2005

HOUSE
FINANCE

COMMITTEE
MINUTES

HOUSE COMMITTEE ON FINANCE
2005-2006 SESSION
(PERMANENT)
Room/Phone/Seat Assignments

MEMBER	E-MAIL	ASSISTANT	PHONE	OFFICE	SEAT
ALEXANDER, Martha, Chair	Marthaa@ncleg.net	Ann Faust	3-5807	2208	32
GIBSON, Pryor, Chair	Pryorg@ncleg.net	Shirlyn MacPherson	5-3007	419A	96
HOWARD, Julia, Chair	Juliah@ncleg.net	Anne Soles	3-5904	1106	3
LUEBKE, Paul, Chair	Paull@ncleg.net	Joyce Harris	3-7663	529	44
McCOMAS, Danny, Chair	Dannym@ncleg.net	Judy Lowe	3-5786	506	13
WAINWRIGHT, William, Chair	Williamw@ncleg.net	Blinda Edwards	3-5995	532	8
DAUGHTRIDGE, Bill, Vice-Chair	Billd@ncleg.net	Rachel Dupree	3-5802	304B	87
HILL, Dewey, Vice-Chair	Deweyh@ncleg.net	Gennie Thurlow	3-5830	1309	10
ROSS, Deborah, Vice-Chair	Deborahr@ncleg.net	Margie Penven	3-5773	2223	65
WEISS, Jennifer, Vice-Chair	Jenniferw@ncleg.net	Susan Doty	3-5781	2221	31
WOMBLE, Larry, Vice-Chair	Larryw@ncleg.net	Dorothy McLean	3-5777	534	56
ALLEN, Bernard	Bernarda@ncleg.net	Latisha Dumas	3-5772	1325	79
BLACKWOOD, Curtis	Curtisb@ncleg.net	Mizie Finke	3-2406	1317	97
BLUST, John	Johnbl@ncleg.net	Betty Childress	3-5806	1420	109
BORDSEN, Alice	Aliceb@ncleg.net	Erin Wynia	3-5820	530	29
CAPPS, Russell	Russellc@ncleg.net	Nancy Fox	3-5903	501	118
CARNEY, Becky	Beckyc@ncleg.net	Joyce Langdon	3-5827	1221	54
DOCKHAM, Jerry	Jerryd@ncleg.net	Regina Irwin	5-2526	1424	106
ENGLAND, Bob	Bobe@ncleg.net	Lisa Brown	3-5749	2219	78
FAISON, Bill	Billf@ncleg.net	Katie Jackelen	5-3019	537	93
FISHER, Susan	Susanf@ncleg.net	Meredith Woodlief	5-2013	420	30
FOLWELL, Dale	Dalef@ncleg.net	Mary Marchman	3-5787	508	104

Last Updated: August 29, 2005

GLAZIER, Rick	Rickg@ncleg.net	Carin Savel	3-5601	2215	81
GOFORTH, Bruce	Bruceg@ncleg.net	Ann Jordan	3-5746	1220	21
HACKNEY, Joe	Joeh@ncleg.net	Emily Reynolds	3-5752	2207	69
HARRELL, Jim	Jimha@ncleg.net	Beth LeGrande	5-1883	403	46
HOLLIMAN, Hugh	Hughh@ncleg.net	Carol Bowers	5-0873	1213	55
INSKO, Verla	Verlai@ncleg.net	Pam Evans	3-7208	2121	70
JONES, Earl	Earlj@ncleg.net	Mia Bailey	3-5825	536	80
LEWIS, David	Davidl@ncleg.net	Marie Strickland	5-3015	509	100
LUCAS, Marvin	Marvinl@ncleg.net	Thelma Utley	3-5775	1323	20
McGEE, William	Williamm@ncleg.net	Jayne Nelson	3-5747	531	103
RAYFIELD, John	Johnr@ncleg.net	Brenda Olls	3-5868	510	73
UNDERHILL, Alice	aliceu@ncleg.net	Judy Veorse	3-5853	1206	17
VINSON, Doug	dougv@ncleg.net	Darden Trotter	3-5886	1010	89
WALEND, Trudi	Trudiw@ncleg.net	Ken Walend	5-4466	1015	115
WILEY, Laura	lauraw@ncleg.net	Susan Brothers	3-5877	513	88

EX-OFFICIO MEMBERS

CULPEPPER, Bill	Billc@ncleg.net	Dot Crocker	5-3028	404	36
CUNNINGHAM, Pete	Petec@ncleg.net	Valerie Rustin	3-5778	541	7
EDDINS, Rick	Ricke@ncleg.net	Susan Phillips	3-5828	1002	26

STAFF

Cindy Avrette, Research	cindya@ncleg.net	3-2578	545	
Erika Churchill, Research	erikac@ncleg.net	3-2578	545	
Judy Collier, Research	judyc@ncleg.net	3-2578	545	
Trina Griffin, Research	trinag@ncleg.net	3-2578	545	

Rodney Bizzell, Fiscal Research	rodneybi@ncleg.net	3-4910	619
David Crotts, Fiscal Research	davidc@ncleg.net	3-4910	619
Linda Millsaps, Fiscal Research	lindam@ncleg.net	3-4910	619
Alexei Pavlichev, Fiscal Research	alexeip@ncleg.net	3-4910	619
Martha Walston, Fiscal Research	marthaw@ncleg.net	3-4910	619
Mikael Gross, Bill Drafting	mikaelg@ncleg.net	3-6660	401
Ashley Huffstetler, Bill Drafting	ashleyh@ncleg.net	3-6660	401
Canaan Huie, Bill Drafting	canaanh@ncleg.net	3-6660	401

COMMITTEE ASSISTANT

Jason Cannon	jasonc@ncleg.net	5-1812	1104

HOUSE FINANCE COMMITTEE ATTENDANCE

2005 Session

DATES →→→	2/22/05	3/17/05	3/24/05	3/29/05	4/5/05	4/7/05	4/12/05	4/19/05	4/26/05	5/3/05	5/10/05	5/17/05	5/24/05	5/26/05	6/2/05
Rep. Alexander, Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Gibson, Chair	✓	E	E	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Howard, Chair	E	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Luebke, Chair	✓	✓	E	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
Rep. McComas, Chair	✓	✓	✓				✓			✓		✓	✓	✓	
Rep. Wainwright, Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Daughtridge, Vice-Chair	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓		✓
Rep. Hill, Vice-Chair	✓	✓	✓		✓	✓	✓	✓	✓		✓	✓	✓	✓	✓
Rep. Ross, Vice-Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓
Rep. Weiss, Vice-Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	E
Rep. Womble, Vice-Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Blackwood	✓	✓	✓			✓		✓	✓	✓	✓	✓	✓	✓	✓
Rep. Blust		✓	✓	✓			✓		✓	✓	✓	✓			
Rep. Bordsen	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	E
Rep. Capps	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Rep. Carney	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Dockham	✓	✓	✓	✓							✓	✓	✓		
Rep. Faison	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Folwell	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Glazier	✓		✓	✓	✓		✓		✓	✓	✓	✓	✓	✓	
Rep. Hackney	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Rep. Harrell	E		✓	✓	✓			✓				✓			
Rep. Holliman	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓		✓	
Rep. Jones	✓		✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	
Rep. Lewis	✓	✓	✓	E		E	✓		✓	✓		✓			E
Rep. McGee	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

HOUSE FINANCE COMMITTEE ATTENDANCE

2005 Session

DATES →→→	2/22/05	3/1/05	3/24/05	3/29/05	4/5/05	4/7/05	4/12/05	4/19/05	4/26/05	5/3/05	5/10/05	5/17/05	5/24/05	5/26/05	6/2/05
Rep. Rayfield	E	✓	✓	✓	✓	✓	✓	✓	E	✓	✓	✓	✓	✓	✓
Rep. Underhill	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Vinson	✓		✓	E	✓	✓	E	✓	✓			✓	✓		
Rep. Walend	✓	✓		✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	
Rep. Wiley	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓
Rep. Culpepper, Ex-Officio											✓				
Rep. Cunningham, Ex-Officio										✓				✓	
Rep. Eddins, Ex-Officio															
Cindy Avrette. Staff	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rodney Bizzell, Staff	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Erika Churchill, Staff					✓		✓		✓		✓	✓		✓	
Gerry Cohen, Staff	✓								✓						
David Crotts, Staff	✓	✓					✓		✓						
Trina Griffin, Staff															
Mikael Gross, Staff	✓														
Ashley Huffstetler, Staff	✓				✓			✓		✓	✓	✓	✓	✓	✓
Canaan Huie, Staff															
Linda Millsaps, Staff	✓	✓	✓		✓		✓	✓			✓	✓	✓	✓	✓
Alexei Pavlichev, Staff	✓	✓													
Martha Walston, Staff	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Brenna Erford											✓	✓	✓	✓	✓

HOUSE FINANCE COMMITTEE ATTENDANCE

2005 Session

DATES →→→	6/7/05 (8:30a)	6/7/05 (2:30p)	6/13/05	~~6/14/05~~											
Rep. Alexander, Chair	✓	✓	✓												
Rep. Gibson, Chair	✓	✓	✓												
Rep. Howard, Chair	E	E	✓												
Rep. Luebke, Chair	✓	✓	✓												
Rep. McComas, Chair	✓	✓	✓												
Rep. Wainwright, Chair	✓	✓													
Rep. Daughtridge, Vice-Chair	✓	✓	✓												
Rep. Hill, Vice-Chair	✓	✓	✓												
Rep. Ross, Vice-Chair	✓	✓	✓												
Rep. Weiss, Vice-Chair	✓	✓	✓												
Rep. Womble, Vice-Chair	✓	✓	✓												
Rep. Blackwood	✓	✓	✓												
Rep. Blust	✓	✓	✓												
Rep. Bordsen	✓	✓	✓												
Rep. Capps	✓	✓	✓												
Rep. Carney	✓	✓	✓												
Rep. Dockham			✓												
Rep. Faison	✓	✓	✓												
Rep. Folwell	✓	✓	✓												
Rep. Glazier	✓	✓	✓												
Rep. Hackney	✓	✓	✓												
Rep. Harrell	✓	✓	✓												
Rep. Holliman	✓	✓	✓												
Rep. Jones	✓		✓												
Rep. Lewis	✓	✓	✓												
Rep. McGee	✓	✓	✓												

HOUSE FINANCE COMMITTEE ATTENDANCE

2005 Session

DATES →→→	6/7/05 (8 am)	6/7/05 (2 pm)	6/13/05	6/14/05											
Rep. Rayfield	✓	✓	✓												
Rep. Underhill	✓	✓	✓												
Rep. Vinson			✓												
Rep. Walend	✓	✓	✓												
Rep. Wiley	✓	✓	✓												
Rep. Culpepper, Ex-Officio		✓	✓												
Rep. Cunningham, Ex-Officio		✓	✓												
Rep. Eddins, Ex-Officio			✓												
Cindy Avrette. Staff	✓	✓	✓												
Rodney Bizzell, Staff	✓	✓	✓												
Erika Churchill, Staff			✓												
Gerry Cohen, Staff	✓		✓												
David Crotts, Staff		✓	✓												
Brenna Erford	✓	✓	✓												
Trina Griffin, Staff															
Mikael Gross, Staff															
Ashley Huffstetler, Staff	✓		✓												
Canaan Huie, Staff		✓	✓												
Linda Millsaps, Staff		✓	✓												
Alexei Pavlichev, Staff															
Martha Walston, Staff	✓	✓	✓												

HOUSE FINANCE COMMITTEE ATTENDANCE

2005 Session

DATES →→→	6-14-05	6-21-05	6-13-05	6-28-05	6-30-05	7-7-05	7-19-05	7-26-05	7-27-05	7-28-05	8-4-05	8-23-05 #1	8-23-05 #2	8-23-05 #3	8-23-05 #4
Rep. Alexander, Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Gibson, Chair	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	
Rep. Howard, Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Luebke, Chair	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. McComas, Chair	✓			✓			✓	✓	✓	✓	✓	✓	✓	✓	
Rep. Wainwright, Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Daughtridge, Vice-Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓		✓
Rep. Hill, Vice-Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
Rep. Ross, Vice-Chair	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Rep. Weiss, Vice-Chair	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓		
Rep. Womble, Vice-Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		
Rep. B. Allen	✓				✓	✓		✓	✓	✓	✓	✓	✓		
Rep. Blackwood	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Rep. Blust	✓			✓	✓			✓		✓					
Rep. Bordsen	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Capps	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓				
Rep. Carney	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Dockham	✓				✓	✓	✓	✓		✓	✓		✓		✓
Rep. England	✓		✓	✓	✓	✓		✓	✓	✓	✓	✓		✓	
Rep. Faison	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓
Rep. Fisher	✓	✓		✓	✓	✓		✓	✓	✓	✓	✓	✓		
Rep. Folwell	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Glazier	✓	✓		✓	✓	✓		✓	✓	✓	✓	✓		✓	
Rep. Goforth	✓	✓	✓					✓	✓	✓	✓	✓			
Rep. Hackney	✓	✓	✓		✓	✓		✓	✓		✓	✓	✓	✓	
Rep. Harrell	✓	✓						✓	✓	✓	✓	✓			
Rep. Holliman	✓			✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓
Rep. Insko	✓		✓		✓	✓		✓		✓	✓	✓		✓	

HOUSE FINANCE COMMITTEE ATTENDANCE

2005 Session

DATES →→→	6-14-05	6-21-05	6-23-05	6-28-05	6-30-05	7-7-05	7-19-05	7-26-05	7-27-05	7-28-05	8-4-05	8-23-05 #1	8-23-05 #2	8-23-05 #3	8-23-05 #4
Rep. Jones	✓	✓			✓		✓	✓	✓	✓	✓	✓	✓	✓	
Rep. Lewis	✓			✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓
Rep. Lucas	✓				✓			✓		✓	✓		✓		
Rep. McGee	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Rep. Rayfield	✓	✓	✓	✓	✓	✓	E	E	E	E	E	✓	✓	✓	✓
Rep. Underhill	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Vinson	✓	✓		✓	✓		✓	✓	✓	✓	✓		✓		
Rep. Walend	✓	✓		✓	✓		✓	✓	✓	✓	E		✓		
Rep. Wiley	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
Rep. Culpepper, Ex-Officio	✓	✓						✓	✓	✓	✓				
Rep. Cunningham, Ex-Officio				✓											
Rep. Eddins, Ex-Officio															
Cindy Avrette. Staff	✓				✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rodney Bizzell, Staff	✓	✓		✓	✓	✓		✓	✓	✓	✓	✓	✓		
Erika Churchill, Staff	✓	✓	✓			✓	✓	✓	✓		✓				
Gerry Cohen, Staff	✓						✓		✓						
David Crotts, Staff	✓										✓	✓			
Brenna Erford	✓			✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	
Trina Griffin, Staff															
Mikael Gross, Staff															
Ashley Huffstetler, Staff	✓	✓		✓	✓	✓	✓			✓	✓	✓			
Canaan Huie, Staff	✓									✓	✓	✓	✓		✓
Linda Millsaps, Staff	✓	✓				✓	✓	✓	✓	✓	✓	✓	✓		
Alexei Pavlichev, Staff															
Martha Walston, Staff	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓
Brad Krehely											✓				

Bill Gilkeson 8/23

HOUSE FINANCE COMMITTEE ATTENDANCE

2005 Session

DATES →→→	8-24-05														
Rep. Alexander, Chair															
Rep. Gibson, Chair	✓														
Rep. Howard, Chair	✓														
Rep. Luebke, Chair	✓														
Rep. McComas, Chair	✓														
Rep. Wainwright, Chair	✓														
Rep. Daughtridge, Vice-Chair	✓														
Rep. Hill, Vice-Chair	✓														
Rep. Ross, Vice-Chair	✓														
Rep. Weiss, Vice-Chair	✓														
Rep. Womble, Vice-Chair	✓														
Rep. B. Allen	✓														
Rep. Blackwood															
Rep. Blust	✓														
Rep. Bordsen	✓														
Rep. Capps															
Rep. Carney	✓														
Rep. Dockham	✓														
Rep. England	✓														
Rep. Faison	✓														
Rep. Fisher															
Rep. Folwell	✓														
Rep. Glazier	✓														
Rep. Goforth	✓														
Rep. Hackney	✓														
Rep. Harrell															
Rep. Holliman	✓														
Rep. Insko															

HOUSE FINANCE COMMITTEE ATTENDANCE

2005 Session

DATES →→→	8-24-05														
Rep. Jones	✓														
Rep. Lewis	✓														
Rep. Lucas															
Rep. McGee	✓														
Rep. Rayfield															
Rep. Underhill	✓														
Rep. Vinson															
Rep. Walend	✓														
Rep. Wiley	✓														
Rep. Culpepper, Ex-Officio															
Rep. Cunningham, Ex-Officio															
Rep. Eddins, Ex-Officio															
Cindy Avrette. Staff	✓														
Rodney Bizzell, Staff	✓														
Erika Churchill, Staff															
Gerry Cohen, Staff															
David Crotts, Staff															
Brenna Erford															
Trina Griffin, Staff															
Mikael Gross, Staff															
Ashley Huffstetler, Staff	✓														
Canaan Huie, Staff	✓														
Linda Millsaps, Staff															
Alexei Pavlichev, Staff															
Martha Walston, Staff	✓														

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON FINANCE
2005 – 2006 SESSION

CHAIRS

Rep. Alexander
Co-Chair

Rep. Gibson
Co-Chair

Rep. Howard
Co-Chair

Rep. Luebke
Co-Chair

Rep. McComas
Co-Chair

Rep. Wainwright
Co-Chair

VICE-CHAIRS

Rep. Daughtridge
Vice-Chair

Rep. Hill
Vice -Chair

Rep. Ross
Vice-Chair

Rep. Weiss
Vice-Chair

Rep. Womble
Vice-Chair

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON FINANCE
2005 – 2006 SESSION

MEMBERS

Rep. B. Allen

Rep. Blackwood

Rep. Blust

Rep. Bordsen

Rep. Capps

Rep. Carney

Rep. Dockham

Rep. England

Rep. Faison

Rep. Fisher

Rep. Folwell

Rep. Glazier

Rep. Goforth

Rep. Hackney

Rep. Harrell

Rep. Holliman

Rep. Insko

Rep. Jones

Rep. Lewis

Rep. Lucas

Rep. McGee

Rep. Rayfield

Rep. Underhill

Rep. Vinson

Rep. Walend

Rep. Wiley

EX-OFFICIO MEMBERS

Rep. Culpepper
Ex-officio

Rep. Cunningham
Ex-officio

Rep. Eddins
Ex-officio

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0009	Holliman	THOMASVILLE DEANNEXATION.	HR	Ch. SL 2005-108	01-31-05	03-24-05
H0015	Miller	CIGARETTE TAX INCREASE FOR PUBLIC HEALTH.	H	Ref To Com On Finance	01-31-05	
H0020	Holliman	HEALTH INSURANCE CREDIT/MINIMUM WAGE.	*H	Ref To Com On Finance	01-31-05	03-10-05
H0020	Holliman	HEALTH INSURANCE CREDIT/MINIMUM WAGE.	*H	Ref To Com On Finance	03-17-05	08-04-05
H0034	Hill	TABOR CITY SATELLITE ANNEXATION.	H	Re-ref Com On Agriculture	02-02-05	06-23-05
H0035	Alexander	ADET SCHOOL/FEE/ QUALIS. INCREASE.	*HR	Ch. SL 2005-312	04-12-05	04-26-05
H0036	Allred	EXPAND HOMESTEAD TAX BENEFIT VIA TAX CREDIT.	H	Ref To Com On Finance	02-02-05	
H0058	Moore	SECURITIES TRANSFER ON DEATH.	*H	Re-ref Com On Finance	04-12-05	
H0060	Dollar	INCORPORATE SWIFT CREEK.	H	Ref To Com On Finance	02-03-05	
H0061	Culpepper	INCOME TAX - EXEMPT CERTAIN MILITARY INCOME.	H	Re-ref Com On Finance	03-16-05	
H0084=	Nye	LONG-TERM CARE INSURANCE TAX CREDIT.	H	Ref To Com On Finance	02-07-05	
H0085	Womble	VARIOUS SPECIAL LICENSE PLATES	*HR	Ch. SL 2005-216	02-07-05	05-18-05
H0088	Miller	ELECTORAL FAIRNESS ACT.	*H	Ref To Com On Judiciary I	03-28-05	08-23-05
H0105	Luebke	MOTOR FUEL TAX CHGS & REV LAWS TECHNICAL CHGS.	*H	Pres. To Gov. 8/ 24/2005	02-08-05	05-04-05
H0116	Brubaker	PROPERTY TAX CHANGES	*HR	Ch. SL 2005-313	02-09-05	04-26-05
H0118=	Clary	REENACT LONG-TERM CARE INSURANCE TAX CREDIT.	H	Ref To Com On Finance	02-09-05	
H0125=	Wilson	WEST JEFFERSON OCCUPANCY TAX.	HR	Ch. SL 2005-49	02-09-05	04-05-05
H0143=	Coates	EXEMPT AGRI-TOURISM FROM PRIVILEGE TAX.	H	Ref To Com On Finance	03-16-05	08-23-05
H0148=	Howard	LONG-TERM CARE INSURANCE TAX CREDIT.	H	Ref To Com On Finance	02-09-05	
H0186	LaRoque	INCREASE UNIFORM JUROR FEES.	*H	Re-ref Com On Finance	03-15-05	
H0237	Coates	REVISE MORTGAGE LENDING ACT.	*HR	Ch. SL 2005-316	07-06-05	07-28-05
H0251=	Setzer	FIREFIGHTER/RESCUE SQUAD TAX DEDUCTION.	H	Ref To Com On Finance	02-16-05	
H0254	Crawford	GARVEE BOND ISSUANCE.	*H	Pres. To Gov. 8/ 23/2005	05-26-05	07-07-05
H0272	L. Allen	SANITARY DISTRICT SET-OFF DEBT COLLECTION.	*H	Re-ref Com On Finance	03-28-05	
H0278	Brown	WALKERTOWN DEANNEXATIONS.	HR	Ch. SL 2005-50	02-17-05	04-05-05
H0283	Pierce	TAX CREDIT FOR EMPLOYING FELONS.	H	Ref To Com On Finance	02-17-05	

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0285	Pierce	TAX INCENTIVE - PREVENTIVE HEALTH CARE.	H	Ref To Com On Finance	02-17-05	
H0286	Weiss	INCREASE CIGARETTE TAX.	H	Ref To Com On Finance	02-17-05	
H0287=	Nye	AMEND OCCUPATIONAL THERAPY LAWS/FEES.	H	Re-ref Com On Health	02-17-05	04-05-05
H0295=	Hilton	FIREFIGHTER/RESCUE SQUAD TAX DEDUCTION.	H	Ref To Com On Finance	02-17-05	
H0317	Clary	WACO TOWN CENTER.	H	Re-ref Com On Rules, Calendar, and Operations of the House	03-17-05	04-07-05
H0342	Gibson	REDUCE FRANCHISE TAX.	H	Ref To Com On Finance	02-22-05	
H0344	Setzer	LAW ENFORCEMENT TAX DEDUCTION.	H	Re-ref Com On Agriculture	02-22-05	07-13-05
H0350	Stiller	HOLDEN BEACH CANAL DREDGING FEE.	*H	Ref To Com On Finance	03-17-05	04-07-05
H0351	Owens	MODIFY PASQUOTANK/ ELIZ. CITY OCCUPANCY TAX.	*HR	Ch. SL 2005-16	02-23-05	04-05-05
H0352	Holloway	SMALL BUSINESS TAX EXEMPTION.	H	Ref To Com On Finance	02-23-05	
H0370	Steen	SATELLITE ANNEXATIONS/ VARIOUS MUNICIPLALITIES.	*HR	Ch. SL 2005-173	03-23-05	04-05-05
H0378	Setzer	AIR MEDAL SPECIAL LICENSE PLATE.	H	Ref To Com On Finance	02-24-05	
H0379	Setzer	COLD WAR VETERAN SPECIAL LICENSE PLATE.	H	Ref To Com On Finance	02-24-05	
H0393=	Stam	HOLLY SPRINGS EMINENT DOMAIN.	HR	Ch. SL 2005-57	02-28-05	04-07-05
H0396	Holloway	INCREASE LONG-TERM CARE TAX CREDIT.	H	Ref To Com On Finance	02-28-05	
H0397	Howard	APPRENTICESHIP PROGRAM TAX CREDITS.	H	Ref To Com On Finance	02-28-05	
H0399	Owens	UNIFIED GOVERNMENT.	*HR	Ch. SL 2005-35	03-16-05	04-05-05
H0433	Insko	EARNED INCOME TAX CREDIT.	H	Ref To Com On Finance	03-02-05	
H0442	Faison	INCREASE JUROR FEES/ COURT COSTS.	H	Ref To Com On Finance	03-02-05	
H0445=	Pate	INCOME TAX CREDIT - ENERGY EFFICIENT HOMES.	H	Ref To Com On Finance	03-02-05	
H0446	L. Allen	ROANOKE RAPIDS ANNEXATION/ETJ/WELDON ANNEX.	HR	Ch. SL 2005-9	03-02-05	03-29-05
H0449	Stam	GIFT TAX CHANGES.	*H	Ref To Com On Finance	03-02-05	04-12-05
H0454=	Tolson	WATER/UTILITIES SAVINGS IN GOVT. FACILITIES.	H	Re-ref Com On Appropriations	04-13-05	05-04-05
H0464	Parmon	WINSTON-SALEM MOTOR VEHICLE TAX INCREASE.	*HR	Ch. SL 2005-278	03-03-05	04-26-05
H0469=	Current	LEASE PURCHASE FOR	*H	Re-ref Com On	03-29-05	

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		SCHOOL WAREHOUSE.		Finance		
H0470	Walend	TRANSYLVANIA OCCUPANCY TAX.	*HR	Ch. SL 2005-88	03-07-05	05-24-05
H0474=	Ross	MILL REHABILITATION TAX CREDIT.	*H	Ref To Com On Finance	03-07-05	08-23-05
H0476	Tolson	WILSON/GREENE BOUNDARY SETTLEMENT.	HR	Ch. SL 2005-259	03-07-05	03-24-05
H0478	Folwell	TOBACCOVILLE DEANNEXATION.	HR	Ch. SL 2005-51	03-07-05	04-05-05
H0488	Weiss	CARY CHARTER REWRITE.	*HR	Ch. SL 2005-117	03-07-05	04-26-05
H0491	Hilton	REDUCE HANDGUN PERMIT FEE.	H	Ref To Com On Finance	03-07-05	
H0498=	Hollo	TAYLORSVILLE SATELLITE ANNEXATIONS.	HR	Ch. SL 2005-52	03-07-05	03-24-05
H0504=	Wainwright	FUEL TAX REFUND FOR OFF-ROAD USE BY PUMPERS.	H	Ref To Com On Finance	03-07-05	
H0512=	Jeffus	INCOME TAX CREDIT FOR PUBLIC SCHOOL TEACHERS.	H	Ref To Com On Finance	03-07-05	
$ H0530	**Brown**	**HISTORIC OAK GROVE SCHOOL FUNDS.**	**H**	**Re-ref Com On Finance**	**08-02-05**	
H0540	L. Allen	HALIFAX AND ROANOKE RAPIDS OCCUPANCY TAXES.	*HR	Ch. SL 2005-46	03-09-05	04-05-05
H0544	Rapp	MADISON COUNTY OCCUPANCY TAX.	HR	Ch. SL 2005-118	03-09-05	04-05-05
H0566=	Gibson	MODERN ESCHEAT INVESTMENT PROGRAM.	H	Re-ref Com On Finance	04-20-05	
H0580	Rayfield	BELMONT & TROUTMAN OCCUPANCY TAX.	*HR	Ch. SL 2005-220	03-10-05	04-19-05
H0580	Rayfield	BELMONT & TROUTMAN OCCUPANCY TAX.	*HR	Ch. SL 2005-220	06-29-05	07-19-05
H0581=	Rayfield	BELMONT STREET LIGHTING ASSESSMENTS.	HR	Ch. SL 2005-111	04-06-05	04-19-05
H0608=	Moore	CONSUMER CREDIT PROTECTION ACT.	H	Ref To Com On Finance	03-14-05	
H0613	Harrell	UPDATE CERTIFICATION/ LICENSURE/REC. THERAPY.	*H	Pres. To Gov. 8/ 23/2005	03-14-05	05-18-05
H0621=	Wright	SMALL INSTALLMENT CONSUMER LOANS.	H	Re-ref Com On Finance	04-13-05	
H0623=	Goforth	AMEND TAXATION OF CONSTRUCTION MACHINERY.	H	Ref To Com On Finance	03-14-05	
$ H0625=	**L. Allen**	**ADVANCED VEHICLE RESEARCH CENTER INCENTIVE.**	**H**	**Ref To Com On Finance**	**03-14-05**	
H0629	Adams	OPTION TO FREEZE CREDIT REPORT.	*H	Ref To Com On Judiciary I	03-15-05	05-18-05
H0631	Haire	MAGGIE VALLEY SATELLITE ANNEXATIONS.	*HR	Ch. SL 2005-79	03-15-05	03-29-05
H0634	Tolson	JUDICIAL DEPT. CRIMINAL BACKGROUND CHECKS.-AB	*H	Re-ref Com On Finance	03-28-05	
H0646	Holliman	INSURANCE COMPANY FEE	*H	Pres. To Gov. 8/	04-18-05	04-26-05

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		CONSOLIDATION.-AB		24/2005		
48	Moore	EXEMPT BUILDER'S INVENTORY.	H	Ref To Com On Finance	03-16-05	
H0650	Haire	BUSINESS COURT CASES/ FEE.	*H	Pres. To Gov. 8/ 24/2005	03-28-05	06-14-05
H0682	Capps	OPERATION IRAQI FREEDOM REGISTRATION PLATES.	H	Ref To Com On Finance	03-17-05	
H0688	Gibson	CERTIFY ON-SITE WASTEWATER CONTRACTORS.	*H	Ref to Agriculture/ Environment/ Natural Resources. If fav, re-ref to Finance	03-17-05	07-07-05
H0689	Gibson	MONROE MEALS TAX.	*HR	Ch. SL 2005-261	03-17-05	05-04-05
H0691	Insko	CARRBORO MOTOR VEHICLE TAX.	*HR	Ch. SL 2005-306	03-17-05	04-26-05
H0692=	Jeffus	GUILFORD BATTLEGROUND SPECIAL PLATE.	H	Ref To Com On Finance	03-17-05	
H0705=	Hill	PRESENT-USE VALUE BUYOUT CREDITS.	HR	Ch. SL 2005-293	03-17-05	04-12-05
H0723	Glazier	UNC/CRIMINAL RECORD CHECKS/FEE.-AB	*H	Re-ref Com On Finance	05-26-05	06-08-05
H0726=	Brubaker	SPECIAL OBLIGATION BONDS FOR UNC.-AB	H	Ref To Com On Finance	03-17-05	
H0736=	Holliman	CODE ENFORCEMENT OFFICIAL EXAM FEES.-AB	*HR	Ch. SL 2005-289	03-17-05	04-19-05
H0743	Coates	EAST SPENCER ANNEXATION.	HR	Ch. SL 2005-112	03-17-05	03-29-05
45	Coates	WILD TURKEY FEDERATION SPECIAL PLATE.	H	Ref To Com On Finance	03-17-05	
H0749=	Cole	AGREEMENT FOR TRANSPORTATION IMPROVEMENTS.-AB	*H	Re-ref Com On Finance	06-01-05	
H0756=	Sauls	LEE LOCAL SALES TAX.	*H	Passed 3rd Reading	03-17-05	08-23-05
H0766	Howard	ENHANCE PASSENGER TRAMWAY SAFETY ACT.-AB	*H	Pres. To Gov. 8/ 24/2005	03-17-05	04-19-05
H0768	Howard	2005 OMNIBUS LABOR LAW CHANGES.-AB	*H	Pres. To Gov. 8/ 24/2005	05-09-05	05-18-05
H0770	Dickson	PARENTAL SAVINGS TRUST FUND TAX DEDUCTION.-AB	H	Ref To Com On Finance	03-17-05	
H0782	Wright	FACILITY QUALITY & SAFETY IMPROVEMENT-HHS.-AB	H	Ref To Com On Finance	03-17-05	
H0785	Wright	PUBLIC HOSPITAL INVESTMENT AUTHORITY.	*H	Re-ref Com On Finance	05-31-05	
H0787	Wilson	VARIOUS LOCAL ACTS.	*H	Pres. To Gov. 8/ 24/2005	05-26-05	05-26-05
H0802	Insko	CHAPEL HILL UTILITY TAX DISTRICT.	H	Ref To Com On Finance	03-21-05	
H0803	Holliman	MANUFACTURED HOUSING LICENSE AMENDMENTS.	*HR	Ch. SL 2005-297	03-21-05	04-19-05
H0812=	Preston	SCUBA SPECIAL	H	Ref To Com On	03-21-05	

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		REGISTRATION PLATE.		Finance		
[redacted]315	Blust	OAK RIDGE VOLUNTARY ANNEXATIONS.	H	Ref To Com On Finance	03-21-05	
$ H0816	**Pate**	**PROPERTY TAX EXCLUSION DISABLED VETERANS.**	**H**	**Ref To Com On Finance**	**03-21-05**	
H0824	Tucker	EMERGENCY MED. SERVICE AVAIL. FEE/ DUPLIN CO.	*H	Re-ref Com On Finance	05-31-05	
H0828	Stiller	BELVILLE DEANNEXATION.	HR	Ch. SL 2005-113	03-22-05	03-29-05
H0834	Walker	NORTH WILKESBORO/LAND FOR PRISONS.	*H	Re-ref Com On Finance	03-30-05	
H0835	McGee	CONCEALED CARRY FOR LAW ENFORCEMENT OFFICERS.	H	Re-ref Com On Finance	05-17-05	
H0843	Tucker	DUPLIN OCCUPANCY TAX.	*HR	Ch. SL 2005-53	03-22-05	04-05-05
H0844	Moore	ASSIST DEPLOYING NATIONAL GUARD MEMBERS.	H	Ref To Com On Finance	03-22-05	
H0855	Insko	CHILD NUTRITION STANDARDS.	*H	Pres. To Gov. 8/ 24/2005	03-22-05	05-05-05
H0863	Warren	WOODFIN ANNEXATION.	*H	Re-ref Com On Rules, Calendar, and Operations of the House	05-19-05	06-02-05
H0870	Preston	BUDDY PELLETIER SURFING FOUNDATION PLATE.	H	Ref To Com On Finance	03-23-05	
H0871	Preston	EMERALD ISLE CANAL DREDGING FEE.	*HR	Ch. SL 2005-47	03-23-05	04-07-05
[redacted]876	Rapp	HAYWOOD COUNTY SALES TAX.	*H	Ref To Com On Finance	03-24-05	08-23-05
H0890	Alexander	CRIME LAB COST RECOVERY FEE.	*H	Pres. To Gov. 8/ 23/2005	03-24-05	05-18-05
H0892=	Alexander	REGULATE SALE OF MALT BEVERAGE KEGS.	*H	Re-ref Com On Rules, Calendar, and Operations of the House	05-25-05	06-08-05
H0894	Hunter	CREATE A MOBILE HOME DISPOSAL TAX.	H	Ref To Com On Finance	03-24-05	
H0896	Haire	STATE BAR/APPEAL/FEE.	*HR	Ch. SL 2005-237	03-24-05	05-04-05
H0903	England	PERFUSIONISTS LICENSURE.	H	Ref To Com On Finance	03-28-05	
H0909	Gillespie	"CHOOSE LIFE" SPECIAL REGISTRATION PLATE.	H	Ref To Com On Finance	03-28-05	
H0918=	McComas	FILM INDUSTRY JOBS INCENTIVES.	H	Ref To Com On Finance	03-28-05	
H0931	Stam	TAX FAIRNESS IN EDUCATION.	H	Ref To Com On Finance	03-28-05	
H0932	Hunter	GATES LAND TRANSFER TAX.	H	Ref To Com On Finance	03-28-05	
H0936=	McLawhorn	INCOME TAX - MILITARY/ NATIONAL GUARD EXEMPT.	H	Ref To Com On Finance	03-28-05	
$ H0942=	**Glazier**	**2005 MILITARY SUPPORT ACT.**	***H**	**Re-ref Com On Finance**	**06-14-05**	
H0945	Luebke	OMNIBUS OCC. TAXES.	*H	Ref To Com On	03-29-05	06-02-05

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
				Rules, Calendar, and Operations of the House		
H0947	Owens	LOCAL TAX FOR PUBLIC SCHOOLS/COMM COLLEGES-II	*H	Passed 3rd Reading	05-02-05	08-24-05
$ H0948	**Owens**	**FILM PRODUCTION RECRUITMENT STIMULUS.**	**H**	**Ref to the Com on Finance and, if favorable, to the Com on Appropriations**	**03-29-05**	
H0950	Owens	TYRRELL LAND TRANSFER TAX.	H	Ref To Com On Finance	03-29-05	
H0965	Miller	DURHAM IMPACT FEE FOR SCHOOLS.	H	Ref To Com On Finance	03-29-05	
H0976	Blust	TAXPAYER COST RECOVERY.	H	Ref To Com On Finance	03-29-05	
H0980	Blust	CONFORM PERSONAL TAX DEDUCT AND EXEMPT TO IRC.	H	Ref To Com On Finance	03-29-05	
H0986	McLawhorn	VARIOUS SATELLITE ANNEXATIONS.	*HR	Ch. SL 2005-71	03-30-05	04-12-05
H0988	Blackwood	PROPERTY TAX - VALUE OF MOTOR VEHICLES.	*HR	Ch. SL 2005-303	03-30-05	04-26-05
H0990	Starnes	DEFINITION OF FARMER FOR SALES AND USE TAX.	*H	Ref To Com On Finance	03-30-05	08-23-05
H0992	Starnes	INCREASE THE EXCISE TAX ON MALT BEVERAGES.	H	Ref To Com On Finance	03-30-05	
H0993	Gillespie	GEN. CONTRACTORS/FEE INCREASES.	H	Ref To Com On Finance	03-30-05	
H1004	Gibson	EXTEND JDIG AND BILL LEE ACT.	*HR	Ch. SL 2005-241	03-31-05	04-26-05
H1005	McMahan	PINEVILLE ANNEXATION.	HR	Ch. SL 2005-119	03-31-05	05-10-05
H1013	Hill	COUNTY COMMISSIONER SPECIAL PLATE LIMIT.	H	Ref To Com On Finance	03-31-05	
H1025	Luebke	WINEMAKING ON PREMISES PERMIT.	H	Re-ref Com On Finance	05-03-05	05-18-05
H1030	Stiller	BRUNSWICK COUNTY AIRPORT AUTHORITY.	*HR	Ch. SL 2005-342	03-31-05	05-04-05
H1036	McComas	AQUARIUM SOCIETY SPECIAL REGISTRATION PLATE.	H	Ref To Com On Finance	03-31-05	
H1037	McComas	INCREASE WRIGHTSVILLE BEACH MOTOR VEHICLE TAX.	*H	Ref To Com On Finance	03-31-05	04-26-05
H1050	Warren	LOCAL TAX FOR PUBLIC SCHOOLS & COMMUNITY COLLEGE	*H	Passed 3rd Reading	03-31-05	08-23-05
H1051	Haire	MACON-JACKSON REGIONAL AIRPORT AUTHORITY.	*HR	Ch. SL 2005-219	03-31-05	06-30-05
H1056	Preston	AMEND CARTERET COUNTY OCCUPANCY TAX.	HR	Ch. SL 2005-120	03-31-05	04-19-05
H1062	Insko	ORANGE/CHATHAM COUNTY TRANSFER TAXES.	H	Ref To Com On Finance	03-31-05	
H1063	Culpepper	KILL DEVIL HILLS	HR	Ch. SL 2005-142	03-31-05	06-21-05

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		ASSESSMENTS.				
H1067	Insko	ORANGE/CHATHAM IMPACT TAX.	H	Ref To Com On Finance	03-31-05	
H1068	Justice	SURF CITY SATELLITE ANNEXATIONS.	H	Ref To Com On Finance	03-31-05	
H1080	Daughtridge	DORTCHES DEANNEXATION.	HR	Ch. SL 2005-60	03-31-05	04-12-05
H1083	Martin	FRIENDS OF NC NATURAL SCIENCES MUSEUM PLATES.	H	Ref To Com On Finance	04-04-05	
H1084	Bordsen	EXPUNGE NONVIOLENT FELONIES/YOUNG OFFENDERS.	*H	Ref To Com On Rules and Operations of the Senate	04-21-05	06-30-05
H1089	Blackwood	TAX CREDIT - NONPUBLIC SCHOOL STUDENTS.	H	Ref To Com On Finance	04-04-05	
$ H1092	**Gibson**	**AMEND FISHING LICENSE REQUIREMENTS.**	***H**	**Re-ref Com On Finance**	**04-11-05**	
$ H1098	**Daughtridge**	**FINANCE NC MUSEUM OF ART EXPANSION.**	***H**	**Placed On Cal For 8/9/2005**	**08-03-05**	**08-04-05**
H1114	Holloway	EMERGENCY PERSONNEL TAX DEDUCTION.	H	Ref To Com On Finance	04-05-05	
H1115	Moore	ELECTION ADMINISTRATION AMENDMENTS.	*H	Pres. To Gov. 8/24/2005	05-02-05	05-10-05
H1117	Ross	PUBLIC FINANCE CHANGES.	*HR	Ch. SL 2005-238	04-20-05	04-26-05
H1122	Rayfield	REDUCE SALES TAX ON FUNERALS.	H	Ref To Com On Finance	04-06-05	
H1136	Culpepper	MERCURY SWITCH REMOVAL-2.	*H	Pres. To Gov. 8/23/2005	04-20-05	05-10-05
H1142	Michaux	LOCAL TAX MENU WITH VOTER APPROVAL.	H	Ref To Com On Finance	04-07-05	
H1159=	Holloway	PRESENT-USE VALUE BUYOUT CREDITS.	H	Ref To Com On Finance	04-11-05	
$ H1160	**Holloway**	**DEDUCTION FOR S CORPORATION INCOME.**	**H**	**Ref To Com On Finance**	**04-11-05**	
H1194	Weiss	PHYSICAL THERAPISTS/ PROFESSIONAL CORPORATIONS.	*H	Ref To Com On Rules and Operations of the Senate	04-19-05	04-26-05
H1196	Church	REDUCE WHOLESALE DRUG DISTRIBUTOR LICENSE FEE.	H	Ref To Com On Finance	04-13-05	
H1197	Holliman	NATIONAL MS SOCIETY REGISTRATION PLATE.	H	Ref To Com On Finance	04-13-05	
H1208	Tolson	EXTEND BILL LEE ACT - CERTAIN MANUFACTURERS.	H	Re-ref Com On Commerce	04-13-05	04-25-05
H1212	Coleman	TAX FORM DONATION - BREAST CANCER SCREENINGS.	H	Ref To Com On Finance	04-13-05	
H1214	Blackwood	TAX CREDIT - TOLL PAYMENTS.	H	Ref To Com On Finance	04-13-05	
H1217	Earle	NOTARY FEE INCREASE.	*HR	Ch. SL 2005-328	04-13-05	05-04-05
H1223	Setzer	AMEND HISTORIC VEHICLE OWNER PLATES.	H	Ref To Com On Finance	04-14-05	

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H1228	Underhill	CORVETTE CLUB SPECIAL REGISTRATION PLATE.	H	Ref To Com On Finance	04-14-05	
H1231	Steen	SHP RETIREE PLATE MODIFICATIONS.	*H	Ref To Com On Finance	04-14-05	08-23-05
H1251	Wainwright	SALES TAX EXEMPTION FOR ITEMS USED IN R&D.	H	Ref To Com On Finance	04-18-05	
H1257	Pierce	TAX REFUND DONATION FOR THE ARTS.	H	Ref To Com On Finance	04-18-05	
H1261	Underhill	WIRELESS TELEPHONE SERVICE.	*H	Pres. To Gov. 8/ 24/2005	05-09-05	05-24-05
H1267	Underhill	EXCLUDE PENSIONS FROM INCOME TAX.	H	Ref To Com On Finance	04-18-05	
H1270	Culpepper	AMEND REAL ESTATE APPRAISERS ACT/FEES.	H	Ref To Com On Finance	04-19-05	
H1274=	Bordsen	GLASS TECHNICIANS LICENSURE.	H	Ref To Com On Finance	04-19-05	
H1275=	Bordsen	LICENSURE/MOTOR VEH. REPAIR SHOPS/COLL. REP.	H	Ref To Com On Finance	04-19-05	
H1277	Faison	CLARIFY HUNTER SAFETY.	*H	Pres. To Gov. 8/ 23/2005	05-04-05	05-18-05
H1281	L. Allen	COUNTY CONTROL/ NOXIOUS AQUATIC WEEDS.	*H	Pres. To Gov. 8/ 23/2005	05-05-05	05-18-05
H1283	Culpepper	IMPROVE ENVIRONMENTAL ENFORCEMENT.	*HF	Failed 2nd Reading	04-19-05	07-28-05
H1284	Culpepper	IMPROVE REAL ESTATE LICENSING LAW.	*H	Pres. To Gov. 8/ 23/2005	04-19-05	06-21-05
H1287	Haire	PRESENT USE VALUE EXEMPTION FOR FISH FARMS.	H	Ref To Com On Finance	04-19-05	
H1288	Haire	CLEANUP OF ABANDONED MOBILE HOMES.	H	Ref To Com On Finance	04-19-05	
H1289	Sauls	AMEND MOTORCYCLE HELMET LAW.	H	Ref To Com On Finance	04-19-05	
H1296=	Hackney	RENEWABLE FUELS MOTOR FUELS TAX EXEMPTION.	H	Ref To Com On Finance	04-20-05	
H1313	Wright	INCREASE PROCESSING FEE FOR RETURNED CHECKS.	H	Ref To Com On Finance	04-20-05	
H1325	McLawhorn	TAX CREDIT FOR RECYCLING OYSTER SHELLS.	H	Ref To Com On Finance	04-20-05	
H1327	Harrison	CRIM. RECORD CHECKS/ PSYCHOLOGY PRACTICE ACT.	*H	Re-ref Com On Finance	05-26-05	07-07-05
H1330	Jeffus	AMEND ELECTROLYSIS PRACTICE ACT/FEES.	*H	Ref to Health Care. If fav, re-ref to Finance	04-20-05	08-03-05
H1330	Jeffus	AMEND ELECTROLYSIS PRACTICE ACT/FEES.	*H	Ref to Health Care. If fav, re-ref to Finance	08-23-05	08-23-05
H1340	Faison	REESTABLISH BOXING COMMISSION.	*H	Re-ref Com On Appropriations	04-21-05	06-08-05
H1349	Wilkins	RAISE CEILING ON FEES/ BOARD OF PHARMACY.	*H	Pres. To Gov. 8/ 24/2005	04-21-05	08-04-05
H1355	McMahan	COASTAL CONSERVATION	H	Ref To Com On	04-21-05	

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		ASSOCIATION PLATE.		Finance		
H1357	Fisher	AMEND ACUPUNCTURE LAWS/FEES.	*H	Pres. To Gov. 8/ 23/2005	04-21-05	05-10-05
H1360	McGee	EQUITY IN EXCISE TAXES ON ALCOHOLIC BEVERAGES.	H	Ref To Com On Finance	04-21-05	
H1369	Vinson	EXPAND RENEWABLE ENERGY TAX CREDIT.	H	Ref To Com On Finance	04-21-05	
H1370	Vinson	TAX CREDIT FOR MANUFACTURING FACILITIES.	H	Ref To Com On Finance	04-21-05	
H1374	Culpepper	PHARMACY BENEFITS MANAGER REGULATION ACT/FEES.	H	Ref To Com On Finance	04-21-05	
H1376=	Culpepper	GEN. CONTRACTORS/FEES/ CIVIL PENALTIES.	H	Ref To Com On Finance	04-21-05	
H1386=	Gibson	CHANGE GAS TAX RATES/ INCREASE TANK FEES.	H	Ref To Com On Finance	04-21-05	
H1411	Luebke	UPDATE CONSUMER CREDIT SALES CAP.	*HR	Ch. SL 2005-338	04-21-05	05-10-05
H1413=	L. Allen	ENHANCE LOCAL GOVT. ADM. OF ENV. PRGMS.	*H	Ref to Agriculture/ Environment/ Natural Resources. If fav, re-ref to Finance	08-11-05	08-23-05
H1421=	Jones	RANDLEMAN DAM BONDS.	H	Ref To Com On Finance	04-21-05	
H1429	Harrell	WINE SHIPPER FEE/WINE PRIMARY SOURCE	*H	Pres. To Gov. 8/ 23/2005	04-21-05	05-18-05
H1433	Hollo	AMATEUR RADIO PLATE FEE ELIMINATED.	H	Ref To Com On Finance	04-21-05	
H1456	Blust	CHARITABLE ENTITY EXEMPTION STANDARD.	H	Ref To Com On Finance	04-21-05	
H1471	McGee	EXPAND DUTIES OF TAX COLLECTOR.	H	Ref To Com On Finance	04-21-05	
H1475	Wright	PUBLIC-PRIVATE PARTNER. INFRASTRUCTURE ACT.	H	Ref To Com On Finance	04-21-05	
H1481	Wilkins	COMPOUNDING PHARMACY PERMITS/FEES.	H	Ref To Com On Finance	04-21-05	
H1507	Alexander	AMEND INTERPRETER/ TRANSLITERATOR LICENSE ACT.	HR	Ch. SL 2005-299	04-21-05	05-18-05
H1515	LaRoque	MED SCHOOLS/CRIM BACKGROUND CHECK.	*H	Ref to Judiciary I. If fav, re-ref to Finance	05-31-05	07-19-05
H1519	Wright	AMEND MASSAGE THERAPY ACT/FEES/CRIM. CHECKS.	H	Ref To Com On Finance	04-21-05	
H1521=	McComas	OYSTER SHELLS/BAN LANDFILLING/TAX CREDIT	*H	Re-ref Com On Finance	05-17-05	
H1526=	Frye	AVERY COUNTY/HERITAGE PARK AUTHORITY.	*H	Re-ref Com On Finance	05-31-05	08-23-05
H1526=	Frye	AVERY COUNTY/HERITAGE PARK AUTHORITY.	*H	Re-ref Com On Finance	08-25-05	

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H1529	Goodwin	ARC OF NORTH CAROLINA SPECIAL PLATE.	H	Ref To Com On Finance	04-21-05	
H1534	Gibson	MODULAR HOME SALES/ INSTALLATION REQUIREMENTS.	H	Ref To Com On Finance	04-21-05	
H1537	Barnhart	MISCELLANEOUS CHANGES/ MFG. HOME LAWS.	H	Ref To Com On Finance	04-21-05	
H1541	Earle	HOMEOWNER ASSOCIATION AMENDMENTS.	*H	Pres. To Gov. 8/ 24/2005	04-21-05	05-26-05
H1549	Brubaker	PROPERTY TAX COLLECTION ON MOBILE HOMES.	H	Ref To Com On Finance	04-21-05	
H1586	Harrell	TEXTILE MILLS REDEVELOPMENT.	H	Ref To Com On Finance	05-05-05	
H1595	Alexander	REDUCE EMISSIONS FROM MOBILE SOURCES PROGRAM.	H	Ref To Com On Finance	05-05-05	
$ H1610	**Wilkins**	**ROXBORO UPTOWN DEV. CORP. FUNDS.**	***H**	**Passed 3rd Reading**	**07-14-05**	**08-23-05**
H1613	Vinson	CENTRAL ADMINISTRATIVE OFFICE CREDIT.	H	Ref To Com On Finance	05-09-05	
H1618	Walend	BILL LEE TIER FORMULA.	H	Ref To Com On Finance	05-10-05	
H1619	Walend	DEVELOPMENT TIER DESIGNATION FORMULA.	H	Ref To Com On Finance	05-10-05	
H1621	Culpepper	CHARITABLE BINGO FEE/ PRIZE LIMITS INCREASED.	H	Ref To Com On Finance	05-11-05	
H1622	Culpepper	INSURANCE GUARANTY BONDS.	H	Ref To Com On Finance	05-11-05	
H1623	Insko	INCREASE EXCISE TAX ON CIGARETTES.	H	Ref To Com On Finance	05-11-05	
$ H1630	**Luebke**	**2005 CONTINUING BUDGET AUTHORITY/ REVENUE.**	***HR**	**Ch. SL 2005-144**	**05-11-05**	**06-07-05**
$ H1631	**Luebke**	**EXTEND CONTINUING BUDGET AUTHORITY.**	***HR**	**Ch. SL 2005-201**	**05-11-05**	**07-14-05**
H1632	Luebke	FINANCE LAWS 3.	H	Ref To Com On Finance	05-11-05	
H1634	Blackwood	STIMULATE ECONOMY MANUFACTURING.	H	Ref To Com On Finance	05-11-05	
H1635	Adams	AMEND DISPLACED HOMEMAKER LAWS/UP FUND FEES.	*H	Pres. To Gov. 8/ 24/2005	05-11-05	06-14-05
H1638	Saunders	ALLOWABLE 911 EXPENDITURES/CAP CHARGE/STUDY.	*H	Re-ref Com On Finance	07-28-05	
H1646	Allred	TINTED WINDOW INSPECTIONS.	H	Ref To Com On Finance	05-11-05	
H1668	Gibson	AUTISM SOCIETY OF NC REGISTRATION PLATE.	H	Ref To Com On Finance	05-12-05	
H1682	Harrison	ALTERNATIVE FUEL CREDITS/ENERGY CREDITS PGM.	H	Ref To Com On Finance	05-12-05	
H1683	Harrison	RAISE CAMA FEES.	H	Ref To Com On	05-12-05	

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				Finance		
[redacted]687	L. Allen	INFRASTRUCTURE FOUNDATION FOR 21ST CENTURY NC.	H	Ref To Com On Finance	05-12-05	
H1708	Wright	DENR FEES RADIOACTIVE MATERIAL/X-RAY/ TANNING.	H	Ref To Com On Finance	05-12-05	
H1715	Luebke	RENEWABLE ENERGY TAX CREDITS.	H	Ref To Com On Finance	05-12-05	
H1716	Luebke	LEAD HAZARD REDUCTION TAX CREDIT.	H	Ref To Com On Finance	05-12-05	
H1722	Brubaker	WILDLIFE CONSERVATION - PRESENT-USE VALUE.	H	Ref To Com On Finance	05-12-05	
H1729	Earle	NC TRAVEL AND TOURISM INVESTMENT ACT.	H	Ref To Com On Finance	05-12-05	
H1731	Stiller	SHARE THE ROAD SPECIAL REGISTRATION PLATE.	H	Ref To Com On Finance	05-12-05	
$ H1746	**England**	**CIGARETTE TAX/COUNTY SHARE OF MEDICAID.**	**H**	**Ref To Com On Finance**	**05-12-05**	
H1752	Allred	SALES TAX ON OFF-ROAD VEHICLES.	H	Ref To Com On Finance	05-12-05	
H1758	McComas	INCREASE WATER & SEWER AUTHORITY PER DIEM.	H	Ref To Com On Finance	05-12-05	
H1764	Folwell	SALES TAX REFUND REFORM ACT/REDUCE COR. RATE.	H	Ref To Com On Finance	05-12-05	
H1766=	Martin	ALTERNATIVE FUEL VEHICLE TAX CREDIT.	H	Ref To Com On Finance	05-12-05	
[redacted]767	Gibson	QUALIFIED VENTURE CAPITAL GAIN EXEMPTION.	H	Ref To Com On Finance	05-12-05	
H1769	Gibson	STATEWIDE WASTE DISPOSAL TAX.	H	Ref To Com On Finance	05-12-05	
H1775	McComas	UNC NONAPPROPRIATED CAPITAL PROJECTS.	*HR	Ch. SL 2005-324	05-12-05	07-07-05
H1776	Haire	JACKSON COUNTY AIRPORT AUTHORITY CONTRACTS.	*HR	Ch. SL 2005-203	06-01-05	06-14-05
H1777	McComas	LOCAL OPTION SALES TAX AND HOMESTEAD RELIEF.	H	Ref To Com On Finance	05-12-05	
$ H1779	**Folwell**	**PROPERTY TAX PAID WITH VEHICLE REGISTRATION.**	***HR**	**Ch. SL 2005-294**	**05-12-05**	**07-26-05**
H1781	Rhodes	COLLEGE SAVINGS PLAN TAX DEDUCTIBLE.	H	Ref To Com On Finance	05-12-05	
$ S0007	**Martin L. Nesbit**	**HURRICANE RECOVERY ACT OF 2005.**	***HR**	**Ch. SL 2005-1**	**02-21-05**	**02-22-05**
S0014=	R. C. Soles, Jr.	HOLDEN BEACH CANAL DREDGING FEE.	*HR	Ch. SL 2005-90	03-22-05	06-08-05
S0015=	R. C. Soles, Jr.	WATER & SEWER DISTRICT BOUNDARIES/ PER DIEM.	*HR	Ch. SL 2005-127	03-23-05	06-08-05
S0016=	R. C. Soles, Jr.	TABOR CITY SATELLITE	*HR	Ch. SL 2005-8	03-23-05	04-07-05

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		ANNEXATION.				
[redacted]32=	David W. Hoyle	FIRE SERVICE DISTRICT TAX RATE.	*HR	Ch. SL 2005-281	07-13-05	07-19-05
S0092	John A. Garwood	WATAUGA DIST. U OCC. TAX/FORCE ACCOUNT LIMIT.	*HR	Ch. SL 2005-197	05-19-05	06-30-05
S0170=	Walter H. Dalton	WACO TOWN CENTER.	HR	Ch. SL 2005-199	03-23-05	07-07-05
S0178	Jerry W. Tillman	AMEND CERTAIN LIC. REQS/PLUMB'G/HEAT'G CONTR.	*HR	Ch. SL 2005-131	04-12-05	06-14-05
S0185	Robert Lee Hollo	WINDSHIELD REPLACERS-STICKERS W/O FEE.	*H	Re-ref Com On Appropriations Subcommittee on Transportation	07-13-05	07-19-05
S0206	Charles W. Alber	SALEMBURG BOUNDARY VALIDATION.	*HR	Ch. SL 2005-84	05-18-05	06-08-05
S0208=	Jeanne H. Lucas	AMEND OCCUPATIONAL THERAPY LAWS/FEE.	*H	Pres. To Gov. 8/24/2005	08-23-05	08-23-05
S0249	Tom Apodaca	ASHEVILLE SATELLITE ANNEXATIONS.	*HR	Ch. SL 2005-85	05-26-05	06-08-05
S0290	David W. Hoyle	SECURITIES TRANSFER ON DEATH.	*H	Pres. To Gov. 8/24/2005	08-22-05	08-23-05
S0327	Tony Rand	NC STATE BAR CHANGES/FEES.	*H	Pres. To Gov. 8/23/2005	07-14-05	08-04-05
S0339	Robert Lee Hollo	OMNIBUS OCCUPANCY TAXES-III	*H	Re-ref Com On Finance	06-23-05	07-28-05
S0341=	David W. Hoyle	MODERN ESCHEAT INVESTMENT PROGRAM.	HR	Ch. SL 2005-252	05-17-05	07-19-05
S0350=	John A. Garwood	TAYLORSVILLE SATELLITE ANNEXATIONS.	H	Ref To Com On Finance	03-23-05	
[redacted]56=	David W. Hoyle	FUEL TAX REFUND FOR PUMPERS AND SWEEPERS.	*H	Pres. To Gov. 8/24/2005	04-26-05	08-23-05
S0369	Doug Berger	OMNIBUS OCCUPANCY TAXES.	*HR	Ch. SL 2005-233	06-13-05	07-07-05
S0386	Fletcher L. Hart	CABARRUS BUILD/DEVELOP/ANNEX CHANGES.	*H	Placed On Cal For 8/30/2005	06-07-05	06-09-05
S0388	R. C. Soles, Jr.	WATHA TOWN COUNCIL/BOLTON ANNEXATION.	*HR	Ch. SL 2005-141	06-22-05	06-23-05
S0396	David W. Hoyle	COUNTY SERVICE DISTRICTS.	*HR	Ch. SL 2005-136	04-12-05	06-08-05
S0407	Fletcher L. Hart	CABARRUS LOCAL ACTS.	*HR	Ch. SL 2005-116	05-19-05	06-14-05
S0420=	Philip E. Berger	OAK RIDGE VOL. ANNEX./RED CROSS BUDGET ORD.	*HR	Ch. SL 2005-245	04-06-05	05-10-05
S0420=	Philip E. Berger	OAK RIDGE VOL. ANNEX./RED CROSS BUDGET ORD.	*HR	Ch. SL 2005-245	07-07-05	07-19-05
S0442	John A. Garwood	BLOWING ROCK OFF-STREET PARKING FUND.	HR	Ch. SL 2005-86	05-18-05	06-08-05
S0443	Julia Boseman	PUBLIC HOSPITAL INVESTMENTS.	*H	Pres. To Gov. 8/24/2005	06-13-05	07-07-05
S0450	Walter H. Dalton	RUTHERFORD AIRPORT AUTHORITY LEASES.	HR	Ch. SL 2005-105	05-18-05	06-14-05
S0466	Philip E. Berger	BURLINGTON/GIBSONVILLE BOUNDARY.	*HR	Ch. SL 2005-87	05-19-05	06-08-05
S0505	William R. Purce	MEDICAL EXAMINER FEE INCREASE.-AB	*H	Pres. To Gov. 8/24/2005	08-11-05	08-23-05
S0525	Daniel G. Clodfe	NASCAR HALL OF FAME	*HR	Ch. SL 2005-68	05-23-05	05-24-05

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		FINANCING.				
S0528	Daniel G. Clodfe	TAX INCREMENT FINANCING CHANGES.	*H	Pres. To Gov. 8/ 24/2005	08-09-05	08-23-05
S0537	Daniel G. Clodfe	ALLOW PAYMENT OF TAX BY OFFSET.	*HR	Ch. SL 2005-134	06-02-05	06-21-05
S0540	Daniel G. Clodfe	FRANCHISE TAX LOOPHOLE CLOSING.	*H	Ref To Com On Finance	04-13-05	
S0551=	Don East	PRESENT-USE VALUE BUYOUT CREDITS.	H	Ref To Com On Finance	05-27-05	
S0590	Katie G. Dorsett	CONSUMER CREDIT COUNSELING/DEBT MANAGEMENT.	*H	Ratified	06-02-05	06-30-05
S0592	Eleanor Kinnaird	INDIGENT DEFENSE TECHNICAL REVISIONS.	*HR	Ch. SL 2005-250	06-14-05	07-19-05
S0593	Eleanor Kinnaird	COPY COSTS IN INDIGENT CASES.	*HR	Ch. SL 2005-251	05-27-05	07-19-05
S0594	Eleanor Kinnaird	RECOUPMENT BY COURT-APPOINTED ATTORNEYS.	*HR	Ch. SL 2005-254	06-14-05	07-19-05
$ S0612=	**Tony Rand**	**AMEND LOBBYING LAWS.**	***H**	**Pres. To Gov. 8/ 24/2005**	**07-20-05**	**07-27-05**
$ S0622=	**Linda Garrou**	**2005 APPROPRIATIONS ACT.**	***HR**	**Ch. SL 2005-276**	**06-13-05**	**06-14-05**
S0671=	Fletcher L. Hart	REAL PROPERTY ELECTRONIC RECORDING.	*H	Pres. To Gov. 8/ 24/2005	08-22-05	08-23-05
S0682	Robert Lee Hollo	ADD AGENCIES TO SET-OFF DEBT COLLECTION.	*H	Signed By Gov. 8/ 26/2005	04-11-05	06-14-05
S0685	Stan Bingham	REVISE PROFESSIONAL EMPLOYER ORGANIZATION ACT.	*HR	Ch. SL 2005-124	05-17-05	06-14-05
$ S0705	**Martin L. Nesbit**	**AMEND SUBSTANCE ABUSE LAWS.**	***H**	**Ratified**	**07-05-05**	**07-19-05**
S0757	Martin L. Nesbit	ESC OMNIBUS ACT.	*H	Ratified	07-25-05	08-04-05
S0774	William R. Purce	SEAT BELT USE ENHANCEMENTS.	*H	Re-ref Com On Rules, Calendar, and Operations of the House	08-24-05	08-24-05
S0796	Scott Thomas	CRIMINAL RECORD CHECKS/ARCHAEOLOGICAL OPS.	*H	Ratified	07-28-05	08-04-05
S0868	Doug Berger	BILL LEE -MULTI-JURISDICTION INDUS. PARK.	*H	Pres. To Gov. 8/ 24/2005	08-22-05	08-23-05
S0868	Doug Berger	BILL LEE -MULTI-JURISDICTION INDUS. PARK.	*H	Pres. To Gov. 8/ 24/2005	08-23-05	08-24-05
S1011=	Kay R. Hagan	RANDLEMAN DAM BONDS.	HR	Ch. SL 2005-249	06-09-05	07-19-05
S1013=	David W. Hoyle	GEN. CONTRACTORS/FEES/ COST RECOVERY.	*H	Pres. To Gov. 8/ 24/2005	08-15-05	08-23-05
S1048=	Daniel G. Clodfe	IDENTITY THEFT PROTECTION ACT OF 2005.	*H	Ratified	07-26-05	08-11-05
S1059=	William R. Purce	PERFUSIONISTS LICENSURE.	*HR	Ch. SL 2005-267	06-09-05	06-21-05
S1077	Tony Rand	MOTORCYCLE LEARNER'S PERMIT.	*H	Ref To Com On Finance	06-20-05	
S1081	Philip E. Berger	PROCEDURES FOR	H	Ref To Com On	06-02-05	

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		ADVERTISING TAX LIENS.		Finance		
S 126	**Charles W. Alber**	**IMPLEMENT CRFL/AMEND FISHERIES LAWS.**	***H**	**Conf Report Adopted 3rd**	**04-13-05**	**06-28-05**
S1144=	Julia Boseman	FILM INDUSTRY JOBS INCENTIVES.	*H	Ref To Com On Finance	06-22-05	
S1149	Clark Jenkins	ENERGY CREDIT BANKING/ SELLING PROGRAM/FUND.	*H	Pres. To Gov. 8/ 24/2005	08-16-05	08-23-05

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North Carolina General Assembly

House Committee on Finance

Minutes

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February 22, 2005

The House Committee on Finance met on Tuesday, February 22, 2005 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Luebke, McComas, and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives Blackwood, Bordsen, Capps, Carney, Dockham, Faison, Folwell, Glazier, Hackney, Holliman, Jones, Lewis, McGee, Underhill, Vinson, Walend, and Wiley. Also present were Sergeant-at-Arms Bill Freeman, Fred Hines, Dusty Rhodes, and Walter Spell. Staff persons present included Cindy Avrette, Rodney Bizzell, Gerry Cohen, David Crotts, Mikael Gross, Ashley Huffstetler, Linda Millsaps, Alexei Pavlichev, and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2.**

Chairman Luebke called the meeting to order at 8:39 am and recognized the one (1) page present: Matthew Guin of Lee County, sponsored by Representative Sauls.

Chairman Luebke recognized Senator Nesbitt to explain **SB 7 – HURRICANE RECOVERY ACT OF 2005** (see **attachment 3** for a copy of the bill). Senator Nesbitt, as the bill sponsor, explained that the bill provides assistance to individuals, businesses, and public agencies that sustained damage from one or more of the six hurricanes that struck North Carolina during the late summer and early fall of 2004. (The bill analysis and fiscal memorandum are included in these minutes as **attachments 4 and 5**.) He noted that the bill makes appropriations to the Disaster Relief Reserve Fund, which has already been established by the Governor in the Office of State Budget and Management. He also explained that the bill was re-referred from the House Appropriations Committee to House Finance due to an income tax exemption present in the bill.

Chairman Luebke then recognized Linda Millsaps with Fiscal Research to further explain this income tax exemption. Ms. Millsaps stated that under current state and federal law, payments received to replace property lost in a federally declared disaster are exempt from tax. However, payments received to replace income are not exempt. For instance, Ms. Millsaps noted that payments to farmers for crop losses would be an example of a taxable payment, since the crops are assumed to be converted into income. She stated that this bill would allow for this exemption. She also noted that the General Assembly provided similar tax relief to the Hurricane Floyd victims in 1999.

Lynn Muchmore with Fiscal Research was then recognized by the Chair and provided a brief overview of the funding provided in the bill. Noting approximately $247 million in funding, Mr. Muchmore stated that approximately $91 million had been secured by the Governor in budget reversions from 2004-2005, $3 million was coming from the General Fund as monies remaining

unused from the Hurricane Floyd disaster of 1999, and the remaining $153,541,000 was being drafted from the Rainy Day Fund ($30 million of which had been designated for the study of preventing future floods).

Following this explanation, Chairman Luebke opened the floor for questions from the members of the Committee. Representative Wainwright was recognized and inquired as to the $30 million appropriation in the bill to fund the prevention of future floods. Senator Nesbitt was recognized to speak on the inquiry and explained that there were some relatively minor measures that had been identified and that could be taken in several of the western areas in the State to help prevent future flooding events should the State be struck in the west by hurricanes again. Senator Nesbitt also noted that the $30 million includes both the study and implementation of these preventative measures.

Representative Walend was recognized next and emphasized the tremendous amount of time and effort that Senate Bill 7 had received, both in the full Senate and the House Appropriations Committee as well as in the task force formed to address the issue. She was then recognized by the Chair for a motion and moved that Senate Bill 7 be given a favorable report.

Prior to taking action on the motion, however, Chairman Luebke recognized Representative Blackwood for an inquiry. Representative Blackwood asked how authorization would be granted for the funds appropriated in the bill to be spent. Senator Nesbitt was again recognized and explained that the Governor would have control over when and when not to authorize the use of funds.

Representative Holliman was recognized next and inquired if any of these funds had already been spent to assist those in the western part of the State. Chairman Luebke again recognized Senator Nesbitt to respond. Senator Nesbitt stated that some of the funds, a portion of the $91 million that the Governor secured from 2004-2005 budget reversions, had in fact already been provided as assistance to those in need. He also noted, however, that much more assistance was needed.

Chairman Luebke then recognized several of the House members from the western part of the State who were present at the meeting to briefly address the Committee. Representatives Goforth, Rapp, Fisher and Sherrill all spoke to the needs in their districts and to the high degree of planning on the bill. They also noted that great care had been taken to ensure that the funds appropriated in the bill would be spent properly and as they are intended. Representative Hackney was also recognized and reminded the Committee that Section 4.1(a) of the bill sets the appropriation provided in the bill as a "maximum" amount, and the Governor is not required to disburse any more than is needed in the State's relief efforts.

For a final inquiry, Representative Wainwright was recognized and asked Senator Nesbitt if there were any criteria or standards in place that localities were required to meet in order to receive assistance under the bill. Senator Nesbitt responded that, again, the Governor would exercise control on the release of funds. Some general discussion amongst the members then ensued on this point.

Chairman Luebke then called Representative Walend's motion for a favorable report to a vote, and the motion carried unanimously. (see **attachment 6**)

As there was no further business before the Committee, Chairman Luebke then adjourned the meeting at 9:38 am.

Respectfully submitted,

Representative Paul Luebke
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. Senate Bill 7 (4th Edition)
4. Bill Analysis of Senate Bill 7
5. Fiscal Memorandum on Senate Bill 7
6. Committee Report on Senate Bill 7

ATTACHMENT 1

AGENDA

House Finance Committee

February 22, 2005
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Luebke

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard
Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order

Introduction of Pages

Bill:

SB 7 **HURRICANE RECOVERY ACT OF 2005** *Sen. Nesbitt*

Adjournment

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, February 22, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

SB 7 – Hurricane Recovery Act of 2005 – Sen. Nesbitt

Respectfully,
Representatives Alexander, Gibson, Howard, Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **10:45 a.m.** on **February 17, 2005.**

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — February 22, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Warren Plonk	OSBM
Bill McNeil	NC Rural Center
[illegible]	[illegible]
Erin Kinsey	NC Conservation Network
Helen McLean	Rural Economic Development Center
Ebonie Alexander	NC Initiative
Dianne Beasley	Div of Forestry DENR
Lori Ann Harris	LATA
Kevin Howell	Gov's office
Norma Mills	PPT

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — February 22, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Debbie Hamrick	NC Farm Bureau
Nancy Pomeranz	NC DOR
DAVID BARNES	Poyner + Spruill LLP
Brian Janson	UNC-CH
John Mattyl	Gov Affairs
Dean Plunkett	NCBWWA
Henry Huntsman	N.C.S.D.A.
Rick Zechini	NC Assn. of Realtors
Kathy Hawkins	Progress Energy
John Long	Martin Marietta Materials
Brenda Haas	Gov.'s Office

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — February 22, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
KENNETH TAYLOR	CC & PS - EMERGENCY MANAGEMENT
Bryan Beatty	CCPS
DSP	NCB
Connie Wilson	SSI

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 4

SENATE BILL 7

Appropriations/Base Budget Committee Substitute Adopted 2/16/05
Third Edition Engrossed 2/16/05
House Committee Substitute Favorable 2/21/05

Short Title: Hurricane Recovery Act of 2005. (Public)

Sponsors:

Referred to:

January 31, 2005

A BILL TO BE ENTITLED

AN ACT TO ENACT THE HURRICANE RECOVERY ACT OF 2005, MAKING FINDINGS AS TO DAMAGE CAUSED BY THE HURRICANES THAT STRUCK NORTH CAROLINA IN 2004, CONCERNING ESTABLISHMENT OF THE DISASTER RELIEF RESERVE FUND, MAKING APPROPRIATIONS TO THE DISASTER RELIEF RESERVE FUND, DIRECTING THE REESTABLISHMENT AND MODIFICATION OF HURRICANE FLOYD RECOVERY PROGRAMS, AUTHORIZING ESTABLISHMENT OF NEW PROGRAMS, EXPANSION OF EXISTING PROGRAMS, AND MODIFICATION OF EXISTING PROGRAMS TO IMPLEMENT THIS ACT, AUTHORIZING TRANSFER OF FUNDS TO FEDERAL AGENCIES AND LOCAL GOVERNMENTS, AUTHORIZING TIME-LIMITED POSITIONS TO IMPLEMENT THIS ACT, PROVIDING FOR SUBROGATION BY THE STATE OF CERTAIN INSURANCE CLAIMS, AUTHORIZING ADVISORY COUNCILS TO ADVISE STATE AGENCIES ON RECOVERY EFFORTS, PROVIDING FOR TAX EXEMPTION OF BENEFITS, DIRECTING THE MAPPING OF FLOOD PLAINS AND THE IDENTIFICATION OF POTENTIAL LANDSLIDE AREAS AND STREAM BANK EROSION, DIRECTING THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY THE CAUSES OF FLOODING IN CERTAIN AREAS AND DETERMINE MEASURES TO PREVENT OR MITIGATE FUTURE FLOODING, DIRECTING THE GOVERNOR TO MAINTAIN THE REDEVELOPMENT OFFICE IN WESTERN NORTH CAROLINA, APPROPRIATING FUNDS TO RESTORE AND REPAIR CERTAIN PUBLIC BUILDINGS IN HYDE COUNTY DAMAGED BY HURRICANE ISABEL AND ESTABLISHING REPORTING REQUIREMENTS.

The General Assembly of North Carolina enacts:

PART I. TITLE OF ACT

SECTION 1. This act shall be known as "The Hurricane Recovery Act of 2005."

PART II. LEGISLATIVE FINDINGS

DAMAGE CAUSED BY 2004 HURRICANES AND TROPICAL STORMS

SECTION 2.(a) The General Assembly finds that the State of North Carolina endured six hurricanes during the late summer and fall of 2004. In the Western region of the State, Hurricanes Frances and Ivan dumped heavy rains that led to flooding and landslides throughout the region. Eastern North Carolina, including areas along the coast and the Sandhills, were struck by Hurricanes Alex, Bonnie, Charlie, and Jeanne. Wind damage and flooding were the primary source of damage in the east.

SECTION 2.(b) The General Assembly finds that Hurricanes Frances and Ivan wrought havoc upon Western North Carolina impacting the region on a scale not experienced before in that area of the State. Flooding and landslides destroyed infrastructure, roads, bridges, homes, businesses, farmland, and crops, damaging the civil, social, economic, and environmental well-being of Western North Carolina. The economic base of the region has been undermined as the result of business closures, crop and aquaculture losses, and revenue losses to the extent that many individuals' ability to support themselves and their families is threatened and may be lost completely without assistance from the State. A disaster of this magnitude affects the entire State. Extraordinary assistance to the region is necessary if Western North Carolina, and with it the economic well-being of the State, is to recover from the effects of the damage inflicted by Hurricanes Frances and Ivan.

SECTION 2.(c) The General Assembly finds that as a result of the hurricanes in Western North Carolina:

(1) The President of the United States issued two federal disaster declarations for the Western region of the State.

(2) Eleven people lost their lives.

(3) People lost their loved ones, their homes, sources of livelihood, and, in some instances, their communities. During Hurricane Ivan, the community of Peeks Creek was devastated by a debris flow triggered by the heavy rains. The debris flow traveled speeds as great as 33 miles per hour for two and a quarter miles from the top of Fishhawk Mountain. Five persons were killed, and 15 homes destroyed by the flow that was estimated to be several hundred feet wide and up to 40 feet high. Other communities that were particularly hard hit by landslides include the Starnes Creek area in Buncombe County, the Little Pine area in Madison County, the White Laurel community in Watauga County, and Bear Rock Estates in Henderson County.

(4) Sixty-two homes were destroyed, and 11,107 homes suffered damage in Hurricane Frances. Another 78 homes were destroyed, and 5,127 homes damaged in Hurricane Ivan. Eighty-five landslides were

reported as a result of the 27+ inches of rain that fell on the region. Many persons did not have flood insurance, as they did not know that there was a danger of flooding where they lived. Further, people could not know the landslide risks associated with their housing location because such maps are not readily available. The State needs to update current flood mapping for and prepare landslide zone mapping for the region so that homes may be rebuilt in safe areas. Homes lying within flood and landslide zones need to be relocated to mitigate the possibility of further damage to life and property should subsequent events occur. Additional State assistance to homeowners is necessary to accomplish these goals and to assure that there is safe and adequate housing for the citizens of the affected area.

(5) The region also lost rental properties that provided needed housing for those who cannot afford to purchase their own homes. The impact of the hurricanes on the regional economy is such that sufficient rental housing at affordable prices may not be built to replace the property damaged or destroyed, leaving persons who were forced from their homes unable to obtain adequate housing.

(6) Landslides and flooding damaged or destroyed at least 272 private roads, culverts and bridges, cutting off numerous families from access to emergency services and access to State roads.

(7) The Small Business Administration reported receiving 10,113 referrals for business loan applications from the Federal Emergency Management Agency to cover physical damage to businesses. Of these requests for applications, however, only 2,080 (around twenty percent (20%)) were returned to the SBA for processing. The numbers suggest both the numbers of businesses that suffered physical damage as a result of the hurricane and the inability of many businesses in the region to take on additional debt. Without additional assistance, many businesses may not be able to reopen, and jobs will be lost.

(8) Reports from the region indicated that the town of Canton lost forty percent (40%) of its business district in the floods attending Ivan. Blue Ridge Paper, the largest manufacturing employer in Western North Carolina, reportedly suffered several million dollars in flood damages from Hurricane Frances alone. The flooding a week later from Hurricane Ivan was two to three feet above the level experienced by the plant during Frances. Biltmore Village, a community near the Biltmore Estate, was almost completely inundated by floodwaters of the Swannanoa.

(9) According to North Carolina Department of Commerce reports, the region lost an estimated eighty-seven million dollars ($87,000,000) in tourism revenue during the three-week period after the hurricanes struck.

(10) The agricultural economy of the region was seriously affected. Early estimates of crops and acreage affected included thousands of acres of fruits and vegetables, hay, corn, soybeans, and tobacco. In Henderson County alone, approximately 90,000 of the county's 1,000,000 apple trees were downed. Greenhouse and nursery crops were also seriously affected. At least five trout farms reported extensive physical damage and losses of over 160,000 pounds of fish. In addition to crop and fish losses, there was extensive damage to farmland through erosion and flooding, and many farms suffered damage to farm structures. Most farmers cannot afford to take on additional debt to rehabilitate damaged fields, rebuild and repair farm structures, purchase new equipment, replant trees, or replace inventory. Many farmers may be unable to continue farming without assistance from the State. It is therefore necessary to provide State assistance to farmers to preserve the agricultural sector of the economy in Western North Carolina and the economic stability of the region.

(11) Impacts on the environment have yet to be calculated. In addition to the stream damage from flooding, there was also contamination from sewage overflows and chemical spills. It was reported that over 100,000 gallons of petroleum products were spilled into the French Broad River system.

(12) Local governments have suffered loss of infrastructure, damage to public buildings, roads, wastewater treatment plants, and other facilities. One thousand four hundred and forty specific public assistance projects have been authorized to repair facilities and roads, remove debris, and otherwise effect cleanup and repair of local government facilities. In addition, the damage from the storms to property and businesses has eroded the tax base of the counties affected. These counties must bear a loss of revenue at the same time they are shouldering the costs of replacing and repairing the infrastructure and meeting the additional needs of the population struggling to recover from the effects of the hurricanes.

SECTION 2.(d) The General Assembly finds that as a result of the storms that hit Eastern North Carolina:

(1) A State Type I Disaster Declaration was issued for Dare and Hyde Counties after Hurricane Alex which provided individual assistance to 22 applicants who failed to qualify for SBA loans and substantial public assistance to the two counties for debris removal.

(2) Hurricanes Bonnie and Charlie impacted Beaufort, Bladen, Brunswick, Craven, Columbus, Dare, Duplin, Harnett, Hyde, Jones, Lenoir, New Hanover, Pamlico, Pasquotank, Pender, Pitt, Onslow, Tyrrell, and Washington Counties. A federal disaster declaration has been requested but denied. According to the Division of Emergency Management, 2,860 homes and 65 businesses were affected by the two

hurricanes. Three hundred six of the affected homes were destroyed or suffered major damage.

(3) Hurricane Jeanne impacted Cabarrus, Moore, Rowan, and Stokes Counties. Reports from Moore County indicated that over 100 homes and businesses were damaged, primarily in Southern Pines. Public Assistance needs were limited to Stokes and Moore Counties.

(4) In addition to the damage reports for individuals and local governments, the North Carolina Department of Agriculture and Consumer Services reported early estimates of over 900,000 acres of corn, soybeans, tobacco, cotton, peanuts, and fruits and vegetables were lost as a result of Hurricane Charlie and Hurricane Bonnie.

SECTION 2.(e) The General Assembly further finds that the devastation caused by the 2004 hurricanes in North Carolina continues to affect all aspects of the economy, the environment, public health and safety, infrastructure, public and private institutions, and the general welfare of the counties affected and, indirectly, of the entire State. Immediate short-term responses and long-term responses are necessary to preserve a way of life in those North Carolina counties, to preserve the economic condition of the entire State, and to preserve the reputation North Carolina has, nationally and internationally, as a great place to live and a great place to do business.

CRITICAL NEEDS NOT MET BY EXISTING STATE AND FEDERAL PROGRAMS AND FUNDS

SECTION 2.1.(a) The General Assembly finds that State and federal disaster relief initiatives are not intended to make individuals whole after a loss; they are intended to assist the affected areas in recovering from the damage caused by the six hurricanes that struck North Carolina.

Without significant additional State assistance to the area damaged by Hurricanes Alex, Bonnie, Charlie, Frances, Ivan, and Jeanne, further deterioration of the economy, the environment, public health and safety, and quality of life in the State is likely to occur. Without additional State assistance:

(1) Many people in uninsured, damaged homes will either not qualify for federal housing assistance or not have the resources to take advantage of federal housing assistance.

(2) Local governments already overwhelmed with storm-related expenses may not have the resources to repair damaged infrastructure and provide the new infrastructure necessary for families relocating out of the flood and landslide zones and for businesses that are in the process of rebuilding.

(3) Jobs may be permanently lost because many cannot qualify for Small Business Administration loans.

(4) Many farmers who suffered significant losses may find it difficult to continue farming.

(5) Resources for drinking water protection, solid waste cleanup, hazardous waste cleanup, and remediation of high-risk storage tanks will be inadequate.

(6) The tourism industry will continue to suffer due to negative publicity about the storm.

SECTION 2.1.(b) It is the intent of the General Assembly that the benefits of the projects and programs authorized by this act are for the common good and collective recovery of the people of this State following a devastating natural disaster directly affecting a large portion of the State and indirectly affecting the entire State. The entire State faces a major loss if the counties that bore the major impact of the hurricanes and tropical storms of 2004 are not offered the assistance provided by this act. The purpose of this act is to provide an ultimate net public benefit to the State through a successful hurricane recovery initiative in Western North Carolina and other affected counties.

PART III. SCOPE OF ACT

COUNTIES COVERED BY THIS ACT

SECTION 3. Sections 2 through 5.2 of this act apply as follows:

(1) This act applies to the 19 counties designated by the Federal Emergency Management Agency (FEMA) as eligible for Individual Assistance and Public Assistance as a result of damages sustained from Hurricane Frances or Ivan. Those counties are eligible for all programs and assistance provided under this act. Those counties are: Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, and Yancey.

(2) This act applies to the additional 26 counties that were designated by FEMA as eligible only for individual assistance as a result of damages sustained from Hurricane Frances or Ivan. Those counties are eligible for all programs and assistance provided under this act for individual assistance. Those counties are: Alamance, Alexander, Bladen, Cabarrus, Caswell, Catawba, Cleveland, Columbus, Cumberland, Davidson, Forsyth, Gaston, Graham, Guilford, Hoke, Iredell, Lincoln, Mecklenburg, Randolph, Robeson, Rockingham, Rutherford, Scotland, Stokes, Union, and Wilkes.

(3) In addition, a number of counties were not included in a federal disaster declaration but were included in a State disaster declaration issued under Article 1 of Chapter 166A of the General Statutes as a result of the damages sustained by one of the hurricanes that occurred in 2004. The Governor shall also extend the coverage of the programs and assistance provided under this act to those counties.

PART IV. THE DISASTER RELIEF RESERVE FUND

ESTABLISHMENT OF THE DISASTER RELIEF RESERVE FUND

SECTION 4. The Governor has established the Disaster Relief Reserve Fund in the Office of State Budget and Management. The purpose of this fund is to provide necessary and appropriate relief and assistance from the effects of natural disasters. Consistent with the provisions of this act, the Governor shall spend monies appropriated to or otherwise transferred to the Disaster Relief Fund by this act to assist the counties referenced in Section 3 of this act. The monies shall be used to implement programs as provided by this act.

APPROPRIATION TO THE DISASTER RELIEF RESERVE FUND AND COMMITTEE REPORT

SECTION 4.1.(a) The appropriation made in this section is for the maximum amount necessary to implement this act. Savings shall be effected where the total amount appropriated is not required to implement the act.

SECTION 4.1.(b) The fund availability upon which appropriations in this act are based is as follows:

Estimated unappropriated General Fund over collections, fiscal year 2004-2005	$0.0
Estimated General Fund reversions, fiscal year 2004-2005	$91.0 million
North Carolina Community Development Initiative, Inc. – Reversion of unused Hurricane Floyd Recovery funds to the General Fund	$3.0 million
Savings Reserve Account balance, February 15, 2005	$267.0 million

SECTION 4.1.(c) Of the funds allocated to the North Carolina Community Development Initiative, Inc., for Hurricane Floyd Recovery programs pursuant to S.L. 1999-463 Extra Session, the sum of three million dollars ($3,000,000) in unused grant and loan funds for home relocation and repairs shall revert to the General Fund.

SECTION 4.1.(d) The Governor shall transfer from unexpended General Fund appropriations for fiscal year 2004-2005 to the Office of State Budget and Management, Disaster Relief Reserve Fund, the sum of ninety-one million dollars ($91,000,000) which shall be used to aid the counties referenced in Section 3 of this act in their efforts to recover from the effects of the 2004 hurricanes. The funds shall be used for the purposes set out in Part V, Part VI, and Part VII of this act. These funds shall remain available to implement the provisions of this act until the General Assembly directs the reversion of the unexpended funds.

SECTION 4.1.(e) There is appropriated from the General Fund to the Office of State Budget and Management, Disaster Relief Reserve Fund, the sum of three million dollars ($3,000,000) for the 2004-2005 fiscal year to aid the counties referenced in Section 3 of this act in their efforts to recover from the effects of the 2004 hurricanes. The funds shall be used for the purposes set out in Part V, Part VI, and Part VII of this act. These funds shall remain available to implement the provisions of this act until the General Assembly directs the reversion of the unexpended funds.

SECTION 4.1.(f) There is appropriated from the Savings Reserve Account to the Office of State Budget and Management, Disaster Relief Reserve Fund, the sum of one hundred twenty-three million five hundred forty-one thousand four hundred forty-seven dollars ($123,541,447) for the 2004-2005 fiscal year to aid the counties referenced in Section 3 of this act in their efforts to recover from the effects of the

hurricanes of 2004. The funds shall be used for the purposes set forth in Part V, Part VI, and Part VII of this act. The funds appropriated by this section shall be transferred to the Disaster Relief Reserve Fund and shall remain available to implement the provisions of this act until the General Assembly directs the reversion of the unexpended funds.

SECTION 4.1.(g) The allocation of funds in the Report of the House Appropriations Committee on The Hurricane Recovery Act of 2005, dated February 17, 2005, are intended as guidance for the Governor. Notwithstanding the provisions of Section 5.1 of this act, if the Governor determines in accordance with Chapter 166A of the General Statutes that allocations should be made to programs other than those set forth in the Committee Report or that reallocations should be made among programs set forth in the Committee Report, the Governor may make the changes except as funds are otherwise specifically allocated by this act. The Governor shall report to the Joint Legislative Commission on Governmental Operations before implementing any changes in the allocations.

SECTION 4.1.(h) The Governor shall, to the extent practicable, ensure that assistance to victims provided from the Disaster Relief Reserve Fund is prioritized towards those areas and individuals least able to afford the losses as a result of the hurricanes of 2004.

PART V. IMPLEMENTATION OF ACT

DIRECTIVE TO REESTABLISH AND MODIFY, AS NECESSARY, RELIEF PROGRAMS DEVELOPED AFTER HURRICANE FLOYD, ESTABLISH NEW PROGRAMS, AND EXPAND OR MODIFY EXISTING PROGRAMS TO IMPLEMENT THIS ACT

SECTION 5. The General Assembly finds that the relief efforts and programs implemented after Hurricane Floyd hit Eastern North Carolina were critical in assisting Eastern North Carolina's recovery. The General Assembly further finds that the recovery of Eastern North Carolina has provided statewide benefits. It is the intent of the General Assembly to provide the same type of support and assistance to the counties affected by the 2004 hurricanes and tropical storms.

SECTION 5.1.(a) The Governor shall reestablish and may modify, as necessary, all of the programs implemented as part of the Hurricane Floyd Recovery Act of 1999 under S.L. 1999-463 Extra Session and the Report of the House Appropriations Committee on Hurricane Floyd Recovery dated December 15, 1999, as amended by S.L. 1999-463 Extra Session. The Governor shall also establish new programs and expand or modify, as necessary, existing programs to provide necessary and appropriate relief and assistance from the effects of the hurricanes that hit the State in 2004.

SECTION 5.1.(b) The Governor shall modify the State Hazard Mitigation Grant Program to provide housing buyout and relocation assistance for those persons whose homes were destroyed or severely damaged by debris flows or whose homes are located in a landslide zone.

SECTION 5.1.(c) The Department of Crime Control and Public Safety shall modify the Crisis Housing Assistance Fund (CHAF) to provide money to persons who do not qualify for CHAF assistance solely because they failed to apply for federal assistance through the Small Business Administration's (SBA) Real Property Disaster loan program. The Department shall review these persons' applications for CHAF assistance using the same criteria employed by the SBA to determine eligibility for an SBA Real Property Disaster loan. The applicants shall be eligible for CHAF assistance if it is determined that they would have failed to qualify for assistance under the SBA Real Property disaster loan criteria and that they otherwise meet the criteria for CHAF.

SECTION 5.1.(d) The Governor shall expend funds appropriated to or otherwise transferred to the Disaster Relief Reserve Fund by this act to provide for the following programs and activities:

(1) Required matching funds for federal funds for disaster relief.

(2) Crisis housing assistance, which may include, but shall not be limited to, direct housing assistance to homeowners and renters, grants to local governments for water, sewer, and other infrastructure needs for housing in new areas, predevelopment activities, housing counselors, and housing recovery efforts. It is the intent of the General Assembly that housing assistance includes providing renters with assistance to purchase affordable housing. The General Assembly therefore encourages the Governor to use funds appropriated in this act to implement a program that provides assistance to renters in affected areas to purchase affordable housing (preferably permanent homes and not manufactured housing) by providing State resources, including grants and low-interest loans, for that purpose.

(3) Economic recovery assistance, including, but not limited to, assistance to the agriculture, aquaculture, forestry, commercial, and industrial sectors of the economy which may include, but shall not be limited to, grants and loans to businesses, grants and loans to farmers, and grants and loans for aquaculture.

(4) Public health, public safety, social services, and environmental restoration measures that may include, but shall not be limited to, drinking water protection, water quality monitoring, solid waste and hazardous waste cleanup, assessment and remediation of high-risk storage tank sites, and emergency and maintenance dredging.

(5) Support to local governments, by grants for public infrastructure, for the repair, renovation, and relocation of facilities, and to offset revenue losses resulting from storm damage from natural disasters covered by federal disaster declarations as to any storm between August 1, 2004, and the date this act becomes law. The amount of the grants shall be based on loss of taxable property in the jurisdiction.

(6) Mapping and studies authorized by this act.

SECTION 5.1.(e) Of the funds appropriated by this act to the Disaster Relief Reserve Fund for the 2004-2005 fiscal year, the sum of four million five hundred

thousand dollars ($4,500,000) shall be allocated to the Town of Canton as a grant to repair and upgrade the flood levees, flood gates and pumps, for levee penetration mitigation, erosion control, elevating electrical controls, and repairing sewer lines for the purpose of protecting the wastewater treatment plant owned by Blue Ridge Paper Products and used by the Town of Canton.

SECTION 5.1.(f) Notwithstanding Part III and Part IV of this act, of the funds allocated by this act to local governments for repairs and renovations to public facilities damaged by the storms, the sum of eight million dollars ($8,000,000) shall be allocated to Hyde County for the 2004-2005 fiscal year to be used for the reconstruction of the Hyde County Courthouse and repair of other county buildings in the Courthouse Annex that were damaged as a result of Hurricane Isabel in 2003.

SECTION 5.1.(g) Of the funds appropriated by this act to the Disaster Relief Reserve Fund for the 2004-2005 fiscal year, the sum of five million dollars ($5,000,000) shall be allocated to the Rural Economic Development Center to be used for economic infrastructure through the Small Town Building Reuse and Restoration Program established in S.L. 2004-88. The funds allocated by this subsection shall be used to provide grants to local governments in counties covered under this act for economic recovery and redevelopment activities in business areas that sustained storm damage. These activities may include all of the following:

(1) Grants to repair public and private buildings damaged by flooding and deemed necessary to retain existing businesses or provide for new businesses.
(2) Repairs and improvements to public infrastructure.
(3) Other technical and design assistance to redevelop business properties and business areas.

Recipients shall certify that assistance received under this subsection does not duplicate other State or federal assistance or replace insurance proceeds.

SECTION 5.1.(h) Of the funds appropriated by this act to the Disaster Relief Reserve Fund for the 2004-2005 fiscal year, the sum of three million dollars ($3,000,000) shall be allocated to the North Carolina Community Development Initiative, Inc., to be used for housing programs and assistance.

SECTION 5.1.(i) Of the funds appropriated in this act to the Disaster Relief Reserve Fund for the 2004-2005 fiscal year, the sum of five hundred thousand dollars ($500,000) may be allocated to the Department of Environment and Natural Resources, Division of Forest Resources, for the purposes of forestland restoration and fire prevention activities needed due to hurricane damage.

AUTHORIZATION TO TRANSFER FUNDS TO FEDERAL AGENCIES AND TO LOCAL GOVERNMENTS

SECTION 5.2. The Governor may:

(1) Use funds from the Disaster Relief Reserve Fund to match federal funds in accordance with this act.
(2) Provide grants to local governments in accordance with this act.

(3) Transfer funds to local governments pursuant to cooperative agreements under which they administer programs or provide services on behalf of the State.

(4) Transfer funds to federal agencies pursuant to cooperative agreements under which they administer agriculture programs or provide services on behalf of the State.

AUTHORIZATION TO ESTABLISH TIME-LIMITED POSITIONS TO IMPLEMENT THIS ACT

SECTION 5.3. The Governor may establish part-time and full-time personnel positions to implement this act. All such positions shall be time-limited and shall be exempt from the State Personnel Act.

SUBROGATION BY STATE OF RIGHT TO INSURANCE COVERAGE FOR DAMAGED HOMES PURCHASED OR RELOCATED UNDER THE HAZARD MITIGATION GRANT PROGRAM

SECTION 5.4. If a person's home is relocated or purchased under the Hazard Mitigation Grant Program, or through the State Acquisition and Relocation Fund, the Disaster Relief Reserve Fund is subrogated to the person's rights under any insurance coverage for the damage to the home, and any monies received from the insurance coverage shall be paid to the Disaster Relief Reserve Fund.

AUTHORIZATION TO ESTABLISH ADVISORY COUNCILS TO ADVISE STATE AGENCIES ON RECOVERY EFFORTS

SECTION 5.5. The Governor shall establish advisory councils to advise relevant State agencies on hurricane relief and recovery efforts and to ensure input from representatives of affected communities and groups.

TAX EXEMPTION

SECTION 5.6. Each agency disbursing funds or property under this act from the Disaster Relief Reserve Fund for hurricane relief or assistance, other than payments for goods or services provided by the recipient, shall include with the disbursement a written statement of the State and federal income tax treatment of the funds or property disbursed.

SECTION 5.7.(a) G.S. 105-134.6(b) is amended by adding the following new subdivision to read:

"(18) The amount paid to the taxpayer during the taxable year from the Disaster Relief Reserve Fund in the Office of State Budget and Management for hurricane relief or assistance, but not including payments for goods or services provided by the taxpayer."

SECTION 5.7.(b) G.S. 105-130.5(b) is amended by adding the following new subdivision to read:

"(22) To the extent included in federal taxable income, the amount paid to the taxpayer during the taxable year from the Disaster Relief Reserve

Fund in the Office of State Budget and Management for hurricane relief or assistance, but not including payments for goods or services provided by the taxpayer."

SECTION 5.7.(c) This section is effective for taxable years beginning on or after January 1, 2004.

INVOLVEMENT OF HISTORICALLY UNDERUTILIZED BUSINESSES

SECTION 5.8. It is the intent of the General Assembly that, during this time of rebuilding and hurricane relief efforts, each State agency should strive to increase the total amount of goods and services acquired by it from historically underutilized business vendors, whether directly as principal contractors or indirectly as subcontractors or otherwise.

LEGISLATIVE REVIEW OF FEDERAL FUNDING AND REMAINING UNMET NEEDS

SECTION 5.9. It is the intent of the General Assembly to review in 2005 and 2006 the funds appropriated by Congress and to consider actions needed to address any remaining unmet needs, especially in the area of economic recovery.

LIMITATION ON USE OF STATE FUNDS

SECTION 5.10.(a) No State funds used to implement this act, including any funds in the Disaster Relief Reserve Fund, may be expended for the construction of any new residence within the 100-year floodplain unless the construction is in an area regulated by a unit of local government pursuant to a floodplain management ordinance, and the construction complies with the ordinance. As used in this section, "100-year floodplain" means any area subject to inundation by a 100-year flood, as indicated on the most recent Flood Insurance Rate Map prepared by the Federal Emergency Management Agency under the National Flood Insurance Program.

SECTION 5.10.(b) Homeowners in the 100-year floodplain who receive homeowner's housing assistance pursuant to this act shall have in effect federal flood insurance, if available, as a precondition to receipt of State homeowner's housing assistance for losses resulting from future flooding.

SECTION 5.10.(c) Funds loaned to small and mid-sized businesses shall be used only for eligible purposes under the Small Business Administration disaster loan assistance program. Payments for economic losses shall be limited to documented business expenses necessary for the continued operation of the business.

PART VI. MAPPING OF FLOOD PLAINS AND LANDSLIDE ZONES

SECTION 6. The Department of Crime Control and Public Safety shall proceed immediately to update Flood Insurance Rate Maps for all of the counties included in federal disaster declarations for Hurricanes Frances and Ivan. The Department of Environment and Natural Resources, in cooperation with the Department of Crime Control and Public Safety, shall act to ensure that (i) streambed maps and (ii) maps indicating areas vulnerable to landslides are made available for the same

multicounty area. Streambed maps shall be annotated to show areas of significant actual or potential stream bank erosion.

PART VII. STUDY PREVENTIVE AND PROTECTIVE MEASURES THAT MAY PREVENT OR MITIGATE POTENTIAL FLOODING IN CERTAIN AREAS AND FUNDING TO IMPLEMENT THE STUDY AND ITS FINDINGS

SECTION 7.(a) The Department of Environment and Natural Resources shall study the causes of the flooding in Canton, Biltmore Village, the City of Newland, Clyde, and other affected areas as deemed necessary to determine what measures can be taken to prevent or mitigate the flooding potential in those areas. The Department may request the assistance of the Army Corps of Engineers in this study. The Department of Environment and Natural Resources shall report its findings to the 2005 General Assembly, 2006 Regular Session.

SECTION 7.(b) Of the funds appropriated by this act to the Disaster Relief Reserve Fund an amount of up to three million dollars ($3,000,000) shall be transferred by the Office of State Budget and Management to the Department of Environment and Natural Resources to conduct the study. The funds shall be transferred upon the request of the Secretary of Environment and Natural Resources.

SECTION 7.(c) In accordance with G.S. 143-15.3, the General Assembly authorizes the Director of the Budget to transfer up to thirty million dollars ($30,000,000) from the Savings Reserve Account to the Office of State Budget and Management, Disaster Relief Reserve Fund, to implement the recommendations of the studies authorized in this section. Prior to the transfer of funds under this subsection, the Governor shall consult with the Joint Legislative Commission on Governmental Operations on his plans to implement any recommendations for flood remediation and mitigation including anticipated expenditures. Funds to be transferred pursuant to this subsection are appropriated from the Savings Reserve Account for the fiscal year in which the consultation is made to implement this subsection.

PART VIII. MAINTAIN REDEVELOPMENT CENTER

SECTION 8. The Governor has established a redevelopment center in Western North Carolina. The Governor shall maintain that redevelopment center for the entire period required to implement the provisions of this act.

PART IX. REPORTING REQUIREMENTS

SECTION 9. The Governor shall report to the Appropriations Committees of the Senate and the House of Representatives regarding the implementation of this act no later than 30 days after the date this act becomes law and shall report monthly thereafter until the adjournment of the 2005 Regular Session. The Governor shall report on the implementation of this act to the Joint Legislative Commission on Governmental Operations by October 15, 2005, and quarterly thereafter.

PART X. EFFECTIVE DATE

SECTION 10. This act is effective when it becomes law, except that Section 5.7 of this act is effective for taxable years beginning on or after January 1, 2004.

SENATE BILL 7:
Hurricane Recovery Act of 2005

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Senator Nesbitt
Date:	February 17, 2005	**Summary by:**	Martha Walston and Barbara Riley, staff attorneys
Version:	4th Edition		

SUMMARY: ***Senate Bill 7[1] provides disaster assistance to individuals, businesses, and public agencies that sustained damage from one or more of the six hurricanes that struck North Carolina during the late summer and early fall of 2004. The Governor has established the Disaster Relief Reserve Fund in the Office of State Budget and Management, and Senate Bill 7 makes appropriations to this Fund.***

Senate Bill 7 also provides greater income tax relief for recipients of disbursements from the Disaster Relief Reserve Fund than current law allows. Section 5.7 of the bill provides a State income tax deduction equal to the amount paid to the taxpayer, either individual or business, during the taxable year from the Fund. The deduction does not apply to amounts received as payments for goods and services provided by the taxpayer. Under current state and federal law, payments received to replace property lost in a federally declared disaster are exempt from tax. However, payments received to replace income are not exempt. Payments to farmers for crop losses would be an example of a taxable payment, as the crops are assumed to be converted into income. The General Assembly provided similar tax relief to Hurricane Floyd victims in 1999. The deduction is effective for taxable years beginning on or after January 1, 2004.

BACKGROUND: North Carolina was struck by six hurricanes during the 2004 season. Hurricanes Alex, Bonnie, Charlie, and Jeanne brought flooding and wind damage to the Eastern Region of the State. Hurricanes Frances and Ivan dumped heavy rains on Western North Carolina resulting in landslides, flooding, and at least 11 dead. Forty-five counties in Western North Carolina were included in federal disaster declarations in Western North Carolina as a result of Hurricanes Frances and Ivan. Nineteen of those counties were designated by FEMA as eligible for Individual Assistance and Public Assistance. Another twenty-six counties were designated as eligible for Individual Assistance. The damage in the Eastern Region resulted in State Disaster Declarations.

BILL ANALYSIS: Below is an analysis of the 4th Edition of SB 7. **The underlined language describes parts of the Senate version that have been changed in the House.**

PART I of the bill sets forth the title of the act as "The Hurricane Recovery Act of 2005."

PART II of the bill sets forth detailed findings regarding the impacts of the many hurricanes on individuals, businesses, and local government in the affected areas. One of the findings states that further deterioration of the economy, environment, public health and safety, and quality of life in the State is likely to occur unless significant additional State assistance is allocated to the areas damaged.

[1] Similar bills, both entitled the "Hurricane Recovery Act of 2005", have also been introduced in the House: HB 24 introduced by Rep. Gillespie and HB 108 introduced by Representatives Haire, Fisher, Goforth, and Rapp.

PART III establishes the 47 counties that would be eligible to receive assistance under the Act. These counties include the 19 counties that were designated as eligible for federal individual assistance and public assistance: Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, and Yancey; the 26 counties that were eligible for federal public assistance: Alamance, Alexander, Bladen, Cabarrus, Caswell, Catawba, Cleveland, Columbus, Cumberland, Davidson, Forsyth, Gaston, Graham, Guilford, Hoke, Iredell, Lincoln, Mecklenburg, Randolph, Robeson, Rockingham, Rutherford, Scotland, Stokes, Union and Wilkes; and the two counties that were not included in a federal disaster declaration but were included in a State disaster declaration as a result of the damages sustained by one of the hurricanes that occurred in 2004: Hyde and Dare.

PART IV notes that the Governor has established the Disaster Relief Reserve Fund for the purpose of providing necessary and appropriate assistance and relief needed as a result of natural disasters. $217,541,447 million dollars is appropriated to the Disaster Relief Reserve Fund in Part IV. This amount comes from the following sources:

- $91 million from unexpended General Fund appropriations for fiscal year 2004-2005
- $123,541,447 million from the Savings Reserve Account
  (The Senate version took $120,541,447 from the Savings Reserve Account)
- $3 million in reversions from the NC Community Development Initiative for Hurricane Floyd recovery programs. (These are unused Hurricane Floyd Recovery funds)

In PART VII, an additional $30 million is appropriated from the Savings Reserve Account to implement the recommendations of the study on flood prevention and mitigation.

PART V deals with the implementation of the Act.

5.1(a) The Governor is directed to reauthorize the programs established for the Hurricane Floyd relief effort. He may modify and expand these programs and create new programs as he deems appropriate.

5.1(b) The Governor is directed to modify the State Hazard Mitigation Grant Program to provide housing buyout and relocation assistance to those persons whose homes were damaged or destroyed by debris slides or whose homes are located in a landslide zone

5.1(c) The Department of Crime Control and Public Safety is directed to modify the Crisis Housing Assistance Fund to provide assistance to persons who otherwise would be eligible but did not file an application for a SBA Real Property disaster loan.

5.1(d) Lists the programs and activities on which the Governor may expend the hurricane funds.

5.1(e) The sum of $4.5 million dollars is allocated to the Town of Canton for repairs and upgrades to flood levees, flood gates and pumps, levee penetration mitigation, erosion control, elevation of electrical controls and sewer line repair for the purpose of protecting the wastewater treatment plant owned by Blue Ridge Paper Products and used by the Town of Canton.

5.1(f) Allocates, from the funds allocated by this Act to local governments for repairs and renovations to public facilities, the sum of $8 million dollars to Hyde County for the 2004-2005 fiscal year for the reconstruction of the Hyde County Courthouse and repair of other county buildings in the Courthouse annex that were damaged as a result of Hurricane Isabel in 2003.

5.1(g) The sum of $5 million dollars is allocated to the Rural Economic Development Center to be used through the Small Town Building Reuse and Restoration Program for grants to local

governments for economic recovery and redevelopment activities in business areas that sustained storm damage.

5.1(h) Allocates $3 million dollars to the NC Community Development Initiatives, Inc. to be used for housing programs and assistance.

5.1(i) Allocates to DENR, Division of Forest Resources, the sum of $500,000 for forestland restoration and fire prevention activities needed as a result of hurricane damage. (The Senate version allocated $2 million for the purposes of repairing or relocating Division facilities damaged in the hurricanes and related forestland restoration and fire prevention activities.

5.2 The Governor is authorized to use funds in the Disaster Relief Reserve Fund to match federal funds, provide grants to local governments, and transfer funds to federal agencies and local governments under cooperative agreements whereby they administer programs on behalf of the State.

5.3 The Governor may establish time-limited positions to implement the act.

5.4 The Disaster Relief Reserve Fund is subrogated to a person's insurance rights for damage to their home if the home has been purchased or relocated under the Hazard Mitigation Grant Program or through the State Acquisition and Relocation Fund.

5.5 The Governor shall establish advisory councils to advise State agencies on hurricane efforts.

5.6 Each agency disbursing funds or property from the Disaster Relief Reserve Fund for hurricane relief, other than payments for goods or services provided by the recipient, must provide a written statement of the federal and State tax treatment of the disbursement.

5.7 State income tax deductions are provided for individuals and businesses for amounts paid to the taxpayer during the taxable year from the Disaster Relief Reserve Fund. The deduction does not apply to amounts received as payments for goods and services provided by the taxpayer.

5.8 The General Assembly sets forth its express intent that in the relief efforts each State agency should try to increase the amount of goods and services obtained from historically underutilized businesses.

5.9 It is the intent of the General Assembly to review in 2005 and 2006 the funds appropriated by Congress and to consider actions needed to address remaining unmet needs, especially in the area of economic recovery.

5.10 No State funds may be used for the construction of any new residence within the 100-year flood plain unless the construction is in an area regulated by a local floodplain management ordinance. Homeowners in the 100-year floodplain who receive help under this act must have federal flood insurance, if available, in place to receive future assistance for flooding losses.

5.10 Loans to small and mid-sized businesses shall be used only for eligible purposes under the Small Business Administration disaster assistance loan program. Economic loss payments shall be limited to documented business expenses needed for continued operations.

PART VI

Directs the Department of Crime Control and Public Safety to proceed immediately to update the flood insurance rate maps for all of the counties included in federal disaster declarations for Hurricanes Frances and Ivan. DENR, in cooperation with the Department of Crime Control and Public Safety shall insure that streambed maps and maps showing areas vulnerable to landslides are available for the same multicounty area. Streambed maps should be annotated to show areas of actual and potential stream bank erosion.

PART VII

Directs DENR to study the causes of flooding in Canton, Biltmore Village, Newland, Clyde and other affected areas as deemed necessary to determine what can be done to prevent or mitigate future floods. DENR may request assistance from the US Army Corps of Engineers in conducting the study. Up to $3 million dollars may be transferred from the Disaster Relief Reserve Fund to the DENR for the study. The Governor shall consult with the Joint Legislative Commission on Governmental Operations on any plans to implement the recommendations of the study prior to any transfer of funds for such implementation. $30 million dollars is appropriated from the Savings Reserve Account for the fiscal year in which the consultation is made to implement the recommendations of the study.

PART VIII

Directs the Governor to maintain the redevelopment center in Western North Carolina for the entire period needed to implement the act.

PART IX

Requires the Governor to report monthly to the Appropriations Committees of the Senate and House on the implementation of the act no later than 30 days after the enactment of this act and then monthly until the adjournment of the 2005 Regular Session. The governor shall report to the Joint Legislative Commission on Governmental Operations by October 15, 2005 and quarterly thereafter.

PART X

The bill is effective when it becomes law, except that Section 5.7 of this act is effective for taxable years beginning on or after January 1, 2004.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: February 21, 2005

TO: Representative Luebke

FROM: Lynn Muchmore
Fiscal Research Division

RE: Senate Bill 7 (Proposed House Committee Substitute)
Hurricane Recovery Act of 2005

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:	($1,575,000)				
	See assumptions and methodology.				
EXPENDITURES:					
General Fund	$94,000,000				
Savings Reserve Account	$153,541,447				
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

EFFECTIVE DATE: The bill becomes law, except that Section 5.7 of this act is effective for taxable years beginning on or after January 1, 2004.

BACKGROUND:
North Carolina was struck by six hurricanes during the 2004 season. Hurricanes Alex, Bonnie, Charlie, and Jeanne brought flooding and wind damage to the Eastern Region of the State. Hurricanes Frances and Ivan dumped heavy rains on Western North Carolina resulting in landslides, flooding, and at least 11 dead. Forty-five counties in Western North Carolina were included in federal disaster declarations in Western North Carolina as a result of Hurricanes Frances and Ivan. Nineteen of those counties were designated by FEMA as eligible for Individual Assistance and Public Assistance. Another twenty-six counties were designated as eligible for Individual Assistance. The damage in the Eastern Region resulted in State Disaster Declarations.

BILL SUMMARY:

PART I of the bill sets forth the title of the act as "The Hurricane Recovery Act of 2005."

PART II of the bill sets forth detailed findings regarding the impacts of the many hurricanes on individuals, businesses, and local government in the affected areas. One of the findings states that further deterioration of the economy, environment, public health and safety, and quality of life in the State is likely to occur unless significant additional State assistance is allocated to the areas damaged.

PART III establishes the 47 counties that would be eligible to receive assistance under the Act. These counties include the 19 counties that were designated as eligible for federal individual assistance and public assistance: Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, and Yancey; the 26 counties that were eligible for federal public assistance: Alamance, Alexander, Bladen, Cabarrus, Caswell, Catawba, Cleveland, Columbus, Cumberland, Davidson, Forsyth, Gaston, Graham, Guilford, Hoke, Iredell, Lincoln, Mecklenburg, Randolph, Robeson, Rockingham, Rutherford, Scotland, Stokes, Union and Wilkes; and the two counties that were not included in a federal disaster declaration but were included in a State disaster declaration as a result of the damages sustained by one of the hurricanes that occurred in 2004: Hyde and Dare.

PART IV notes that the Governor has established the Disaster Relief Reserve Fund for the purpose of providing necessary and appropriate assistance and relief needed as a result of natural disasters. $217,541,447 million dollars is appropriated to the Disaster Relief Reserve Fund in Part IV. This amount comes from the following sources:

- $94 million from unexpended General Fund appropriations for fiscal year 2004-2005
- $153,541,447 million from the Savings Reserve Account

In PART VII, an additional $30 million is appropriated from the Savings Reserve Account to implement the recommendations of the study on flood prevention and mitigation.

PART V deals with the implementation of the Act.

5.1(a) The Governor is directed to reauthorize the programs established for the Hurricane Floyd relief effort. He may modify and expand these programs and create new programs as he deems appropriate.

5.1(b) The Governor is directed to modify the State Hazard Mitigation Grant Program to provide housing buyout and relocation assistance to those persons whose homes were damaged or destroyed by debris slides or whose homes are located in a landslide zone

5.1(c) The Department of Crime Control and Public Safety is directed to modify the Crisis Housing Assistance Fund to provide assistance to persons who otherwise would be eligible but did not file an application for a SBA Real Property disaster loan.

5.1(d) Lists the programs and activities on which the Governor may expend the hurricane funds.

5.1(e) The sum of $4.5 million dollars is allocated to the Town of Canton for repairs and upgrades to flood levees, flood gates and pumps, levee penetration mitigation, erosion control, elevation of electrical controls and sewer line repair for the purpose of protecting the wastewater treatment plant owned by Blue Ridge Paper Products and used by the Town of Canton.

5.1(f) Allocates, from the funds allocated by this Act to local governments for repairs and renovations to public facilities, the sum of $8 million dollars to Hyde County for the 2004-2005 fiscal year for the reconstruction of the Hyde County Courthouse and repair of other county buildings in the Courthouse annex that were damaged as a result of Hurricane Isabel in 2003.

5.1(g) The sum of $5 million dollars is allocated to the Rural Economic Development Center to be used through the Small Town Building Reuse and Restoration Program for grants to local governments for economic recovery and redevelopment activities in business areas that sustained storm damage.

5.1(h) Allocates $3 million dollars to the NC Community Development Initiatives, Inc. to be used for housing programs and assistance.

5.1(i) Allocates to DENR, Division of Forest Resources, the sum of $500,000 for forestland restoration and fire prevention activities needed as a result of hurricane damage.

5.2 The Governor is authorized to use funds in the Disaster Relief Reserve Fund to match federal funds, provide grants to local governments, and transfer funds to federal agencies and local governments under cooperative agreements whereby they administer programs on behalf of the State.

5.3 The Governor may establish time-limited positions to implement the act.

5.4 The Disaster Relief Reserve Fund is subrogated to a person's insurance rights for damage to their home if the home has been purchased or relocated under the Hazard Mitigation Grant Program or through the State Acquisition and Relocation Fund.

5.5 The Governor shall establish advisory councils to advise State agencies on hurricane efforts.

5.6 Each agency disbursing funds or property from the Disaster Relief Reserve Fund for hurricane relief, other than payments for goods or services provided by the recipient, must provide a written statement of the federal and State tax treatment of the disbursement.

5.7 State income tax deductions are provided for individuals and businesses for amounts paid to the taxpayer during the taxable year from the Disaster Relief Reserve Fund.

The deduction does not apply to amounts received as payments for goods and services provided by the taxpayer.

5.8 The General Assembly sets forth its express intent that in the relief efforts each State agency should try to increase the amount of goods and services obtained from historically underutilized businesses.

5.9 It is the intent of the General Assembly to review in 2005 and 2006 the funds appropriated by Congress and to consider actions needed to address remaining unmet needs, especially in the area of economic recovery.

5.10 No State funds may be used for the construction of any new residence within the 100-year flood plain unless the construction is in an area regulated by a local floodplain management ordinance. Homeowners in the 100-year floodplain who receive help under this act must have federal flood insurance, if available, in place to receive future assistance for flooding losses.

5.10 Loans to small and mid-sized businesses shall be used only for eligible purposes under the Small Business Administration disaster assistance loan program. Economic loss payments shall be limited to documented business expenses needed for continued operations.

PART VI

Directs the Department of Crime Control and Public Safety to proceed immediately to update the flood insurance rate maps for all of the counties included in federal disaster declarations for Hurricanes Frances and Ivan. DENR, in cooperation with the Department of Crime Control and Public Safety shall insure that streambed maps and maps showing areas vulnerable to landslides are available for the same multicounty area. Streambed maps should be annotated to show areas of actual and potential stream bank erosion.

PART VII

Directs DENR to study the causes of flooding in Canton, Biltmore Village, Newland, Clyde and other affected areas as deemed necessary to determine what can be done to prevent or mitigate future floods. DENR may request assistance from the US Army Corps of Engineers in conducting the study. Up to $3 million dollars may be transferred from the Disaster Relief Reserve Fund to the DENR for the study. The Governor shall consult with the Joint Legislative Commission on Governmental Operations on any plans to implement the recommendations of the study prior to any transfer of funds for such implementation. $30 million dollars is appropriated from the Savings Reserve Account for the fiscal year in which the consultation is made to implement the recommendations of the study.

PART VIII

Directs the Governor to maintain the redevelopment center in Western North Carolina for the entire period needed to implement the act.

PART IX

Requires the Governor to report monthly to the Appropriations Committees of the Senate and House on the implementation of the act no later than 30 days after the enactment of this act and then monthly until the adjournment of the 2005 Regular Session. The governor shall report to the

Joint Legislative Commission on Governmental Operations by October 15, 2005 and quarterly thereafter.

PART X

The bill is effective when it becomes law, except that Section 5.7 of this act is effective for taxable years beginning on or after January 1, 2004.

ASSUMPTIONS AND METHODOLOGY:

Section 5.7 Income Tax: Under current state and federal law, payments received to replace property lost in a federally declared disaster are exempt from tax. This includes state and federal assistance payments, as well as insurance payments. However, payments received to replace income are not exempt. Payments to farmers for crop losses are therefore taxable under current law. This bill exempts payments made to replace lost income. Payments to farmers are expected to be $22.5 million. Exempting these payments from tax, assuming an average tax rate of 7.0%, creates a one-time loss of $1,575,000.

The remaining non-revenue related fiscal impacts are included in the relevant portions of the bill summary.

SOURCES OF DATA:

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representatives **Alexander, Gibson, Howard, Luebke, McComas, and Wainwright** (Chairs) for the Committee on **FINANCE**.

☒ House Committee Substitute for

S.B. 7 A BILL TO BE ENTITLED AN ACT TO ENACT THE HURRICANE RECOVERY ACT OF 2005, MAKING FINDINGS AS TO DAMAGE CAUSED BY THE HURRICANES THAT STRUCK NORTH CAROLINA IN 2004, CONCERNING ESTABLISHMENT OF THE DISASTER RELIEF RESERVE FUND, MAKING APPROPRIATIONS TO THE DISASTER RELIEF RESERVE FUND, DIRECTING THE REESTABLISHMENT AND MODIFICATION OF HURRICANE FLOYD RECOVERY PROGRAMS, AUTHORIZING ESTABLISHMENT OF NEW PROGRAMS, EXPANSION OF EXISTING PROGRAMS, AND MODIFICATION OF EXISTING PROGRAMS TO IMPLEMENT THIS ACT, AUTHORIZING TRANSFER OF FUNDS TO FEDERAL AGENCIES AND LOCAL GOVERNMENTS, AUTHORIZING TIME LIMITED POSITIONS TO IMPLEMENT THIS ACT, PROVIDING FOR SUBROGATION BY THE STATE OF CERTAIN INSURANCE CLAIMS, AUTHORIZING ADVISORY COUNCILS TO ADVISE STATE AGENCIES ON RECOVERY EFFORTS, PROVIDING FOR TAX EXEMPTION OF BENEFITS, DIRECTING THE MAPPING OF FLOOD PLAINS AND THE IDENTIFICATION OF POTENTIAL LANDSLIDE AREAS AND STREAM BANK EROSION, DIRECTING THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY THE CAUSES OF FLOODING IN CERTAIN AREAS AND DETERMINE MEASURES TO PREVENT OR MITIGATE FUTURE FLOODING, DIRECTING THE GOVERNOR TO MAINTAIN THE REDEVELOPMENT OFFICE IN WESTERN NORTH CAROLINA, APPROPRIATING FUNDS TO RESTORE AND REPAIR CERTAIN PUBLIC BUILDINGS IN HYDE COUNTY DAMAGED BY HURRICANE ISABEL AND ESTABLISHING REPORTING REQUIREMENTS.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

☐ With a favorable report as to 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.

North Carolina General Assembly

House Committee on Finance

Minutes

~

March 17, 2005

The House Committee on Finance met on Thursday, March 17, 2005 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, Luebke, McComas, and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives Blackwood, Blust, Bordsen, Capps, Carney, Dockham, Faison, Folwell, Hackney, Holliman, Lewis, McGee, Rayfield, Underhill, Walend, and Wiley. Also present were Sergeant-at-Arms Bill Freeman, Fred Hines, Dusty Rhodes, and Walter Spell. Staff persons present included Cindy Avrette, Rodney Bizzell, David Crotts, Linda Millsaps, and Alexei Pavlichev. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairwoman Alexander called the meeting to order at 8:34 am and announced the death of Representative John Hall. She followed the announcement with a moment of silence. She then recognized the two (2) pages present: Katharina Stevens of Wake County, sponsored by Representative Capps, and Crystal Rayl of Wake County, sponsored by Senator Hunt.

Chairwoman Alexander then recognized Linda Millsaps with Fiscal Research to provide an overview of the State's General Fund revenue sources (see **attachment 3** for a summary of the presentation). During the presentation, Chairwoman Alexander recognized Representative Luebke who requested for the term "Nexus" to be defined and explained as it relates to Corporate Income tax. Ms. Millsaps then explained that the term "Nexus" means physical presence. A company that does not have nexus, or physical presence, does not pay corporate income taxes. Ms. Millsaps concluded her presentation with an overview of Gift and Estate Taxes in North Carolina.

Following the presentation given by Ms. Millsaps, Chairwoman Alexander then recognized Rodney Bizzell with Fiscal Research to give an overview of the sources of Local Revenue (see **attachment 4** for a summary of the presentation). Mr. Bizzell noted that the proportionment of the sources of Local Revenue has remained relatively stable over the past decade. In 2002-03, counties received most of their revenue (39% or $3.9 billion) from property taxes. In the same year, municipalities received most of their revenue (34% or $2.4 billion) from utility taxes. Mr. Bizzell concluded his presentation with an Occupancy Tax Overview. Since 1983, the General Assembly has enacted local bills giving 72 counties and 61 municipalities the authority to levy a room occupancy tax.

Following Mr. Bizzell's presentation, Chairwoman Alexander announced the formation of the House Finance Subcommittee on Occupancy Tax. She appointed Representative Womble as

chairman and Representatives Carney and McGee as members. She then referred the following bills to the Subcommittee on Occupancy Tax:

- HB 125 – West Jefferson Occupancy Tax
- HB 351 – Modify Pasquotank/Elizabeth City Occupancy Tax
- HB 540 – Halifax Occupancy Tax
- HB 544 – Madison County Occupancy Tax
- HB 580 – City of Belmont Occupancy Tax

Chairwoman Alexander then moved that the Occupancy Tax Overview (see **attachment 5**) as approved by the House Finance Chairs be adopted for use by the Subcommittee on Occupancy Tax. The motion was adopted without objection.

As there was no further business before the Committee, Chairwoman Alexander then adjourned the meeting at 9:50 am in the memory of Representative John Hall.

Respectfully submitted,

Representative Martha Alexander
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. General Fund Revenue Sources Presentation
4. Sources of Local Revenue Presentation
5. Occupancy Tax Overview

AGENDA

ATTACHMENT 1

House Finance Committee

March 17, 2005
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Alexander

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard
Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order

Introduction of Pages

Topic:

REVENUE REPORT FROM FINANCE STAFF

Adjournment

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Thursday, March 17, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

The following will be considered:

REVENUE REPORT FROM FINANCE STAFF

Respectfully,
Representatives Alexander, Gibson, Howard, Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **2:05 p.m.** on **March 15, 2005.**

_X_ Principal Clerk
_X_ Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

ATTACHMENT 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — March 17, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Warren Plonk	OSBM
Cam Coven	BPMHL
Rebecca Key	intern - Gibson
Beatrice Williams	CUCA
Stacy Flannery	NCHCFA
Kevin Leonard	WCSR
DON HOISART	NCDOC
Stephanie Dorko	Charlotte Chamber
Erin Wynia	NCGA
Andy Elken	NCRMA
DAVID BARNES	Poyner & Spruill LLP

VISITOR REGISTRATION SHEET

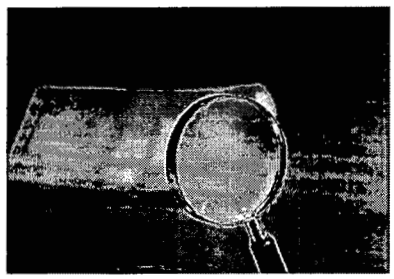
HOUSE COMMITTEE ON FINANCE — March 17, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Catherine Davis	ElectriCities of NC
Michelle Frazier	NC Bar Assoc.
John Mabry	Gov office
Doug Heron	NC BAR ASSOC.

GENERAL FUND REVENUE SOURCES



Linda Struyk Millsaps

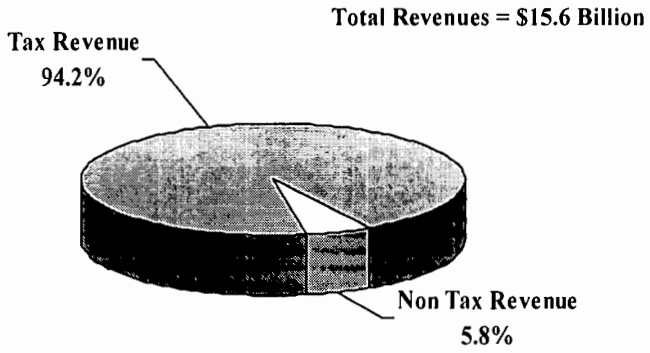
Fiscal Research

March 2005

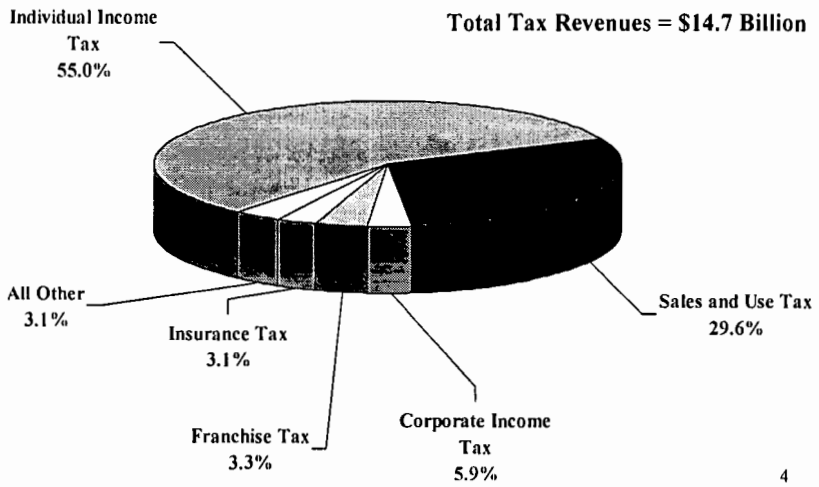
- Overall Collections
  - Tax v. Non-tax
  - Major Categories
  - Over time
- Individual Income Tax
- Sales Tax
- Corporate Tax
- Franchise Tax
- Other Taxes
  - Insurance Premiums Tax
  - Gift Tax
  - Estate Tax

2

General Fund Revenue Categories (2004-05 Projected)

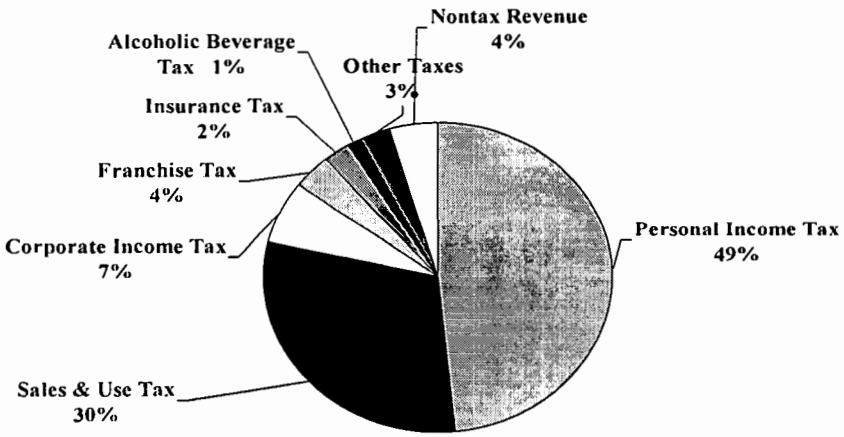


General Fund Revenue Major Tax Sources (2004-05 Projected)



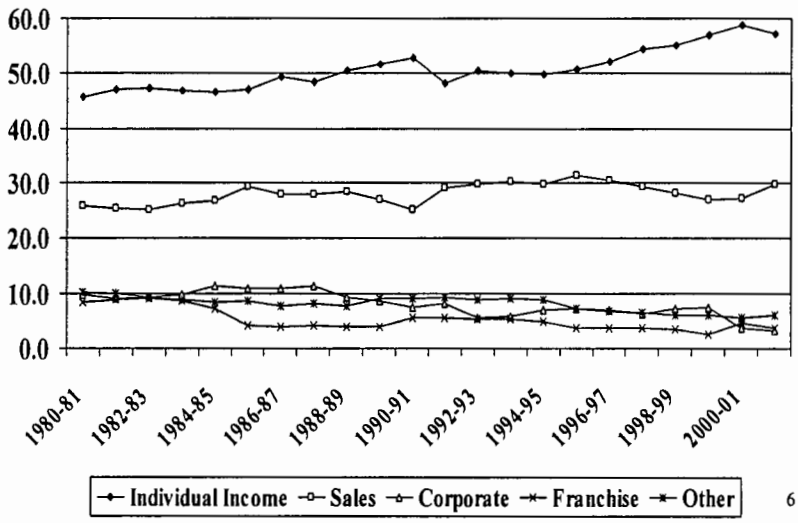
4

General Fund Revenue Major Tax Sources (1994-95)



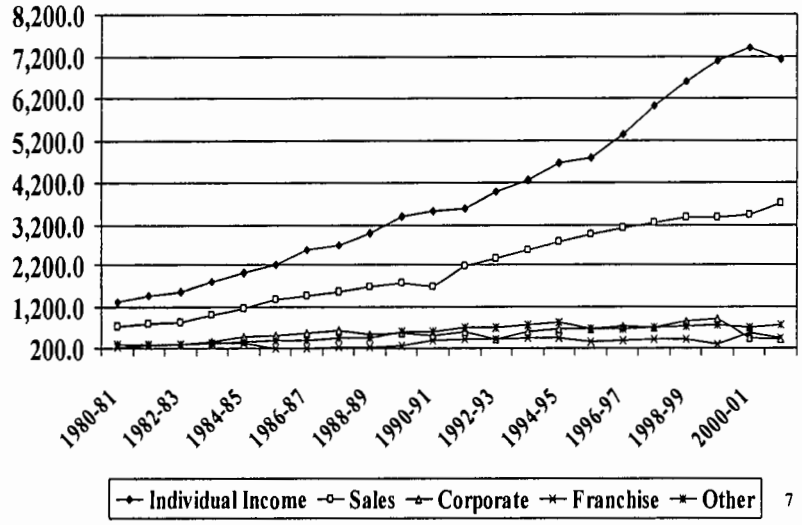
5

Proportion of GF Revenues from Each Type of Tax



6

GF Revenues from Each Type of Tax (actual dollars)

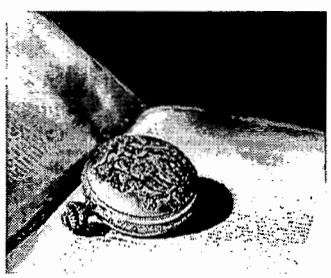


7

Individual Income Tax - History

•Imposed on a limited basis since 1849. Broad based tax established during 1921-37 period

- Starting point for tax is federal taxable income (since 1989)
- Reference to Internal Revenue Code updated annually
- Limited Significant Revisions



8

Individual Income Tax

	Tax Year 2004*	
Standard Deduction	**State**	**Federal**
Single	$3,000	$4,850
Head of Household	4,400	7,150
Married Filing Jointly	6,000	9,700
Married Filing Separately	3,000	4,850
Personal Exemption	2,500	3,100
>7.75% Tax Rate	2,000	3,100

*In addition, taxpayers aged 65 or over receive an additional $950 deduction if married and filing jointly ($1,200 single)

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Individual Income Tax

Tax Rates	Taxable Income			
	6%	7%	7.75%	8.25%*
Single	<$12,750	<$60,000	<$120,000	$120,000>
Head of Household	< 17,000	< 80,000	< 160,000	160,000>
Married Filing Jointly	< 21,250	<100,000	< 200,000	200,000>
Married Filing Separately	< 10,625	< 50,000	< 100,000	100,000>

*Will sunset in January 1, 2006

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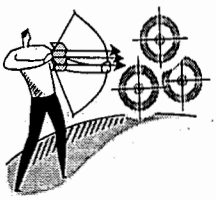
Individual Income Tax – Issues

- Status of 8.25% upper income tax rate
- Potential lower to middle income relief
  - Changes in Standard Deduction
  - Changes in Personal Exemption
  - EITC
- Military and military retirees
- Changes in the federal base



11

Sales Tax

Collected from local merchants.

The general rate of tax is 4.5% state, 2.5% or 3.0% local. (4.5% set to move to 4.0% July 1, 2005).

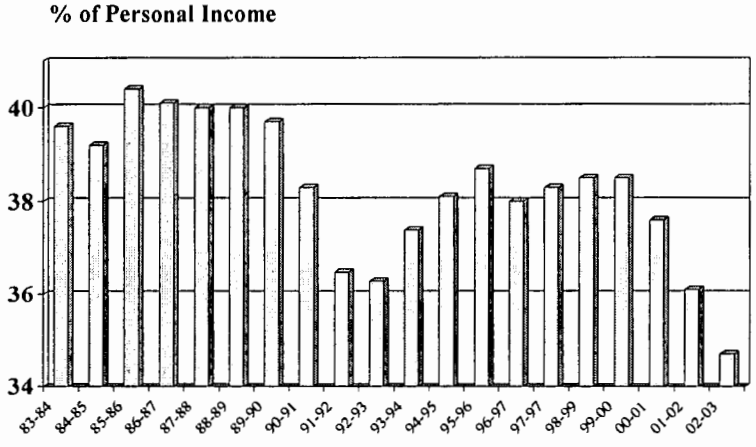
This relatively standard rate is often held up as a model for other states.

Participation in the Streamlined Sales Tax project will force greater standardization.

Food is exempt from state tax but is still subject to a 2% local tax. (The new ½ cent of local tax does not apply to food).**

Distribution of sales tax revenue to localities is made on both per capita and point of sale basis.

What's Coming in ... Local Sales Tax Base Relative to Personal Income



NOTE: Ratio calculated by converting 1% local sales tax receipts to a "tax base" and then dividing by personal income.

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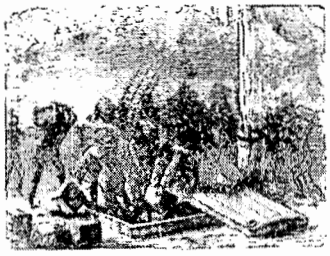
Sales Tax: Recent Activity

- **Sourcing** – For non over the counter transactions, shifts the sales from the place of business to the delivery address.
- **Monthly payments** – July 2003 moved from quarterly to monthly payments to local units.
- **Redefined food** - No fiscal impact to local units.
- **State agencies** – Exempt from sales tax July 2004.
- **Sales Tax Swap** – Based on $365.1 million in local revenue.
- **Local Tax Increase Legislation** - Gaston and Dare.
- **Industrial Facility Refunds** – Economic Development.

14

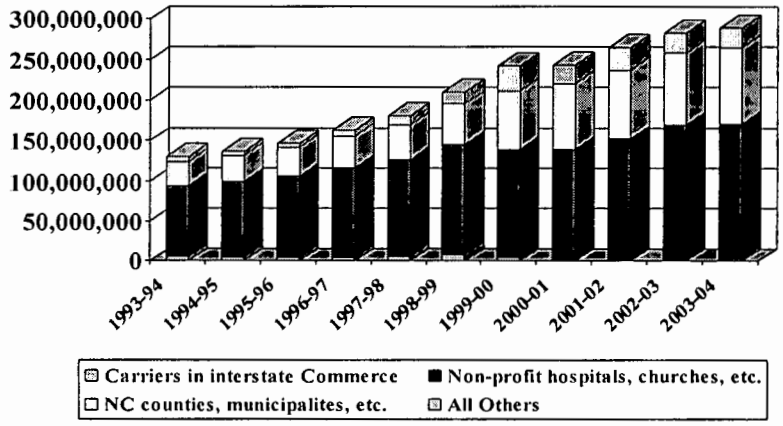
Sales Tax Issues



- Streamlined Sales Tax Compliance
  - Eliminate Special Rates and Caps
    - Telecommunications
    - Satellite/Cable
    - Liquor
    - Farm machinery and Fuel
    - Other machinery
  - Unify Tax Base
    - Electricity
- Services
- Refunds
  - Moving local units and schools to an exemption.
  - Overall Magnitude

15

Sales and Use Tax Refunds – State Portion



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Corporate Income Tax

- Imposed since 1921
- All domestic and foreign corporations doing business in North Carolina are subject to the tax
- Exempt Corporations include:

  S corporations

  Insurance Companies

  Telephone and electric membership corporations

  Cooperative board without capital stocks

  Nonprofits

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Corporate Income Tax (continued)

•Tax on state net income = federal taxable income

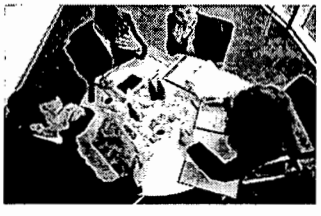
•Based on federal, but with numerous add-backs and deductions.

•Tax rate = 6.9%

•Key tests related to:

Apportionment

Nexus – Physical Presence Plus



Effective Rate is Lower- Especially for multi-nationals

Numerous credits for specialized businesses, Bill Lee

18

Corporate Income Tax - Issues

- Effective Tax Rates –
  - Center for Budget and Policy Priorities
- Loopholes
  - Apportionment
- Incentives
  - Bill Lee
  - Structure
  - Amount
  - Cuno
  - Disclosure
- IRC Update

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Franchise Tax

- Privilege or excise tax imposed on domestic and foreign corporations for the privilege of doing business and existing as a corporation under North Carolina law
- The franchise tax is measured by whichever of the following bases is greatest in amount:
  (1) capital stock, surplus and undivided profits allocated to NC
  (2) 55% of the appraised value of real and tangible property or
  (3) investment in tangible property in North Carolina
- Tax is $1.50 per $1,000 (minimum tax is $35)
- Closed loophole in 2001, 2002, and 2004 on the transfer of corporate assets to wholly owned LLC subsidiaries

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Insurance Premiums Tax

- Tax on gross premiums of life insurance policies covering North Carolina residents and gross premiums of other insurance policies covering risks in North Carolina

•2.5% tax rate on Workers' Comp

•1.9% on annuities and all other insurance contracts

•Additional 1.33% on fire and lightning coverage (except marine and auto)

•1% on HMOs

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Gift Tax

- Spouse is exempt
- Three classes of rates

A = Lineal (child, stepchild, adopted child)	1% to 12%
B = Brother, Sister, Aunt, Uncle	4% to 16%
C = All Others	8% to 17%

- $11,000 exclusion annually (indexed to federal)
- $100,000 per donor lifetime exemption
- $18.2 million in FY 2004-05 (projected)

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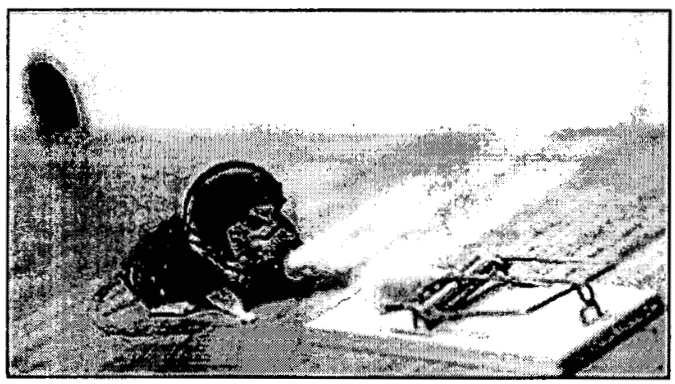
Estate Tax

- Regular death tax repealed effective January 1, 1999
- Estate tax imposed in amount equal to federal state death tax credit ("Pick-up tax")
- In recent years conformed to federal exemption limits but not federal phase out of the tax until July 1, 2005.
- $136.2 million in FY 2004-05 (projected)

•Tax disappears by 2006-07 due to federal phase-out of state tax base unless state action taken

23



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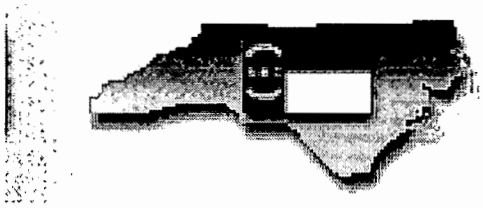
Sources of Local Revenue



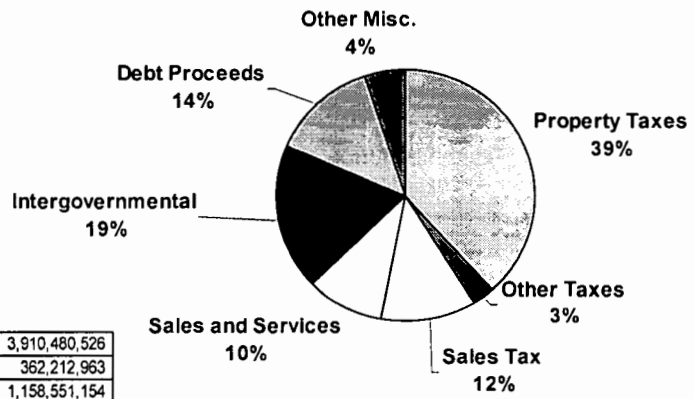
Fiscal Research Division
March 2005

Sources of Local Revenue

- **Sources of Local Revenue**
  - **County**
  - **Municipal**
- **Local Taxes and Fees**
  - **Property Tax**
  - **Sales Tax**
  - **Occupancy Tax**
  - **Meals Tax**
  - **Impact Fees**
  - **Other Fees and Services**
- **State Aid to Local Units**
- **Current Issues**
- **Cigarette and Alcohol Taxes**

Sources of Local Revenue: County

2002-03 County Revenue by Source

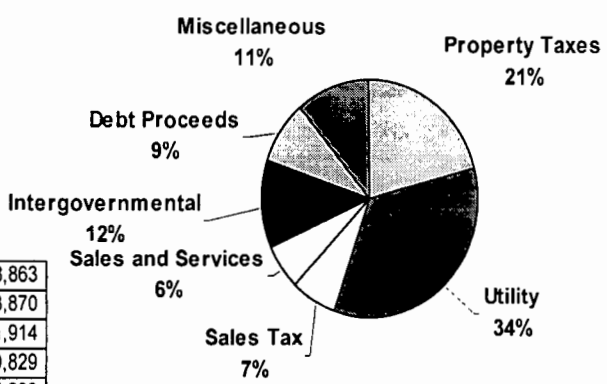


Property Taxes	3,910,480,526
Other Taxes	362,212,963
Sales Tax	1,158,551,154
Sales and Services	978,833,734
Intergovernmental	1,883,026,545
Debt Proceeds	1,364,648,902
Other Misc.	373,053,651
TOTAL	10,030,807,475

Information provided by the NC Dept. of State Treasurer.

Sources of Local Revenue: Municipal

2002-03 Municipal Revenue by Source



Property Taxes	1,475,898,863
Utility	2,421,813,870
Sales Tax	526,371,914
Sales and Services	453,300,829
Intergovernmental	865,105,233
Debt Proceeds	625,202,920
Other Misc.	791,862,000
TOTAL	7,159,555,629

Information provided by the NC Dept. of State Treasurer.

Sources of Local Revenue

- Sources of Local Revenue
  - County
  - Municipal
- Local Taxes and Fees
  - Property Tax
  - Sales Tax
  - Occupancy Tax
  - Meals Tax
  - Impact Fees
  - Other Fees and Services
- State Aid to Local Units
  - Tax Sharing

Local Taxes and Fees: Property Tax

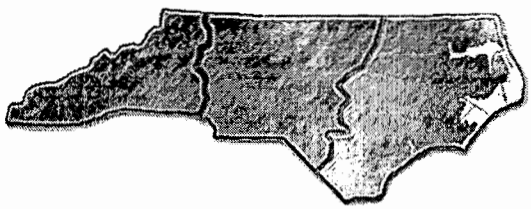
- All taxable property is taxed at the same rate.
- Revaluation at least every 8 years
- Use-value Appraisal
- A Homestead exemption serves to lower low income elderly tax burdens.
  - Age 65 and older or disabled
  - $19,200 or less annual income
  - Exclusion of $20,000 or 50%

Local Taxes and Fees: Property Tax

North Carolina counties depend on property taxes for the largest portion of their budgets.

North Carolina localities are able to limit property taxes because most school operating costs, as well as the construction and maintenance of most roads, prisons and community college systems are borne by the state.

Local Taxes and Fees: Property Tax



2002-03 Unadjusted Tax Rates

Region	Total Average
East	77.20
Mountain	55.20
Piedmont	65.80

Local Taxes and Fees: Occupancy Tax

•Levied on gross receipts derived from the rental of room rentals.

•The General Assembly has enacted local bills giving 72 Counties and 61 municipalities authority to levy an occupancy tax.

•Rates vary from 1% to 6%.

•Uniform municipal and county administrative provisions enacted by General Assembly in 1997. Provides for uniform administration, collection, repeal and penalties.

•Proceeds are typically used to promote travel and tourism and for tourism-related expenditures.

•Most local bills create a Tourism Development Authority with authority to to determine how proceeds will be used.

Local Taxes and Fees: Meals Tax

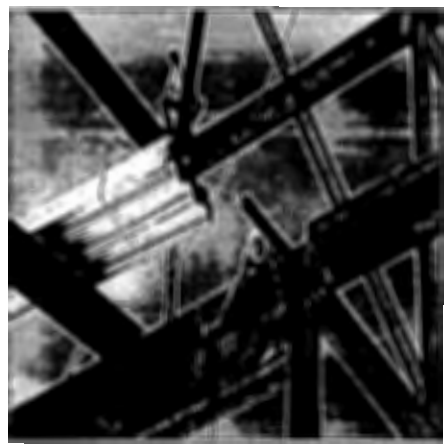
- Since 1989 the General Assembly has ratified local bills giving two municipalities and four counties the authority to levy an additional 1% tax on prepared food.

- Uses include:

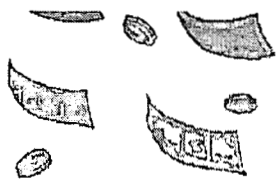
  Services needed because of touris special event centers, museums convention centers,general tourism development, and Interlocal Agreement (Wake)

Local Taxes and Fees: Impact Fees

- **Also called development or facility fees.**
- **Generally assessed on developers for streets, water lines, sewer, and other infrastructure.**
- **Some municipalities with impact fees include Chapel Hill, Carrboro, and Rolesville.**
- **May be the wave of the future in urban areas.**



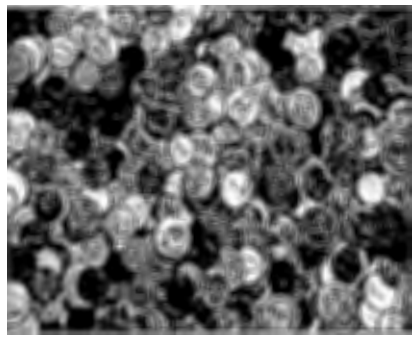
Local Taxes and Fees: Other



- **Motor Vehicle Tax** - $5 to $30 per vehicle, local option.
- **Land Transfer Tax** - Tax (up to 1%) on Conveyances (some authorized counties).
- **Local Transit Revenue Options** (for public transit, local option).
- **Utilities** - Significant for municipalities. Includes water, sewer, power, gas, solid waste.

Local Taxes and Fees: Other (cont.)

- Privilege License Tax - Business or Occupation based. Flexible.
- Cable TV Franchise Tax - Up to 5% G.R.
- Animal Tax
- 911 Surcharge.
- Other User Charges - Airports, Ambulance. Usually county.



- **Register of Deeds Fees - Marriage License, Oaths, Recording Fees.**
- **Regulatory Fees - Building and Environmental.**

Sources of Local Revenue

- Sources of Local Revenue
  - County
  - Municipal
- Local Taxes and Fees
  - Property Tax
  - Sales Tax
  - Occupancy Tax
  - Meals Tax
  - Impact Fees
  - Other Fees and Services
- State Aid to Local Units
  - **Tax Sharing**

State Aid to Local Units

State Taxes Shared with Counties

Beer and Wine Tax

- Shared only for the types of beverages allowed in the county.
- Distribution is based on the type of beverage.

Liquor by-the-drink

Real Estate Transfer Tax

- Also known as the Deed Tax. County Retains 50%+.
- $1.00 tax for each $500.00 in value transferred.

Hold Harmless Payments

- In lieu of reimbursements

State Aid to Local Units

State Taxes Shared with Municipalities

- Gasoline Tax - Shared through Powell Bill Funds. Restricted Use.
- Gross Receipts Taxes on Electricity and Telephones
- Excise Tax on Piped Natural Gas.
- Beer and Wine Tax.
- Liquor by-the-drink.
- Hold Harmless Payments

Current Issues

- **Property Tax:**
  - Exemptions & Exclusions
  - Motor Vehicles
- **E-911 (Enhanced 911 for wireless calls)**

Alcoholic Beverage Tax

• Spirituous Liquors*	25% of retail price
• Malt Beverages	53.177 cents/gallon
• Fortified Wines	24 cents/liter
• Unfortified Wines	21 cents/liter

- $185.8 million in FY 2004-05 (projected)

- Effective December 1, 2001, also pay 6% state sales tax

Cigarette and Tobacco Products Tax

- 5 cents per pack of 20 cigarettes
- Second lowest rate behind Kentucky (currently 3 cents)
- Kentucky General Assembly has approved an increase to 30 cents effective June 1.
- Other Tobacco Products = 2% of cost of products
- $42.5 million in FY 2004-05 (projected)

Occupancy Tax Overview

Created March 2005

Occupancy Tax

A local tax levied on the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax.

Local Acts

Since 1983, the General Assembly has enacted local bills giving approximately 72 counties and 61 municipalities the authority to levy a room occupancy tax.

Rate

The rates vary from 1% to 6% depending upon the rate established in each local government's authorizing legislation; however, the General Assembly has not authorized any tax above 6%.

Uniform Administrative Provisions

In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – GS 153A-155 and GS 160A-215. These provisions provide uniformity in the areas of levy, administration, collection, repeal, and penalties. The uniform provisions apply to 30 named counties and 43 municipalities.

Use of Funds

In most instances, the proceeds are used to promote travel and tourism and for tourism-related expenditures. Since 1993, the House Finance Committee has typically required the proceeds from the tax to be used for these purposes. There are a few counties (*Ashe, Cleveland, Hertford, and Hyde*) that may use the proceeds for any public purposes and a few others, especially coastal communities, which allow the proceeds to be used for public services such as fire protection, police protection, and solid waste disposal, and for beach nourishment. Since 2001, there is a generally accepted uniform definition of 'beach nourishment'.

Tourism Development Authorities

Most of the local bills authorizing an occupancy tax also create a 'Tourism Development Authority' or some other similar body that has the authority to determine how the tax proceeds will be used. There are only 39 or so instances where the use of the money is solely in the discretion of the county or municipal officials. Since 1993, the House Finance Committee has typically required that at least ¾ of the members of the TDA be currently active in the promotion of travel and tourism in the taxing district and that 1/3 of the members be affiliated with organizations that collect the tax. In 2005, the House Finance Chairs revised this general rule to allow more members of the public not involved in travel and tourism to serve on the TDA by requiring that at least **50%** of the members be currently active in the promotion of travel and tourism.

History

The North Carolina Travel and Tourism Coalition has a policy statement for legislation authorizing local occupancy taxes. Many of the principles contained in its statement are similar to the ones established by a House Finance Subcommittee in 1993. Based upon the work of this subcommittee, the House Finance Committee typically looks for the inclusion of certain provisions in the occupancy tax bills it considers:

- The combined county and municipal tax may not exceed 6%.
- Proceeds must be used for travel and tourism promotion and expenditures.
- The net revenues must be administered by a TDA.
- The costs of collection may not exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

North Carolina General Assembly

House Committee on Finance

Minutes

~

March 24, 2005

The House Committee on Finance met on Thursday, March 24, 2005 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Howard, McComas, and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives Blackwood, Blust, Bordsen, Capps, Carney, Dockham, Faison, Folwell, Glazier, Hackney, Harrell, Holliman, Jones, Lewis, McGee, Rayfield, Underhill, Vinson, and Wiley. Also present were Sergeant-at-Arms Paul Curry, Fred Hines, Walter Spell, and James Worth. Staff persons present included Cindy Avrette, Rodney Bizzell, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2.**

Chairwoman Howard called the meeting to order at 8:30 am and recognized the two (2) pages present: Chris Peele of Onslow County, sponsored by Representative Grady, and Reginald Cameron of Wake County, sponsored by Representative Hall.

Chairwoman Howard then recognized Rodney Bizzell with Fiscal Research to provide an overview of Cigarette and Alcohol Taxation in North Carolina (see **attachment 3** for a summary of the presentation). After several questions were asked about cigarette and alcohol taxes, Chairwoman Howard recommended that staff present a more detailed report that addresses the following issues: the effect of an increased cigarette tax on the sales tax; the number of workers in cigarette manufacturing in other states compared to that in North Carolina; and whether it is possible to make high-level proof malt alcoholic beverages.

Following the presentation given by Mr. Bizzell, Chairwoman Howard recognized Martha Walston with Fiscal Research to give an overview of the recent court cases affecting State Revenues (see **attachment 4** for a summary of the presentation).

Once Mrs. Walston finished her discussion, Chairwoman Howard recognized Representative Holliman to explain the first bill under consideration, **HB 9 – THOMASVILLE DEANNEXATION** (see **attachment 5**). Representative Holliman explained that the bill removes certain property from the corporate limits of the city of Thomasville because it would be overly expensive to complete annexation. He stated that all parties involved in the deannexation favored the passage of the bill. Following the explanation, Chairwoman Howard recognized Representative Wainwright who moved that House Bill 9 be given a favorable report. Seeing no further discussion, Chairwoman Howard called the motion to a vote and it carried by consent.

Chairwoman Howard then recognized Representative Tolson to explain **HB 476 – WILSON/GREENE BOUNDARY SETTLEMENT** (see **attachment 6**). Representative Tolson explained that the bill validates a boundary settlement between Wilson and Greene counties. Following the explanation, Chairwoman Howard recognized Representative Wainwright who moved that House Bill 476 be given a favorable report. Chairwoman then recognized Representative Rayfield who asked how the individuals living on the land that is affected by the boundary settlement felt about the change. Chairwoman Howard then recognized Representative Tolson who stated that he had heard of no opposition to the bill. Seeing no further discussion, Chairwoman Howard called the motion to a vote and it carried by consent.

Chairwoman Howard then recognized Representative Hollo to explain **HB 498 – TAYLORSVILLE SATELLITE ANNEXATION** (see **attachment 7**). He explained that the bill would remove the cap on satellite annexations for the town of Taylorsville. Following the explanation, Chairwoman Howard recognized Representative Underhill who asked the bill's sponsor how many other towns have asked for the satellite annexation cap to be removed. Representative Hollo responded saying that 51 other municipalities had already been granted similar requests by the General Assembly. Chairwoman Howard then recognized Representative Rayfield who moved that House Bill 498 be given a favorable report. Seeing no further discussion, Chairwoman Howard called the motion to a vote and it carried without objection.

Having no further business before the Committee, Chairwoman Howard adjourned the Committee at 9:19 am.

Respectfully submitted,

Representative Julia Howard
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. Overview of Alcohol and Cigarette Taxation Presentation
4. Overview of Recent Court Cases Affecting State Revenue
5. House Bill 9 (and related materials)
6. House Bill 476 (and related materials)
7. House Bill 498 (and related materials)

ATTACHMENT 1

AGENDA

House Finance Committee

March 24, 2005
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Howard

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard
Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order

Introduction of Pages

Topics:

OVERVIEW OF CIGARETTE AND ALCOHOL TAXES

DISCUSSION OF PENDING REVENUE LITIGATION

Bills:

HB 9 **THOMASVILLE DEANNEXATION** *Rep. Holliman*

HB 476 **WILSON/GREENE BOUNDARY SETTLEMENT** *Rep. Tolson*

HB 498 **TAYLORSVILLE SATELLITE ANNEXATIONS** *Rep. Hollo*

Adjournment

CORRECTED NOTICE:
HB 476 – ADDED

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Thursday, March 24, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 9 – THOMASVILLE DEANNEXATION – Rep. Holliman

HB 476 – WILSON/GREENE BOUNDARY SETTLEMENT – Rep. Tolson

HB 498 – TAYLORSVILLE SATELLITE ANNEXATIONS – Rep. Hollo

Respectfully,
Representatives Alexander, Gibson, Howard, Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **11:00 am** on **March 22, 2005.**

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Thursday, March 24, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 9 – THOMASVILLE DEANNEXATION – Rep. Holliman

HB 498 – TAYLORSVILLE SATELLITE ANNEXATIONS – Rep. Hollo

Respectfully,
Representatives Alexander, Gibson, Howard, Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **9:00 am** on **March 22, 2005.**

_X_ Principal Clerk
_X_ Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

CANCELLED

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, March 22, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 9 – THOMASVILLE DEANNEXATION – Rep. Holliman

HB 498 – TAYLORSVILLE SATELLITE ANNEXATIONS – Rep. Hollo

Respectfully,
Representatives Alexander, Gibson, Howard, Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **11:15 am** on **March 17, 2005.**

_X_ Principal Clerk
_X_ Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

ATTACHMENT 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — March 24, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Anna Cameron	NC Justice Center
Michael Hauser	NCAE

Current Issues

- **Property Tax:**
  - Exemptions & Exclusions
  - Motor Vehicles
- **E-911 (Enhanced 911 for wireless calls)**

Alcoholic Beverage Tax

• Spirituous Liquors*	25% of retail price
• Malt Beverages	53.177 cents/gallon
• Fortified Wines	24 cents/liter
• Unfortified Wines	21 cents/liter

- $185.8 million in FY 2004-05 (projected)

- Effective December 1, 2001, also pay 6% state sales tax

Cigarette and Tobacco Products Tax

- 5 cents per pack of 20 cigarettes
- Second lowest rate behind Kentucky (currently 3 cents)
- Kentucky General Assembly has approved an increase to 30 cents effective June 1.
- Other Tobacco Products = 2% of cost of products
- $42.5 million in FY 2004-05 (projected)

RECENT COURT CASES AFFECTING STATE REVENUES
Distributed to House Finance, March 23, 2005

A&F Trademark, Inc. v. Tolson (The Limited Case)
The N.C. Supreme Court upheld the position of the N.C. Department of Revenue that out-of-state taxpayers, who hold trademarks used in North Carolina, are doing business in the State and must pay corporate income and franchise taxes. The Department has indicated that this decision will generate $50 million for the 2004-2005 fiscal year.

North Carolina School Boards Association, et al. v. Richard Moore, et al. (the Fines and Forfeitures Case)
The N.C. Court of Appeals upheld the position of State departments, agencies, institutions and licensing boards that various monetary payments collected by these parties were remedial in nature and not punitive. These payments, therefore, are not governed by the constitutional provision requiring the proceeds of all penalties and forfeitures and of all fines collected in the counties to remain with the counties and to be used for maintaining free public schools. The school boards appealed to the N.C. Supreme Court. The matter was argued in the N.C. Supreme Court on May 11, 2004, but no decision has been filed.

Dunn v. State of North Carolina, et al.
This is a class action suit brought on behalf of plaintiffs and all other persons and entities who have paid North Carolina income tax on the interest of other states' bonds. The issue is whether North Carolina violates the Commerce Clause of the U.S. Constitution by taxing interest earned on state and local government bonds from other states while exempting North Carolina state and local government-issued bonds. Plaintiffs have demanded a refund of taxes paid for tax years 2001 and 2002. The case is currently in Forsyth County Superior Court.

Coley, et al. v. State of North Carolina and Tolson
Plaintiff taxpayers brought this action in Wake County Superior Court seeking a declaration that the 2001 legislation enacting the 8.25% income tax bracket was an illegal retrospective tax and seeking a tax refund. The trial court dismissed plaintiffs' action. Plaintiffs have appealed to the N.C. Court of Appeals, and the case is set for oral argument next month. Plaintiffs contend that because this legislation was ratified midway through their taxable year, it taxes retrospectively in violation of the North Carolina Constitution. The State has countered that the act is not unconstitutional because the tax is not imposed until the conclusion of the taxable year, which occurred after ratification. Mid-year tax legislation such as S.L. 2001-424 does not tax retrospectively.

Philip Morris USA Inc. v. Tolson
Plaintiff Philip Morris (hereinafter PM) brought this action in Wake County Superior Court seeking a refund of income taxes paid for tax years 1989 through 1991. In 1979, PM began construction of a cigarette manufacturing facility in Cabarrus County. PM sought permission from the augmented Tax Review Board to use an alternative method for allocation of their income for North Carolina corporate income tax purposes for 1982

and subsequent years.[1] The Board authorized a special apportionment formula that substantially decreased PM's income tax liability in North Carolina.[2] During the years at issue, 1989 through 1991, PM did not apportion its income to the State using either the special formula or the statutory formula. Instead, PM used an amended version of the statutory formula. The Secretary of Revenue ordered PM to pay income tax based on the special formula, and the Review Board affirmed the decision. The Wake County Superior Court found that for tax years 1990 and 1991, PM was not required to allocate its net income using the special formula but was required to use the statutory formula.[3] For those years, the statutory formula produced a more favorable tax result for PM than the authorized special formula. Therefore, PM was entitled to a refund of corporate income taxes to the extent the amount it paid in a particular year was greater than the amount due under the statutory apportionment formula. The State did not appeal this decision. PM has appealed to the N.C. Court of Appeals on grounds that they should be able to continue using the amended statutory formula. If the State loses, it will be required to pay PM approximately $30 million.

DIRECTV, Inc. and EchoStar Satellite Corporation v. State

This case is in Wake County Superior Court. Plaintiffs brought this action seeking a refund of sales taxes paid since January 1, 2002. They claim that the 5% sales tax rate on their gross receipts is unconstitutional as a violation of the Commerce Clause, the equal protection clause, and the rule of uniform taxation. EchoStar seeks a refund of $10 million, and DIRECTV seeks a refund of $18 million. They base their complaint on the fact that cable television service is exempt from State sales tax. Cable television companies pay local governments an annual franchise tax, which is generally 5% of the company's gross receipts. Plaintiffs argue that the satellite television companies all provide services to North Carolina from out-of-state facilities. In contrast, cable companies have a local presence that places demands on the State for services, while satellite television companies do not have significant facilities in North Carolina that impose demands on state services.

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[1] G.S. 105-130.4 sets out an apportionment formula for a multistate corporation to allocate its net income or net loss taking into account how much sales, property, and payroll the corporation has in each state. A multistate corporation calculates its income tax by adding together its property factor, its payroll factor, and twice its sales factor and then dividing the total by four. The double-weighting of the sales factor was enacted in 1989, as part of an inducement to get RJR Nabisco to build a cookie-baking factory and distribution center in Garner. The factory was never built.

[2] If a corporation believes that the statutory apportionment formula has or will subject it to taxation on a greater portion of its income that is attributable to its business in North Carolina, then the corporation may file a petition with the Tax Review Board to use an alternative formula. If the corporation proves by clear, cogent and convincing evidence that an alternative formula should be used, then the Board will issue a written decision setting out the alternative formula. The State Review Board consists of the State Treasurer, the chairman of the Utilities Commission, and a member of the public appointed by the Governor. At the hearing, the membership is augmented by the Secretary of Revenue, who joins the board as a member with full power.

[3] Under G.S. 105-130.4(t), an order of the augmented Board is nullified if there is a change in either the business method of operation of the corporation or the conditions constituting the basis upon which the decision was made. The trial court found that the fact that the statutory formula produces a more favorable tax result for the corporation than the order for a particular year is a condition constituting the basis upon which the decision was made.

North Carolina School Boards Association, et al. v. Richard Moore, et al.
(The Fines and Forfeitures Case)
(Summary prepared by Finance Team October 1, 2003, updated March 21, 2005)

OVERVIEW: *On September 16, 2003, the North Carolina Court of Appeals issued an opinion reversing much of the Wake County Superior Court's December 14, 2001 ruling in which the superior court had ordered that payments collected by certain State agencies and licensing boards be distributed to the public schools in lieu of allowing the agencies and boards to retain these payments for other purposes. The Court of Appeals held that these monetary payments are remedial rather than punitive in nature and, therefore, are not governed by Article IX, Section 7 of the State Constitution. Section 7 requires the proceeds of all penalties and forfeitures and of all fines collected in the counties to be used for maintaining free public schools. The result of this opinion is that the Department of Revenue and the University System will not have to pay out monetary sums totaling more than $511 million.*[1]

The matter has been appealed and was argued before the North Carolina Supreme Court on May 11, 2004. No decision has been filed.

BACKGROUND

The matter arose in December 1998, when the Plaintiff North Carolina School Boards Association and the individual Boards of Education for Wake, Durham, Johnston, Buncombe, Edgecombe, and Lenoir counties sued defendant State departments, agencies, institutions, and licensing boards seeking a determination that various monetary payments collected by these defendants should go to the school systems in the counties where the payments are collected and that the school boards should decide how to spend the money. Plaintiffs based their position on Article IX, Section 7 of the North Carolina Constitution, which provides in part, "[T]he clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools." Defendants' position is that none of the challenged payments falls within the purview of Article IX, Section 7, because these payments are remedial rather than punitive in nature, and that defendants may therefore retain and use the payments for purposes other than maintaining free public schools.

The case came before the Court of Appeals after the Wake County Superior Court entered summary judgment in plaintiffs' favor on grounds that all of the monetary payments at issue were subject to Article IX, Section 7 of the State Constitution and belong to the public schools. The Court of Appeals reversed most of the findings in the superior court's order of summary judgment.

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[1] This assumes that the opinion is affirmed on appeal to the North Carolina Supreme Court. No estimates are available for the moneys collected by the licensing boards. The monetary sum of $511 million includes payments collected by the Department of Revenue beginning in fiscal year 1995-96 to the present and payments collected by the University System for fiscal years 1999-2000 and 2000-2001.

DECISION

The Court of Appeals, in reversing most of the findings of the superior court, held that the following monetary payments may go to the State agencies collecting the payments and may be used for purposes other than the public schools. The Court concluded that the following payments are remedial rather than punitive in nature and, therefore, are not governed by Article IX, Section 7 of the State Constitution.

- Penalties collected by the Department of Revenue as an additional tax under G.S. 105-236 and other provisions of the NC Revenue Act for failure to comply with the tax code. These payments total on average about $50 million annually in fiscal years 1995-1996 through 1998-1999 and are deposited into the General Fund.
- Payments collected by the Department of Revenue from persons dealing in unauthorized substances pursuant to Article 2D of Chapter 105 of the General Statutes. These payments total about $6 million annually in fiscal years 1995-1996 through 1998-1999. The State or local law enforcement agency that conducted the investigation leading to the assessment of the tax on unauthorized substances received 75% of these collections.
- Payments collected by the Employment Security Commission from employers for overdue contributions to the Unemployment Insurance Fund, late filing of wage reports, and tendering a worthless check pursuant to G.S. 96-10(g) and (h).
- Payments collected by the boards of trustees of the Consolidated University of North Carolina campuses for violation of ordinances regulating traffic, parking, and vehicle registration pursuant to G.S. 116-44.4(h). In fiscal year 1999-2000, UNC-CH collected over $1.6 million while NCSU collected about $800,000. These moneys are used for parking, traffic, and transportation purposes including as a pledge to secure revenue bonds for parking facilities.
- Payments collected by the boards of trustees of the Consolidated University of North Carolina campuses for loss, damage, or late return of materials borrowed from University libraries pursuant to G.S. 116-33. In a recent year, NCSU collected nearly $160,000. These payments are used to offset the cost of maintaining the institutions' library collections.
- Payments collected by the Plumbing and Heating Board, the Electrical Board, the Cosmetic Board and the State Bar for licensees' failure to timely comply with licensing requirements. In a recent three-year period these payments ranged from approximately $18,000 collected on average annually by the State Bar to $45,000 collected annually by the Board of Cosmetic Art Examiners. Generally, these payments are retained by the collecting agency and used for operating expenses.
- Payments collected by State agencies as fines or civil penalties assessed against a public school or local school administrative unit,

including the $11,000 paid to the Department of Environment and Natural Resources (DENR) by the Edgecombe County Board of Education in April, 1997, may remain with the collecting State agency, where they may be used for purposes other than maintaining public schools.[2] Local school administrative units paid at least $500,000 to DENR during a recent five-year period.

The Court of Appeals held that the following payments are punitive in nature and must go to the public schools pursuant to Article IX, Section 7 of the North Carolina Constitution.

- Payments collected by the Department of Transportation from owners of vehicles that exceed axle-weight limits pursuant to G.S. 20-118(e). Theses payments average $7 million annually and are credited to the State Highway Fund.
- Payments collected by the Department of Transportation from vehicle owners who allow their motor vehicle insurance to lapse and from insurers who fail to give notice on insurance termination to the DOT pursuant to G.S. 20-309.
- Payments made in support of a supplemental environmental project, in lieu of paying a civil penalty.[3]

Additional holdings by the Court of Appeals

- The Civil Penalty and Forfeiture Fund (Civil Penalty Fund) and the State School Technology Fund enacted by the General Assembly do NOT violate the plain language of Article IX, Section 7 of the NC Constitution. The Court emphasized that the Constitution only requires generally that revenue collected from civil penalties be used exclusively to support the public schools but does not specify how this is to be accomplished. The Court concluded "that the statutory scheme's creation of the Civil Penalty Fund, its mandate that all funds accruing thereto be transferred to the School Technology Fund for allocation to local school units based on student population, and its requirement that these funds be used to implement local school technology plans are consistent with the intent and purpose of Article IX, Section 7." The Court rejected the plaintiffs' argument that the language in Article IX, Section 7 required that the payments be made to a specific city and/or county school board.
- The trial court correctly applied the three-year statute of limitations to plaintiffs' claims. This means plaintiffs' claims apply to

[2] The Court did not base this result on whether the payment was punitive or remedial in nature but on the public policy that a wrongdoer should not be allowed to enrich himself as a result of his own misconduct.
[3] This includes $50,125 paid by the City of Kinston to Lenoir Community College on March 31, 1998 in support of a supplemental environmental project. A SEP has been defined as part of a settlement to an enforcement action and as providing opportunities for environmental benefit as a result of negotiated settlements.

payments collected within three years preceding the filing of their complaint in December 1998. Defendants argued that a one-year statute of limitation should apply.

Dissenting opinion

One of the appellate judges, in the three-judge panel hearing the case, dissented from the majority opinion on the following grounds:

- The payments collected by DOT pursuant to G.S. 20-118(e) are not punitive in nature and therefore, do not belong to the public schools. These payments were intended to compensate the State for the deterioration of its highways due to operation of overweight vehicles and go to the State Highway Fund instead of the public schools.
- The $11,000 penalty assessed against the Edgecombe County School Board for environmental violations should go to the public schools. However, in determining how to distribute this money among the eligible school systems from the Civil Penalty Fund, the average daily attendance of Edgecombe County public schools should not be included in the calculation and Edgecombe county School Board should not receive any of the money.

Both parties have appealed to the North Carolina Supreme Court. Oral arguments were heard May 11, 2004. The State has appealed the following portions of the majority opinion:

- **That the payments to the Department of Transportation are punitive in nature and must go to the public schools.**
- **That the payments made in support of a supplemental environmental project, in lieu of paying a civil penalty, are punitive in nature and must go to the public schools.**

Note that pursuant to G.S. 7A-30, the parties have a right to a direct appeal to the North Carolina Supreme Court on the substantial constitutional questions raised in the opinion and on the issues raised in the dissenting opinion.

A&F Trademark, Inc. v. Tolson (The Limited Case)

(Summary prepared by Finance Team, December 20, 2004, updated March 19, 2005)

OVERVIEW: *This North Carolina Court of Appeals decision, filed December 7, 2004, upholds the State's position on the taxation of royalty income received by an out-of-state investment company for the use of trademarks in this State. The Court ruled that the out-of-state taxpayers, who hold the trademarks used in North Carolina, were doing business in North Carolina and that the assessment of corporate income and franchise taxes against the taxpayers was not a constitutional violation.*

On March 3, 2005, the North Carolina Supreme Court denied the taxpayers' petition for discretionary review and allowed the State's motion to dismiss the taxpayers' appeal.

FACTS

In this case, the taxpayers are nine wholly-owned subsidiaries[1] of the Limited Stores, Inc. The Limited also owns 100% of eight retail companies[2] who have retail subsidiaries doing business in more than 130 locations in North Carolina. These retail subsidiaries pay North Carolina corporate income and franchise taxes. During the 1980's and early 1990's, the Limited incorporated the taxpayers in Delaware to hold the trademarks owned by the Limited and the related retail companies. The taxpayers do not own or lease any real property or tangible personal property in any state except Delaware. The taxpayers have no employees in any state. The taxpayers entered into the following paper transactions, which had no substantive effect other than eliminating their North Carolina taxable income:

1. The taxpayers received the trademarks from the related retail companies for little or no consideration.
2. The taxpayers then entered into licensing agreements with the corresponding related retail companies. The licensing agreements authorized the related retail companies to continue to use the trademarks they had previously owned in exchange for royalty payments to the taxpayers. The royalty payments were based on a percentage of the retail companies' gross sales. However, the payments were not made by any transfer of funds but only by a bookkeeping entry.
3. The Limited and the related retail companies deducted these royalty payments from their income for North Carolina tax purposes.
4. Taxpayers then loaned these royalty payments back to the related companies for use in their retail operations. Taxpayers charged the retail companies a market rate of interest, which generated further income tax deductions for the related retail companies. No attempt was ever made by taxpayers to collect on outstanding loans. The taxpayers did not pay any income tax to any state on any of the income received from the related retail companies.

For the year at issue (1994), taxpayers recorded $301,067,619 in royalty income and $122,031,344 in interest income from the related retail companies. This accounted for 100% of taxpayers' income.

In September 2000, the Secretary of Revenue rendered a final decision finding that the taxpayers were doing business in this State and as such were subject to North Carolina corporate income

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[1] A&F Trademark, Inc.; Caciqueco, Inc., Expressco, Inc.; Lanco, Inc.; Lernco, Inc.; Limco Investments, Inc.; Limtoo, Inc.; Structureco, Inc.; V. Secret Stores, Inc.

[2] Lane Bryant, Inc.; Lerner, Inc.; Victoria's Secret, Inc.; Cacique, Inc.; Abercrombie & Fitch, Inc.; Limited Too, Inc.; Express, Inc.' and Structure, Inc.

and franchise tax. The Tax Review Board[3] confirmed the Secretary's decision. On May 22, 2003, the Wake County Superior Court affirmed the Tax Review Board's administrative decision in its entirety. The taxpayers then appealed to the North Carolina Court of Appeals.[4] In a decision filed December 7, 2004, the Court of Appeals affirmed the decision of the Wake County Superior Court. The following issues were presented on appeal:

1. Whether the taxpayers were "doing business" in North Carolina under the relevant statutory provisions.
2. Whether the State's attempt to assess the income and franchise taxes offends the Commerce Clause of the U.S. Constitution.

The Court of Appeals concluded that the taxpayers WERE doing business in the State and that the Commerce Clause did NOT forbid the imposition of corporate and franchise taxes against the taxpayers.

DECISION

The North Carolina Court of Appeals affirmed the lower court's decision and upheld the imposition of income and franchise taxes against taxpayers on the following grounds:

Taxpayers were "doing business" in North Carolina under the relevant statutory provisions.
Under G.S. §105-130.3, a tax is imposed on the net income of a corporation doing business in the State. The Secretary of Revenue adopted an administrative rule interpreting this statute and defining "doing business" to mean "the operation of any business enterprise or activity in North Carolina for economic gain, including...the owning, renting, or operating of business or income-producing property in North Carolina including...[t]rademarks [and] tradenames...." [5] The language adding trademarks and tradenames to the definition was added in 1992. In 2001, the General Assembly enacted § 105-130.7A stating that royalties received for the use of trademarks in this State are income derived from doing business in this State and thus are subject to N.C. income tax. The 2001 act also provided "taxpayer with an option concerning the method by which these royalties can be reported for taxation when the recipient and the payer are related members."[6] In finding that the taxpayers were doing business in North Carolina, the Court of Appeals emphasized that the 2001 legislation did not change what was already considered taxable income but merely enhanced compliance with the State tax on income generated from using trademarks and added a reporting option to the income tax statute. The Court concluded that the 2001 legislation supports the premise that the Secretary's interpretation of G.S. 105-130.3 set out in the administrative rules was consistent with the language of this statute. The administrative rule properly reflected the policy of the General Assembly for income taxation of trademark royalty payments and did not, as taxpayers argued, unlawfully expand the statute.

The Court of Appeals also rejected the taxpayers' argument that the imposition of franchise taxes exceeded statutory authority. North Carolina imposes a franchise tax on every corporation doing business in the State. Under G.S. 105-114(b)(3), "doing business" for franchise tax purposes is defined as "[e]ach and every act, power, or privilege exercised or enjoyed in this State, as an incident to, or by virtue of the powers and privileges granted by the laws of this State." The

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[3] The Tax Review Board is composed of the following members: the State Treasurer, the chair of the Utilities Commission, a member appointed by the Governor, and the Secretary of Revenue.
[4] No. COA03-1203
[5] 17 NCAC 5C.0102
[6] S.L. 2001-327. The General Assembly expressly found that most corporations engaged in manufacturing and retailing activities in the State comply with the State tax on income generated from using trademarks in those activities; and it was the intent of this statute to reward taxpayers who comply by giving them an option on how to file tax returns involving royalty income.

franchise tax is imposed on corporations for the opportunity and privilege of transacting business in the State. The Court found that the State "has provided privileges and benefits that fostered and promoted the related retail companies". Consequently, additional benefits have inured to the taxpayers. As support for its holding, the Court sited *Geoffrey, Inc. v. South Carolina Tax Commission,* 437 S.E.2d 13 (S.C. 1993). There the South Carolina Supreme Court upheld income tax imposed on that portion of a non-domiciliary trademark holding company's income derived from the use of its trademarks and trade names within South Carolina by a related retail company. The North Carolina Court of Appeals adopted the rationale of the *Geoffrey* court stating "that by providing an orderly society in which the related retail companies conduct business, North Carolina has made it possible for the taxpayers to earn income pursuant to the licensing agreements."

North Carolina's attempt to assess income and franchise taxes against taxpayers did not offend the Commerce Clause of the U.S. Constitution.

The Court of Appeals also rejected the taxpayers' argument that the Commerce Clause of the United States forbids the State from imposing income and franchise taxes on them. Taxpayers argued that the Commerce Clause requires that an activity must have substantial nexus with a taxing state before that activity can be taxed. Because they have no offices, facilities, employees, and real or tangible property in North Carolina, taxpayers claimed they have no physical presence in the State and, therefore, no substantial nexus. As support, taxpayers cited the U.S. Supreme Court rulings in *National Bellas Hess, Inc. v. Department of Revenue,* 386 U.S. 753, 18 L.Ed.2d 505 (1967) and *Quill Corp. v. North Dakota,* 504 U.S. 298, 119 L.Ed. 2d 91 (1992).[7] In rejecting the taxpayers' argument, the Court of Appeals found that the two cases cited by the taxpayers required a physical presence only for the imposition of sales and use taxes. The Court stressed that the physical presence requirement has never been established by judicial precedent for other forms of taxation. The Court also pointed out the distinctions between sales and use taxes and income and franchise taxes that make the physical presence test inappropriate here. For example, the *Bellas Hess* and *Quill* cases were use tax collection cases based on the vendor's activities in the state. The income and franchise taxes in the instant case are based solely on the taxpayers' receipt of income from the use of the taxpayers' property in this State by a commonly-owned third party. Moreover, a sales and use tax can make a taxpayer an agent of the state who is obligated to collect the tax from the consumer at the point of sale and then pay it over to the taxing entity. A state income tax is usually paid only once a year to one taxing jurisdiction at one rate, while a sales and use tax can be due periodically to more than one taxing jurisdiction within a state and at varying rates.

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[7] *Bellas Hess* and *Quill* involved attempts by a state to require out-of-state mail-order vendors to collect and pay use taxes on goods purchased within the state despite the fact that the vendors had no outlets or sales representatives in the state. The Court in *Bellas Hess* concluded that the vendors' only contacts with the state were by mail or common carrier and that such contact did not satisfy the "substantial nexus" requirement of the Commerce Clause. The Court found that physical presence constituted nexus. The *Quill* Court reaffirmed the requirement that the vendors must have a physical presence in the state to satisfy the "substantial nexus" requirement,

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H 1

HOUSE BILL 9

Short Title:	Thomasville Deannexation.	(Local)
Sponsors:	Representative Holliman.	
Referred to:	Finance.	

January 31, 2005

A BILL TO BE ENTITLED

AN ACT REMOVING CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE CITY OF THOMASVILLE.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate limits of the City of Thomasville:

Beginning at a 100-D nail, said nail being the right-of-way intersection of N.C. Highway 109 and the exit ramp of U.S. Highway 29-70 (Business 85), said nail having North Carolina Grid Coordinates of North = 785,442.855 feet and East = 1,676,141.680 feet (North American Datum of 1983/86); thence from said point of beginning with the eastern right-of-way of N.C. Highway 109 North 48°06'36" West 108.83 feet to an aluminum disk; thence North 48°03'03" West 180.76 feet to a concrete right-of-way monument; thence North 35°24'43" West 220.66 feet to a concrete right-of-way monument; thence North 36°31'35" West 492.55 feet to a concrete right-of-way monument; thence North 35°21'29" West 111.69 feet to a 1/2-inch rebar (found), on the eastern right-of-way of N.C. Highway 109, said rebar having North Carolina Grid Coordinates of North = 786,303.013 feet and East = 1,675,440.628 feet (North American Datum of 1983/86), said rebar being the intersection of the eastern right-of-way of N.C. Highway 109 and the eastern line of Donnie Shuller as described in Deed Book 528 page 79, said iron also being the western corner of Collene Rickard as described in Deed Book 528 Page 78 in said highway right-of-way; thence with Shuller and Rickard's line North 04°43'50" East 76.39 feet to 3/4-inch iron pipe (found), said iron being Shuller's northeast corner and a corner of Lorene V. Rains and Mona Teague as described in Deed Book 593 Page 919 in Rickard's western line; thence with Rickard's western line North 04°42'11" East 235.64 feet to a 3/4-inch iron pipe at a bent axle (found), said iron being Rickard's northwest corner and a corner of Lorene V. Rains and Mona Teague, said iron having North Carolina Grid Coordinates of North = 786,613.961 feet and East = 1,675,466.247 feet (North American Datum of 1983/86); thence with Rickard's northern line and Rains and Teague's southern line South

65°37'04" East 313.68 feet to a 5-inch axle (found), said axle being Rickard's northeast corner and the northwest corner of Joe Don Cline as described in Deed Book 445 page 499; thence with Cline's northern line and Rains and Teague's southern line South 63°02'16" East 1027.31 feet to 4-inch iron pipe, said iron having North Carolina Grid Coordinates of North = 786,018.737 feet and East = 1,676,667.484 feet (North American Datum of 1983/86); thence South 43°26'21" East 179.53 feet to a point; thence South 59°44'24" East 39.19 feet to an iron pipe; thence South 44°01'03" East 109.89 feet to a point, said point having North Carolina Grid Coordinates of North = 785,789.632 feet and East = 1,676,901.107 feet (North American Datum of 1983/86); thence South 28°18'34" West 21.71 feet to a point; thence South 31°45'34" West 153.11 feet to a point in the northern right-of-way of the exit ramp of U.S. Highway 29-70 (Business 85), said point having North Carolina Grid Coordinates of North = 785,640.346 feet and East = 1,676,810.229 feet (North American Datum of 1983/86); thence with the said exit ramp right-of-way South 84°40'29" West 314.10 feet to a point, said point being the P.C. of a curve to the left; thence with the said curve having a radius of 874.34 feet, through a central angle of 21°46'14", an arc distance of 332.22 feet and a chord bearing and distance of South 66°27'09" West 330.22 feet to a point, said point being the P.T. of the said curve; thence South 55°34'01" West 64.43 feet to said point of beginning. Containing 18.263 acres, more or less.

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

HOUSE BILL 9:
Thomasville Deannexation

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Holliman
Date:	March 22, 2005	**Analysis by:**	Martha Walston
Version:	1st Edition		Committee Counsel

SUMMARY: House Bill 9 de-annexes approximately 18.263 acres from the corporate limits of the City of Thomasville. The act would be effective when it becomes law.

CURRENT LAW: A city or town may annex property by petition of owners of the property to be annexed or if the property meets certain statutory requirements. If the property does not meet the statutory requirements for annexation, the municipality does not have the authority to annex. However, the General Assembly can extend the corporate limits of a municipality to encompass areas that the municipality would not statutorily have the authority to annex. The General Assembly can also de-annex property of a municipality.

BILL ANALYSIS: House Bill 9 de-annexes a parcel totaling approximately 18.263 acres from the corporate limits of the City of Thomasville. The act would be effective when it becomes law. On December 20, 2004, the City Council of Thomasville adopted a resolution requesting a local bill to remove the described property from the city limits, because the location of the property poses difficulty in providing city services. The property owners and City have agreed that it would be in the best interest of the City and the residents that this property be removed from the City.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 9 A BILL TO BE ENTITLED AN ACT REMOVING CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE CITY OF THOMASVILLE.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

☐ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 476

Short Title:	Wilson/Greene Boundary Settlement.	(Local)
Sponsors:	Representatives Tolson; and Farmer-Butterfield.	
Referred to:	Finance.	

March 7, 2005

A BILL TO BE ENTITLED

AN ACT RELATING TO THE BOUNDARY SETTLEMENT BETWEEN WILSON AND GREENE COUNTIES AND PERTAINING TO CERTAIN REAL PROPERTY RECORDS IN THOSE COUNTIES.

The General Assembly of North Carolina enacts:

SECTION 1. The recordation and filing of all deeds, deeds of trust mortgages, liens, contracts, and all other instruments and muniments of title required or permitted by law to be registered or filed and which have been accepted by the Wilson County Register of Deeds or other appropriate official for filing or recordation and which purport to convey any interest in the real property containing 322.79 acres, lying south of the centerline of Contentnea Creek and east of the easterly property line of Wayne County are hereby validated to the same extent as if the instruments had been recorded, registered, or filed in Greene County. The property referred to in this section is more particularly shown on a map entitled "Plat of Re-Survey of Wayne/Wilson/Greene County Lines North Carolina", which is recorded in the Office of the Register of Deeds of Wilson County and in the Office of the Register of Deeds of Greene County.

SECTION 2. On and after the effective date of this act, all further documents that affect or purport to affect the title of the 322.79 acres described in Section 1 of this act shall be filed, recorded, or registered in the Office of the Register of Deeds of Greene County or other appropriate office.

SECTION 3. The real property described in Section 1 of this act shall be listed for ad valorem taxes in Wilson County for 2005 and in Greene County for 2006 and thereafter.

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

HOUSE BILL 476:
Wilson/Greene Boundary Settlement

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Tolson
Date:	March 22, 2005	**Analysis by:**	Martha Walston
Version:	1st Edition		Committee Counsel

SUMMARY: House Bill 476 is a local bill that would validate instruments filed in the Wilson County Register of Deeds that purport to convey a parcel of land containing 322.79 acres. A recent survey of the parcel reveals that the parcel lies in Greene County instead of Wilson County.

CURRENT LAW: G.S. 153A-18(a) authorizes two or more counties to appoint special commissioners to survey uncertain boundaries between them. Upon ratification of the survey by the board of commissioners of each county, a map showing the surveyed boundary is recorded in the register of deeds of each county.

BILL ANALYSIS: House Bill 476 validates all instruments recorded in the Wilson County Register of Deeds that purport to convey 322.79 acres near the Wilson County/Greene County boundary lines. For at least 100 years, the property has been considered a part of Wilson County. A recent survey authorized by Greene and Wilson Counties reveals that the property is located in Greene County. The Wilson County Board of Commissioners adopted a resolution on February 7, 2005 requesting legislation to validate instruments filed in Wilson County that purport to convey the 322.79 acres.

House Bill 476 validates the instruments filed with the Wilson County Register of Deeds and directs, that after the effective date of the act, all further documents affecting the title of the property be filed in Greene County. The property shall be listed for property taxes in Wilson County for 2005 and in Greene County for 2006 and thereafter.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 476 A BILL TO BE ENTITLED AN ACT RELATING TO THE BOUNDARY SETTLEMENT BETWEEN WILSON AND GREENE COUNTIES AND PERTAINING TO CERTAIN REAL PROPERTY RECORDS IN THOSE COUNTIES.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

☐ With a favorable report as to 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 498*

Short Title:	Taylorsville Satellite Annexations.	(Local)
Sponsors:	Representative Hollo.	
Referred to:	Finance.	

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE CAP ON SATELLITE ANNEXATIONS FOR THE TOWN OF TAYLORSVILLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-58.1(b)(5) reads as rewritten:

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

...

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

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Gastonia, Hickory, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Angier, Bladenboro, Calabash, Catawba, Creswell, Dallas, Fuquay-Varina, Garner, Godwin, Holly Ridge, Holly Springs, Kenly, Knightdale, Leland, Louisburg, Maiden, Mayodan, Midland, Mocksville, Morrisville, Pembroke, Pine Level, Ranlo, Rolesville, Rutherfordton, Swansboro, Taylorsville, Troy, Wallace, Warsaw, Waynesville, Wendell, and Zebulon."

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

HOUSE BILL 498:
Taylorsville Satellite Annexations

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. Hollo
Date:	March 22, 2005	**Summary by:**	Trina Griffin
Version:	1st Edition		Committee Counsel

SUMMARY: House Bill 498 would exempt the town of Taylorsville from the requirement for satellite annexation that the area to be annexed, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing city. The Senate companion bill, SB 350, passed 2nd reading in the Senate on March 17, 2005, and is on the Senate calendar for 3rd reading on Monday, March 21st.

CURRENT LAW: G.S. 160A-58.1 governs the voluntary annexation by a municipality of noncontiguous property. All property owners in the satellite area[1] may petition for voluntary annexation of the noncontiguous property if the property meets the following five standards in G.S. 160A-58.1(b):

1. The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.
2. No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city.
3. The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
4. If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.
5. **The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing city.**

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

BILL ANALYSIS: House Bill 498 would permanently exempt the town of Taylorsville from the 5th requirement, which requires that the proposed area for satellite annexation, when added to the area within all other satellite corporate limits, not exceed 10% of the area within the primary corporate limits of the annexing city.

The purpose of the 5th requirement is designed to further the legislative goal of not allowing annexations to undermine the notion of a city as a single, contiguous, and compact entity. In practice, however, the standard has proved to be a problem for many smaller cities, because one large development by itself may easily exceed the 10% limit. Because of this, the General Assembly has excepted a significant number of cities (at least 29) from this 10% rule by local act.

BACKGROUND: Four businesses in Alexander County have requested annexation to the town of Taylorsville in order to help lower their water and sewer costs, since the town is the only sewer provider

[1] G.S. 160A-58.4 provides that satellite corporate limits cannot be considered a part of a municipality's corporate limits for purposes of its ETJ. Therefore, satellite annexations have no effect upon a municipality's ETJ.

in the county. However, since the town has already reached its 10% cap with satellite annexations, they cannot consider their petitions for satellite annexation.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 498 A BILL TO BE ENTITLED AN ACT TO REMOVE THE CAP ON SATELLITE ANNEXATIONS FOR THE TOWN OF TAYLORSVILLE.

☒ 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

North Carolina General Assembly

House Committee on Finance

Minutes

~

March 29, 2005

The House Committee on Finance met on Tuesday, March 29, 2005 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, Luebke, and Wainwright; Vice-Chairs Daughtridge, Ross, Weiss, and Womble; and Representatives Blackwood, Blust, Bordsen, Capps, Carney, Dockham, Faison, Folwell, Glazier, Hackney, Harrell, Holliman, Jones, McGee, Rayfield, Underhill, and Wiley. Also present were Sergeant-at-Arms Bill Freeman, Fred Hines, Bill Sullivan, and James Worth. Staff persons present included Cindy Avrette, Rodney Bizzell, and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2.**

Chairman Gibson called the meeting to order at 8:35 am and recognized the two (2) pages present: Dana Lucas of Cumberland County, sponsored by Representative Lucas, and Amisha Bell of Cumberland County, sponsored by Representative Lucas.

Chairman Gibson then recognized Representative Coates to explain the first bill under consideration, **HB 743 – EAST SPENCER ANNEXATION** (see **attachment 3**). Representative Coates explained that the bill adds certain property to the corporate limits of the town of East Spencer. She also stated that there was no known opposition to the bill. Chairman Gibson then recognized Representative Womble who moved that HB 743 be given a favorable report. Seeing no further discussion, Chairman Gibson called the motion to a vote and it carried by consent.

Chairman Gibson then recognized Representative Stiller to explain **HB 828 – BELVILLE DEANNEXATION** (see **attachment 4**). Representative Stiller explained that this bill removes certain property from the corporate limits of the Town of Belville. He stated that this bill is a result of a recent court ruling but that the bill was no longer controversial. Chairman Gibson then recognized Representative Hill who moved that HB 828 be given a favorable report. Seeing no further discussion, Chairman Gibson called the motion to a vote and it carried without objection.

The next bill considered by the Committee was **HB 446 – ROANOKE RAPIDS ANNEXATION/ETJ/WELDON** (see **attachment 5**). Chairman Gibson recognized Representative Lucy Allen to explain the bill. She stated that the bill would allow certain property to be annexed by the city of Roanoke Rapids even though the amount of land annexed is over the 10% annexation expansion normally permitted. She also stated that the passage of this bill would enable Roanoke Rapids and the Town of Weldon to have a great opportunity for new economic development. Following the explanation, Chairman Gibson recognized Representative Blackwood who asked how the property owners felt about the proposed annexation. To answer the question,

Chairman Gibson recognized Mr. Benton from the city of Roanoke Rapids who declared that no opposition has come up on the bill. Chairman Gibson then recognized Representative Jones who asked if the city of Weldon supported this bill. Mr. Benton answered the question affirming that the Town of Weldon was in support of the bill. Chairman Gibson then recognized Representative Carney who moved that HB 446 be given a favorable report. Seeing no further discussion, Chairman Gibson then called the motion to a vote and it carried by consent.

The final bill heard by the Committee was **HB 631 – MAGGIE VALLEY SATELLITE ANNEXATIONS** (see **attachment 6**). Chairman Gibson first recognized Representative Alexander who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Chairman Gibson then recognized Representative Haire, the bill sponsor, to explain the proposed committee substitute. Representative Haire explained that this proposed committee substitute would allow the Town of Maggie Valley to annex part of a subdivision instead of the entire subdivision as is currently required in the statutes. He also noted that this proposed annexation was voluntary and would only affect those requesting the Town's services. Following this explanation, Chairman Gibson recognized Representative Blust who asked if this proposed committee substitute was modifying the 10% annexation rule. To answer the question, Chairman Gibson recognized Cindy Averette with Fiscal Research who discussed that the proposed committee substitute would permit the Town to voluntarily annex above the normal 10% annexation rule. Chairman Gibson then recognized Representative Capps who asked what additional services people would receive under the annexation proposal. Chairman Gibson then recognized Mike McHaffey, the Maggie Valley Director of Public Works, who responded to Representative Capps saying that annexation would add police services, trash pick-up, and snow removal. Chairman Gibson next recognized Representative Luebke who moved for favorable report to the proposed committee substitute and an unfavorable report to the original bill. Offering his support for the proposed committee substitute, Representative Hackney, being recognized by Chairman Gibson, stated that the proposal offers the best arrangement for all parties involved. Seeing no further discussion, Chairman Gibson called the motion to a vote and it carried without objection.

Following the vote, Chairman Gibson recognized Representative Womble who announced that the Subcommittee on Occupancy Tax would meet on Thursday, March 31, 2005 at 9:00 am. Having no further business before the Committee, Chairman Gibson adjourned the Committee at 9:14 am.

Respectfully submitted,

Representative Pryor Gibson
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. House Bill 743 (and related materials)
4. House Bill 828 (and related materials)
5. House Bill 446 (and related materials)
6. House Bill 631 (and related materials)

AGENDA

ATTACHMENT 1

House Finance Committee

March 29, 2005
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Gibson

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard
Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order

Introduction of Pages

Bills:

HB 446 ROANOKE RAPIDS ANNEXATION/ETJ/WELDON ANNEX
Reps. L. Allen & Hall

HB 631 MAGGIE VALLEY SATELLITE ANNEXATIONS *Rep. Haire*

HB 743 EAST SPENCER ANNEXATION *Rep. Coates*

HB 828 BELVILLE DEANNEXATION *Rep. Stiller*

Adjournment

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, March 29, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 446 – ROANOKE RAPIDS ANNEXATION/ETJ/WELDON ANNEX
– Reps. L. Allen & Hall

HB 631 – MAGGIE VALLEY SATELLITE ANNEXATIONS – Rep. Haire

HB 743 – EAST SPENCER ANNEXATION – Rep. Coates

HB 828 – BELVILLE DEANNEXATION – Rep. Stiller

Respectfully,
Representatives Alexander, Gibson, Howard, Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **10:15 a.m.** on **March 24, 2005.**

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — March 29, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rick Burton	City of Rancho Cordova
Drew Bedke	City of Rancho Cordova
Mike Alford	OSMB
Kathy Hawkins	Progress Energy
Bob Shepherd	Maggie Valley

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 743

Short Title:	East Spencer Annexation.	(Local)
Sponsors:	Representative Coates.	
Referred to:	Finance.	

March 17, 2005

A BILL TO BE ENTITLED

AN ACT ADDING CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF EAST SPENCER.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is added to the corporate limits of the Town of East Spencer:

Beginning at a NC DOT right-of-way monument on the south east side of interstate 85 (NC DOT project number 8.1631511, deed book 953 page 749) said right-of-way monument being S 89°05'17" E 986.48' from N.C. Geodetic Survey Monument "Chanti", thence following the I-85 right-of-way in a north east direction, five lines: (1) N 33°53'02" E 433.52' to a NC DOT right-of-way monument; (2) with a curve to the right having a radius of 3719.72', a length of 536.37', a chord bearing of N 38°02'45" E, and a chord distance of 535.90' to a NC DOT right-of-way monument; (3) N 42°25'18" E 865.59' to a NC DOT right-of-way monument; (4) with a curve to the left having a radius of 8769.37', a length of 1530.66', a chord bearing of N 37°09'18" E, and a chord distance of 1528.71' to a NC DOT right-of-way monument; (5) continuing with a curve to the left having a radius of 8769.37', a length of 692.04', a chord bearing of N 29°53' 38" E, and a chord distance of 691.86' to a point in the center line of Town Creek, thence thirteen lines with the center of Town Creek: (1) N 58°16'24" E 29.16' to a point; (2) N 81°15'05" E 196.78' to a point; (3) N 68°16'19" E 152.41' to a point; (4) N 87°18' 10" E 60.68' to a point; (5) S 67°27'17" E 411.35' to a point; (6) S 70°39'56" E 166.61' to a point; (7) S 70°57'43" E 148.95' to a point; (8) S 68°54'14" E 160.63' to a point; (9) S 71°34'36" E 142.36' to a point; (10) S 85°47'04" E 127.76' to a point; (11) S 77°41'38" E 114.32" to a point; (12) S 72°09'01" E 155.52' to a point; (13) S 72°37'10" E 44.94' to a point in the western line of Paul B. Allen, III (deed book 645 page 677), thence three lines with Allen: (1) S 08°55'33" W 422.22' (passing an existing iron pin at 50.00') to an existing iron pin; (2) S 85°31'58" E 658.68' to a new iron pin set in a tree stump; (3) S 03°44'10" W 303.60' to an existing stone in the line of the Rowan Hatchery & Poultry Farm, thence four lines with said Farm: (1) S 09°11'14" W 717.39' to an existing iron

pin; (2) N 85°23'12" W 704.95" to an existing iron pin; (3) S 04°34'51" W 648.60' to an existing iron pin in an asphalt drive; (4) S 04°40'15" W 1763.56' to an existing iron pin in the right-of-way of Old Union Church Road, S.R. 1915, thence with a curve to the left having a radius of 642.96', a curve length of 353.75' and having a chord bearing of N 47°40'39" W and a chord distance of 349.30' to an existing concrete monument thence with the northern right-of-way of Old Union Church Road N 79° 33'22" W 344.85' to an existing concrete monument, thence S 07°23' 56" W 30.00' to an existing concrete monument, thence continuing S 07°23'56" W 20.00' to a point in the center line of Old Union Church Road, thence seven lines with center line: (1) N 82° 34'57" W 198.24' to a point; (2) N 82°27'51" W 532.09' to a point; (3) N 82°42'20" W 665.17' to a point; (4) N 82°56'03" W 284.79' to a point; (5) N 83°01'43" W 343.87' to a point; (6) N 81°31'11" W 153.51' to an existing p.k. nail; (7) N 79°56'03" W 412.69' to an existing p.k. nail, thence N 04°20'18" E 60.23' to an NC DOT right-of-way monument, thence four lines with NC DOT project number 8.1631511: (1) N 79°47'15" W 161.26' to an NC DOT monument; (2) N 78°09'02" W 194.70' to an NC DOT monument; (3) N 65°32'59" W 268.40' to an NC DOT monument; (4) N 20°19'48" W 85.76' to an existing iron pin, a corner of East Spencer's existing corporate limits and then continuing for an additional 24.45' to the point and place of beginning and being 263.195 acres as shown on survey map titled ANNEXATION SURVEY FOR THE TOWN OF EAST SPENCER DATED 03/30/04, survey and map by Shulenburger Surveying Company, PA, reference to which is hereby made for a more particular description.

SECTION 2. This act becomes effective June 30, 2005.

HOUSE BILL 743:
East Spencer Annexation

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Coates
Date:	March 28, 2005	**Analysis by:**	Martha Walston
Version:	1st Edition		Committee Counsel

SUMMARY: House Bill 743 authorizes the annexation of certain described property to the corporate limits of the Town of East Spencer without the Town having to meet the statutory requirements for annexation.

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

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

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

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

BILL ANALYSIS: House Bill 743 would annex 263.195 acres to the corporate limits of the Town of East Spencer without the Town having to meet the statutory requirements for annexation. The Town Administrator had indicated that the area does not qualify for involuntary annexation because it does not meet the statutory requirement that it be developed for urban purposes.[1] The area is owned by the Aldi's Foods Corporate Distribution Center. The

[1] G.S. 160A-36 defines an area developed for urban purposes as an area which is so developed that at least 60% of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional or governmental purposes, and is subdivided into lots and tracts such that at least 60% of the total acreage, not counting the

Town had entered into an agreement not to annex the Center in 1997. The non-annexation agreement expired December 31, 2004. In February 2004, the Town's Board of Aldermen adopted a resolution seeking legislation to annex the area at issue after the expiration of the non-annexation agreement. No opposition has been voiced.

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acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consist of lots and tracts three acres or less in size.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 743 A BILL TO BE ENTITLED AN ACT ADDING CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF EAST SPENCER.

☒ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 828

Short Title:	Belville Deannexation.	(Local)
Sponsors:	Representative Stiller.	
Referred to:	Finance.	

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF BELVILLE.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate limits of the Town of Belville.

BEGINNING in Brunswick County at a point of intersection of the west line of River Road S.E. (N.C. Highway #133 a 60-foot right-of-way) with the center of the run of Jackey's Creek; running thence from said beginning point up said run of Jackey's Creek to a point located North 69 degrees 59 minutes 20 seconds West 304.81 feet and North 62 degrees 15 minutes 38 seconds West 196.28 feet from the preceding point. Thence leaving said run North 27 degrees 44 minutes 22 seconds East 186.00 feet to a point. Thence South 64 degrees 48 minutes 18 seconds East 439.05 feet to a point in the west line of River Road S.E. Thence along said west line as it curves to the west to the point of beginning located South 07 degrees 11 minutes 55 seconds West 98.25 feet and South 08 degrees 33 minutes 12 seconds West 76.76 feet from the preceding point. Containing 2.00 acres more or less.

SECTION 2. This act shall have no effect upon the validity of any liens of the Town of Belville for ad valorem taxes or special assessments outstanding before the effective date of this act. Such liens may be collected or foreclosed upon after the effective date of this act as though the property were still within the corporate limits of the Town of Belville.

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

HOUSE BILL 828:
Belville Deannexation

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. Stiller
Date:	March 28, 2005	**Summary by:**	Martha Walston
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 828 de-annexes approximately two acres of land owned by GTM Investments from the corporate limits of the Town of Belville. The act becomes effective when it becomes law.***

CURRENT LAW: A city or town may annex property by petition of owners of property to be annexed or if the property meets certain statutory requirements. If the property does not meet the statutory requirements for annexation, the municipality does not have the authority to annex. However, the General Assembly can extend the corporate limits of a municipality to encompass areas that the municipality would not statutorily have the authority to annex. The General Assembly can also de-annex property of a municipality.

BILL ANALYSIS: House Bill 828 de-annexes two acres of land from the corporate limits of the city of Belville. The act is effective when it becomes law and does not affect the duty to pay taxes for any prior year.

BACKGROUND: In 2002, the Town of Leland and the Town of Belville became involved in a lawsuit challenging each town's resolution of intent to incorporate certain territory. At trial the two towns entered into a consent order stating their desire to approve the towns' annexation agreement subject to certain terms set out in the consent order. One of the terms of the consent order entered in Brunswick County Superior Court on December 3, 2003 and signed by the attorneys for the Town of Leland and the Town of Belville, is that the Town of Belville will not challenge or object to efforts by the property owner of that portion of the Creekside Estates subdivision located in Belville to de-annex said property from Belville. The Town of Belville further agreed not to challenge the Town of Leland's efforts to annex said property, due to the fact that the annexation agreement between the two towns would leave the development within two separate municipalities. The court order stated that the de-annexation will provide the Town of Leland the opportunity to "clean up" its municipal limits in the area.

The owner of the 2 acres in the Creekside Estates subdivision has requested that the property be de-annexed from Belville and has pointed out that the property is surrounded by Leland's current primary corporate limits and an area that only Leland may annex under the annexation agreement. After the de-annexation, the owner has stated its intent to petition the Town of Leland for voluntary annexation in order to receive municipal services.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representatives **Alexander, Gibson, Howard, Luebke, McComas, and Wainwright** (Chairs) for the Committee on **FINANCE**.

☐ Committee Substitute for

H.B. 828 A BILL TO BE ENTITLED AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF BELVILLE.

☒ 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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H 1

HOUSE BILL 446

Short Title:	Roanoke Rapids Annexation/ETJ/Weldon Annex.	(Local)
Sponsors:	Representatives L. Allen, Hall (Primary Sponsors); and Wray.	
Referred to:	Finance.	

March 2, 2005

A BILL TO BE ENTITLED

AN ACT TO ANNEX CERTAIN DESCRIBED TERRITORY TO THE CITY OF ROANOKE RAPIDS, TO ADD CERTAIN DESCRIBED TERRITORY TO THE EXTRATERRITORIAL PLANNING JURISDICTION OF THE CITY OF ROANOKE RAPIDS, AND TO ANNEX CERTAIN DESCRIBED TERRITORY TO THE TOWN OF WELDON.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the City of Roanoke Rapids are extended to include the following described territory:

That certain tract or parcel of land lying and being situate in Halifax County, North Carolina, more particularly described as follows:

Beginning at the centerline intersection of Becker Drive Extended right-of-way and Interstate Highway 95 right-of-way, north of CSX Transportation Railway 80 foot right-of-way; thence along the centerline of Interstate Highway 95 right-of-way in a southerly direction to the run of "Chockoyotte Creek"; thence easterly along the run of "Chockoyotte Creek" to the northeast corner of property now or formerly belonging to James G. Wallace as described in Deed Book 650, Page 229, Halifax Public Registry, said corner being shown on plat recorded in Plat Book 8, Page 57, Halifax Public Registry; thence southwesterly along the east line of property now or formerly belonging to James G. Wallace to a corner common with property now or formerly belonging to Bessie Wallace Ausby and John Ausby described in Deed Book 701, Page 23, Halifax Public Registry; said corner being shown on plat recorded in Plat Book 8, page 57, Halifax Public Registry; thence southeasterly along the James G. Wallace and Ausby property line to the centerline of State Road 1600; thence along the centerline of State Road 1600 in a southerly direction to the centerline intersection of State Road 1600 and the run of "Holland Branch"; thence along the run of "Holland Branch" in a northwesterly direction, which is the boundary line between property now or formerly belonging to Edwin Branch and Luther Artis to a property corner common with property now or formerly belonging to Luther Artis, Edwin Branch and R.G. Bell;

thence along the R.G. Bell boundary lines in a southerly, westerly and northerly direction the various course and distances as shown on plat of R.G. Bell property recorded in Plat Cabinet 2, Slide 97, Halifax Public Registry, to the northwest corner of the R.G. Bell tract in the southern line of property now or formerly belonging to Edwin Branch; thence westerly along the Edwin Branch line and property line of "Bounds Place Extended II" subdivision as shown on plat recorded in Plat Cabinet 5, Slide 76, Halifax Public Registry to the easterly property line of property now or formerly belonging to Robert W. Willey described in Deed Book 1425, page 390 Halifax Public Registry; thence along the east line of property now or formerly belonging to Robert W. Willey in a southerly direction to the centerline of NC Highway #125; thence in a northwesterly direction along the centerline of NC Highway #125 to the intersection of the western right of way line of Interstate Highway 95 and the centerline of NC Highway #125; thence in a northerly direction along the western right of way line of Interstate Highway 95 to the intersection of the western right of way line of Interstate Highway 95 with the centerline of Becker Drive Extended right of way, north of CSX Transportation Railway 80 foot right-of-way; thence along the centerline of Becker Drive Extended right-of-way in a easterly direction to the point and place of beginning. Less and except from the above described tract or parcel of land a lot or parcel of land now or formerly belonging to James G. Wallace bounded on the southeast by State Road 1600, on the southwest and northwest by property now or formerly belonging to James G. Wallace and on the northeast by property now or formerly belonging to Deborah Sneed; said lot or parcel of land being described as 1.29 Acre "Holt Land", with a parcel # of 1202355, by the Halifax County Tax Department; said lot or parcel of land being a portion of the property now or formerly belonging to James G. Wallace described in Deed Book 650, Page 229, Halifax Public Registry; said lot being a portion of Lot #1 as shown on plat recorded in Plat Book 8, Page 57, Halifax Public Registry.

SECTION 2. In addition to the areas allowed under Article 19 of Chapter 160A of the General Statutes, the City of Roanoke Rapids may exercise all the powers granted by Article 19 of Chapter 160A of the General Statutes in the following defined area:

That certain tract or parcel of land lying and being situate in Halifax County, North Carolina, more particularly described as follows:

Beginning at a point 1000 feet southwesterly and perpendicular from the centerline of NC Highway # 125 on the eastern right-of-way line of Interstate Highway 95; thence along a line 1000 feet parallel with NC Highway # 125 in a southeasterly direction to a point being the intersection with a line running 1000 feet parallel and easterly of State Road 1600, said point being south of "Days Crossroads"; thence in a northeasterly direction along the line 1000 feet southeasterly and parallel to State Road 1600 to the boundary line between property now or formerly belonging to W.D. Allen Heirs and Aubry N. Dickens, Jr., said point being east of the intersection of State Road 1600 and 1692; thence in a northwesterly direction along the boundary line between property now or formerly belonging to W.D. Allen Heirs and Aubry N. Dickens, Jr. to the centerline of State Road 1600; thence along the centerline of State Road 1600 in a southerly direction to the centerline intersection of State Road 1600 and the run of "Holland

Branch"; thence along the run of "Holland Branch" in a northwesterly direction, which is the boundary line between property now or formerly belonging to Edwin Branch and Luther Artis, to a property corner common with property now or formerly belonging to Luther Artis, Edwin Branch and R.G. Bell; thence along the R.G. Bell boundary lines in a southerly, westerly and northerly direction the various course and distances as shown on plat of R. G. Bell property recorded in Plat Cabinet 2, Slide 97, Halifax Public Registry, to the northwest corner of the R.G. Bell tract in the southern line of property now or formerly belonging to Edwin Branch; thence westerly along the Edwin Branch line and property line of "Bounds Place Extended II" subdivision as shown on plat recorded in Plat Cabinet 5, Slide 76, Halifax Public Registry to the easterly property line of property now or formerly belonging to Robert W. Willey described in deed book 1425, page 390 Halifax Public Registry; thence along the east line of property now or formerly belonging to Robert W. Willey in a southerly direction to the centerline of NC Highway # 125; thence in a northwesterly direction along the centerline of NC Highway #125 to the intersection of the centerline of NC Highway # 125 with the eastern right-of-way line of Interstate Highway 95; thence along the eastern right-of-way line of Interstate Highway 95 in a southerly direction to the point and place of beginning.

SECTION 3. G.S. 160A-360(f) shall apply to the extension of jurisdiction provided by Section 2 of this act.

SECTION 4. The corporate limits of the Town of Weldon are extended to include the following described territory:

That certain tract or parcel of land, lying and being situate in Weldon Township, Halifax County, containing 13.892 Acres, and shown on that certain plat entitled "Plat Showing Property Being Conveyed to Duquesne Energy, Inc. From Rightmyer Machine Rentals, Inc.", prepared by Timmons, dated January 13, 1998, and recorded in Plat Cabinet 6, Slide 22-T, Halifax Public Registry, and being more particularly bounded and described in accordance with said plat as follows: Commencing at a found monument located on the Eastern right of way of N. C. State Road No. 1734 and the Northern right of way line of N. C. State Road No. 1710, said monument being the true point and place of beginning; thence South 89° 47' 07" West, a distance of 20.07 feet to a found rod; thence along the Eastern right of way line of said State Road No. 1710, North 08° 21' 36" East, a distance of 658.24 feet to a found pipe; thence leaving said right of way line South 81° 31' 33" East, a distance of 400.10 feet to a found pipe; thence North 08° 27' 19" East, a distance of 257.86 feet to a found pipe; thence South 89° 46' 55" East, a distance of 357.26 feet to a found pipe; thence South 11° 21' 04" West, a distance of 967.55 feet to a found pipe; thence North 89° 42' 06" West, a distance of 690.50 feet to a found pipe; thence North 08° 15' 37" East, a distance of 100.17 feet to a found monument, said monument being the true point and place of beginning and containing 13.892 acres of land.

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

HOUSE BILL 446:
Roanoke Rapids Annexation/ETJ/ Weldon Annex

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. L .Allen and Hall
Date:	March 28, 2005	**Summary by:**	Martha Walston
Version:	1st Edition		Committee Counsel

SUMMARY: House Bill 446 does three things:

- *Authorizes the City of Roanoke Rapids to make voluntary satellite annexation of approximately 816 acres of property to the city limits.*
- *Authorizes the City of Roanoke Rapids to add a parcel to extraterritorial planning jurisdiction of the City.*
- *Authorizes the annexation of 13.892 acres into the corporate limits of the Town of Weldon.*

CURRENT LAW: G.S. 160A-58.1 governs the voluntary annexation by a municipality of noncontiguous property. All property owners in the satellite area[1] may petition for voluntary annexation of the noncontiguous property if the property meets the following five standards in G.S. 160A-58.1(b):

1. The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.
2. No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city.
3. The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
4. If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.
5. **The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing city.**

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

BILL ANALYSIS: House bill 446 authorizes the City of Roanoke Rapids to make voluntary satellite annexation of certain property to the city limits without having to meet the 5th statutory requirement. The Bill also authorizes the City to add certain property to its extraterritorial planning jurisdiction.[2] This property is the area surrounding the actual incorporation boundary, and the ETJ has been requested in order to protect planned investment of the proposed annexed property from incompatible land uses. Finally, the Bill authorizes the annexation of 13.892 acres into the corporate limits of the Town of Weldon. This property is owned by the Town of Weldon. The property is within an industrial park and the Town desires incorporation to facilitate industrial development of the tract.

[1] G.S. 160A-58.4 provides that satellite corporate limits cannot be considered a part of a municipality's corporate limits for purposes of its ETJ. Therefore, satellite annexations have no effect upon a municipality's ETJ.

[2] The City's ETJ extends one mile beyond its corporate limits.

BACKGROUND: The City of Roanoke Rapids has entered into development agreements with a private developer and an entertainment company to develop plans for a music entertainment district in Roanoke Rapids. The proposed entertainment district will involve music entertainment venues, hotels, shopping, restaurants, and other entertainment venues for all ages. The City and its partners believe the plan will considerably increase jobs, new taxable investment, and new business development. The initial phase of the plan is estimated to create 2,595 jobs and $129,250,000 in investment during the first five years after construction of the initial development. The plan will require the entire site to be incorporated into the City of Roanoke Rapids. The City, as the lead local government agency for the project, plans to provide municipal services including full-time police and fire service. The City and the developer have requested certain property to be added to the City's ETJ in order to properly manage growth within and immediately adjoining the development district.

The City of Roanoke Rapids and the private developer seek to move forward with annexation and extraterritorial jurisdiction as quickly as possible so that the City can initiate infrastructure development and other municipal services needed to meet the private developer's time schedule. Development commitments require public utilities to be in place and operational by April 2006.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 446 A BILL TO BE ENTITLED AN ACT ANNEX CERTAIN DESCRIBED TERRITORY TO THE CITY OF ROANOKE RAPIDS, TO ADD CERTAIN DESCRIBED TERRITORY TO THE EXTRATERRITORIAL PLANNING JURISDICTION OF THE CITY OF ROANOKE RAPIDS, AND TO ANNEX CERTAIN DESCRIBED TERRITORY TO THE TOWN OF WELDON.

☒ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 631
PROPOSED COMMITTEE SUBSTITUTE H631-PCS70251-LMx-7

Short Title: Maggie Valley Satellite Annexations. (Local)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT REMOVING CERTAIN RESTRICTIONS ON SATELLITE ANNEXATIONS FOR THE TOWN OF MAGGIE VALLEY.

The General Assembly of North Carolina enacts:

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

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

...

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

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

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Gastonia, Hickory, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Angier, Bladenboro, Calabash, Catawba, Creswell, Dallas, Fuquay-Varina, Garner, Godwin, Holly Ridge, Holly Springs, Kenly, Knightdale, Leland, Louisburg, Maggie Valley, Maiden, Mayodan, Midland, Mocksville, Morrisville, Pembroke, Pine Level, Ranlo, Rolesville, Rutherfordton, Swansboro, Troy, Wallace, Warsaw, Waynesville, Wendell, and Zebulon."

SECTION 2. This section applies to the Town of Maggie Valley only.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 631

Short Title:	Maggie Valley Satellite Annexations.	(Local)
Sponsors:	Representative Haire.	
Referred to:	Finance.	

March 15, 2005

A BILL TO BE ENTITLED

AN ACT REMOVING CERTAIN RESTRICTIONS ON SATELLITE ANNEXATIONS FOR THE TOWN OF MAGGIE VALLEY.

The General Assembly of North Carolina enacts:

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

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

...

~~(2) No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city, except as set forth in subsection (b2) of this section.~~

...

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

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Gastonia, Hickory, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Angier, Bladenboro, Calabash, Catawba, Creswell, Dallas, Fuquay-Varina, Garner, Godwin, Holly Ridge, Holly Springs, Kenly, Knightdale, Leland, Louisburg, Maggie Valley, Maiden, Mayodan, Midland, Mocksville, Morrisville, Pembroke, Pine Level, Ranlo, Rolesville, Rutherfordton, Swansboro, Troy, Wallace, Warsaw, Waynesville, Wendell, and Zebulon."

SECTION 2. This section applies to the Town of Maggie Valley only.

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

HOUSE BILL 631:
Maggie Valley Satellite Annexations

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. Haire
Date:	March 29, 2005	**Summary by:**	Cindy Avrette
Version:	PCS for 1st Edition		Committee Counsel
	PCS70251-LMx-7		

SUMMARY: ***The proposed committee substitute for House Bill 631 removes certain restrictions on voluntary satellite annexations for the town of Maggie Valley. The Maggie Valley Town Board of Aldermen passed a resolution on March 1, 2005, requesting this legislation.***

CURRENT LAW: G.S. 160A-58.1 governs the voluntary annexation by a municipality of noncontiguous property. All property owners in the satellite area[1] may petition for voluntary annexation of the noncontiguous property if the property meets the following five standards in G.S. 160A-58.1(b):

1. The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.
2. No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city.
3. The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
4. If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.
5. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing city.

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

BILL ANALYSIS: The proposed committee substitute for House Bill 631 amends two of the statutory requirements so that the Town of Maggie Valley may, *if petitioned to so do by all of the affected property owners,* annex certain noncontiguous property into its corporate limits.

- The bill removes the town from the fourth requirement that all of a subdivision must be included in a petition for voluntary satellite annexation. Rockingham is also exempted from this requirement.
- The bill removes the town from the fifth requirement that the area within a town's satellite corporate limits may not exceed 10% of the area within its primary corporate limits. At least 33 other cities and towns have been removed from this requirement and numerous others have had it amended.

[1] G.S. 160A-58.4 provides that satellite corporate limits cannot be considered a part of a municipality's corporate limits for purposes of its ETJ. Therefore, satellite annexations have no effect upon a municipality's ETJ.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 631 A BILL TO BE ENTITLED AN ACT REMOVING CERTAIN RESTRICTIONS ON SATELLITE ANNEXATIONS FOR THE TOWN OF MAGGIE VALLEY.

☐ 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

North Carolina General Assembly

House Committee on Finance

Minutes

~

April 5, 2005

The House Committee on Finance met on Tuesday, April 5, 2005 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Luebke, and Wainwright; Vice-Chairs Hill, Ross, Weiss, and Womble; and Representatives Bordsen, Capps, Carney, Faison, Folwell, Glazier, Hackney, Harrell, Holliman, Jones, McGee, Rayfield, Underhill, Vinson, and Wiley. Also present were Sergeant-at-Arms Bill Freeman, Fred Hines, Walter Spell, and Bill Sullivan. Staff persons present included Cindy Avrette, Rodney Bizzell, Erika Churchill, Ashley Huffstetler, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Luebke called the meeting to order at 8:37 am and recognized the two (2) pages present: Drake Day of Person County, sponsored by Representative Wilkins, and Terrence Valladares of Mecklenburg County, sponsored by the Tarheel Challenge. Chairman Luebke then congratulated Linda Millsaps with Fiscal Research for completing her doctoral dissertation at West Virginia University last Friday, April 1, 2005.

Following a round of applause for Ms. Millsaps, Chairman Luebke recognized Representative Owens to explain the first bill under consideration, **HB 399 – UNIFIED GOVERNMENT** (see **attachment 3**). Representative Owens stated that the bill allows the people of Hyde and Currituck counties to choose whether they would prefer a unified local government entity where the County governments would act as a municipality. He reported that the Association of County Commissioners supports the bill and the League of Municipalities does not oppose the bill. Chairman Luebke then recognized Erika Churchill with Research to explain the bill. Ms. Churchill explained that counties would not be allowed to annex or exercise extraterritorial jurisdiction authority over lands outside the county. Chairman Luebke then recognized Representative Faison who asked if this bill was more about the ability to provide services or about managing growth. Representative Owens was again recognized and asserted that the purpose of the bill is to allow the county to better manage growth.

Chairman Luebke then recognized Herb Robbins, a citizen from the community of Corolla in Currituck County. He announced that he favored an amendment to the bill that would: first, require the county to assume complete responsibility for services provided, without the option of "opting out" from providing certain services as permitted in the bill. Second, he stated that the bill should be amended by prohibiting the use of special tax districts to provide municipal services such as police or fire services. And third, he stated that the bill should include a "maintenance of effort" provision so that the County would be required to continue spending at existing levels on municipal services before receiving pass through funds or adding additional taxes. Following Mr. Robbins

remarks, Chairman Luebke recognized Mr. John Morrison, Currituck County Attorney. Mr. Morrison acknowledged that this type of bill has not been enacted in any other part of the country. However, he stated that this bill would prohibit the duplication of services in Currituck and Hyde Counties and provide for a more efficient and unified government. Chairman Luebke then recognized Mr. Jim Blackburn, General Counsel with the North Carolina Association of County Commissioners. Mr. Blackburn affirmed that this bill has the support of the Association of County Commissioners. Chairman Luebke then recognized Representative Holliman who moved that HB 399 be given a favorable report as to the second edition. Seeing no further discussion, Chairman Luebke called the motion to a vote and it carried without objection.

Chairman Luebke then recognized Representative Brown to explain **HB 278 – WALKERTOWN DEANNEXATIONS** (see **attachment 4**). Representative Brown explained that the bill removes certain property from the corporate limits of the Town of Walkertown. Chairman Luebke recognized Martha Walston with Fiscal Research who explained that the bill had received favorable resolutions from all of the involved entities. Representative Glazier was then recognized and moved that HB 278 be given a favorable report by the Committee. Seeing no further discussion, Chairman Luebke then called the motion to a vote and it carried by consent.

The next bill considered by the Committee was **HB 351 – MODIFY PASQUOTANK/ELIZABETH CITY OCCUPANCY TAX** (see **attachment 5**). Chairman Luebke first recognized Representative Carney who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Chairman Luebke then recognized Representative Owen to explain the bill. He explained that the bill would authorize Pasquotank County and Elizabeth City to change their current occupancy tax rates from three percent (3%) to six percent (6%), and noted that the bill had already been heard and approved by the House Finance Subcommittee on Occupancy Tax. Following this explanation, Chairman Luebke recognized Representative Womble who moved for a favorable report to the proposed committee substitute, with an unfavorable report as to the original bill. Seeing no further discussion, Chairman Luebke then called the motion to a vote and it carried without objection.

The next bill considered by the Committee was **HB 125 – WEST JEFFERSON OCCUPANCY TAX** (see **attachment 6**). Chairman Luebke recognized the bill sponsor, Representative Wilson, who explained that the bill authorizes West Jefferson to levy a three percent (3%) room occupancy and tourism development tax. He also stated that there was no opposition to the bill and that it has been approved by the House Finance Subcommittee on Occupancy Tax. Chairman Luebke then recognized Representative McGee who moved that HB 125 be given a favorable report. Seeing no further discussion, Chairman Luebke called the motion to a vote and it carried by consent.

Chairman Luebke then recognized Representative Steen to explain **HB 370 – LANDIS SATELLITE ANNEXATIONS** (see **attachment 7**). He stated that the bill would allow the Town of Landis to conduct voluntary annexations by providing an exemption from the cap on satellite annexations. Chairman Luebke recognized Representative Alexander who moved that HB 370 be given a favorable report by the Committee. Seeing no further discussion, Chairman Luebke called the motion to a vote and it carried without objection.

The next bill considered by the Committee was **HB 478 – TOBACCOVILLE DEANNEXATION** (see **attachment 8**). Chairman Luebke recognized Representative Folwell who explained that the bill would remove about four (4) acres from the corporate limits of the Village of Tobaccoville. He asserted that the Village of Tobaccoville has passed a resolution favoring this deannexation bill and that the bill has received no opposition. Chairman Luebke then

recognized Representative Weiss who moved that HB 478 be given a favorable report. Seeing no further discussion, Chairman Luebke called the motion to a vote and it carried by consent.

The Committee then considered **HB 540 – HALIFAX AND ROANOKE RAPIDS OCCUPANCY TAXES** (see **attachment 9**). Chairman Luebke first recognized Representative Glazier who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion carried. Representative Lucy Allen was then recognized to give a summary of the bill. She explained that the bill would authorize Halifax County to increase its occupancy tax by two percent (2%) and allow the City of Roanoke Rapids to institute a one percent (1%) occupancy tax in order for those communities to continue in their efforts to promote tourism. Chairman Luebke then recognized Representative Ross who moved for a favorable report to the proposed committee substitute and an unfavorable report as to the original bill. Seeing no further discussion, Chairman Luebke called the motion to a vote and it carried without objection.

Chairman Luebke then recognized Representative Rapp who explained **HB 544 – MADISON COUNTY OCCUPANCY TAX** (see **attachment 10**). He stated that the bill would amend the Madison County Occupancy and Tourism Development Tax to allow Madison County to levy an additional two percent (2%) occupancy tax. Chairman Luebke recognized Representative Alexander who moved that HB 544 be given a favorable report by the Committee. Seeing no further discussion, Chairman Luebke called the motion to a vote and it carried by consent.

The final bill considered by the Committee was **HB 843 – DUPLIN OCCUPANCY TAX** (see **attachment 11**). Chairman Luebke first recognized Representative Underhill who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion carried, and then Chairman Luebke recognized Representative Tucker to explain the bill. Representative Tucker stated that the bill had been approved by the House Finance Subcommittee on the Occupancy Tax and authorizes Duplin County to increase its occupancy and tourism development tax from three percent (3%) to six percent (6%), but exempts the County from creating a Tourism Development Authority until certain conditions are met. Chairman Luebke then recognized Representative Wainwright who asked why Duplin County would not be required to establish a Tourism Development Authority. To answer the question, Chairman Luebke recognized Cindy Averette from Research who explained that the proposed committee substitute would require Duplin County to establish a Tourism and Development Agency once the annual net proceeds of the occupancy tax exceed $200,000. She also noted that this exception had been granted to Alleghany County by the House Finance Committee in a bill considered during the 2003-2004 session of the General Assembly. Representative Alexander was then recognized and moved for a favorable report as to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairman Luebke called the motion to a vote, and it carried without objection.

Concluding the meeting, Chairman Luebke announced that the Finance Committee would meet again on Thursday, April 7, 2005 at 8:30 am in Room 544 of the Legislative Office Building. Having no further business before the Committee, Chairman Luebke then adjourned the meeting at 9:24 am.

Respectfully submitted,

Representative Paul Luebke
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. House Bill 399 (and related materials)
4. House Bill 278 (and related materials)
5. House Bill 351 (and related materials)
6. House Bill 125 (and related materials)
7. House Bill 370 (and related materials)
8. House Bill 478 (and related materials)
9. House Bill 540 (and related materials)
10. House Bill 544 (and related materials)
11. House Bill 843 (and related materials)

AGENDA

ATTACHMENT 1

House Finance Committee

April 5, 2005
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Luebke

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard
Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order

Introduction of Pages

Bills:

HB 125 **WEST JEFFERSON OCCUPANCY TAX** *Rep. Wilson*

HB 278 **WALKERTOWN DEANNEXATIONS** *Reps. Brown & Folwell*

HB 351 **MODIFY PASQUOTANK/ELIZ. CITY OCCUPANCY TAX** *Rep. Owens*

HB 370 **LANDIS SATELLITE ANNEXATIONS** *Rep. Steen*

HB 399 **UNIFIED GOVERNMENT** *Rep. Owens*

HB 478 **TOBACCOVILLE DEANNEXATION** *Rep. Folwell*

HB 540 **HALIFAX OCCUPANCY TAX** *Rep. L. Allen*

HB 544 **MADISON COUNTY OCCUPANCY TAX** *Rep. Rapp*

HB 843 **DUPLIN OCCUPANCY TAX** *Rep. Tucker*

Adjournment

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, April 5, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 125 – WEST JEFFERSON OCCUPANCY TAX – Rep. Wilson

HB 278 – WALKERTOWN DEANNEXATIONS – Reps. Brown & Folwell

HB 351 – MODIFY PASQUOTANK/ELIZ. CITY OCCUPANCY TAX – Rep. Owens

HB 370 – LANDIS SATELLITE ANNEXATIONS – Rep. Steen

HB 399 – UNIFIED GOVERNMENT – Rep. Owens

HB 478 – TOBACCOVILLE DEANNEXATION – Rep. Folwell

HB 540 – HALIFAX OCCUPANCY TAX – Rep. L. Allen

HB 544 – MADISON COUNTY OCCUPANCY TAX – Rep. Rapp

HB 843 – DUPLIN OCCUPANCY TAX – Rep. Tucker

Respectfully,
Representatives Alexander, Gibson, Howard, Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **12:00 noon** on **March 31, 2005.**

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

ATTACHMENT 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — April 5, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Herb Robbins	Resident of Currituck County to address HB 399 950 Whalehead Drive Corolla NC 27927
Mac Momphard	Progress Energy
R.L. Bartlett	City of Roanoke Rapids
DN Barbee	City of Roanoke Rapids
Matt Staples	2407 Branson Ct Cary, NC 27511
John Morrison	MOYOCK NC TWIFORD NEW FIRM
DAVID BARNES	PPS
Henry Huntaff	N.C.S.D.A.
Raymond Laughinghouse	NS
Carol Lauer	27648
Warren Pond	0513M

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — April 5, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Milton Alford	OSBM
Eddie Caldwell	NC Sheriffs Assn
Jim Blackburn	Association of County Commissioners
Barbara Carsten	BSCGR
Lisa Martin	NC Home Builders Assoc.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 399
Committee Substitute Favorable 3/16/05

Short Title: Unified Government. (Public)

Sponsors:

Referred to:

March 1, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW COUNTIES WITH NO INCORPORATED MUNICIPALITIES TO EXERCISE MOST MUNICIPAL FUNCTIONS.

The General Assembly of North Carolina enacts:

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

"Article 24.

"Unified Government.

"**§ 153A-471. Unified government.**

(a) Except as provided in this section, the powers, duties, functions, rights, privileges, and immunities of a city are vested with any county that has no portion of an incorporated municipality located within its boundaries.

(b) All of the following shall apply to any county exercising the powers, duties, functions, rights, privileges, and immunities of a city under this Article:

(1) It may not exercise any such powers, duties, functions, rights, privileges, and immunities outside the boundaries of the county.

(2) Article 4A of Chapter 160A of the General Statutes (Extension of Corporate Limits) does not apply.

(3) Article 5 of Chapter 160A of the General Statutes (Form of Government) does not apply.

(4) Article 7 of Chapter 160A of the General Statutes (Administrative Offices) does not apply.

(5) Article 13 of Chapter 160A of the General Statutes (Law Enforcement) does not apply.

(6) The provisions of Chapter 163 of the General Statutes relating to municipal elections do not apply except to the extent they applied to the county absent this Article.

(c) The board of commissioners may by ordinance provide that this Article does not confer the power, duty, function, right, privilege, or immunity of a city upon the

county as to a specific power, duty, function, right, privilege, or immunity, and as to such specified power, duty, function, right, privilege, or immunity it shall not be considered as a city.

(d) If the board of commissioners exercises any power, duty, function, right, privilege, or immunity authorized under both Chapter 153A and Chapter 160A and those statutes conflict, the board of commissioners shall state in their minutes under which Chapter the power, duty, function, right, privilege, or immunity is being exercised.

"**§ 153A-472. Definitions.**

For the purposes of this Article, any statutory reference to:

(1) A city shall be construed as a reference to a county.

(2) A city council or governing board shall be construed as a reference to the board of commissioners.

(3) The mayor shall be construed as a reference to the chair of the board of commissioners.

(4) Any other city official shall be construed as a reference to the equivalent county official.

"**§ 153A-473. Applicability.**

This Article only applies to a county if approved by the qualified voters of the county in a referendum called by the board of commissioners in accordance with G.S. 163-287. The referendum shall be conducted by the county board of elections in accordance with the provisions of law generally applicable to special elections. The ballot question shall be determined by the board of commissioners after consultation with the county attorney as to form."

SECTION 2. G.S. 120-166 reads as rewritten:

"**§ 120-166. Additional criteria; nearness to another municipality.**

(a) The Commission may not make a positive recommendation if the proposed municipality is located within one mile of a municipality of 5,000 to 9,999, within three miles of a municipality of 10,000 to 24,999, within four miles of a municipality of 25,000 to 49,999, or within five miles of a municipality of 50,000 or over, according to the most recent decennial federal census, or according to the most recent annual estimate of the Office of State Budget and Management if the municipality was incorporated since the return of that census. For purposes of this section, "municipality" means a city as defined by G.S. 160A-1(2) or a county that has exercised its authority under Article 24 of Chapter 153A.

(b) Subsection (a) of this section does not apply in the case of proximity to a specific municipality if:

(1) The proposed municipality is entirely on an island that the nearby city is not on;

(2) The proposed municipality is separated by a major river or other natural barrier from the nearby city, such that provision of municipal services by the nearby city to the proposed municipality is infeasible or the cost is prohibitive, and the Commission shall adopt policies to implement this subdivision;

(3) The municipalities within the distances described in subsection (a) of this section by resolution express their approval of the incorporation; or

(4) An area of at least fifty percent (50%) of the proposed municipality has petitioned for annexation to the nearby city under G.S. 160A-31 within the previous 12 months before the incorporation petition is submitted to the Commission but the annexation petition was not approved."

SECTION 3. G.S. 120-169 reads as rewritten:

"**§ 120-169. Additional criteria; area unincorporated.**

The Commission may not make a positive recommendation if any of the proposed municipality is included within the boundary of another incorporated municipality, as defined by ~~G.S. 153A-1(1).~~G.S. 153A-1(1), or if any of the proposed municipality is included within the boundary of a county that has exercised its authority under Article 24 of Chapter 153A of the General Statutes."

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

HOUSE BILL 399:
Unified Government.

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Representative Owens
Date:	April 5, 2005	**Summary by:**	R. Erika Churchill
Version:	2ND Edition		Committee Counsel

SUMMARY: ***The bill would allow county government in counties where there are no incorporated municipal areas to assume the powers, duties, functions, rights, privileges, and immunities of a city upon a referendum of the voters of that county.***

CURRENT LAW: Article VII, Section 1 of the North Carolina Constitution states that the "General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable." Currently, the general provisions for the operations of counties are contained in Chapter 153A and for cities in Chapter 160A. The two chapters provide similar authorities, responsibilities and duties for many functions of government. However, some differ and some are not granted to both cities and counties.

BILL ANALYSIS:

Section 1. The bill would allow a county government in a county where there are no incorporated municipal areas to assume the powers, duties, functions, rights, privileges, and immunities of a city upon a referendum of the voters of that county. The board of county commissioners would have to adopt a resolution requesting the county board of elections conduct a special election on the referendum. Upon a positive vote of the people of the county, the county would assume all the powers, duties, functions, rights, privileges, and immunities of a city **EXCEPT** the following:

1. The ability to exercise any municipal power outside the corporate boundaries of the county. (This would prevent the ability to exercise extraterritorial jurisdiction authority over lands outside the county.)
2. Annexation authority.
3. Form of Government and Administrative Offices. (The county would remain organized as a county.)
4. Law Enforcement.
5. Municipal elections, except to the extent those generally applicable laws currently apply to counties.

Upon the grant of municipal powers, the board of county commissioners would also have the ability to opt out of a specific item if they so desire. The opting out must be done by local ordinance. When conducting a power, duty, function, right, privilege, or immunity that counties and cities are both authorized to conduct under Chapters 153A and 160A (i.e. solid waste, recreation, enacting local ordinances, land use planning, etc.) and those statutes are in conflict, the county would have to state in their minutes under which Chapter the power, duty, function, right, privilege, or immunity is being conducted.

Sections 2 and 3. The bill would prevent the Joint Municipal Incorporation Commission from making a positive recommendation on a petition for incorporation if the petition where to incorporate an area within certain geographic distances from a county having passed a referendum for a unified government or within the county having passed a referendum for a unified government.

EFFECTIVE DATE: The act would become effective when it becomes law.

BACKGROUND: Currently, the only two counties in North Carolina without any incorporated areas located within the boundaries of the county are Currituck and Hyde. During the 2003 session, the General Assembly enacted local legislation placing a moratorium on the ability of municipalities outside of Currituck County to annex territory in Currituck County. S.L. 2003-27.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 399 A BILL TO BE ENTITLED AN ACT TO ALLOW COUNTIES WITH NO INCORPORATED MUNICIPALITIES TO EXERCISE MOST MUNICIPAL FUNCTIONS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H 1

HOUSE BILL 278

Short Title:	Walkertown Deannexations.	(Local)
Sponsors:	Representatives Brown and Folwell (Primary Sponsors).	
Referred to:	Finance.	

February 17, 2005

A BILL TO BE ENTITLED

AN ACT REMOVING CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF WALKERTOWN.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate limits of the Town of Walkertown:

TRACT I (Nancy Wooten property): All of that certain tract or parcel of land lying and being in Walkertown, Forsyth County, North Carolina, more particularly described as follows: BEGINNING at an existing iron pipe lying in the eastern boundary line of Kathleen Yokley (Deed Book 1238, Page 1456), said iron being the northwest corner of property deeded unto Johnny L. Waddell in Deed Book 1617, Page 1279, Forsyth County Registry; thence from said iron pipe, with the eastern line of Kathleen Yokley, North 04 degrees 04 minutes 23 seconds East 657.68 feet to a bent iron at the base of a blown down hickory tree; thence from said iron North 89 degrees 31 minutes 28 seconds East 206.29 feet to a stone; thence North 02 degrees 45 minutes 11 seconds East 181.86 feet to an existing iron pipe; thence with a new line South 81 degrees 44 minutes 19 seconds East 451.09 feet to a new iron pipe lying in the western boundary line of property deeded unto Allie Peddycord in Deed Book 556, Page 458, Forsyth County Registry; thence with the western boundary line of Allie Peddycord South 03 degrees 37 minutes 46 seconds West 891.00 feet to an old existing iron pipe; thence continuing with the western boundary of Allie Peddycord South 03 degrees 37 minutes 46 seconds West 298.86 feet to a planted stone, said stone being the southwestern corner of property deeded unto Allie Peddycord in Deed Book 556, Page 458, Forsyth County Registry; thence from said stone with the northern boundary line of property deeded unto Peddycord, Inc. in Deed Book 1361, Page 1119, Forsyth County Registry South 54 degrees 46 minutes 13 seconds West 66.89 feet to an existing iron pipe, the easternmost corner of property deeded unto Theresa Freibott in Deed Book 1541, Page 912, Forsyth County Registry; thence with the northern line of Theresa Freibott South 75 degrees 20 minutes 10 seconds West 119.52 feet to an existing iron pipe, the

southeast corner of property deeded unto Johnny L. Waddell in Deed Book 1617, Page 1279, Forsyth County Registry; thence with the eastern line of Johnny L. Waddell North 23 degrees 58 minutes 26 seconds West 507.38 feet to an existing iron pipe, the northeast corner of Johnny L. Waddell; thence with the northern line of Johnny L. Waddell North 85 degrees 57 minutes 22 seconds West 259.80 feet to an existing iron pipe, the point and place of BEGINNING, containing 15 acres, more or less, according to an unrecorded map and survey by Larry L. Callahan, R.L.S., dated December 20, 1990, and being designated as Tax Block 5400, Lot 11 M.

TRACT II (L. Paige Wooten property): All of that certain tract or parcel of land lying and being in Walkertown, Forsyth County, North Carolina, more particularly described as follows:

BEGINNING at a new iron pipe in the line with Allie Peddycord (Deed Book 556, Page 548) at a corner with Nancy L. Wooten (Deed Book 1835, Page 4792) and thence South 03 degrees 27 minutes 07 seconds West 529.58 feet through an existing iron pipe and continuing on to a second existing iron pipe; thence North 86 degrees 32 minutes 57 seconds West 180.00 feet to a new iron pipe in the line with Wooten; thence North 08 degrees 50 minutes 34 seconds' East 388.21 feet to an existing iron pipe; thence North 48 degrees 32 minutes 14 seconds East 202.67 feet to the point and place of BEGINNING, being 1.67 acres more or less according to a survey by Larry L. Callahan, R.L.S., revised May 19, 1995, and being a building lot cut from the property of Nancy L. Wooten as recorded in the Forsyth County Registry and found at Deed Book 1835, Page 4792).

TRACT III (Jesse Grimm property): All of that certain tract or parcel of land lying and being in Walkertown, Forsyth County, North Carolina, more particularly described as follows:

BEGINNING at a point in the centerline of an old creek bed, said point being the southwest corner of Lot Number 3, as shown on the plat of Winchester, Section Two, as recorded in Plat Book 27, Page 142, in the Office of the Register of Deeds of Forsyth County, North Carolina; thence with southern property line of Lots 3 and 4, Winchester, Section Two, as defined by said creek bed the following six (6) courses and distances: (1) South 68 degrees 09 minutes 12 seconds East 91.33 feet to an iron; (2) thence South 83 degrees 30 minutes 00 seconds East 129.78 feet to an iron; (3) thence North 60 degrees 24 minutes 27 seconds East 38.78 feet to an iron; (4) thence South 73 degrees 54 minutes 09 seconds East 38.26 feet to an iron; (5) thence North 56 degrees 53 minutes 37 seconds East 26.98 feet to an iron; (6) thence North 85 degrees 47 minutes 03 seconds East 155.00 feet to an existing 80D nail in the western line of property now or formerly owned by Allie Peddycord (see Deed Book 556, Page 458, Forsyth County Registry); thence with Peddycord's western line South 03 degrees 27 minutes 04 seconds West 728.26 feet to an iron; thence North 81 degrees 44 minutes 19 seconds West 451.09 feet to an iron in the eastern line of property now or formerly owned by Kathleen Yokely (see Deed Book 1238, Page 1456, Forsyth County Registry); thence with Yokely's eastern line North 02 degrees 45 minutes 11 seconds East 1005.69 feet to a point in the centerline of an old creek bed, the point and place of Beginning,

containing 10.24 acres, more of less, in accordance with a survey prepared by Larry L. Callahan, R.L.S., dated July 30, 1991, and revised October 15, 1991.

SECTION 2. No ad valorem tax liability for fiscal year 2005-2006 shall accrue on the property described in Section 1 of this act based upon the property being located within the corporate limits of the Town of Walkertown on January 1, 2005.

SECTION 3. This act becomes effective June 30, 2005.

HOUSE BILL 278:
Walkertown Deannexations

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. Brown and Folwell
Date:	April 5, 2005	**Summary by:**	Martha Walston
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 278 de-annexes three tracts of property, totaling approximately 27 acres, from the corporate limits of the town of Walkertown. The act would become effective June 30, 2005.***

CURRENT LAW: A city or town may annex property by petition of owners of property to be annexed or if the property meets certain statutory requirements. If the property does not meet the statutory requirements for annexation, the municipality does not have the authority to annex. However, the General Assembly can extend the corporate limits of a municipality to encompass areas that the municipality would not statutorily have the authority to annex. The General Assembly can also de-annex property of a municipality.

BILL ANALYSIS: House Bill 278 de-annexes three tracts of property, totaling approximately 27 acres, from the corporate limits of the town of Walkertown. The act would become effective June 30, 2005, and provides that no property tax liability will accrue on the property for fiscal year 2005-2006, even though the property was located within the corporate limits of Walkertown on January 1, 2005.

BACKGROUND: On February 9, 1999, the towns of Kernersville and Walkertown entered into an annexation boundary agreement. On November 11, 2003, the Town Council of Walkertown mistakenly adopted a voluntary annexation ordinance which included properties that violated the earlier annexation boundary agreement. In February 2005, both the town of Kernersville and the town of Walkertown adopted resolutions acknowledging the violation of the earlier annexation agreement and supporting local legislation to de-annex the property that was mistakenly annexed to Walkertown.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 278 A BILL TO BE ENTITLED AN ACT REMOVING CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF WALKERTOWN.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H D

HOUSE BILL 351
PROPOSED COMMITTEE SUBSTITUTE H351-PCS30163-SV-2

Short Title: Modify Pasquotank/Eliz. City Occupancy Tax. (Local)

Sponsors:

Referred to:

February 23, 2005

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE OCCUPANCY TAX FOR PASQUOTANK COUNTY AND ELIZABETH CITY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 175 of the 1987 Session Laws reads as rewritten:

"**Section 1.** Pasquotank occupancy tax. (a) Authorization and Scope. The Pasquotank County Board of Commissioners ~~may, by resolution, after not less than 10 days' public notice and after a hearing held pursuant thereto,~~may levy a room occupancy tax of no more than three percent (3%) of the gross receipts derived from the rental in Pasquotank County of any room, lodging, or similar accommodation subject to sales tax under G.S. ~~105-164.4(3).~~105-164.4(a)(3).

This tax does not apply to accommodations furnished by nonprofit charitable, educational, benevolent, or religious organizations when furnished in furtherance of their nonprofit purpose. This tax is in addition to any State or local sales tax.

(a1) Additional Occupancy Tax. – In addition to the tax authorized by subsection (a) of this section, the Pasquotank County Board of Commissioners may levy a room occupancy and tourism development tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under that subsection. Pasquotank County may not levy a tax under this subsection unless it also levies a tax under subsection (a) of this section.

~~(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately on the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of Pasquotank County. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The Pasquotank County Finance Officer shall design, print, and furnish to all appropriate businesses and persons in the~~

~~county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted by him to the county a discount of three percent (3%) of the amount collected as reimbursement for the expenses incurred in collecting the tax.~~

(c) Administration. ~~The county shall administer a tax levied under this section.~~ A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section. ~~A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals and sales upon which the tax is levied. A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due for each additional month or fraction thereof until the tax is paid.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000) and imprisonment not to exceed six months, or both. The board of commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.~~

(e) Use and Distribution of ~~Tax Revenue.~~First Three Cents (3¢). – The finance officer of Pasquotank County shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied under subsection (a) of this section to the Elizabeth City-Pasquotank County Tourism Development Authority. The Authority shall use the net proceeds of the occupancy tax levied under subsection (a) of this section as follows:

(1) Fifty percent (50%) to promote travel and tourism.

(2) Twenty-five percent (25%) for tourism-related expenditures that are recommended by the Elizabeth City City Council and are approved by the Authority.

(3) Twenty-five percent (25%) for tourism-related expenditures that are recommended by the Pasquotank County Board of Commissioners and are approved by the Authority. ~~After the levy of a tax under this section and until the end of the eighth fiscal year after an occupancy tax was first levied under this act, whether pursuant to this section or Section 2 of this act, the county shall, on a quarterly basis, remit the~~

~~net proceeds of the tax levied under this section to the City of Elizabeth City. The city may spend funds remitted to it under this subsection only to develop, promote, and advertise travel and tourism in Elizabeth City and Pasquotank County, to sponsor tourist-oriented events and activities, to operate and maintain museums and historic sites, or to construct and maintain public facilities.~~

~~After the levy of a tax under this section and beginning in the ninth fiscal year after an occupancy tax was first levied under this act, whether under this section or Section 2 of this act, the county shall, on a quarterly basis, remit to the City of Elizabeth City one-half (1/2) of the net proceeds of the tax levied under this section collected on accommodations located in the corporate limits of the city. The remainder of the proceeds of the tax shall be retained by the county. The city and the county may spend the proceeds of the tax only to develop, promote, and advertise travel and tourism in Elizabeth City and Pasquotank County, to sponsor tourist-oriented events and activities, to operate and maintain museums and historic sites, or to construct and maintain public facilities.~~

~~The county, or a town or city that receives revenue under this subsection may contract with a nonprofit organization to undertake or carry out the activities and programs for which the revenue may be expended. All contracts entered into with nonprofit organizations shall require an annual financial audit of any funds expended and a performance audit of contractual obligations.~~

~~As used in this subsection, "net proceeds" means gross proceeds less the direct cost to the county of administering and collecting the tax, not to exceed three percent (3%) of the amount collected.~~

(e1) Use and Distribution of the Proceeds from the Additional Occupancy Tax. – The finance officer of Pasquotank County shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied under subsection (a1) of this section to the Elizabeth City-Pasquotank County Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism and shall use the remainder for tourism-related expenditures.

~~(f) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Pasquotank County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

"**Sec. 1.1.** Elizabeth City Area Convention and Visitors Bureau. (a) Establishment as a Tourism Development Authority. – Upon adoption of a resolution levying a room occupancy tax under this act by either the Pasquotank County Board of Commissioners or the Elizabeth City City Council, the Pasquotank Board of Commissioners shall adopt a resolution converting the Elizabeth City Area Convention and Visitors Bureau into a tourism development authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The county shall transfer to the Authority

upon its creation all of the assets of the county's convention and visitors bureau. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the county.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Pasquotank County shall be the nonvoting ex officio finance officer of the Authority.

(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the governing body or bodies levying a tax under this act on its receipts and expenditures for the preceding quarter and for the year in such detail as the governing body or bodies may require.

"**Sec. 2.** Elizabeth City occupancy tax. (a) Authorization; Scope; Administration. – If the Pasquotank County Board of Commissioners has not levied the tax authorized by Section 1 of this act or has levied the tax at a rate of less than three percent (3%), the Elizabeth City City Council may, by ordinance, levy a room occupancy tax at a rate that does not exceed three percent (3%) when combined with the Pasquotank County occupancy tax rate, if any. This tax shall apply to the same accommodations that are taxable under Section 1 of this act. A tax levied under this subsection shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.~~act and shall be collected and administered in the same manner as the tax authorized by that section, unless this section specifies otherwise. In applying the provisions of Section 1 to a tax levied by the Elizabeth City City Council under this section, however, all references in Section 1 to Pasquotank County or an official of Pasquotank County shall be construed to mean the City of Elizabeth City and the city counterpart to the county official. Accordingly, the Elizabeth City Finance Officer shall collect an occupancy tax levied by the city.~~

(a1) Additional Occupancy Tax. – In addition to the tax authorized by subsection (a) of this section, the Elizabeth City City Council may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section only if Elizabeth City also levies the tax authorized under subsection (a) of this section or if Pasquotank County levies the tax authorized under subsection (a) of Section 1 of this act. The total rate of tax levied under subsections (a) and (a1) of this section, when combined with the rate of any room occupancy tax that may be levied by Pasquotank County, may not exceed six percent (6%). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section.

(b) Use and Distribution of ~~Revenue. After the levy of a tax under this section and until the end of the eighth fiscal year after an occupancy tax was first levied under this act, whether pursuant to this section or Section 1 of this act, the city shall retain the proceeds of the tax levied under this section. After the levy of a tax under this section and beginning in the ninth fiscal year after an occupancy tax was first levied under this act, whether pursuant to this section or Section 1 of this act, the city shall, on a quarterly basis, remit to Pasquotank County one-half (1/2) of the net proceeds of the tax levied under this section collected on accommodations located in the corporate limits of the city. The remainder of the proceeds of the tax shall be retained by the city. The city and the county may spend the proceeds of the tax only to develop, promote, and advertise travel and tourism in Elizabeth City, to sponsor tourist-oriented events and activities, to operate and maintain museums and historic sites, or to construct and maintain public facilities.~~

~~As used in this subsection, "net proceeds" means gross proceeds less the cost to the city of administering and collecting the tax, not to exceed three percent (3%) of the amount collected.~~ First Three Cents (3¢). – The finance officer of Elizabeth City shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied under subsection (a) of this section to the Elizabeth City-Pasquotank County Tourism Development Authority. The Authority shall use the net proceeds of the occupancy tax levied under subsection (a) of this section as follows:

(1) Fifty percent (50%) to promote travel and tourism.

(2) Twenty-five percent (25%) for tourism-related expenditures that are recommended by the Elizabeth City City Council and are approved by the Authority.

(3) Twenty-five percent (25%) for tourism-related expenditures that are recommended by the Pasquotank County Board of Commissioners and are approved by the Authority.

(b1) Use and Distribution of the Proceeds from the Additional Occupancy Tax. – The finance officer of Elizabeth City shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied under subsection (a1) of this section to the Elizabeth City-Pasquotank County Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism and shall use the remainder for tourism-related expenditures.

"**Sec. 2.1.** Definitions. – The following definitions apply in this act:

(1) Net proceeds. – Gross proceeds less the cost to the governing body of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

"**Sec. 3.** Effect of county tax on previously levied city tax. If the City of Elizabeth City levies an occupancy tax under Section 2 of this act, and the Pasquotank County Board of Commissioners subsequently adopts a resolution levying an occupancy tax in Pasquotank County under Section 1 of this act, the occupancy tax levied by the City of Elizabeth City shall be repealed as of the effective date of the county levy if the county levies an occupancy tax at the rate of ~~three percent (3%),~~ six percent (6%), and shall be reduced by the amount that the combined county and city occupancy tax rates exceed ~~three percent (3%)~~ six percent (6%) if the county rate is less than ~~three percent (3%).~~ six percent (6%).

"**Sec. 4.** This act is effective upon ratification."

SECTION 2. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Anson, Brunswick, Buncombe, Cabarrus, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Durham, Granville, Madison, Montgomery, Nash, New Hanover, Pasquotank, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, and to the Township of Averasboro in Harnett County."

SECTION 3. G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Elizabeth City, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, Washington, and Wilmington, to the Towns of Beech Mountain, Blowing Rock, Carolina Beach, Carrboro, Franklin, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 351

Short Title:	Modify Pasquotank/Eliz. City Occupancy Tax.	(Local)
Sponsors:	Representative Owens.	
Referred to:	Finance.	

February 23, 2005

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE OCCUPANCY TAX FOR PASQUOTANK COUNTY AND ELIZABETH CITY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 175 of the 1987 Session Laws reads as rewritten:

"Section 1. Pasquotank occupancy tax. (a) Authorization and Scope. The Pasquotank County Board of Commissioners ~~may, by resolution, after not less than 10 days' public notice and after a hearing held pursuant thereto,~~may levy a room occupancy tax of no more than three percent (3%) of the gross receipts derived from the rental in Pasquotank County of any room, lodging, or similar accommodation subject to sales tax under G.S. ~~105-164.4(3).~~105-164.4(a)(3).

This tax does not apply to accommodations furnished by nonprofit charitable, educational, benevolent, or religious organizations when furnished in furtherance of their nonprofit purpose. This tax is in addition to any State or local sales tax.

(a1) Additional Occupancy Tax. – In addition to the tax authorized by subsection (a) of this section, the Pasquotank County Board of Commissioners may levy a room occupancy and tourism development tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under that subsection. Pasquotank County may not levy a tax under this subsection unless it also levies a tax under subsection (a) of this section.

~~(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately on the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of Pasquotank County. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The Pasquotank County Finance Officer shall design, print, and furnish to all appropriate businesses and persons in the~~

~~county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted by him to the county a discount of three percent (3%) of the amount collected as reimbursement for the expenses incurred in collecting the tax.~~

(c) Administration. ~~The county shall administer a tax levied under this section.~~ A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section. ~~A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals and sales upon which the tax is levied. A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due for each additional month or fraction thereof until the tax is paid.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000) and imprisonment not to exceed six months, or both. The board of commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.~~

(e) Use and Distribution of ~~Tax Revenue.~~First Three Cents (3¢). – The finance officer of Pasquotank County shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied under subsection (a) of this section to the Elizabeth City-Pasquotank County Tourism Development Authority. The Authority shall use the net proceeds of the occupancy tax levied under subsection (a) of this section as follows:

(1) Fifty percent (50%) to promote travel and tourism.

(2) Twenty-five percent (25%) for tourism-related expenditures that are recommended by the Elizabeth City City Council and are approved by the Authority.

(3) Twenty-five percent (25%) for tourism-related expenditures that are recommended by the Pasquotank County Board of Commissioners and are approved by the Authority. ~~After the levy of a tax under this section and until the end of the eighth fiscal year after an occupancy tax was first levied under this act, whether pursuant to this section or Section 2 of this act, the~~

~~county shall, on a quarterly basis, remit the net proceeds of the tax levied under this section to the City of Elizabeth City. The city may spend funds remitted to it under this subsection only to develop, promote, and advertise travel and tourism in Elizabeth City and Pasquotank County, to sponsor tourist-oriented events and activities, to operate and maintain museums and historic sites, or to construct and maintain public facilities.~~

~~After the levy of a tax under this section and beginning in the ninth fiscal year after an occupancy tax was first levied under this act, whether under this section or Section 2 of this act, the county shall, on a quarterly basis, remit to the City of Elizabeth City one-half (1/2) of the net proceeds of the tax levied under this section collected on accommodations located in the corporate limits of the city. The remainder of the proceeds of the tax shall be retained by the county. The city and the county may spend the proceeds of the tax only to develop, promote, and advertise travel and tourism in Elizabeth City and Pasquotank County, to sponsor tourist-oriented events and activities, to operate and maintain museums and historic sites, or to construct and maintain public facilities.~~

~~The county, or a town or city that receives revenue under this subsection may contract with a nonprofit organization to undertake or carry out the activities and programs for which the revenue may be expended. All contracts entered into with nonprofit organizations shall require an annual financial audit of any funds expended and a performance audit of contractual obligations.~~

~~As used in this subsection, "net proceeds" means gross proceeds less the direct cost to the county of administering and collecting the tax, not to exceed three percent (3%) of the amount collected.~~

(e1) Use and Distribution of the Proceeds from the Additional Occupancy Tax. – The finance officer of Pasquotank County shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied under subsection (a1) of this section to the Elizabeth City-Pasquotank County Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism and shall use the remainder for tourism-related expenditures.

~~(f) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Pasquotank County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

"Sec. 1.1. Elizabeth City Area Convention and Visitors Bureau. (a) Establishment as a Tourism Development Authority. – Upon adoption of a resolution levying a room occupancy tax under this act by either the Pasquotank County Board of Commissioners or the Elizabeth City City Council, the Pasquotank Board of Commissioners shall adopt a resolution converting the Elizabeth City Area Convention and Visitors Bureau into a tourism development authority, which shall be a public authority under the Local

Government Budget and Fiscal Control Act. The county shall transfer to the Authority upon its creation all of the assets of the county's convention and visitors bureau. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the county.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Pasquotank County shall be the nonvoting ex officio finance officer of the Authority.

(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the governing body or bodies levying a tax under this act on its receipts and expenditures for the preceding quarter and for the year in such detail as the governing body or bodies may require.

"Sec. 2. Elizabeth City occupancy tax. (a) Authorization; Scope; Administration. – If the Pasquotank County Board of Commissioners has not levied the tax authorized by Section 1 of this act or has levied the tax at a rate of less than three percent (3%), the Elizabeth City City Council may, by ordinance, levy a room occupancy tax at a rate that does not exceed three percent (3%) when combined with the Pasquotank County occupancy tax rate, if any. This tax shall apply to the same accommodations that are taxable under Section 1 of this act. A tax levied under this subsection shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.~~act and shall be collected and administered in the same manner as the tax authorized by that section, unless this section specifies otherwise. In applying the provisions of Section 1 to a tax levied by the Elizabeth City City Council under this section, however, all references in Section 1 to Pasquotank County or an official of Pasquotank County shall be construed to mean the City of Elizabeth City and the city counterpart to the county official. Accordingly, the Elizabeth City Finance Officer shall collect an occupancy tax levied by the city.~~

(a1) Additional Occupancy Tax. – In addition to the tax authorized by subsection (a) of this section, the Elizabeth City City Council may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) only if Elizabeth City also levies the tax authorized under subsection (a) of this section or if Pasquotank County levies the tax authorized under subsection (a) of Section 1 of this act. The total rate of tax levied under subsections (a) and (a1) of this section, when combined with the rate of any room occupancy tax that may be levied by Pasquotank County, may not exceed six percent (6%). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section.

(b) Use and Distribution of ~~Revenue. After the levy of a tax under this section and until the end of the eighth fiscal year after an occupancy tax was first levied under this act, whether pursuant to this section or Section 1 of this act, the city shall retain the proceeds of the tax levied under this section. After the levy of a tax under this section and beginning in the ninth fiscal year after an occupancy tax was first levied under this act, whether pursuant to this section or Section 1 of this act, the city shall, on a quarterly basis, remit to Pasquotank County one-half (1/2) of the net proceeds of the tax levied under this section collected on accommodations located in the corporate limits of the city. The remainder of the proceeds of the tax shall be retained by the city. The city and the county may spend the proceeds of the tax only to develop, promote, and advertise travel and tourism in Elizabeth City, to sponsor tourist-oriented events and activities, to operate and maintain museums and historic sites, or to construct and maintain public facilities.~~

~~As used in this subsection, "net proceeds" means gross proceeds less the cost to the city of administering and collecting the tax, not to exceed three percent (3%) of the amount collected.~~ First Three Cents (3¢). – The finance officer of Elizabeth City shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied under subsection (a) of this section to the Elizabeth City-Pasquotank County Tourism Development Authority. The Authority shall use the net proceeds of the occupancy tax levied under subsection (a) of this section as follows:

(1) Fifty percent (50%) to promote travel and tourism.

(2) Twenty-five percent (25%) for tourism-related expenditures that are recommended by the Elizabeth City City Council and are approved by the Authority.

(3) Twenty-five percent (25%) for tourism-related expenditures that are recommended by the Pasquotank County Board of Commissioners and are approved by the Authority.

(b1) Use and Distribution of the Proceeds from the Additional Occupancy Tax. – The finance officer of Elizabeth City shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied under subsection (a1) of this section to the Elizabeth City-Pasquotank County Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism and shall use the remainder for tourism-related expenditures.

"Sec. 2.1. Definitions. – The following definitions apply in this act.

(1) Net proceeds. – Gross proceeds less the cost to the governing body of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

"Sec. 3. Effect of county tax on previously levied city tax. If the City of Elizabeth City levies an occupancy tax under Section 2 of this act, and the Pasquotank County Board of Commissioners subsequently adopts a resolution levying an occupancy tax in Pasquotank County under Section 1 of this act, the occupancy tax levied by the City of Elizabeth City shall be repealed as of the effective date of the county levy if the county levies an occupancy tax at the rate of ~~three percent (3%),~~ six percent (6%), and shall be reduced by the amount that the combined county and city occupancy tax rates exceed ~~three percent (3%)~~ six percent (6%) if the county rate is less than ~~three percent (3%).~~ six percent (6%).

"Sec. 4. This act is effective upon ratification."

SECTION 2. G.S. 153A-155 reads as rewritten:

"**§ 153A-155. Uniform provisions for room occupancy taxes.**

(a) Scope. – This section applies only to counties the General Assembly has authorized to levy room occupancy taxes.

(b) Levy. – A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing county a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. – The taxing county shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the taxing county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax

return filed with the county finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. – A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing county has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. – A room occupancy tax levied by a county may be repealed or reduced by a resolution adopted by the governing body of the county. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(f1) Use. – The proceeds of a room occupancy tax shall not be used for development or construction of a hotel or another transient lodging facility.

(g) This section applies only to Anson, Brunswick, Buncombe, Cabarrus, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Durham, Granville, Madison, Montgomery, Nash, New Hanover, Pasquotank, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, and to the Township of Averasboro in Harnett County."

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

HOUSE BILL 351:
Modify Pasquotank/Eliz. City Occupancy Tax

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. Owens
Date:		**Summary by:**	Trina Griffin
Version:	PCS for 1st Edition H351-PCS30163-SV-2		Committee Counsel

SUMMARY: House Bill 351 does the following:

- *It increases Pasquotank County's authority to levy a room occupancy tax from 3% to 6%.*
- *It increases Elizabeth City's authority to levy a room occupancy tax from 3% to 6%, but in no case may the combined county and city rate of tax exceed 6%.*
- *It requires that the Elizabeth City Area Convention and Visitors Bureau be established as the Elizabeth City-Pasquotank County Tourism Development Authority for purposes of administering the occupancy tax proceeds.*
- *It conforms both the county and city's administrative provisions to the uniform provisions concerning the levy, administration, collection, and repeal of the tax found in G.S. 153A-155 and G.S. 160A-215.*

The PCS makes a technical correction by adding a new Section 3, which adds Elizabeth City to the list of cities whose administrative provisions conform to the uniform statutory provisions in G.S. 160A-215. The House Finance Subcommittee on Occupancy Taxes reviewed this bill at its meeting on March 31 and gave it a favorable recommendation.

CURRENT LAW: In 1987, the General Assembly authorized Pasquotank County to levy a 3% room occupancy tax. The county must remit one-half of the net proceeds to Elizabeth City and may keep the remainder. The city and the county may spend the proceeds of the tax only to develop, promote, and advertise travel and tourism in Elizabeth City and Pasquotank County, to sponsor tourist-oriented events and activities, to operate and maintain museums and historic sites, or to construct and maintain public facilities.

The legislation also provides that, if Pasquotank County has not levied the occupancy tax, or has levied the tax at a rate of less than 3%, the Elizabeth City has the authority to levy a room occupancy tax that does not exceed 3% when combined with the Pasquotank County occupancy tax rate, if any. If the city were to levy the occupancy tax, then the city would be required to remit one-half of the proceeds to the county and retain the remainder. The proceeds may be used for the same purposes mentioned above. Currently, Pasquotank County is levying the 3% tax.

BILL ANALYSIS: House Bill 351 increases the authority of Pasquotank County to levy a room occupancy tax from 3% to 6%. The bill also requires that the existing Elizabeth City Area Convention and Visitors Bureau be established as the Elizabeth City-Pasquotank County Tourism Development Authority, and that the proceeds be remitted to the TDA for distribution. The first 3% is to be distributed as follows:

- 50% to promote travel and tourism.
- 25% for tourism-related expenditures recommended by the Elizabeth City Council and approved by the TDA.

- 25% for tourism-related expenditures recommended by the Pasquotank County Board of Commissioners and approved by the Authority.

Of the second 3%, two thirds of the net proceeds must be used for tourism promotion and the remainder for tourism-related expenditures. Based on this distribution, 58% of the total occupancy tax proceeds will be used for tourism promotion with the remainder being used for tourism-related expenditures.

The bill also increases Elizabeth City's authority to levy an occupancy tax from 3% to 6%. However, the City may only levy the tax if the county has not levied the tax or has not levied the entire 6%. The total rate of tax for both the county and city may not exceed 6%. If Elizabeth City levies the tax, the net proceeds are to be distributed in the same manner as required for the county.

The bill also brings both the county and city administrative provisions into conformity with the uniform statutory provisions set out in G.S. 153A-155 and 160A-215.

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. In several instances, the General Assembly has authorized both a county and a city within that county to impose an occupancy tax. The rate of tax, the use of the tax proceeds, the administration of the tax, and the body with the authority to determine how the tax proceeds will be spent vary considerably. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – G.S. 153A-155 and G.S. 160A-215. These provisions provide uniformity in the areas of levy, administration, collection, repeal, and penalties.

The North Carolina Travel and Tourism Coalition has a policy statement for legislation authorizing local occupancy taxes. Many of the principles contained in its statement are similar to the ones established by a House Finance subcommittee on Occupancy Taxes in 1993 and detailed in the chart below:

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least ¾ of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: March 30, 2005

TO: House Finance Subcommittee on Occupancy Tax

FROM: Rodney Bizzell
Fiscal Research Division

RE: House Bill 351 (Unknown Edition)

FISCAL IMPACT

Yes (X)	No ( )	No Estimate Available ( )		
FY 2005-06	**FY 2006-07**	**FY 2007-08**	**FY 2008-09**	**FY 2009-10**
REVENUES:				
General Fund	*No General Fund Impact*			
Pasquotank Co.	**$254,635**	**$264,820**	**$275,413**	**$286,429**	**$297,886**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Pasquotank County

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY: This bill increases the authority of Pasquotank County to levy a room occupancy tax from 3% to 6%. The bill also increases Elizabeth City's authority to levy an occupancy tax from 3% to 6%, however, the City may only levy the tax if the county has not levied the tax or has not levied the entire 6%. The bill requires that the existing Elizabeth City Area Convention and Visitors Bureau be established as the Elizabeth City-Pasquotank County Tourism Development Authority, and that the proceeds be remitted to the TDA for distribution.

ASSUMPTIONS AND METHODOLOGY: This analysis assumes that Pasquotank County levies the full 6% occupancy tax authorized by the bill. In the event that the county levies less

than 6%, the revenues to the county would be less and Elizabeth City would have the authority to levy an occupancy tax up to 6%, as long as the total rate for the county and city do not exceed 6%.

In 2003-2004, the 3% room tax in Pasquotank County raised $235,424. This bill doubles the rate to 6%. Historically, Pasquotank County's collections have been as follows:

Year	Amount	Each 1%
1999-00	75,321	25,107
2000-01	78,144	26,048
2001-02	165,168	55,056
2002-03	172,468	57,489
2003-04	235,424	78,475

Extending this trend suggests the following increase in total occupancy tax revenue as a result of the bill:

Year	Amount	Each 1%
2005-06	254,635	84,878
2006-07	264,820	88,273
2007-08	275,413	91,804
2008-09	286,429	95,476
2009-10	297,886	99,295

SOURCES OF DATA: NC Department of Revenue, NC Department of State Treasurer

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 351 A BILL TO BE ENTITLED AN ACT TO MODIFY THE OCCUPANCY TAX FOR PASQUOTANK COUNTY AND ELIZABETH CITY.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 125*

Short Title:	West Jefferson Occupancy Tax.	(Local)
Sponsors:	Representative Wilson.	
Referred to:	Finance.	

February 9, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF WEST JEFFERSON TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Occupancy tax. – (a) Authorization and Scope. – The West Jefferson Board of Aldermen may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.(c) Distribution and Use of Tax Revenue. – The Town of West Jefferson shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the West Jefferson Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in West Jefferson and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract

tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the West Jefferson Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 2. Tourism Development Authority. – (a) Appointment and Membership. – When the Board of Aldermen adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town, and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the town. The Board of Aldermen shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the Town of West Jefferson shall be the ex officio finance officer of the Authority.

SECTION 2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Board of Aldermen on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board of Aldermen may require.

SECTION 3. Town administrative provisions. – G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, Washington, and Wilmington, to the Towns of Beech Mountain, Blowing Rock, Carolina Beach, Carrboro, Franklin, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, West Jefferson, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

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

HOUSE BILL 125:
West Jefferson Occupancy Tax

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. Wilson
Date:	April 5, 2005	**Summary by:**	Cindy Avrette
Version:	1st Edition		Committee Counsel

SUMMARY: House Bill 125 authorizes the town of West Jefferson to levy a 3% room occupancy tax. Two-thirds of the proceeds would be used to promote travel and tourism and one-third would be used for tourism-related expenditures. This bill conforms to the guidelines supported by the North Carolina Travel and Tourism Coalition and adhered to by the House Finance Committee. The House Finance Subcommittee on Occupancy Taxes reviewed this bill at its meeting on March 31 and gave it a favorable recommendation.

CURRENT LAW: Currently, the town of West Jefferson does not have authority to levy a room occupancy tax. West Jefferson is located in Ashe County, which does have authority to levy a 3% occupancy tax. The proceeds of the county tax are distributed as follows: 1/3 goes to the Ashe County Chamber of Commerce for travel and tourism and 2/3 goes to the general fund to be used for any public purpose.

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. In several instances, the General Assembly has authorized both a county and a city within that county to impose an occupancy tax. The rate of tax, the use of the tax proceeds, the administration of the tax, and the body with the authority to determine how the tax proceeds will be spent vary considerably. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – G.S. 153A-155 and G.S. 160A-215. These provisions provide uniformity in the areas of levy, administration, collection, repeal, and penalties.

The North Carolina Travel and Tourism Coalition has a policy statement for legislation authorizing local occupancy taxes. Many of the principles contained in its statement are similar to the ones established by a House Finance subcommittee on Occupancy Taxes in 1993.

BILL ANALYSIS: House Bill 125 authorizes the town of West Jefferson to levy a room occupancy tax of up to 3%. The proceeds must be remitted to a town Tourism Development Authority (TDA), which must use two-thirds of the proceeds to promote travel and tourism and one-third for tourism-related expenditures. These administrative and use provisions conform to the uniform guidelines referenced above and detailed in the chart below:

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least ¾ of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 125 (First Edition)

SHORT TITLE: West Jefferson Occupancy Tax.

SPONSOR(S): Representative Wilson

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund	*No General Fund Impact*				
Town of West Jefferson	$17,500	$18,200	$18,928	$19,685	$20,473

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Town of West Jefferson

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:
This bill allows the Town of West Jefferson to levy a 3% occupancy tax. The bill requires the proceeds to go to the West Jefferson Tourism Development Authority. At least two-thirds of the funds are to be used to promote travel and tourism in West Jefferson and the remainder is to be used for travel-related expenditures.

ASSUMPTIONS AND METHODOLOGY:
There is currently one hotel in the city limits of West Jefferson. Based on hotel receipts, the town estimates that the occupancy tax will generate between $15,000 and $20,000 annually. For the purposes of this analysis, an estimate of $17,500 is used for the first year. An annual rate of increase of 4% is used to project revenues for future years.

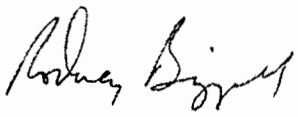
Year	Amount	Each 1%
2005-06	17,500	5,833
2006-07	18,200	6,066
2007-08	18,928	6,309
2008-09	19,685	6,561
2009-10	20,473	6,824

SOURCES OF DATA: Town of West Jefferson, NC Department of Revenue

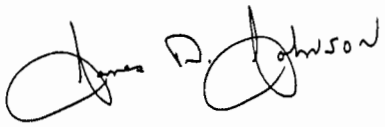
TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell



APPROVED BY: James D. Johnson, Director
Fiscal Research Division



DATE: March 30, 2005

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 125 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE TOWN OF WEST JEFFERSON TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 370

Short Title:	Landis Satellite Annexations.	(Local)
Sponsors:	Representatives Steen; and Coates.	
Referred to:	Local Government II.	

February 24, 2005

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE CAP ON SATELLITE ANNEXATIONS FOR THE TOWN OF LANDIS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-58.1(b)(5) reads as rewritten:

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

...

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

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Gastonia, Hickory, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Angier, Bladenboro, Calabash, Catawba, Creswell, Dallas, Fuquay-Varina, Garner, Godwin, Holly Ridge, Holly Springs, Kenly, Knightdale, Landis, Leland, Louisburg, Maiden, Mayodan, Midland, Mocksville, Morrisville, Pembroke, Pine Level, Ranlo, Rolesville, Rutherfordton, Swansboro, Troy, Wallace, Warsaw, Waynesville, Wendell, and Zebulon."

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

HOUSE BILL 370:
Landis Satellite Annexations

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. Steen
Date:	April 5, 2005	**Summary by:**	Martha Walston
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 370 is a local bill that would exempt the town of Landis from the requirement for satellite annexation that the area to be annexed, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing city. House Bill 370 was given a favorable report in House Local Government II.***

CURRENT LAW: G.S. 160A-58.1 governs the voluntary annexation by a municipality of noncontiguous property. All property owners in the satellite area[1] may petition for voluntary annexation of the noncontiguous property if the property meets the following five standards in G.S. 160A-58.1(b):

1. The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.
2. No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city.
3. The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
4. If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.
5. **The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing city.**

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

BILL ANALYSIS: House Bill 370 would permanently exempt the town of Landis from the 5th requirement, which requires that the proposed area for satellite annexation, when added to the area within all other satellite corporate limits, not exceed 10% of the area within the primary corporate limits of the annexing city.

The purpose of the 5th requirement is designed to further the legislative goal of not allowing annexations to undermine the notion of a city as a single, contiguous, and compact entity. In practice, however, the standard has proved to be a problem for many smaller cities, because one large development by itself may easily exceed the 10% limit. Because of this, the General Assembly has excepted a significant number of cities and towns (at least 51) from this 10% rule by local act.

BACKGROUND: On February 7, 2005, the town of Landis Board of Alderman unanimously voted to request legislation to remove the 10% cap on voluntary satellite annexations. The Town is currently at the 10% cap. Recently a land development agency requested that certain noncontiguous property be brought into the corporate limits of the town. The Landis Board of Alderman believes that this property and its potential for development would greatly enhance the economic future of Landis.

[1] G.S. 160A-58.4 provides that satellite corporate limits cannot be considered a part of a municipality's corporate limits for purposes of its ETJ. Therefore, satellite annexations have no effect upon a municipality's ETJ.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 370 A BILL TO BE ENTITLED AN ACT TO REMOVE THE CAP ON SATELLITE ANNEXATIONS FOR THE TOWN OF LANDIS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H 1

HOUSE BILL 478

Short Title:	Tobaccoville Deannexation.	(Local)
Sponsors:	Representative Folwell.	
Referred to:	Finance.	

March 7, 2005

A BILL TO BE ENTITLED

AN ACT REMOVING CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE VILLAGE OF TOBACCOVILLE.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate limits of the Village of Tobaccoville:

BEGINNING at a stone, said stone being known as Annie H. Kapp's southeast corner as described and recorded in Deed Book 1168, Page 901 in the Forsyth County Register of Deeds, North Carolina and also being known as the northeast corner of Lot #9 of Lelia M. Spears Estate as recorded in Plat Book 32, Page 134; thence running from said point of beginning along the current Tobaccoville City Limits and near an existing fence the following three bearing and distances: 1) South 02°07'39" West 325.37 feet to a existing iron pipe; 2) South 01°52'27" West 874.34 feet to a existing iron pipe; 3 South 18°28'56" West 272.94 feet to a existing rebar, said rebar being located on the northern right-of-way of Shore Road; thence running with the northern right-of-way of Shore Road North 65°37'47" West 149.14 feet to a point; thence running with eastern property line of Lloyd Nelson & wife property as described and recorded in Deed Book 1901, Page 1544 North 18°52'00" East 211.88 feet to a point; thence running with the northern line of the above said Nelson property North 86°39'10" West 154.66 feet to a point, said point also being known as the northeastern corner of George B. Drauszewski & wife property as described and recorded in Deed Book 2002, Page 2448; thence running with the eastern line of the George B. Drauszewski & wife property as described and recorded in Deed Book 2002, Page 2448, Deed Book 1997, Page 1932 and Deed Book 2002, Page 2443 the following two bearing and distances: 1) North 18°50'00" East 136.16 feet to a point; 2) North 01°52'17" East 550.86 feet to a point; thence running, with the northeastern line of the above said Drauszewski property South 88°12'24" West 30.74 feet to a point near the Beaver Dam Creek; thence running with the eastern property line of the above said Drauszewski property the following thirteen (13) bearing and distances along the above

said creek: 1) North 11°35'43" East 26.80 feet to a point; 2) North 32°55'55" West 67.02 feet to a point; 3) North 10°02'39" East 30.98 feet to a point; 4) North 30°25'28" East 31.85 feet to a point; 5) North 05°05'05" West 16.54 feet to a point; 6) North 67° 18'23" West 51.25 feet to a point; 7) North 19°16'05" West 24.44 feet to a point; 8) North 30°55'54" East 34.28 feet to a point; 9) North 60°16'49" East 35.60 feet to a point; 10) North 29°41'31" East 100.30 feet to a point; 11) North 00°00'00" East 49.63 feet to a point; 12) North 27°52'18" West 66.13 feet to a point; 13) North 04°08'13" West 57.18 feet to a point; thence running, with the southern property line of the above said Kapp North 88°21'40" East 321.00 feet to a the point and place of beginning, containing 8.767 acres, more or less, and being the same property known as Forsyth County Tax Lots 009 of Block 4968C and 045 of Block 4968 as is shown on the Forsyth County Tax Map #606898 as is presently constituted.

SECTION 2. This act does not affect the duty to pay taxes for any prior year and does not eliminate any liens for taxes for prior years.

SECTION 3. This act becomes effective June 30, 2005.

HOUSE BILL 478:
Tobaccoville Deannexation

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. Folwell
Date:	April 5, 2005	**Summary by:**	Martha Walston
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 478 de-annexes two lots, totaling approximately 8.767 acres, from the corporate limits of the village of Tobaccoville. The act would become effective June 30, 2005.***

CURRENT LAW: A city or town may annex property by petition of owners of property to be annexed or if the property meets certain statutory requirements. If the property does not meet the statutory requirements for annexation, the municipality does not have the authority to annex. However, the General Assembly can extend the corporate limits of a municipality to encompass areas that the municipality would not statutorily have the authority to annex. The General Assembly can also de-annex property of a municipality.

BILL ANALYSIS: House Bill 478 de-annexes two lots, totaling approximately 8.767 acres, from the corporate limits of the village of Tobaccoville. The act would become effective June 30, 2005, and would not affect the duty to pay taxes for any prior year and would not eliminate any liens for taxes for prior years.

BACKGROUND: The two lots described in House Bill 478 were annexed to the village of Tobaccoville pursuant to a voluntary annexation. At the time of annexation, the lots were owned as separate parcels. Later, the lots were combined with other land outside Tobaccoville's limits to create a proposed new subdivision. The two lots constitute less than 5% of the area of the subdivision. The remainder of the subdivision is located within the jurisdiction of Forsyth County and in an area that can only be annexed by the City of Winston-Salem under an annexation agreement between Tobaccoville and Winston-Salem.

On February 23, 2005, the Tobaccoville Village Council adopted a resolution approving a bill to de-annex the two lots. In the resolution, the Village administrator and Council expressed their concern that, given the location of the two lots and the limited area they cover, the potential split of jurisdiction for the provision of services and other governmental matters would be confusing and constitute an unnecessary administrative burden for the Village, the County, the City and the Subdivision. After consulting with Winston-Salem and Forsyth County, the Village Council has determined that it is in the best interests of Tobaccoville to avoid such confusion and to permit the provision of services and the administration of other governmental matters on a uniform basis within the Subdivision.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 478 A BILL TO BE ENTITLED AN ACT REMOVING CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE VILLAGE OF TOBACCOVILLE.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 540
PROPOSED COMMITTEE SUBSTITUTE H540-PCS60293-MB-3

Short Title: Halifax and Roanoke Rapids Occupancy Taxes. (Local)

Sponsors:

Referred to:

March 9, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE HALIFAX COUNTY TOURISM AND DEVELOPMENT TAX AND TO IMPLEMENT A TOURISM AND DEVELOPMENT TAX FOR THE CITY OF ROANOKE RAPIDS.

The General Assembly of North Carolina enacts:

PART I. HALIFAX COUNTY OCCUPANCY TAX

SECTION 1.1. Chapter 377 of the 1987 Session Laws reads as rewritten:

"Section 1. Occupancy tax. (a) Authorization and scope. – The Halifax County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S ~~105-164.4(3).~~105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of additional tax. – In addition to the tax authorized by subsection (a) of this section, the Halifax County Board of Commissioners may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. Halifax County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. – A tax levied under this section must be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~(b) Collection. Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this act may deduct from the amount remitted to the county a discount of three percent (3%) of the amount collected.~~

~~(c) Administration. The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due for each additional month or fraction thereof until the tax is paid.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this act or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both. The Board of Commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.~~

~~(e)~~(c) Distribution and use of tax revenue. – Halifax County ~~shall~~must, on a quarterly basis, remit the net proceeds of the occupancy tax to the Halifax County Tourism Development Authority. The Authority ~~may spend funds remitted to it under this subsection only to promote travel and tourism in Halifax County, to sponsor tourist-oriented events and activities in Halifax County, and to finance tourist-related capital projects in Halifax County. As used in this subsection, "net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer.~~must use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Halifax County and must use the remainder for tourism-related expenditures.

The following definitions apply to this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of the gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the county by attracting tourists or business travelers to the county. The term includes tourism-related capital expenditures.

~~(f) Effective date of levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this act may be repealed by a resolution adopted by the Halifax County Board of Commissioners. Repeal of a tax levied under this act does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

Sec. 2. Tourism Development Authority. (a) Appointment and membership. – When the Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it ~~shall~~must also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution ~~shall~~must provide for the membership of the Authority including the members' qualifications and terms of office, and for the filling of vacancies on the Authority. At least one-fifth of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the county. The ~~Board of Commissioners~~Authority ~~shall~~must designate one member ~~of the Authority~~ as ~~chair and shall determine the compensation, if any, to be paid to members of the Authority.~~chair and one member as treasurer.

The Authority ~~shall~~must meet at the call of the chair and ~~shall~~must adopt rules of procedure to govern its meetings. ~~The Finance Officer for Halifax County shall be the ex officio finance officer of the Authority.~~

(b) Duties. – The Authority must expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority ~~shall~~must

promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. – The Authority ~~shall~~must report ~~quarterly and~~ at the close of the fiscal year to the Board of County Commissioners on its receipts and expenditures ~~for the preceding quarter and~~ for the year in such detail as the Board may require.

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

SECTION 1.2. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Durham, Granville, Halifax, Madison, Montgomery, Nash, New Hanover, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, and to the Township of Averasboro in Harnett County."

PART II. CITY OF ROANOKE RAPIDS OCCUPANCY TAX

SECTION 2.1. Occupancy tax. – (a) Authorization and Scope. – The Roanoke Rapids City Council may levy a room occupancy tax of up to one percent (1%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 2.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 2.2.(a) Distribution and Use of Tax Revenue. – The City of Roanoke Rapids shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Halifax County Tourism Development Authority. The Halifax County Tourism Development Authority must hold the funds in a separate account and administer them separately from proceeds of the Halifax County occupancy tax. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the City of Roanoke Rapids and shall use the remainder for tourism-related expenditures in the City of Roanoke Rapids.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, promote and support the Roanoke Rapids entertainment district, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a city or to attract tourists or business travelers to the city. The term includes tourism-related capital expenditures.

SECTION 2.2.(b) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Roanoke Rapids City Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the city council may require.

SECTION 2.3. G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Roanoke Rapids, Shelby, Statesville, Washington, and Wilmington, to the Towns of Beech Mountain, Blowing Rock, Carolina Beach, Carrboro, Franklin, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

PART III. EFFECTIVE DATE

SECTION 3. This act is effective when it becomes law. Halifax County must ensure that the membership of the Tourism Development Authority is in compliance with the requirements of this act on or before January 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 540

Short Title:	Halifax Occupancy Tax.	(Local)
Sponsors:	Representative L. Allen.	
Referred to:	Finance.	

March 9, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE HALIFAX COUNTY OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 377 of the 1987 Session Laws reads as rewritten:

"Section 1. Occupancy tax. (a) Authorization and scope. – The Halifax County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S ~~105-164.4(3).~~105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(b) Authorization of additional tax. – In addition to the tax authorized by subsection (a) of this section, the Halifax County Board of Commissioners may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. Halifax County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(c) Administration. – A tax levied under this section must be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~(b) Collection. Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the~~

~~purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this act may deduct from the amount remitted to the county a discount of three percent (3%) of the amount collected.~~

~~(c) Administration. The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due for each additional month or fraction thereof until the tax is paid.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this act or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both. The Board of Commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.~~

~~(e)~~(d) Distribution and use of tax revenue. – Halifax County ~~shall~~must, on a quarterly basis, remit the net proceeds of the occupancy tax to the Halifax Tourism Development Authority. The Authority ~~may spend funds remitted to it under this subsection only to promote travel and tourism in Halifax County, to sponsor tourist-oriented events and activities in Halifax County, and to finance tourist-related capital projects in Halifax County. As used in this subsection, "net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer.~~must use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Halifax County and must use the remainder for tourism-related expenditures.

The following definitions apply to this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of the gross proceeds collected each year

and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the county by attracting tourists or business travelers to the county. The term includes tourism-related capital expenditures.

~~(f) Effective date of levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this act may be repealed by a resolution adopted by the Halifax County Board of Commissioners. Repeal of a tax levied under this act does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

Sec. 2. Tourism Development Authority. (a) Appointment and membership. – When the Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it ~~shall~~must also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution ~~shall~~must provide for the membership of the Authority including the members' qualifications and terms of office, and for the filling of vacancies on the Authority. At least one-fifth of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the county. The ~~Board of Commissioners~~Authority ~~shall~~must designate one member ~~of the Authority~~ as ~~chair and shall determine the compensation, if any, to be paid to members of the Authority.~~chair and one member as treasurer.

The Authority ~~shall~~must meet at the call of the chair and ~~shall~~must adopt rules of procedure to govern its meetings. ~~The Finance Officer for Halifax County shall be the ex officio finance officer of the Authority.~~

(b) Duties. – The Authority must expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority ~~shall~~must promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. – The Authority ~~shall~~must report ~~quarterly and~~ at the close of the fiscal year to the Board of County Commissioners on its receipts and expenditures ~~for the preceding quarter and~~ for the year in such detail as the Board may require.

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

SECTION 2. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Durham, Granville, Halifax, Madison, Montgomery, Nash, New Hanover, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, and to the Township of Averasboro in Harnett County."

SECTION 3. This act is effective when it becomes law. Halifax County must ensure that the membership of the Tourism Development Authority is in compliance with the requirements of this act on or before January 1, 2006.

HOUSE BILL 540:
Halifax and Roanoke Rapids Occupancy Taxes

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. L. Allen
Date:	April 5, 2005	**Summary by:**	Cindy Avrette
Version:	PCS for 1st Edition		Committee Counsel
	H540-PCS60293-MB-3		

SUMMARY: ***The proposed committee substitute for House Bill 540 authorizes an additional 2% occupancy tax for Halifax County, generally its provisions to the guidelines adhered to by the House Finance Committee, and authorizes a 1% occupancy tax for the City of Roanoke Rapids. The House Finance Subcommittee on Occupancy Taxes reviewed this bill at its meeting on March 31 and gave a favorable recommendation to this PCS.***

CURRENT LAW: Halifax County has had the authority to levy a 3% occupancy tax since 1987. The proceeds of the tax are remitted to the Halifax Tourism Development Authority and used by the Authority to promote travel and tourism in Halifax County.

BILL ANALYSIS: The PCS for House Bill 540 does the following:

- It authorizes an additional 2% occupancy tax for Halifax County.
- It modernizes the language of the County's current authority and conforms it to the guidelines adhered to by the House Finance Committee. It clarifies how the tax proceeds may be used and defines the terms 'net proceeds', 'promote travel and tourism', and 'tourism-related expenditures'. It also specifies the membership of the TDA to reflect its current composition: 1/5 of the members[1] must be affiliated with businesses that collect the tax and at least ¾ of the members must be individuals who are currently active in the promotion of travel and tourism in the county.
- It authorizes the City of Roanoke Rapids to levy a 1% occupancy tax. Two-thirds of the proceeds must be used to promote travel and tourism in the City and the remainder must be used for tourism-related expenditures. Rather than create a TDA for the City of Roanoke Rapids, the bill directs the net proceeds to be remitted to the Halifax County TDA. The Halifax County TDA must hold the funds from the 1% tax in a separate account and administer them separately from the proceeds of the county tax. The funds must be used to promote travel and tourism in the city and for tourism-related expenditures.

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. In several instances, the General Assembly has authorized both a county and a city within that county to impose an occupancy tax. The rate of tax, the use of the tax proceeds, the administration of the tax, and the body with the authority to determine how the tax proceeds will be spent vary considerably. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for

[1] The guidelines specify that 1/3 of the members must be affiliated with businesses that collect the tax. However, the 1/5 requirement in the bill reflects the local realities of the county's TDA.

occupancy tax legislation – G.S. 153A-155 and G.S. 160A-215. These provisions provide uniformity in the areas of levy, administration, collection, repeal, and penalties.

The North Carolina Travel and Tourism Coalition has a policy statement for legislation authorizing local occupancy taxes. Many of the principles contained in its statement are similar to the ones established by a House Finance subcommittee on Occupancy Taxes in 1993. The chart below details those provisions:

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least ¾ of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: March 30, 2005

TO: House Finance Subcommittee on Occupancy Tax

FROM: Rodney Bizzell
Fiscal Research Division

RE: House Bill 540 (Unknown Edition)

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund	*No General Fund Impact*				
Halifax County	$198,072	$204,014	$210,135	$216,439	$222,932
City of Roanoke Rapids	$38,753	$39,915	$41,113	$42,346	$43,617

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Halifax County and the City of Roanoke Rapids

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:
This bill allows Halifax County to increase its occupancy tax rate from 3% to 5% and allows the City of Roanoke Rapids to levy a 1% occupancy tax. The bill also makes changes to the distribution of occupancy taxes to require that the Halifax Tourism Development Authority use at least two-thirds of the proceeds to promote travel and tourism in the county and to use the remainder for tourism-related expenditures. The bill requires that at least one-fifth of members of

the Authority be affiliated with businesses that collect Halifax County occupancy taxes and at least three-fourths of members be active in travel and tourism promotion activities. The bill also makes technical and conforming changes and requires that the Authority membership be in compliance with the act by January 1, 2006.

ASSUMPTIONS AND METHODOLOGY:
In 2003-2004, the 3% room tax in Halifax County raised $279,343.

This bill increases the rate for Halifax County from 3% to 5%. Historically, Halifax County's collections have been as follows:

Year	Amount	Each 1%
2000-01	27,478	9,159
2001-02	262,558	87,519
2002-03	258,338	86,113
2003-04	279,343	93,114

Extending this trend suggests the following increase in occupancy tax revenue to Halifax County as a result of the bill:

Year	Amount	Each 1%
2005-06	198,072	99,036
2006-07	119,747	102,007
2007-08	123,339	105,067
2008-09	127,040	108,219
2009-10	130,851	111,466

To estimate the revenue generated by the Roanoke Rapids portion of the bill, the total collections for Halifax County was prorated by the percentage of lodging accommodations in Halifax County that are located in Roanoke Rapids. Finally, the revenue estimate for Roanoke Rapids is adjusted to reflect a 1% rate.

SOURCES OF DATA: North Carolina Department of Revenue, Halifax County website

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 540 A BILL TO BE ENTITLED AN ACT TO AMEND THE HALIFAX COUNTY OCCUPANCY AND TOURISM DEVELOPMENT TAX.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

HOUSE BILL 544

Short Title:	Madison County Occupancy Tax.	(Local)
Sponsors:	Representative Rapp.	
Referred to:	Finance.	

March 9, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE MADISON COUNTY OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of Chapter 102 of the 1997 Session Laws reads as rewritten:

"Section 1. ~~Occupancy tax. (a) Referendum. The Madison County Board of Commissioners may direct the county board of elections to conduct an advisory referendum on the question of whether a room occupancy tax of up to three percent (3%) will be levied in accordance with this act. The election shall be held on a date jointly agreed upon by the two boards and shall be held in accordance with the procedures of G.S. 163-287.~~

~~The form of the question to be presented on a ballot for a special election concerning the levy of the tax authorized by this act shall be:~~

~~[ ] FOR [ ] AGAINST~~

~~Tax on rental of lodging at hotels, motels, and similar businesses, at a maximum rate of three percent (3%), to be used to promote travel and tourism and for tourism-related expenditures.~~

(b) Authorization and scope. ~~If a majority of those voting in a referendum held pursuant to this act vote for the levy of the tax, the Madison County Board of Commissioners may by resolution levy a room occupancy tax as provided in this act. In addition, if the county has not held a referendum, or if five years have passed since the tax was defeated at a referendum, the~~The Madison County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax ~~as provided in this act. The tax authorized by this act may be levied at a rate~~ of up to three percent (3%) ~~and shall apply to~~of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in

addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations or to a business that offers to rent fewer than five units.

(b1) In addition to the tax authorized by subsection (b) of this section, the Madison County Board of Commissioners may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (b) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. Madison County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (b) of this section.

(c) Administration. ~~Except as otherwise provided in this section, a~~A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

(d) Distribution and use of tax revenue. Madison County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Madison County Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Madison County and shall use the remainder for tourism-related expenditures. ~~The administrative expenses of the Authority may not exceed fifteen percent (15%) of the funds remitted to it under this subsection.~~

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed ~~five percent 5% of the gross proceeds.~~ three percent (3%) of the first five hundred thousand dollars ($500,000) of the gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that are designed to increase the use of lodging facilities in a county or to attract tourists or business travelers to the county. The term includes expenditures to construct, maintain, operate, or market a convention or meeting facility, a visitors' center, or a coliseum and other expenditures that, in the judgment of the Authority, will facilitate and promote tourism."

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

HOUSE BILL 544:
Madison County Occupancy Tax

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. Rapp
Date:	April 5, 2005	**Summary by:**	Cindy Avrette
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 544 authorizes an additional 2% occupancy tax for Madison County. It also deletes obsolete language, modernizes and conforms the administrative provisions, and conforms the administrative costs that may be deducted from the gross proceeds of the tax to the guidelines supported by the North Carolina Travel and Tourism Coalition and adhered to by the House Finance Committee. Although the current authority provides for a Tourism Development Authority, its membership does not necessarily include representatives from the hotel/motel industry. The House Finance Subcommittee on Occupancy Taxes reviewed this bill at its meeting on March 31 and gave it a favorable recommendation.***

CURRENT LAW: Madison County has had the authority to levy a 3% occupancy tax since 1997. The net proceeds of the tax are remitted quarterly to the Madison County Tourism Development Authority. The Authority must use at least 2/3 of the funds remitted to it to promote travel and tourism in Madison County and the remainder for tourism-related expenditures. The TDA is composed as follows:

(1) The mayors of the Towns of Hot Springs, Mars Hill, and Marshall, to serve ex officio. Each mayor may designate another resident of the mayor's town to serve in his or her place.
(2) Three residents of Madison County, one each recommended by the mayors of the Towns of Hot Springs, Mars Hill, and Marshall, respectively.
(3) Two residents of Madison County selected by the Madison County Board of Commissioners.
(4) The Chair of the Madison County Chamber of Commerce or an individual recommended by the Chair of the Madison County Chamber of Commerce.
(5) Two residents of Madison County recommended by the Madison County Chamber of Commerce.

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. In several instances, the General Assembly has authorized both a county and a city within that county to impose an occupancy tax. The rate of tax, the use of the tax proceeds, the administration of the tax, and the body with the authority to determine how the tax proceeds will be spent vary considerably. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – G.S. 153A-155 and G.S. 160A-215. These provisions provide uniformity in the areas of levy, administration, collection, repeal, and penalties.

The North Carolina Travel and Tourism Coalition has a policy statement for legislation authorizing local occupancy taxes. Many of the principles contained in its statement are similar to the ones established by a House Finance subcommittee on Occupancy Taxes in 1993.

BILL ANALYSIS: House Bill 544 authorizes Madison County to levy an additional 2% occupancy tax. It also deletes obsolete language, modernizes and conforms administrative provisions, and conforms the amount of the gross proceeds that may be used for administrative costs to the uniform guidelines referenced above and detailed in the chart below. Although the current law provides for a Tourism Development Authority, its membership differs from the uniform guidelines. The legislation does not amend the membership requirements to conform to the guidelines.

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least ¾ of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: March 30, 2005

TO: Representative Rapp

FROM: Rodney Bizzell
Fiscal Research Division

RE: House Bill 544 (Unknown Edition)

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund		*No General Fund Impact*			
Madison Co.	$32,871	$34,186	$35,554	$36,976	$38,455

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Madison County

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:
This bill increases the Madison County Occupancy tax rate from 3% to 5%. The existing local act authorizes Madison County to levy a 3% occupancy tax either after approval by the voters or without asking for voter approval. This act deletes the county's authority to submit the question to the voters. The proceeds of the occupancy tax are distributed to the Madison County Tourism Development Authority. The Authority must use at least 2/3 of the funds remitted to it to promote travel and tourism in Madison County and the remainder for tourism-related expenditures.

ASSUMPTIONS AND METHODOLOGY:
In 2003-2004, the 3% room tax in Madison County raised $45,588. This bill increases the rate to 5%.

Historically, Madison County's collections have been as follows:

Year	Amount	Each 1%
1999-00	39,394	13,131
2000-01	42,735	14,245
2001-02	43,042	14,347
2002-03	39,350	13,117
2003-04	45,588	15,196

Extending this trend suggests the following increase in total occupancy tax revenue as a result of a 2% increase in the rate:

Year	Amount	Each 1%
2005-06	32,871	16,436
2006-07	34,186	17,093
2007-08	35,554	17,777
2008-09	36,976	18,488
2009-10	38,455	19,228

SOURCES OF DATA: North Carolina Department of Revenue, North Carolina Department of State Treasurer

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 544 A BILL TO BE ENTITLED AN ACT TO AMEND THE MADISON COUNTY OCCUPANCY AND TOURISM DEVELOPMENT TAX.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H **D**

HOUSE BILL 843
PROPOSED COMMITTEE SUBSTITUTE H843-PCS10201-RBx-2

Short Title: Duplin Occupancy Tax. (Local)

Sponsors:

Referred to:

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE DUPLIN COUNTY TO LEVY AN ADDITIONAL ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 377 of the 1987 Session Laws reads as rewritten:

"**Section 1.** Occupancy tax. (a) Authorization and scope. The Duplin County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3).~~105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of additional tax. In addition to the tax authorized by subsection (a) of this section, the Duplin County Board of Commissioners may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. Duplin County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(a2) Administration. A tax levied under this section must be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The~~

~~tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of thirty 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both. The board of commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.~~

(e) Distribution and ~~Use~~ use of tax revenue. Except as otherwise provided in this act, Duplin County ~~may~~ shall use the net proceeds of a tax levied under this section in accordance with this subsection. ~~only~~ It shall use at least two-thirds of the funds to promote travel and tourism in Duplin ~~County.~~County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of the gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract

tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Board of Commissioners, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the county by attracting tourists or business travelers to the county. The term includes tourism-related capital expenditures.

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Duplin County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

"**Section 1.1.** Duplin County Tourism Development Authority. (a) Appointment and Membership. When the annual net proceeds of the occupancy tax exceed two hundred thousand dollars ($200,000), the Duplin County Board of Commissioners shall adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filing of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to the members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Duplin County shall be the ex officio finance officer of the Authority.

"**Section 1.2.** Duties. If the board of commissioners establishes a Tourism Development Authority as provided in Section 1.1 of this act, then Duplin County shall, on a quarterly basis, remit the net proceeds of the tax to the Tourism Development Authority. The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act.

"**Section 1.3.** Reports. If the board of commissioners establishes a Tourism Development Authority as provided in Section 1.1 of this act, then the Authority shall report quarterly and at the close of the fiscal year to the Duplin County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require."

SECTION 2. G.S. 153A-155(g) reads as rewritten:

"**§ 153A-155. Uniform provisions for room occupancy taxes.**

(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Granville, Madison, Montgomery, Nash, New Hanover, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, and to the Township of Averasboro in Harnett County."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 843

Short Title:	Duplin Occupancy Tax.	(Local)
Sponsors:	Representative Tucker.	
Referred to:	Finance.	

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE DUPLIN COUNTY TO LEVY AN ADDITIONAL ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 377 of the 1987 Session Laws reads as rewritten:

"Section 1. Occupancy tax. (a) Authorization and scope. The Duplin County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3).~~105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of additional tax. In addition to the tax authorized by subsection (a) of this section, the Duplin County Board of Commissioners may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. Duplin County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(a2) Administration. A tax levied under this section must be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by~~

~~the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of thirty 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both. The board of commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.~~

(e) Use of tax revenue. Duplin County may use the proceeds of a tax levied under this section only to promote travel and tourism in Duplin County.

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Duplin County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~"

SECTION 2. G.S. 153A-155(g) reads as rewritten:

"**§ 153A-155. Uniform provisions for room occupancy taxes.**

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Duplin,

Durham, Granville, Madison, Montgomery, Nash, New Hanover, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, and to the Township of Averasboro in Harnett County."

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

HOUSE BILL 843:
Duplin Occupancy Tax

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. Tucker
Date:	April 5, 2005	**Summary by:**	Cindy Avrette
Version:	PCS for 1st Edition		Committee Counsel
	H843-PCS10201-RBx-2		

SUMMARY: ***The PCS for House Bill 843 would allow Duplin County to increase its occupancy tax rate from 3% to 6% and it would conform the administrative provisions and defined terms to the guidelines supported by the North Carolina Travel and Tourism Coalition and adhered to by the House Finance Committee. Duplin County's current authorization does not provide for a travel and tourism development authority to oversee the use of the tax proceeds; however, the PCS would provide that the county must create a TDA to oversee the use of the tax proceeds once the annual net proceeds of the tax exceed $200,000. The House Finance Subcommittee on Occupancy Taxes reviewed this bill at its meeting on March 31 and gave a favorable recommendation to this PCS.***

CURRENT LAW: Duplin County has had the authority to levy a 3% occupancy tax since 1987. The County may use the proceeds of the tax only to promote travel and tourism. The current authority does not establish a Tourism Development Authority and it does not define the terms 'travel and tourism', 'tourism-related expenditures', or 'net proceeds'.

BILL ANALYSIS: The PCS for House Bill 843 would do several things:

- It would authorize Duplin County to increase its occupancy tax rate from 3% to 6%.
- Under current law, the county can only use the proceeds from the occupancy tax proceeds to promote travel and tourism. Although the PCS does not substantively change this law, it would amend it to follow the guidelines by defining the term 'net proceeds' and providing that at least 2/3 of the net proceeds must be used to promote travel and tourism and the remainder for tourism-related expenditures.
- Under current law, the county determines the use of the tax proceeds. The original authorization did not create a tourism development authority to oversee the use of the tax proceeds. The PCS would provide that Duplin County must establish a TDA to oversee the use of the occupancy tax proceeds once the annual net proceeds exceed $200,000. The House Finance Committee adopted, and the General Assembly enacted, a similar provision for Alleghany County in 2004.
- The PCS also makes technical and conforming changes to the county's current authorization.

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. In several instances, the General Assembly has authorized both a county and a city within that county to impose an occupancy tax. The rate of tax, the use of the tax proceeds, the administration of the tax, and the body with the authority to determine how the tax proceeds will be spent vary considerably. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – G.S. 153A-155 and G.S. 160A-215. These provisions provide uniformity in the areas of levy, administration, collection, repeal, and penalties.

The North Carolina Travel and Tourism Coalition has a policy statement for legislation authorizing local occupancy taxes. Many of the principles contained in its statement are similar to the ones established by a House Finance subcommittee on Occupancy Taxes in 1993 and detailed in the chart below:

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least ¾ of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: March 30, 2005

TO: Representative Tucker

FROM: Rodney Bizzell
Fiscal Research Division

RE: House Bill 843 (Unknown Edition)

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund		***No General Fund Impact***			
Duplin Co.	**$95,931**	**$99,768**	**$103,759**	**$107,909**	**$112,226**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Duplin County

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:
This bill authorizes Duplin County to increase its occupancy tax rate from 3% to 6%. The tax proceeds may be used to promote travel and tourism in Duplin County.

ASSUMPTIONS AND METHODOLOGY:
In 2003-2004, the 3% room tax in Duplin County raised $88,974.

This bill doubles the rate to 6%. Historically, Duplin County's collections have been as follows:

Year	Amount	Each 1%
1999-00	77,617	25,872
2000-01	84,578	28,193
2001-02	79,392	26,464
2002-03	81,186	27,062
2003-04	88,974	29,658

Extending this trend suggests the following increase in total occupancy tax revenue as a result of the bill:

Year	Amount	Each 1%
2005-06	95,931	31,977
2006-07	99,768	33,256
2007-08	103,759	34,586
2008-09	107,909	35,970
2009-10	112,226	37,409

SOURCES OF DATA: NC Department of Revenue, NC Dept of State Treasurer

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 843 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE DUPLIN COUNTY TO LEVY AN ADDITIONAL ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

North Carolina General Assembly

House Committee on Finance

Minutes

~

April 7, 2005

The House Committee on Finance met on Thursday, April 7, 2005 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, Luebke, and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives Blackwood, Bordsen, Capps, Carney, Faison, Folwell, Hackney, McGee, Rayfield, Vinson, Walend, and Wiley. Also present were Sergeant-at-Arms Bill Freeman, Fred Hines, Dusty Rhodes, and Walter Spell. Staff persons present included Cindy Avrette, Rodney Bizzell, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2.**

Chairman Wainwright called the meeting to order at 8:34 am and recognized the two (2) pages present: Drake Day of Person County, sponsored by Representative Wilkins, and Amalia Fetting of Johnston County, sponsored by Representative Dollar.

The first bill under the Committee's consideration was **HB 317 – WACO TOWN CENTER** (see **attachment 3**). Chairman Wainwright recognized Representative Clary who explained that this bill amends the charter of the Town of Waco to change the description of the town center to more accurately reflect its current position. She noted that the charter needs to be corrected because it currently includes a description of a bridge that has been removed and rebuilt elsewhere. Following the explanation, Chairman Wainwright then recognized Representative Howard who moved that HB 317 be given a favorable report by the Committee. Seeing no further discussion, Chairman Wainwright called the motion to a vote and it carried by consent.

Chairman Wainwright then recognized Representative Stam to explain **HB 393 – HOLLY SPRINGS EMINENT DOMAIN** (see **attachment 4**). Representative Stam explained that this bill authorizes the Town of Holly Springs to use condemnation procedures granted under authority of Chapter 136 of the General Statutes to acquire property for water, sewer, and public streets. Chairman Wainwright then recognized Representative Weiss who moved that the HB 393 be given a favorable report. Seeing no further discussion, Chairman Wainwright called the motion to a vote, and it carried without objection.

The next bill considered by the Committee was **HB 350 – HOLDEN BEACH CANAL DREDGING FEE** (see **attachment 5**). Chairman Wainwright first recognized Representative Hill who explained the bill on behalf of the bill sponsor, Representative Stiller. Representative Hill informed the Committee members that the bill allows the Town of Holden Beach to create a fee-supported canal dredging district for all properties next to a canal. Representative Luebke was then

recognized and moved that House Bill 350 be given a favorable report. Seeing no further discussion, Chairman Wainwright called the motion to a vote, and it carried by consent.

The following bill heard by the Committee was **SB 16 – TABOR CITY SATELLITE ANNEXATION** (see **attachment 6**). Chairman Wainwright again recognized Representative Hill who, on behalf of the bill sponsor Senator Soles, explained that the bill authorizes the Town of Tabor City to make a voluntary satellite annexation of approximately 108 acres. Following the explanation, Representative Womble was recognized and moved that Senate Bill 16 be given a favorable report by the Committee. Seeing no further discussion, Chairman Wainwright called the motion to a vote, and it carried without objection.

The final bill considered by the Committee was **HB 871 – EMERALED ISLE CANAL DREDGING FEE** (see **attachment 7**). Chairman Wainwright first recognized Representative Howard who sent forth a technical amendment (see **attachment 8**) to the bill that corrected a fault in the statutory reference of the bill. Representative Howard then moved for the adoption of her amendment. As there was no discussion, Chairman Wainwright called the motion to a vote and the amendment was adopted. Chairman Wainwright then recognized Representative Preston, the bill sponsor, to explain her bill. She stated that the bill allows the Town of Emerald Isle to create a fee-supported canal dredging district for all properties next to the canal. Following the explanation, Representative Blackwood was recognized and moved that HB 871 be given a favorable report, as amended. Chairman Wainwright then recognized Representative Luebke who asked why the language of the bill does not include the voluntary nature that exists in the bill summary. To answer the question, Chairman Wainwright recognized Representative Hill who responded saying that the bill is voluntary in nature because the bill was initially requested by the people. After a brief discussion, Chairman Wainwright called Representative Blackwood's motion for a favorable report (as amended) to a vote and it carried by consent.

As there was no further business before the Committee, Chairman Wainwright then adjourned the meeting at 8:50 am.

Respectfully submitted,

Representative William Wainwright
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. House Bill 317 (and related materials)
4. House Bill 393 (and related materials)
5. House Bill 350 (and related materials)
6. Senate Bill 16 (and related materials)
7. House Bill 871 (and related materials)
8. Howard Amendment on HB 871 – **Adopted**
9. House Bill 272 (and related materials) (REMOVED FROM CALENDER)

AGENDA

ATTACHMENT 1

House Finance Committee

April 7, 2005
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Wainwright

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard
Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order

Introduction of Pages

Bills:

HB 317 **WACO TOWN CENTER** *Rep. Clary*

HB 350 **HOLDEN BEACH CANAL DREDGING FEE** *Rep. Stiller*

HB 393 **HOLLY SPRINGS EMINENT DOMAIN** *Rep. Stam*

HB 871 **EMERALD ISLE CANAL DREDGING FEE** *Rep. Preston*

SB 16 **TABOR CITY SATELLITE ANNEXATION** *Rep. Hill*

Adjournment

CORRECTED NOTICE:
HB 272 - REMOVED

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Thursday, April 7, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

~~**HB 272 – SANITARY DISTRICT SET-OFF DEBT COLLECTION**~~
~~**Reps. L. Allen & Sherrill**~~

HB 317 – WACO TOWN CENTER – Rep. Clary

HB 350 – HOLDEN BEACH CANAL DREDGING FEE – Rep. Stiller

HB 393 – HOLLY SPRINGS EMINENT DOMAIN – Rep. Stam

HB 871 – EMERALD ISLE CANAL DREDGING FEE – Rep. Preston

SB 16 – TABOR CITY SATELLITE ANNEXATION – Sen. Soles

Respectfully,
Representatives Alexander, Gibson, Howard, Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **3:02 p.m.** on **April 6, 2005.**

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

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HB 317 – WACO TOWN CENTER – Rep. Clary

HB 350 – HOLDEN BEACH CANAL DREDGING FEE – Rep. Stiller

HB 393 – HOLLY SPRINGS EMINENT DOMAIN – Rep. Stam

HB 871 – EMERALD ISLE CANAL DREDGING FEE – Rep. Preston

SB 16 – TABOR CITY SATELLITE ANNEXATION – Sen. Soles

Respectfully,
Representatives Alexander, Gibson, Howard, Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **10:55 a.m.** on **April 6, 2005.**

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

ATTACHMENT 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — April 7, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Warren Plonk	OSBM
Mitch Kelly	OSBM
Rick Zechini	NC Assoc. of Realtors
Mike Waters	NCRPS
Rebecca Key	Rep. Gibson's office
Mark Benson	Capitol Group
Hal Miller	NCAECT

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H 1

HOUSE BILL 317*

Short Title:	Waco Town Center.	(Local)
Sponsors:	Representative Clary.	
Referred to:	Local Government II.	

February 21, 2005

A BILL TO BE ENTITLED

AN ACT AMENDING THE CHARTER OF THE TOWN OF WACO TO CORRECTLY IDENTIFY THE CENTER OF TOWN.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of the Charter of the Town of Waco, being Chapter 147 of the 1907 Private Laws, reads as rewritten:

"Sec. 2. ~~That the incorporate limits of said corporation of Waco shall remain hereafter as formerly defined and located, as follows: All that territory covered by and included in the circle having as its center the railroad bridge in the town of Waco, and made by a radius extending one half of a mile in length from said center; that is, all that territory within a radius of one half mile from the railroad bridge, the present center of the Town of Waco.~~The center of the Town of Waco is described as follows: Mag nail set in the centerline of the intersection of Cherryville Road (NC Hwy. 150) and Main Street (S.R. 1001). Grid coordinates: Y=595,434.5286; X=1,276,039.0584. Latitude=35°21'42.234723"; Longitude=81°25'42.607645"."

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

HOUSE BILL 317:
Waco Town Center

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. Clary
Date:	April 7, 2005	**Summary by:**	Trina Griffin
Version:	1st Edition		Committee Counsel

SUMMARY: House Bill 317 amends the charter of the Town of Waco to correctly identify the center of town. SB 170, an identical companion bill sponsored by Sen. Dalton, is also in House Finance.

BILL ANALYSIS: House Bill 317 amends the charter of the Town of Waco to correctly identify the center of town. The current description references a railroad bridge that no longer exists. Therefore, the revised description with survey coordinates more accurately reflects the location of the center of the town.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 317 A BILL TO BE ENTITLED AN ACT AMENDING THE CHARTER OF THE TOWN OF WACO TO CORRECTLY IDENTIFY THE CENTER OF TOWN.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 393*

Short Title:	Holly Springs Eminent Domain.	(Local)
Sponsors:	Representative Stam.	
Referred to:	Finance.	

February 28, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE TOWN OF HOLLY SPRINGS TO USE THE PROCEDURE AND AUTHORITY OF CHAPTER 136 OF THE NORTH CAROLINA GENERAL STATUTES IN CONDEMNATION PROCEEDINGS CONCERNING WATER, SEWER, PUBLIC STREETS AND ROADS.

The General Assembly of North Carolina enacts:

SECTION 1. The Charter of the Town of Holly Springs, being S.L. 2003-73, is amended by adding a new section to read:

"Section 5.2. **Additional Eminent Domain Powers.** Notwithstanding the provisions of G.S. 40A-1, in the exercise of its authority of eminent domain for the acquisition of property interests (including, without limitation, fee simple title, rights-of-way, and easements) to be used for waterlines and treatment facilities and sewer lines and treatment facilities, and opening, widening, extending, or improving public streets and roads, the town may use the procedure and authority prescribed in Article 9 of Chapter 136 of the General Statutes of North Carolina, as now or hereafter amended; provided further, that whenever therein the words 'Secretary' or 'Secretary of Transportation' appear, they shall be deemed to include the 'Town Manager'; Manager', and whenever therein the word 'highway' appears, it is deemed to include 'public works' in accordance with this section, provided further that nothing herein shall be construed to enlarge the power of the town to condemn property already devoted to public use. Provided further, just compensation for the acquisition of fee simple title or a perpetual easement pursuant to this section to be used for street or road right-of-way shall be no less than (i) one dollar ($1.00) per square foot of real property taken, or (ii) the prorated ad valorem tax value of the parent tract, whichever is less. The powers granted by this section are in addition to and supplementary to those powers granted by any local or general law."

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

HOUSE BILL 393:
Holly Springs Eminent Domain

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. Stam
Date:	April 7, 2005	**Summary by:**	Cindy Avrette
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 393 authorizes the Town of Holly Springs to use the same condemnation procedures and authority for roads that the Department of Transportation uses in Chapter 136. The bill becomes effective when it becomes law.***

CURRENT LAW: Cities and towns may condemn property under Chapter 40A for water, sewer, roads, and streets. The Department of Transportation may acquire property under Article 9 of Chapter 136 for the construction and improvement of highways. Municipalities may also use the condemnation provisions in Article 9 of Chapter 136 for the acquisition of property related to the construction and improvement of roads and streets within their corporate boundaries that are part of the state-highway-system, but not for city streets. There are two primary differences between the acquisition authority granted by Chapter 40A and Article 9 of Chapter 136:

- Under Chapter 40A, a condemnor must give the owner of the property to be acquired 30 days notice of its intent to institute an action to condemn the property.[1] Under Article 9 of Chapter 136, the condemnor does not have to give this 30–day notice.
- Under Chapter 40A, the just compensation for the value of the property taken is generally its fair market value prior to the taking.[2] Under Chapter 136, the just compensation for the property taken is its fair market value, taking into consideration any benefits resulting from the utilization of the part taken for highway purposes.

BILL ANALYSIS: House Bill 393 provides that the Town of Holly Springs may use the procedure and authority of Article 9 of Chapter 136 for the acquisition of property for water, sewer, and public streets and roads. The bill also establishes a floor for determining just compensation by specifying that just compensation may be no less than $1.00 per square foot of real property taken or the prorated property tax value of the parent tract, whichever is less. Therefore, for the Town of Holly Springs, the determination of just compensation under Article 9 of Chapter 136 would be the fair market value of the property taking into consideration any benefit the property derives from the road improvement, but in no event may that value be less than $1.00 per square foot or the prorated property tax value of the parent tract, whichever is less. The General Assembly granted the same authority to the Town of Apex last biennium in S.L. 2003-88.

---

[1] For purposes of road construction and improvement, the title to the property and the right to immediate possession vests automatically with the city subject to the filing of the condemnation complaint and deposit of the estimated just compensation. Chapter 40A and Article 9 of Chapter 136 do not differ in this point.

[2] Under Chapter 40A, the measure of compensation is the greater of either (i) the amount by which the fair market value of the entire tract immediately before the taking exceeds the fair market value of the remainder immediately after the taking or (ii) the fair market value of the property taken. The value of the property does not include an increase or decrease in value that is caused by the proposed improvement or project for which the property is taken.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 393 A BILL TO BE ENTITLED AN ACT AUTHORIZING THE TOWN OF HOLLY SPRINGS TO USE THE PROCEDURE AND AUTHORITY OF CHAPTER 136 OF THE NORTH CAROLINA GENERAL STATUTES IN CONDEMNATION PROCEEDINGS CONCERNING WATER, SEWER, PUBLIC STREETS AND ROADS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 350*
Committee Substitute Favorable 3/16/05

Short Title: Holden Beach Canal Dredging Fee. (Local)

Sponsors:

Referred to:

February 23, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWN OF HOLDEN BEACH TO IMPOSE A CANAL DREDGING FEE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7 of S.L. 2004-104 reads as rewritten:

"**SECTION 7.** This act applies only within the municipal boundaries of the ~~Town~~ Towns of Holden Beach and Ocean Isle Beach."

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

HOUSE BILL 350:
Holden Beach Canal Dredging Fee

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. Stiller
Date:	April 7, 2005	**Summary by:**	Cindy Avrette
Version:	2nd Edition		Committee Counsel

SUMMARY: House Bill 350 is a local bill that would allow the Town of Holden Beach to create a fee-supported canal dredging district for all properties that are contiguous to a canal. The fee may not exceed the cost of dredging and will be imposed on owners of each dwelling unit or parcel that could or does benefit from water access through the canal system.

BILL ANALYSIS: Last year, the General Assembly authorized the Town of Ocean Isle Beach to create a fee-supported canal dredging district for properties that are contiguous to a canal within the town limits (House Bill 1734; S.L. 2004-104). The legislation provided the following:

- The annual fee may not exceed the cost of providing for the dredging of canals, both natural and concrete.
- The fee would be imposed on owners of each dwelling unit or parcel of property that could or does benefit from water access through the canal system.
- The dredging fee may be included on the property tax bill and collected in the same manner as property taxes. The remedies for collection of taxes will also apply to the collection of these fees.
- The fees collected shall be placed in a separate fund to be used only to pay the bill for canal dredging.

This legislation was proposed to provide the means to remove the silt and sand that have flowed into the canals in the Town impeding the navigability of the canals. These canals provide water access from the Intracoastal Waterway to lots and rights-of-way within the Town limits.

House Bill 350 would authorize the Town of Holden Beach to create a fee-supported canal dredging district in the same manner and under the same conditions that have already been authorized for the Town of Ocean Isle Beach.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

HB 350 A BILL TO BE ENTITLED AN ACT TO ALLOW TOWN OF HOLDEN BEACH TO IMPOSE A CANAL DREDGING FEE.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 16
Finance Committee Substitute Adopted 3/16/05

Short Title: Tabor City Satellite Annexation. (Local)

Sponsors:

Referred to:

January 31, 2005

A BILL TO BE ENTITLED

AN ACT ADDING CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF TABOR CITY.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is added to the corporate limits of the Town of Tabor City: That certain parcel or tract of land lying and being in South Williams Township, Columbus County, North Carolina bounded on the southwest by NC Hwy. 904 and on all other sides by AMS Ventures LLC, et al. (DB 638 PG 478), and being more particularly described as follows: BEGINNING at a new iron rod, said rod being located S 45°37'17" E 144.02 feet from an existing railroad spike at the point of intersection of the centerline of NC Hwy. 904 and a small branch, said spike being the westernmost corner of Tract #9 as shown on a map entitled "Pine Lands Tree Farm" recorded in Map Book 6 Page 13, Columbus County Registry in the northeast right-of-way of NC Hwy. 904 and running thence as a new line leaving said right-of-way N 56°24'26" E 376.99 feet to a new iron rod; thence N 23°16'28" W passing over a new iron rod located 59.43 feet, a total distance of 63.95 feet to a point; thence N 66°43'32" E 1081.88 feet to a new iron rod; thence N 65°22'39" E 1059.74 feet to a new iron rod; thence S 30°17'50" E 1874.99 feet to a new iron rod; thence S 57°22'45" W 1755.00 feet to a new iron rod; thence N 36°33'50" W 502.00 feet to a new iron rod; thence S 56°21'09" W 462.91 feet to a new iron rod; thence S 50°50'36" W 148.90 feet to a new iron rod in the northeast right-of-way of NC Hwy. 904; thence as said right-of-way N 33°35'28" W 1651.78 feet to the BEGINNING, containing 107.95 acres, more or less, and being a portion of that tract described in Deed Book 638 Page 478, Columbus County Registry.

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

SENATE BILL 16:
Tabor City Satellite Annexation

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Sen. Soles
Date:	April 7, 2005	**Summary by:**	Cindy Avrette
Version:	2nd Edition		Committee Counsel

SUMMARY: Senate Bill 16 authorizes the town of Tabor City to make voluntary satellite annexation of approximately 108 acres of property to the city limits.

CURRENT LAW: G.S. 160A-58.1 governs the voluntary annexation by a municipality of noncontiguous property. All property owners in the satellite area[1] may petition for voluntary annexation of the noncontiguous property if the property meets the following five standards in G.S. 160A-58.1(b):

1. The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.
2. No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city.
3. The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
4. If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.
5. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing city.

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

BILL ANALYSIS: Senate Bill 16 authorizes the town of Tabor City to make voluntary satellite annexation of certain property to the city limits. The property being annexed is the future site for a correctional facility. By adding the population of prisoners to the Town's overall population, Tabor City will derive enough funds to help pay for the land on which the prison will be situated.

Trina Griffin, counsel to the Senate Finance Committee, contributed substantially to this summary.

[1] G.S. 160A-58.4 provides that satellite corporate limits cannot be considered a part of a municipality's corporate limits for purposes of its ETJ. Therefore, satellite annexations have no effect upon a municipality's ETJ.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

SB 16 A BILL TO BE ENTITLED AN ACT ADDING CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF TABOR CITY.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 871*

Short Title:	Emerald Isle Canal Dredging Fee.	(Local)
Sponsors:	Representative Preston.	
Referred to:	Finance.	

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWN OF EMERALD ISLE TO IMPOSE A CANAL DREDGING FEE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7 of S.L. 2004-14 reads as rewritten:

"**SECTION 7.** This act applies only within the municipal boundaries of the ~~Town~~ Towns of Emerald Isle and Ocean Isle Beach."

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

HOUSE BILL 871:
Emerald Isle Canal Dredging Fee

BILL ANALYSIS

Committee: House Finance
Date: April 7, 2005
Version: 1st Edition

Introduced by: Rep. Preston
Summary by: Cindy Avrette
Committee Counsel

SUMMARY: House Bill 871 is a local bill that would allow the Town of Emerald Isle to create a fee-supported canal dredging district for all properties that are contiguous to a canal. The fee may not exceed the cost of dredging and will be imposed on owners of each dwelling unit or parcel that could or does benefit from water access through the canal system.

BILL ANALYSIS: Last year, the General Assembly authorized the Town of Ocean Isle Beach to create a fee-supported canal dredging district for properties that are contiguous to a canal within the town limits (House Bill 1734; S.L. 2004-104). The legislation provided the following:

- The annual fee may not exceed the cost of providing for the dredging of canals, both natural and concrete.
- The fee would be imposed on owners of each dwelling unit or parcel of property that could or does benefit from water access through the canal system.
- The dredging fee may be included on the property tax bill and collected in the same manner as property taxes. The remedies for collection of taxes will also apply to the collection of these fees.
- The fees collected shall be placed in a separate fund to be used only to pay the bill for canal dredging.

This legislation was proposed to provide the means to remove the silt and sand that have flowed into the canals in the Town impeding the navigability of the canals. These canals provide water access from the Intracoastal Waterway to lots and rights-of-way within the Town limits.

House Bill 871 would authorize the Town of Emerald Isle to create a fee-supported canal dredging district in the same manner and under the same conditions that have already been authorized for the Town of Ocean Isle Beach. House Bill 350, introduced by Rep. Stiller, would extend this same authority to the Town of Holden Beach.

TECHNICAL AMENDMENT NEEDED TO CORRECT AN INCORRECT STATUTORY REFERENCE.

Trina Griffin, counsel to the Senate Finance Committee, contributed significantly to this summary.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 871 A BILL TO BE ENTITLED AN ACT TO ALLOW THE TOWN OF EMERALD ISLE TO IMPOSE A CANAL DREDGING FEE.

☒ With a favorable report, as amended.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

ATTACHMENT 8

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 871*

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

H871-ARB-3 [v.1]

Date April 7 ,2005

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

Representative Howard

moves to amend the bill on page 1, line 5, by deleting "S.L. 2004-14" and substituting "S.L. 2004-104".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 272

Committee Substitute Favorable 3/28/05

Short Title: Sanitary District Set-Off Debt Collection. (Public)

Sponsors:

Referred to:

February 17, 2005

A BILL TO BE ENTITLED

AN ACT TO EXTEND TO SANITARY DISTRICTS AND METROPOLITAN SEWERAGE DISTRICTS THE SET-OFF DEBT COLLECTION PROCEDURES CURRENTLY AVAILABLE TO COUNTIES AND CITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105A-2(6) reads as rewritten:

"(6) Local agency. – Any of the following:

a. A county, to the extent it is not considered a State agency.

b. A municipality.

c. A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.

d. A regional joint agency created by interlocal agreement under Article 20 of Chapter 160A of the General Statutes between two or more counties, cities, or both.

e. A metropolitan sewerage district created under Article 5 of Chapter 162A of the General Statutes.

f. A sanitary district created under Part 2 of Article 2 of Chapter 130A of the General Statutes."

SECTION 2. This act becomes effective January 1, 2006, and applies to income tax refunds determined on or after that date.

HOUSE BILL 272:
Sanitary District Set-Off Debt Collection

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. L Allen and Sherrill
Date:	April 7, 2005	**Analysis by:**	Martha Walston
Version:	2nd Edition		Committee Counsel

SUMMARY: House Bill 272 adds sanitary districts and metropolitan sewerage districts to the list of local agencies that may collect debts owed to them by obtaining a setoff against a debtor's North Carolina income tax refund. The act is effective January 1, 2006, and applies to income tax refunds determined on or after that date. The bill was given a favorable report in the House Ways and Means Committee.

CURRENT LAW: Under the Setoff Debt Collection Act, the North Carolina Department of Revenue diverts part or all of an individual's income tax refund to pay a debt the individual owed to a State or local agency. Thus, the debt the individual owes the agency is set off against the individual's income tax refund. The Act applies only to a debt that is at least $50 and to a refund that is at least $50. Debts collected through the Act are subject to both a $5 State collection assistance fee and a $15 local collection assistance fee. Counties and municipalities participate through a clearinghouse that submits debts on their behalf to the Department of Revenue. The clearinghouse was established pursuant to an interlocal agreement adopted under Article 20 of Chapter 160A of the General Statutes. Because there are so many local agencies, funneling their claims through a clearinghouse avoids placing an undue administrative burden on the Department of Revenue.

In 2003, the General Assembly added water and sewer authorities to the list of local agencies allowed to participate in setoff debt collection.

BILL ANALYSIS: House bill 272 allows sanitary districts and metropolitan sewerage districts to participate in the setoff program through the clearinghouse in the same manner as counties, cities, and water and sewer authorities. These districts will be authorized to submit their debts for collection by setoff only after providing the debtor with notice, an opportunity to be heard before the district board, and an appeal process under the Administrative Procedure Act.

Sanitary District

The Commission for Health Services may create sanitary districts for the purpose of preserving and promoting the public health and welfare. A sanitary district is incorporated if 51% of the freeholders[1] in the proposed district petition the county board of commissioners of the county in which all or the largest portion of the land of the proposed district is located. A sanitary district board has the authority to levy property taxes within the district and apply service charges and

[1] A freeholder is a person holding a deed to a tract of land within the district or who has entered into a contract to purchase a tract of land in the district, is making contractual payments, and will receive a deed upon completion of the contractual payments.

rates based on the benefits provided. Sanitary districts that maintain and operate a sewage system may bring suit for overdue sewer charges and disconnect the sewer lines. This remedy is not sufficient when the customer moves out of the district. The charges also become a lien on the property served and the property may be sold.[2]

Metropolitan Sewerage District

Any two or more political subdivisions in one or more counties, or any political subdivision and any unincorporated area within one or more counties, may petition for the creation of a metropolitan sewerage district by filing a resolution with the boards of county commissioners of the county or counties within which the proposed district will lie. A public hearing is then held where the Environmental Commission and board of county commissioners determine whether the creation of the metropolitan sewerage district would preserve and promote the public health and welfare of the area.[3] A sewerage district board has the authority to levy taxes on property within the district and impose charges for the services furnished. The district board may provide methods for collection of charges and measures for enforcement of collection, including penalties and the denial or discontinuance of service.

[2] G.S. 130A-65
[3] G.S. 162A-66

North Carolina General Assembly

House Committee on Finance

Minutes

~

April 12, 2005

The House Committee on Finance met on Tuesday, April 12, 2005 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, Luebke, and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives Blust, Bordsen, Capps, Carney, Faison, Folwell, Glazier, Hackney, Holliman, Jones, Lewis, McGee, Rayfield, Underhill, Walend, and Wiley. Also present were Sergeant-at-Arms Bill Freeman, Fred Hines, Dusty Rhodes, and Walter Spell. Staff persons present included Cindy Avrette, Rodney Bizzell, Erika Churchill, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman McComas called the meeting to order at 8:34 am and recognized the two (2) pages present: Kelsey McDaniel of Davie County, sponsored by Representative Howard, and Shelby Green of Guilford County, sponsored by Representative Wiley.

The first bill under the Committee's consideration was **HB 449 – GIFT TAX CHANGES** (see **attachment 3**). Chairman McComas recognized Representative Stam who explained that this bill conforms the valuation of gifts for State gift tax purposes to the valuation used for federal gift tax purposes. Chairman McComas then recognized Representative Gibson who sent forth a technical amendment (see **attachment 4**) correcting a statutory reference. Representative Luebke was recognized and moved for the adoption of the technical amendment. Seeing no further discussion, Chairman McComas called the motion to a vote and the amendment was adopted. Chairman McComas then recognized Representative Gibson who moved that House Bill 449 be given a favorable report, as amended. As there was no further debate, Chairman McComas called the motion to a vote and it carried by consent.

Chairman McComas then recognized Representative Hill to explain **HB 705 – PRESENT-USE VALUE BUYOUT CREDITS** (see **attachment 5**). Representative Hill explained that this bill allows buyout payments to count toward the one thousand dollar ($1,000) gross income requirement for agricultural land for present-use value tax exemptions. Chairman McComas then recognized Representative Howard who stated her support and moved that House Bill 705 be given a favorable report by the Committee. Chairman McComas then recognized Representative Hackney who asked how the counties felt about this bill. To answer the question, Chairman McComas recognized Patrice Roesler from the North Carolina Association of County Commissioners who stated that the Association supports this bill. Seeing no further discussion, Chairman McComas called the motion to a vote, and it carried without objection.

Following the vote, Chairman McComas referred the following bills to the Subcommittee on Occupancy Tax:

- HB 945 – Durham Occupancy Tax
- HB 1056 – Amend Carteret County Occupancy Tax

The next bill considered by the Committee was **HB 1080 – DORTCHES DEANNEXATION** (see **attachment 6**). Chairman McComas first recognized Representative Daughtridge who explained that the bill removes approximately seventy (70) acres from the Town of Dortches in order for that land to then be annexed by the City of Rocky Mount. He also stated that this bill had been requested by the landowner for improvements to the land, which will require the infrastructure of the City of Rocky Mount that Dortches does not provide. Following the explanation, Representative Glazier was recognized and moved that House Bill 1080 be given a favorable report. Seeing no further discussion, Chairman McComas called the motion to a vote and it carried by consent.

The following bill heard by the Committee was **HB 1030 – BRUNSWICK COUNTY AIRPORT COMMISSION** (see **attachment 7**). Chairman McComas first recognized Representative Womble who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Chairman McComas then recognized Representative Stiller who explained that this bill clarifies the authority of the Brunswick County Airport Commission and exempts the Commission from any beach renourishment fees imposed by the Town of Oak Island. Following the explanation, Representative Hill was recognized and moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. As there was no further debate, Chairman McComas called the motion to a vote, and it carried without objection.

The final bill considered by the Committee was **HB 986 – GREENVILLE/SURF CITY SATELLITE ANNEXATIONS** (see **attachment 8**). Chairman McComas first recognized Representative Womble who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Chairman McComas then recognized Representative McLawhorn who explained that this bill would allow the municipalities of Greenville and Surf City to voluntarily annex beyond the ten percent (10%) limit as set out in the statutes. Representative Carney was then recognized who moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairman McComas called the motion to a vote and it carried by consent.

As there was no further business before the Committee, Chairman McComas then adjourned the meeting at 8:50 am.

Respectfully submitted,

Representative Danny McComas
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. House Bill 449 (and related materials)
4. Gibson Amendment on HB 449 - **Adopted**
5. House Bill 705 (and related materials)
6. House Bill 1080 (and related materials)
7. House Bill 1030 (and related materials)
8. House Bill 986 (and related materials)

ATTACHMENT 1

AGENDA

House Finance Committee

April 12, 2005
8:30 a.m.
Room 544 LOB
Chaired by: Rep. McComas

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard
Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order

Introduction of Pages

Bills:

HB 449 GIFT TAX CHANGES *Reps. Stam & Gibson*

HB 705 PRESENT-USE VALUE BUYOUT CREDITS *Rep. Hill*

HB 986 GREENVILLE SATELLITE ANNEXATIONS
Reps. McLawhorn, Warren, & Williams

HB 1030 BRUNSWICK COUNTY AIRPORT AUTHORITY *Rep. Stiller*

HB 1080 DORTCHES DEANNEXATION *Rep. Daughtridge*

Adjournment

CORRECTED NOTICE:
HB 469 & HB 1051 – REMOVED

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, April 12, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 449 – GIFT TAX CHANGES – Reps. Stam & Gibson

~~**HB 469 – LEASE PURCHASE FOR SCHOOL WAREHOUSE – Reps. Current, Clary, & Rayfield**~~

HB 705 – PRESENT-USE VALUE BUYOUT CREDITS – Rep. Hill

HB 986 – GREENVILLE SATELLITE ANNEXATIONS – Reps. McLawhorn, Warren, & Williams

HB 1030 – BRUNSWICK COUNTY AIRPORT AUTHORITY – Rep. Stiller

~~**HB 1051 – MACON-JACKSON REGIONAL AIRPORT AUTHORITY – Reps. Haire & West**~~

HB 1068 – SURF CITY SATELLITE ANNEXATIONS – Rep. Justice

HB 1080 – DORTCHES DEANNEXATION – Rep. Daughtridge

Respectfully,
Representatives Alexander, Gibson, Howard, Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **2:15 p.m.** on **April 11, 2005.**

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, April 12, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 449 – GIFT TAX CHANGES – Reps. Stam & Gibson

HB 469 – LEASE PURCHASE FOR SCHOOL WAREHOUSE
– Reps. Current, Clary, & Rayfield

HB 705 – PRESENT-USE VALUE BUYOUT CREDITS – Rep. Hill

HB 986 – GREENVILLE SATELLITE ANNEXATIONS
– Reps. McLawhorn, Warren, & Williams

HB 1030 – BRUNSWICK COUNTY AIRPORT AUTHORITY – Rep. Stiller

HB 1051 – MACON-JACKSON REGIONAL AIRPORT AUTHORITY
– Reps. Haire & West

HB 1068 – SURF CITY SATELLITE ANNEXATIONS – Rep. Justice

HB 1080 – DORTCHES DEANNEXATION – Rep. Daughtridge

Respectfully,
Representatives Alexander, Gibson, Howard, Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **11:15 a.m.** on **April 7, 2005.**

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

ATTACHMENT 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — April 12, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michael Moore	Town of Surf City P.O. Box 2475 - Surf City, NC 28445
Ed Kinney	NC Conservation Network
P&P	NCFB
Patricia Ramey	NAFCC
Don Gast	Legislative
Ken McHan	O.O.R.
Henry Hunter	N.P.S.D.A.
DAVID BARNES	Poyner + Spruill LLP
Rick Zechini	NC Assoc. of Realtors
Warren Plonk	OSBM
Milla	OSBM

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — April 12, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steve Woodson	NC Farm Bureau
Michael Blum	NC DOR
Bill Wilkes	NC DOR
Kim Hibbard	NCLM
Doug Lassiter	NCSTA
Angie Hamm	Maupin Taylor
Nancy Pomerance	DOR

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — April 12, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lee Hodge	KCLH

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 449

Short Title:	Gift Tax Changes.	(Public)
Sponsors:	Representatives Stam and Gibson (Primary Sponsors).	
Referred to:	Finance.	

March 2, 2005

A BILL TO BE ENTITLED

AN ACT TO CONFORM THE VALUATION OF GIFTS FOR GIFT TAX PURPOSES TO THE FEDERAL STANDARDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-189 is repealed.

SECTION 2. G.S. 105-190 is repealed.

SECTION 3. G.S. 105-195 is repealed.

SECTION 4. Article 6 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-195A. Value of gifts for gift tax purposes.**

The value of a gift shall be determined in accordance with the Code and with regulations promulgated under the Code."

SECTION 5. This act becomes effective January 1, 2006, and applies to gifts made on or after that date.

House Bill 449:
Gift Tax Changes

BILL ANALYSIS

Committee:	House Finance	**Date:**	April 12, 2005
Introduced by:	Reps. Stam, Gibson	**Summary by:**	Cindy Avrette
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 449 conforms the valuation of gifts for State gift tax purposes to the valuation used for federal gift tax purposes. The bill becomes effective January 1, 2006, and applies to gifts made on or after that date. The bill is a recommendation of the NC Bar Association.***

CURRENT LAW: North Carolina is one of four states[1] that impose a gift tax on the donor of a gift.[2] The tax is imposed on gifts that exceed the annual exclusion amount. The State annual exclusion amount is the same as the federal amount: $11,000. In addition to the annual exclusion amount, a lifetime exemption of $100,000 is allowed each donor for gifts made to Class A donnes. The rate of tax depends upon the donor's relationship to the donee. North Carolina law divides donees into three classes: Class A includes any lineal ancestor or descendant, or adopted child or stepchild; Class B includes brother, sister, descendant of a brother or sister, and aunt or uncle by blood of the decedent; and Class C includes all others. Gifts to spouses are exempt, as are gifts to governmental entities and charitable, educational, or religious organizations.

Like the federal gift tax, the State's gift tax is imposed on the actual value of the property at the time of the transfer by gift. When property is transferred for less than its fair market value, the difference is deemed a gift.[3] If the gift is made in property, the fair market value of the property at the date of the gift is considered to be the amount of the gift.[4] However, the State law may differ slightly from the federal law when it comes to valuing transfers that may involve contingencies, life estates, trusts, etc.

BILL ANALYSIS: **House Bill 449** would provide that the value of a gift for State tax purposes is the same as its value for federal tax purposes. For simple transfers, the law for the State already mirrors the federal law. For more complicated transfers, the federal law will provide more instruction, certainty, and consistency. Currently, North Carolina determines the value of gifts that must be apportioned between tenants and remaindermen using a fixed percentage rate of 6% of the value of the gift for the period of years determined by the mortuary and annuity tables in Chapter 8 of the General Statutes. Conforming the value of these gifts to the Code will use the valuation tables in Section 7520 of the Code, which uses an interest rate that may vary monthly. When property is transferred or limited in trust or otherwise, the Secretary of Revenue has the discretion to determine the value of the property. The Code provides valuation rules for many different types of transfers, and there is a body of law and regulations governing these valuation rules. Conforming these types of transfers to the Code will provide consistency and certainty to their valuations. In many instances there will be no substantive changes because the Secretary is currently using the reported federal values for State tax purposes.

TECHNICAL AMENDMENT: The statutory reference needs to be changed to conform to the drafting code standards.

H0449e1-SMRB

[1] Connecticut, Louisiana, and Tennessee also impose a gift tax.

[2] The amount of revenue generated by this tax varies from year to year: from a high of $25 million in 1999-2000 to a low of $13.4 million in 2001-02. The tax generated approximately $16.6 million in 2003-04.

[3] G.S. 105-189 provides the same valuation as Section 2512(b) of the Internal Revenue Code.

[4] G.S. 105-190 provides the same valuation as Section 2512(a) of the Internal Revenue Code.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

REVISED

BILL NUMBER: House Bill 449 (First Edition)

SHORT TITLE: Gift Tax Changes.

SPONSOR(S): Representatives Stam and Gibson

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:	**See "Assumptions and Methodology"**				
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

EFFECTIVE DATE: Gifts made on or after January 1, 2006.

BILL SUMMARY: Modifies the state gift tax law by providing that the value of a gift is determined in accordance with the Internal Revenue Code and makes technical changes to gift tax valuation language.

ASSUMPTIONS AND METHODOLOGY: Based on a discussion with the Department of Revenue, the North Carolina Bar Association, and an attorney involved in a recent state gift tax case, there is no detailed data for all of the gift tax situations that would be affected by the proposed change. However, Fiscal Research feels that the impact on General Fund tax revenue will be minimal for the following reasons: (1) the total annual gift tax yield is less than $20 million; (2) the small dollar revenue loss from qualified personal residence trusts (the subject of recent litigation); and (3) in some situations federal conformity may lead to additional taxes.

SOURCES OF DATA:

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: David Crotts

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

Official
Fiscal Research Division
Publication

DATE: April 11, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

ATTACHMENT 4

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 449

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

H449-ARB-4 [v.2]

Date April 12 ,2005

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

Representative Gibson

moves to amend the bill on page 1, line 10, by deleting "105-195A." and substituting "105-195.1.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 449 A BILL TO BE ENTITLED AN ACT TO CONFORM THE VALUATION OF GIFTS FOR GIFT TAX PURPOSES TO THE FEDERAL STANDARDS.

☒ With a favorable report, as amended.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 705

Short Title:	Present-Use Value Buyout Credits.	(Public)
Sponsors:	Representatives Hill; and Faison.	
Referred to:	Finance.	

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW BUYOUT PAYMENTS TO COUNT TOWARDS THE ONE THOUSAND DOLLAR GROSS INCOME REQUIREMENT FOR AGRICULTURAL LAND FOR PRESENT-USE VALUE TAX EXEMPTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-277.3(a)(1) reads as rewritten:

"**§ 105-277.3. Agricultural, horticultural, and forestland – Classifications.**

(a) Classes Defined. – The following classes of property are designated special classes of property under authority of Section 2(2) of Article V of the North Carolina Constitution and must be appraised, assessed, and taxed as provided in G.S. 105-277.2 through G.S. 105-277.7.

(1) Agricultural land. – Individually owned agricultural land consisting of one or more tracts, one of which consists of at least 10 acres that are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have produced an average gross income of at least one thousand dollars ($1,000). Gross income includes income from the sale of the agricultural products produced from the ~~land and~~ land, any payments received under a governmental soil conservation or land retirement ~~program.~~ program, and the amount paid to the taxpayer during the taxable year pursuant to P.L. 108-357, Title VI, Fair and Equitable Tobacco Reform Act of 2004. Land in actual production includes land under improvements used in the commercial production or growing of crops, plants, or animals."

SECTION 2. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2005.

HOUSE BILL 705:
Present-Use Value Buyout Credits

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Hill
Date:	April 12, 2005	**Analysis by:**	Martha Walston
Version:	1st Edition		Committee Counsel

SUMMARY: House Bill 705 would allow payments received under the tobacco quota buyout program to be counted towards the $1,000 income requirement which must be met before agricultural land can be assessed at present-use value for property tax purposes.

CURRENT LAW: Agricultural land, horticultural land and forestland have been designated as a special class of property and are appraised and assessed at present-use value, instead of market value, for property tax purposes if the land meets certain statutory requirements. Agricultural land must be part of a farm unit, under a sound management program, individually owned, consist of one or more tracts (one of which must consist of at least 10 acres that are in actual production) and **for the three years preceding January 1 of the year for which the present-use value benefit is claimed, have produced an average gross income of at least $1,000.** Counted income includes the following:

- Income from the sale of agricultural products produced from the land, and
- Payments received under a governmental soil conservation or land retirement program

BILL ANALYSIS: House Bill 705 allows payments received under the Fair and Equitable Tobacco Reform Act of 2004 to be included as income when determining the present-use value eligibility of agricultural land. The agricultural land must continue to meet the ownership and actual production requirements.

BACKGROUND: Congress passed the Fair and Equitable Tobacco Reform Act of 2004 in October of last year. This Act repeals the federal tobacco price support and quota programs, provides compensation payments to tobacco quota owners and growers, and provides an assessment mechanism for tobacco manufacturers and importers to pay for the buyout. An eligible quota owner is the owner of a farm, on the date the bill was enacted, for which a basic tobacco quota/allotment was established for the 2004 marketing year. An eligible quota grower is an owner, operator, landlord, tenant or sharecropper who shared in the risk of producing tobacco in the 2002, 2003, or 2004 marketing year. Quota owners will be paid $7 per pound for the basic quota they owned in 2002. Growers will be paid $3 per pound for their 2002 effective quota.[1] These payments will be distributed equally over 10 years, beginning with the 2005 fiscal year and ending in 2014. The initial payment should be made by the end of September. The buyout is funded by quarterly assessments on tobacco manufacturers and importers. Because

[1] The payment is $2 per pound if the grower participated in two of the three marketing years, and $1 per pound if the grower participated in only one of the three marketing years.

the buyout is funded by manufacturer and importer assessments, future Phase II payments will be terminated. For federal tax purposes, quota owner payments are expected to be treated as capital gains and grower payments are expected to be treated as ordinary income. The I. R. S. should rule on the tax status of these payments by the end of April.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 705 A BILL TO BE ENTITLED AN ACT TO ALLOW BUYOUT PAYMENTS TO COUNT TOWARDS THE ONE THOUSAND DOLLAR GROSS INCOME REQUIREMENT FOR AGRICULTURAL LAND FOR PRESENT-USE VALUE TAX EXEMPTIONS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

HOUSE BILL 1080

Short Title:	Dortches Deannexation.	(Local)
Sponsors:	Representative Daughtridge.	
Referred to:	Finance.	

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF DORTCHES.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate limits of the Town of Dortches:

Commencing at a point in the centerline of Hunter Hill Road (SR 1604), said point being approximately 0.64 miles west of the intersection of Hunter Hill Road (SR 1604) and Woodruff Road (SR 1613) as shown on the map hereinafter referred to; thence N 06°33'01"E 30.66 feet to an iron pipe on the northern right-of-way of Hunter Hill Road, the southwest corner of Belmont N. Woodruff, Deed Book 1178 Page 701; thence along the western line of Woodruff the following three courses and distances: (1) N 06°33'01"E 544.62 feet to an iron pipe; thence (2) N 06°37'51"E 263.63 feet to an iron pipe, and (3) N 06°38'27"E 656.60 feet to a point, the POINT OF BEGINNING; thence continuing along the western line of Woodruff the following four courses and distances: (1) N 06°38'27"E 13.39 feet to an iron pipe; thence (2) N 06°34'29"E 1059.90 feet to an iron pipe; thence (3) N 06°34'52"E 662.80 feet to an iron pipe, and (4) N 06°34'52"E 19.83 feet to a point in the center of Goose Branch; thence along the centerline of Goose Branch the following seventy-nine courses and distances: (1) N 87°14'19"E 38.87 feet to a point; (2) N 33°28'34"E 32.81 feet to a point; (3) N 74°39'06"E 18.43 feet to a point; (4) S 46°47'37"E 18.20 feet to a point; (5) N 54°45'19"E 19.88 feet to a point; (6) S 86°19'12"E 21.51 feet to a point; (7) S 33°16'52"E 16.05 feet to a point; (8) N 72°08'16"E 41.78 feet to a point; (9) N 13°41'19"E 21.24 feet to a point; (10) N 39°26'31"W 16.05 feet to a point; (11) N 46°45'44"W 19.46 feet to a point; (12) N 44°28'36"E 48.64 feet to a point; (13) S 66°11'01"E 32.90 feet to a point; (14) S 81°16'33"E 39.38 feet to a point; (15) N 38°24'32"E 44.68 feet to a point; (16) N 62°37'46"E 16.43 feet to a point; (17) S 47°15'47"E 21.24 feet to a point; (18) N 89°56'55"E 20.61 feet to a point; (19) N 31°35'50"E 39.76 feet to a point; (20) N 61°46'22"E 24.94 feet to a point; (21) S 35°55'59"E 27.77 feet to a point; (22) N

88°26'40"E 50.89 feet to a point; (23) N 46°33'10"E 18.62 feet to a point; (24) N 04°08'24"E 30.38 feet to a point; (25) N 09°57'49"W 21.47 feet to a point; (26) N 27°44'17"E 27.63 feet to a point; (27) N 66°05'32"E 34.06 feet to a point; (28) S 81°56'48"E 12.12 feet to a point; (29) N 62°11'40"E 15.75 feet to a point; (30) S 68°59'05"E 32.18 feet to a point; (31) N 64°55'34"E 1.91 feet to a point; (32) S 42°59'01"E 17.33 feet to a point; (33) S 48°01'00"E 11.80 feet to a point; (34) S 69°50'31"E 27.50 feet to a point; (35) N 65°16'47"E 10.10 feet to a point; (36) N 39°57'09"E 24.45 feet to a point; (37) N 86°51'15"E 27.98 feet to a point; (38) N 45°20'21"E 26.50 feet to a point; (39) S 78°43'02"E 36.19 feet to a point; (40) N 64°12'15"E 17.72 feet to a point; (41) N 31°06'09"E 30.86 feet to a point; (42) N 77°43'15"E 33.45 feet to a point; (43) S 32°11'32"E 58.25 feet to a point; (44) S 62°22'12"E 18.20 feet to a point; (45) N 86°54'18"E 18.49 feet to a point; (46) S 77°46'33"E 58.35 feet to a point; (47) N 45°56'39"E 16.23 feet to a point; (48) N 34°06'59"E 74.53 feet to a point; (49) N 79°31'58"E 22.59 feet to a point; (50) S 61°50'15"E 94.92 feet to a point; (51) S 57°11'52"E 46.55 feet to a point; (52) N 54°50'20"E 53.32 feet to a point; (53) S 53°20'36"E 72.88 feet to a point; (54) S 29°03'53"E 82.40 feet to a point; (55) S 78°44'41"E 53.38 feet to a point; (56) S 65°39'57"E 51.91 feet to a point; (57) N 44°32'31"E 75.98 feet to a point; (58) S 57°18'22"E 43.39 feet to a point; (59) S 19°00'23"W 41.37 feet to a point; (60) S 39°06'27"E 45.69 feet to a point; (61) N 64°53'10"E 182.38 feet to a point; (62) S 47°52'04"E 39.66 feet to a point; (63) S 83°24'18"E 72.61 feet to a point; (64) S 20°04'10"E 76.09 feet to a point; (65) S 59°38'23"E 67.36 feet to a point; (66) S 20°11'24"E 110.52 feet to a point; (67) S 28°59'16"W 53.79 feet to a point; (68) S 68°17'04"W 33.36 feet to a point; (69) N 83°58'11"W 44.01 feet to a point; (70) S 06°34'37"E 62.10 feet to a point; (71) S 15°32'34"E 96.25 feet to a point; (72) S 59°00'23"E 184.89 feet to a point; (73) S 29°36'28"E 68.74 feet to a point; (74) S 31°23'21"E 151.80 feet to a point; (75) S 40°45'24"W 79.33 feet to a point; (76) S 01°10'54"W 53.48 feet to a point; (77) S 25°30'33"E 76.50 feet to a point; (78) S 77°02'09"E 38.59 feet to a point; and (79) N 82°43'48"E 101.89 feet to a point; thence leaving Goose Branch and continuing along the present City Limits the following ten courses and distances: (1) S 57°59'33"W 167.19 feet to a point; (2) S 60°10'38"W 171.65 feet to a point; (3) S 61°38'32"W 280.10 feet to a point; (4) S 63°45'09"W 280.36 feet to a point; (5) S 65°47'08"W 280.04 feet to a point; (6) S 67°52'28"W 279.93 feet to a point; (7) S 69°48'22"W 237.92 feet to a point; (8) S 71°28'31"W 223.48 feet to a point; (9) S 73°38'21"W 336.09 feet to a point; and (10) S 76°00'20"W 307.00 feet to a point, the POINT OF BEGINNING and containing 70.18 acres as shown on map by MACK GAY ASSOCIATES, P.A., March 22, 2005.

SECTION 2. This act has no effect upon the validity of any liens of the Town of Dortches for ad valorem taxes or special assessments outstanding before the effective date of this act. Such liens may be collected or foreclosed upon after the effective date of this act as though the property was still within the corporate limits of the Town of Dortches.

SECTION 3. This act becomes effective June 30, 2005.

House Bill 1080:
Dortches Deannexation

BILL ANALYSIS

Committee:	House Finance	**Date:**	April 12, 2005
Introduced by:	Rep. Daughtridge	**Summary by:**	Cindy Avrette
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 1080 removes approximately 70 acres from the Town of Dortches, effective June 30, 2005.***

BILL ANALYSIS: The General Assembly incorporated the Town of Dortches in 1977. The Town has a population of just over 800 people. Much of the southern boundary of the town is contiguous with the City of Rocky Mount and much of the eastern boundary of the Town is contiguous with the ETJ of Rocky Mount.

House Bill 1080 would remove approximately 70 acres from the corporate limits of Dortches so that it could be annexed by the City of Rocky Mount. The property includes four parcels of land. The owners of the property would like to develop the land and would benefit from the water and sewer infrastructure that would be available to the property if incorporated by the City of Rocky Mount.

H1080e1-SMRB

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 986 A BILL TO BE ENTITLED AN ACT REMOVING THE CAP ON SATELLITE ANNEXATIONS FOR THE CITY OF GREENVILLE.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1030
PROPOSED COMMITTEE SUBSTITUTE H1030-CSLA-2 [v.3]

4/11/2005 5:35:49 PM

Short Title: Brunswick County Airport Commission. (Local)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE POWERS OF THE COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. In addition to all other powers authorized by law, the Brunswick County Airport Commission shall have the following powers:

(1) To sell, lease, or otherwise dispose of any property, real or personal, belonging to the Airport Commission, according to the procedures described in Article 12 of Chapter 160A of the General Statutes, but no sale of real property shall be made without the approval of the Brunswick County Board of Commissioners.

(2) To contract with persons, firms, or corporations for terms not to exceed 20 years, for the operation of airline-scheduled passenger and freight flights, nonscheduled flights, and any other airplane activities not inconsistent with the grant agreements under which the airport property is held.

(3) To erect and construct buildings, hangars, shops, and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; to lease these improvements and facilities for a term or terms not to exceed 20 years; to borrow money for use in making and paying for these improvements and facilities, secured by and on the credit only of the lease agreements in respect to these improvements and facilities, and to pledge and assign the leases and lease agreements as security for the authorized loans.

SECTION 2. The Brunswick County Airport Commission shall be exempt from any beach renourishment fees imposed by the Town of Oak Island.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1030

Short Title:	Brunswick County Airport Authority.	(Local)
Sponsors:	Representative Stiller.	
Referred to:	Finance.	

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE ACTS REGULATING THE BRUNSWICK COUNTY AIRPORT COMMISSION AND TO CLARIFY THE POWERS OF THE COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of Chapter 411 of the 1961 Session Laws, as amended by Section 2 of Chapter 385 of the 1991 Session Laws, reads as rewritten:

"Section 1. There is hereby created a board to be known as the Brunswick County Airport Commission whose membership shall consist of Southport, ~~Yaupon Beach, Long Beach,~~ Oak Island, and Brunswick County and which board is hereby constituted a body politic and corporate. The said board shall be comprised of seven members, four of whom shall be appointed by the Board of County Commissioners of Brunswick ~~County and one~~ County, two of whom shall be appointed by ~~each member town,~~ the governing body of the Town of Oak Island, and one of whom shall be appointed by the governing body of the City of Southport, all of whom shall be experienced businessmen with no qualifications as to residence. The membership of said board shall be named as provided for in Chapter 63 of the General Statutes of North Carolina. The members of said board shall receive no compensation per diem or otherwise, but shall be allowed and paid actual expenses incurred in the transaction of business and at the instance of the said Commission. In the event that either the Aldermen of the City of Southport, the Commissioners of the Town of ~~Yaupon Beach, the Commissioners of the Town of Long Beach,~~ Oak Island, or the Brunswick County Commissioners do not deem it advisable or any one or two of said municipal bodies do not enter into an agreement to set up said Airport Commission as provided for under Chapter 63 of the General Statutes of North Carolina, then in such event the municipality or county desiring to create such a commission may do so having all powers herein conferred with the right and privilege of calling such commission in the name of the particular municipality and/or county government."

SECTION 2. In addition to all other powers authorized by law, the Brunswick County Airport Commission shall have the following powers:

(1) To sell, lease, or otherwise dispose of any property, real or personal, belonging to the Airport Commission, according to the procedures described in Article 12 of Chapter 160A of the General Statutes, but no sale of real property shall be made without the approval of the Brunswick County Board of County Commissioners.

(2) To contract with persons, firms, or corporations for terms not to exceed 20 years, for the operation of airline-scheduled passenger and freight flights, nonscheduled flights, and any other airplane activities not inconsistent with the grant agreements under which the airport property is held.

(3) To erect and construct buildings, hangars, shops, and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; to lease these improvements and facilities for a term or terms not to exceed 20 years; to borrow money for use in making and paying for these improvements and facilities, secured by and on the credit only of the lease agreements in respect to these improvements and facilities, and to pledge and assign the leases and lease agreements as security for the authorized loans.

SECTION 3. The Brunswick County Airport Commission shall be exempt from any beach renourishment fees imposed by the Town of Oak Island.

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

HOUSE BILL 1030:
Brunswick County Airport Commission

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Stiller
Date:	April 11, 2005	**Analysis by:**	Martha Walston
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY: ***House Bill 1030 is a local bill that gives the Brunswick County Airport Commission additional powers and exempts the Commission from any beach renourishment fees imposed by the Town of Oak Island.***

The original bill contained proposed legislation that was enacted in 2000. The proposed committee substitute removes this unnecessary language.

BILL ANALYSIS: House Bill 1030 provides the Brunswick County Airport Commission with the following additional powers:

1. To sell, lease, or dispose of real or personal property belonging to the Commission, according to the procedures described in Article 12 of Chapter 160A of the General Statutes. No sale of real property may be made without the approval of the Brunswick County Board of Commissioners. In 2003, the General Assembly gave airport authorities created by a local act of the General Assembly the authority to finance real and personal property by installment contracts and other means of indebtedness authorized by G.S. 160A-20.
2. To contract with persons, firms, or corporations for terms not to exceed 20 years, for the operation of airline-scheduled passenger and freight flights, nonscheduled flights, and any other airplane activities not inconsistent with the grant agreements under which the airport property is held.
3. To erect and construct improvements and facilities; to lease these improvements and facilities for a term not to exceed 20 years; to borrow money for paying for the improvements and facilities, secured by the lease agreements, and to pledge and assign the leases as security for the authorized loans.

House Bill 1030 also exempts the Airport Commission from any beach renourishment fees imposed by the Town of Oak Island.

CURRENT LAW AND BACKGROUND: Airport authorities created by a local act of the General Assembly have only the powers given to them in the local legislation that creates them.[1] Local legislation creating airport authorities typically gives the power to set fees and rents and to issue bonds and notes. In 1961, the General Assembly authorized legislation creating the Airport Commission of Southport, Boiling Springs Lake, Long Beach, and Brunswick County.

[1] There are at least 34 public airport authorities created by local acts.

In 1991, the General Assembly amended the earlier legislation and authorized the town of Yaupon Beach, the town of Long Beach, and Brunswick County to establish the Brunswick County Airport Commission. In 1999, the General Assembly authorized the Airport Commission to receive refunds of sales and use taxes.[2] In 2000, the General Assembly amended the membership of the Commission to reflect the consolidation of the charters of the towns of Yaupon Beach and Long Beach into the newly created town of Oak Island.

[2] G.S. 105-164.14(c) allows certain governmental entities, including a local airport authority that was created under a local act of the General Assembly, to receive refunds of sales and use taxes paid on direct purchases of personal property and services.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 986*
PROPOSED COMMITTEE SUBSTITUTE H986-CSST-14 [v.1]

4/7/2005 1:41:02 PM

Short Title: Greenville/Surf City Satellite Annexations. (Local)

Sponsors:

Referred to:

March 30, 2005

A BILL TO BE ENTITLED

AN ACT REMOVING THE CAP ON SATELLITE ANNEXATIONS FOR THE CITY OF GREENVILLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-58.1(b)(5) reads as rewritten:

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

...

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

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Gastonia, Greenville, Hickory, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Angier, Bladenboro, Calabash, Catawba, Creswell, Dallas, Fuquay-Varina, Garner, Godwin, Holly Ridge, Holly Springs, Kenly, Knightdale, Leland, Louisburg, Maiden, Mayodan, Midland, Mocksville, Morrisville, Pembroke, Pine Level, Ranlo, Rolesville, Rutherfordton, Surf City, Swansboro, Troy, Wallace, Warsaw, Waynesville, Wendell, and Zebulon."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 986*

Short Title:	Greenville Satellite Annexations.	(Local)
Sponsors:	Representatives McLawhorn, Warren, and Williams (Primary Sponsors).	
Referred to:	Finance.	

March 30, 2005

A BILL TO BE ENTITLED

AN ACT REMOVING THE CAP ON SATELLITE ANNEXATIONS FOR THE CITY OF GREENVILLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-58.1(b)(5) reads as rewritten:

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

...

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

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Gastonia, Greenville, Hickory, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Angier, Bladenboro, Calabash, Catawba, Creswell, Dallas, Fuquay-Varina, Garner, Godwin, Holly Ridge, Holly Springs, Kenly, Knightdale, Leland, Louisburg, Maiden, Mayodan, Midland, Mocksville, Morrisville, Pembroke, Pine Level, Ranlo, Rolesville, Rutherfordton, Swansboro, Troy, Wallace, Warsaw, Waynesville, Wendell, and Zebulon."

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

HOUSE BILL 986:
Greenville Satellite Annexations

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. McLawhorn, Warren, Williams
Date:	April 7, 2005		
Version:	H986-CSST-14v.1	**Summary by:**	R. Erika Churchill Committee Counsel

SUMMARY: ***The proposed committee substitute would add Greenville and Surf City to the list of municipalities that may annex satellite areas without meeting the standard that limits the size of the area within the satellite corporate limits, effective when it becomes law.***

CURRENT LAW: G.S. 160A-58.1 and 160A-58.7 govern the voluntary annexation by a municipality of noncontiguous property.

G.S. 160A-58.1 provides that all property owners in the satellite area may petition a city for voluntary annexation of the noncontiguous property if the property meets all of the following five standards:

1. The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.
2. No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city.
3. The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
4. If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.
5. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

G.S. 160-58.7 provides the process a city must follow when the city is the property owner of the satellite area. This process requires that the city comply with the provisions of G.S. 160A-58.1 as described above.

BILL ANALYSIS: The proposed committee substitute would remove the requirement that the area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits when noncontiguous property is annexed by Greenville or Surf City (Rep. Justus, HB 1068).

BACKGROUND: The municipalities of Angier, Bladenboro, Calabash, Catawba, Claremont, Concord, Conover, Creswell, Dallas, Fuquay-Varina, Garner, Gastonia, Godwin, Hickory, Holly Ridge, Holly Springs, Kenly, Knightdale, Leland, Locust, Louisburg, Maiden, Marion, Mayodan, Midland, Mocksville, Morrisville, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Pembroke, Pine Level, Randleman, Ranlo, Rockingham, Rolesville, Rutherfordton, Sanford, Salisbury, Southport, Statesville, Swansboro, Troy, Wallace, Warsaw, Washington, Waynesville, Wendell, and Zebulon have already eliminated the 5th standard for all annexations by the municipality.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 1080 A BILL TO BE ENTITLED AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF DORTCHES.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

North Carolina General Assembly

House Committee on Finance

Minutes

~

April 19, 2005

The House Committee on Finance met on Tuesday, April 19, 2005 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, Luebke, and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives Blackwood, Bordsen, Capps, Carney, Faison, Folwell, Hackney, Harrell, Holliman, Jones, McGee, Rayfield, Underhill, Vinson, Walend, and Wiley. Also present were Sergeant-at-Arms Bill Freeman, Fred Hines, Dusty Rhodes, and Walter Spell. Staff persons present included Cindy Avrette, Rodney Bizzell, Ashley Huffstetler, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairwoman Alexander called the meeting to order at 8:34 am and recognized the two (2) pages present: Will Caldwell of Wake County, sponsored by Representative Capps, and Peter Coogan of Wake County, sponsored by Representative Eddins.

The first bill under the Committee's consideration was **HB 580 – CITY OF BELMONT OCCUPANCY TAX** (see **attachment 3**). Chairwoman Alexander first recognized Representative Howard who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Representative Rayfield was then recognized and explained that the bill authorizes the City of Belmont to levy a three percent (3%) occupancy tax. He also informed the Committee members that the bill had received a favorable recommendation by the House Finance Subcommittee on Occupancy Tax. Chairwoman Alexander then recognized Representative Howard who moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. As there was no further debate, Chairwoman Alexander called the motion to a vote and it carried by consent.

Chairwoman Alexander again recognized Representative Rayfield to explain the next bill: **HB 581 – BELMONT STREET LIGHTING ASSESSMENTS** (see **attachment 4**). Representative Rayfield explained that this bill authorizes the City of Belmont to make a special assessment for street lighting upon the receipt of a petition of a majority of the landowners benefited. Chairwoman Alexander then recognized Representative Blackwood who moved that House Bill 581 be given a favorable report by the Committee. Seeing no further discussion, Chairwoman Alexander called the motion to a vote, and it carried without objection.

The next bill considered by the Committee was **HB 736 - CODE ENFORCEMENT OFFICIAL EXAM FEES** (see **attachment 5**). Chairwoman Alexander first recognized Representative Holliman who explained that the bill establishes an examination fee of up to $125 for

code-enforcement officials and an examination review fee of up to $50. He also noted that the bill was filed at the request of the Agency. Representative Ross was then recognized who moved that House Bill 736 be given a favorable report. As there was no further debate, Chairwoman Alexander called the motion to a vote, and it carried by consent.

The following bill heard by the Committee was **HB 803 – MANUFACTURED HOUSING LICENSE AGREEMENTS** (see **attachment 6**). Chairwoman Alexander first recognized Representative Weiss who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Chairwoman Alexander then again recognized Representative Holliman who explained that this bill establishes a late filing fee for licenses of manufactured home manufacturers, dealers, salespersons, or set-up contractors that have already expired. He further explained that the bill also eliminates supplemental licensing by the Manufactured Housing Board. Following the explanation, Representative Howard moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairwoman Alexander called the motion to a vote, and it carried without objection.

Chairwoman Alexander then recognized Representative Howard to explain **HB 766 – ENHANCE PASSENGER TRAMWAY SAFETY ACT** (see **attachment 7**). Representative Howard explained that this bill amends the Passenger Tramway Safety Act to include transportation by conveyor belts, such as ski lifts. This bill also empowers the Commissioner of Labor to investigate accidents involving tramways and establishes fees of up to $137 for the issuance of registration certificates. Tramway operators would also be required to obtain liability insurance. Following the explanation, Representative Womble was recognized and moved that House Bill 766 be given a favorable report. Chairwoman Alexander then recognized Representative McGee who asked for a further explanation of the insurance requirement in the bill. To answer the question, Chairwoman Alexander recognized John Hoomani from the Department of Labor. Mr. Hoomani stated that the insurance requirement makes the bill consistent with other acts administrated by the Commissioner of Labor. Chairwoman Alexander then recognized Representative Hackney who asked why the bill would be effective immediately. Representative Howard was recognized to answer the question and stated that she does not object to making the bill effective October 15, 2005, if the committee so desired. As there was no further debate or action taken, however, Chairwoman Alexander called the motion to a vote and it carried with no known objection.

The final bill considered by the Committee was **HB 1056 – AMEND CARTERET COUNTY OCCUPANCY TAX** (see **attachment 8**). Chairwoman Alexander recognized Representative Preston who explained that this bill amends the Carteret Occupancy Tax by extending the date allowed for the Carteret County Board of Commissioners to develop a plan and sign a contract for the construction of a convention center. The bill also extends the date for the Board to levy the one percent (1%) tax to the year 2008. Following the explanation, Representative Womble, noting that the bill had been approved by the House Finance Subcommittee on Occupancy Tax (which he chairs), moved that House Bill 1056 be given a favorable report. Seeing no further discussion, Chairwoman Alexander called the motion to a vote and it carried without objection.

Chairwoman Alexander, on behalf of the Committee, then recognized the attendance of and welcomed former Representative Ruth Easterling from Mecklenburg County. As there was no further business before the Committee, Chairwoman Alexander then adjourned the meeting at 8:56 am.

Respectfully submitted,

Representative Martha Alexander
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. House Bill 580 (and related materials)
4. House Bill 581 (and related materials)
5. House Bill 736 (and related materials)
6. House Bill 803 (and related materials)
7. House Bill 766 (and related materials)
8. House Bill 1056 (and related materials)
9. House Bill 105 (and related materials) (REMOVED FROM CALENDER)

ATTACHMENT 1

AGENDA

House Finance Committee

April 19, 2005
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Alexander

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard

Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order

Introduction of Pages

Bills:

HB 105 MOTOR FUEL TAX CHANGES *Rep. Luebke*

HB 580 CITY OF BELMONT OCCUPANCY TAX *Rep. Rayfield*

HB 581 BELMONT STREET LIGHTING ASSESSMENTS *Rep. Rayfield*

HB 736 CODE ENFORCEMENT OFFICIAL EXAM FEES.-AB
Rep. Holliman

HB 766 ENHANCE PASSENGER TRAMWAY SAFETY ACT.-AB
Rep. Howard

HB 803 MANUFACTURED HOUSING LICENSE AMENDMENTS
Rep. Holliman

HB 1056 AMEND CARTERET COUNTY OCCUPANCY TAX *Rep. Preston*

Adjournment

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, April 19, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 105 – MOTOR FUEL TAX CHANGES – Rep. Luebke

HB 580 – CITY OF BELMONT OCCUPANCY TAX – Rep. Rayfield

HB 581 – BELMONT STREET LIGHTING ASSESSMENTS – Rep. Rayfield

HB 736 – CODE ENFORCEMENT OFFICIAL EXAM FEES.-AB – Rep. Holliman

HB 766 – ENHANCE PASSENGER TRAMWAY SAFETY ACT.-AB – Rep. Howard

HB 803 – MANUFACTURED HOUSING LICENSE AMENDMENTS – Rep. Holliman

HB 1056 – AMEND CARTERET COUNTY OCCUPANCY TAX – Rep. Preston

Respectfully,
Representatives Alexander, Gibson, Howard, Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **11:15 a.m.** on **April 14, 2005.**

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

ATTACHMENT 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — April 19, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mitch Kokai	OSBM
Warren Plonk	OSBM
Donna Alderman	NCDOR
Michael White	
Ken Melton	D.O.R.
Brad Lovin	NC Manufactured Housing
FRANKLIN FOLGER	NCDOT
Rebecca Key	INTERN - PRYOR GIBSON
Amy Hobbs	Hobbs & Co
Bo Heath	Intern
Kevin Leonard	WCSR

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — APRIL 19, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Conner Kerley	NCDOT
Jonathan Brooks	NC Dept of Labor
John Hoomani	NCDOL
Art Britt	NCDOL
Doug Lassiter	NCSTA
Jim Blackburn	N.C. Association of County Commissioners
Paul Meyer	NC ACC

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — April 19, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ruth Easterling	Former Legislator
Mary Klenz	League of Women Voters of NC
Chad Hinton	Civitas Institute
John Maltbg	Gov Office

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H D

HOUSE BILL 580*
PROPOSED COMMITTEE SUBSTITUTE H580-PCS60346-MB-10

Short Title: City of Belmont Occupancy Tax. (Local)

Sponsors:

Referred to:

March 10, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF BELMONT TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Occupancy tax. – (a) Authorization and Scope. – The Belmont City Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.(c) Distribution and Use of Tax Revenue. – The City of Belmont shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Belmont Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Belmont and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct

market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a city or to attract tourists or business travelers to the city. The term includes tourism-related capital expenditures.

SECTION 2. Belmont Tourism Development Authority. – (a) Appointment and Membership. – When the Belmont City Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a city Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the city, and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the city. The city council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Belmont shall be the ex officio finance officer of the Authority.

SECTION 2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the city, sponsor tourist-related events and activities in the city, and finance tourist-related capital projects in the city.

SECTION 2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Belmont City Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the city council may require.

SECTION 3. G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Belmont, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, Washington, and Wilmington, to the Towns of Beech Mountain, Blowing Rock, Carolina Beach, Carrboro, Franklin, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 580*

Short Title:	City of Belmont Occupancy Tax.	(Local)
Sponsors:	Representative Rayfield.	
Referred to:	Finance.	

March 10, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF BELMONT TO LEVY A ROOM AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Occupancy tax. – (a) Authorization and Scope. – The Belmont City Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.(c) Distribution and Use of Tax Revenue. – The City of Belmont shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Belmont Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Belmont and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract

tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a city or to attract tourists or business travelers to the city. The term includes tourism-related capital expenditures.

SECTION 2. Belmont Tourism Development Authority. – (a) Appointment and Membership. – When the Belmont City Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a city Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the city, and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the city. The city council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Belmont shall be the ex officio finance officer of the Authority.

SECTION 2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the city, sponsor tourist-related events and activities in the city, and finance tourist-related capital projects in the city.

SECTION 2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Belmont City Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the city council may require.

SECTION 3. City Administrative Provisions. – G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Belmont, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, Washington, and Wilmington, to the Towns of Beech Mountain, Blowing Rock, Carolina Beach, Carrboro, Franklin, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

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

House Bill 580
Belmont Occupancy Tax

BILL ANALYSIS

Committee:	**Finance**	**Sponsor:**	**Representative Rayfield**
Date:	April 19, 2004	**Analysis:**	Ashley Huffstetler
Version:	**1st Edition**		Staff Attorney

SUMMARY: ***House Bill 580 authorizes the City of Belmont to levy a 3% room occupancy tax. Two-thirds of the proceeds would be used to promote travel and tourism and one-third would be used for tourism-related expenditures. This bill conforms to the guidelines supported by the North Carolina Travel and Tourism Coalition and adhered to by the House Finance Committee. <u>The PCS makes only technical corrections to the bill.</u>***

CURRENT LAW: Currently, the City of Belmont does not have authority to levy a room occupancy tax. Belmont is located in Gaston County, which does have authority to levy a 3% occupancy tax. The proceeds of the county tax are used for economic development to promote travel and tourism.

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. In several instances, the General Assembly has authorized both a county and a city within that county to impose an occupancy tax. The rate of tax, the use of the tax proceeds, the administration of the tax, and the body with the authority to determine how the tax proceeds will be spent vary considerably. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – G.S. 153A-155 and G.S. 160A-215. These provisions provide uniformity in the areas of levy, administration, collection, repeal, and penalties.

The North Carolina Travel and Tourism Coalition has a policy statement for legislation authorizing local occupancy taxes. Many of the principles contained in its statement are similar to the ones established by a House Finance Subcommittee on Occupancy Taxes in 1993.

BILL ANALYSIS: House Bill 580 authorizes the City of Belmont to levy a room occupancy tax of up to 3%. The proceeds must be remitted to a city Tourism Development Authority (TDA), which must use two-thirds of the proceeds to promote travel and tourism and one-third for tourism-related expenditures. These administrative and use provisions conform to the uniform guidelines referenced above and detailed in the chart below:

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6%, and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism, and the remainder must be used for tourism-related expenditures.
Definitions – The terms "net proceeds," "promote travel and tourism," and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority, which has the authority to determine how the tax proceeds will be used and is created by a local ordinance. At least ½ of the members must be currently active in the promotion of travel and tourism in the city or county, and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: April 13, 2005

TO: Representative Rayfield

FROM: Rodney Bizzell
Fiscal Research Division

RE: House Bill 580-Belmont Occupancy Tax

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:	$9,600	$9,820	$10,036	$10,237	$10,442

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Town of Belmont

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY: This bill authorizes the Town of Belmont to levy an occupancy tax. The tax applies to the rental of any room, lodging, or accommodation within the city limits. The occupancy tax rate is 3% of gross receipts from the rental of accommodations. The proceeds must be remitted to a city Tourism Development Authority (TDA), which must use two-thirds of the proceeds to promote travel and tourism and one-third for tourism-related expenditures.

ASSUMPTIONS AND METHODOLOGY: According to the Belmont town manager, there are 3 motels in Belmont with 12-15 rooms each and 1 bed and breakfast. Assuming an average room rate of $45 per night and a 50% rate of room occupancy, FRD estimates the 3% occupancy tax would generate $9,600 per year. Because no historic data is available, the General Consumer Price Index estimated rate of increase is used to estimate future growth in occupancy tax receipts. No development of additional motels or other accommodations is assumed in the estimates of subsequent year revenues.

SOURCES OF DATA: Town of Belmont

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 580 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE CITY OF BELMONT TO LEVY A ROOM AND TOURISM DEVELOPMENT TAX.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

ATTACHMENT 4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H **1**

HOUSE BILL 581*

Short Title:	Belmont Street Lighting Assessments.	(Local)
Sponsors:	Representative Rayfield.	
Referred to:	Local Government II.	

March 10, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE CITY OF BELMONT TO UTILIZE THE PETITION PROCEDURE FOR STREET LIGHTING AS IT IS CURRENTLY AUTHORIZED FOR STREET OR SIDEWALK IMPROVEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-216 is amended by adding a new subdivision to read:

"(4a) Providing street lights and street lighting;".

SECTION 2. Assessments made under G.S. 160A-216(4a), as enacted by this act, shall be governed by the same petition requirements of G.S. 160A-217 as if it were an assessment for street or sidewalk improvements.

SECTION 3. This act applies to the City of Belmont only.

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

HOUSE BILL 581:
Belmont Street Lighting Assessments

BILL ANALYSIS

Committee:	House Finance	**Date:**	April 19, 2005
Introduced by:	Rep. Rayfield	**Summary by:**	Cindy Avrette
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 581 authorizes the City of Belmont to make special assessments for street lighting, upon receipt of a petition of a majority of the landowners representing a majority of the road frontage benefited. The bill becomes effective when it becomes law. The bill received a favorable report from the Local Government II Committee on April 6, 2005.

CURRENT LAW: A city is authorized to make special assessments against benefited property for streets and sidewalks as well as water, sewer, and stormwater drainage systems. To levy a special assessment for street or sidewalk improvements, the city must receive a petition to do so signed by at least a majority of the owners of property to be assessed, who must represent at least a majority of all the lineal feet of frontage of the lands abutting on the street or portion to be improved. Unless the petition specifies another percentage, not more than 50% of the cost of the improvement may be assessed.

Once a city decides to finance a proposed project by special assessments, it must adopt a preliminary resolution, provide public notice, and hold a public hearing. After a public hearing, a city may adopt an assessment resolution that must include the cost of the project and the basis for making the assessments. Assessments may be made on one or more of the following bases: frontage abutting the property, area of land served, value added to the land served by the project, or the number of lots served.

BILL ANALYSIS: House Bill 581 would allow the City of Belmont to levy special assessments for street lighting in the same manner that it may levy assessments for street or sidewalk improvements.[1] The City could not initiate the assessment on its own. To levy the assessment, the City must receive a petition signed by a majority of the owners of property to be assessed. The request for this legislation originated with a subdivision in Belmont that sought the help of the city in getting new street lighting installed in its neighborhood.[2]

EFFECTIVE DATE: When it becomes law.

Giles Perry, counsel to the Local Government II Committee, contributed to this summary.

H0581e1-SMRB

[1] In the past, G.S. 160A-216 has been modified by local legislation to authorize certain cities to make special assessments for underground wiring and to authorize certain cities to levy special assessments for street and sidewalk improvements without a petition requirement.

[2] Counties have the authority to make special assessments for street lighting in a residential subdivision under G.S. 153A-185.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 581 A BILL TO BE ENTITLED AN ACT AUTHORIZING THE CITY OF BELMONT TO UTILIZE THE PETITION PROCEDURE FOR STREET LIGHTING AS IT IS CURRENTLY AUTHORIZED FOR STREET OR SIDEWALK IMPROVEMENTS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 736

Short Title:	Code Enforcement Official Exam Fees.-AB	(Public)
Sponsors:	Representative Holliman.	
Referred to:	Finance.	

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE ADMINISTERING OF THE CODE ENFORCEMENT OFFICIAL BOARD'S EXAMINATION AT REGIONAL LOCATIONS AND MORE FREQUENTLY THAN QUARTERLY BY THE AUTHORIZING OF CODE ENFORCEMENT OFFICIAL EXAMINATION FEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-151.16 reads as rewritten:

"**§ 143-151.16. Certification fees; renewal of ~~certificates.~~ certificates; examination fees.**

(a) The Board shall establish a schedule of fees to be paid by each applicant for certification as a qualified Code-enforcement official. Such fee shall not exceed twenty dollars ($20.00) for each applicant.

(b) A certificate, other than a probationary certificate, as a qualified Code-enforcement official issued pursuant to the provisions of this Article must be renewed annually on or before the first day of July. Each application for renewal must be accompanied by a renewal fee to be determined by the Board, but not to exceed ten dollars ($10.00). The Board is authorized to charge an extra two dollar ($2.00) late renewal fee for renewals made after the first day of July each year.

(c) Any person who fails to renew his certificate for a period of two consecutive years may be required by the Board to take and pass the same examination as unlicensed applicants before allowing such person to renew his certificate.

(d) The Board may establish and collect a fee to be paid by each applicant for examination in an amount not to exceed one hundred twenty-five dollars ($125.00). In addition, the Board may establish and collect a fee to be paid by each applicant applying for a review of the applicant's examination. The amount of the examination review fee shall not exceed fifty dollars ($50.00). Examination and examination review fees may be paid directly to approved testing services that maintain regional facilities for the purpose of administering the Board's examinations."

SECTION 2. This act becomes effective October 1, 2005, and applies to applications made on or after that date.

HOUSE BILL 736:
Code Enforcement Official Exam Fees.-AB

BILL ANALYSIS

Committee:	House Finance	**Date:**	April 19, 2005
Introduced by:	Rep. Holliman	**Summary by:**	Cindy Avrette
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 736 would establish an examination fee of up to $125 for Code-enforcement officials and an examination review fee of up to $50. The bill provides that the fee may be paid directly to approved testing services that administer the North Carolina Code Officials Qualification Board's examination. The bill would become effective October 1, 2005, and apply to applications made on or after that date. The Board passed a motion on October 29, 2003, requesting this legislation.

CURRENT LAW: Buildings in the State must comply with the State Building Code. Qualified Code-enforcement officials enforce the State Building Code. The North Carolina Code Officials Qualification Board maintains responsibility for certifying Code-enforcement officials. To become certified, a person must apply for certification, pay a $20 application fee, and pass an examination. The certification must be renewed annually. The renewal fee is $10. At present, there is no examination fee. The examination is given four times a year in Raleigh.

BILL ANALYSIS: House Bill 736 would enable the Board to offer certification examinations across the State on any date arranged by the inspector and the examination firm by imposing an examination fee of up to $125. The fee would be payable to the testing firm that administers the Board's exams. The Board's intent is to offer examinations within approximately 120 miles of all inspection departments. The bill also provides for an examination review fee of up to $50.

To establish the fee amount, the Board will have to go through the administrative rules process.[1] In addition to the notice and public comment provided for under the administrative rules process, the Board will also have to consult with the Joint Legislative Commission on Governmental Operations on the amount and purpose of the fee before the fee may become effective.[2]

EFFECTIVE DATE: October 1, 2005, and applicable to applications made on or after that date.

H0736e1-SMRB

[1] Chapter 150B of the General Statutes.
[2] G.S. 12-3.1.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 736 (First Edition)

SHORT TITLE: Code Enforcement Official Exam Fees.-AB

SPONSOR(S): Representative Holliman

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund			**No fiscal impact**		
EXPENDITURES:					
Local governments	**124,000**	**124,000**	**124,000**	**124,000**	**124,000**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina counties & municipalities.

EFFECTIVE DATE: October 1, 2005

BILL SUMMARY: Allows the Office of the State Fire Marshal to establish a fee up to $125 for the certification examination required for code enforcement officials across the state. The exam is currently administered free of charge in Raleigh. The testing fee will be paid directly to a private testing firm by the applicant and will not be collected by the state. The current application fee for code enforcement officials is $20 and is not changed by this legislation.

ASSUMPTIONS AND METHODOLOGY: The North Carolina Department of Insurance's Office of the State Fire Marshal issues 900 code enforcement officer licenses and administers 1500 to 1600 examinations annually. The fee for the application was last increased in 1988, and the department has never assessed a fee for the examinations. The Office of the State Fire Marshal has never recouped its administrative costs for the examinations. Additionally, the examinations are only offered in Raleigh, which has been problematic for applicants from remote areas of the state. By offering the examinations through a private testing firm, applicants will have a choice of approximately six cities throughout the region where they may take the exam. The State Fire Marshal proposes this legislation as a solution both for their department's financial interest and for

city and county employees who incur time away from work as well as travel expenses as part of earning their certification.

The cost to cities and counties will vary by the number of building inspectors they employ. For some municipalities, the option to take the examination at a testing center will constitute a savings in time lost and travel expenses for those employees; for other entities, it will constitute a new expenditure. Cumulatively, this fee will cost North Carolina cities and counties approximately $193,750 per year, assuming the testing fee is $125 and an averaged 1,550 exams are administered. From its communications with private testing firms, the State Fire Marshal estimates that the actual cost of the exam will be approximately $80, which would cost North Carolina municipalities a total of $124,000 annually assuming the same number of exams are administered.

SOURCES OF DATA: North Carolina Office of the State Fire Marshall.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Linda Struyk Millsaps and Brenna Erford

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

Official
Fiscal Research Division
Publication

DATE: April 18, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 736 A BILL TO BE ENTITLED AN ACT TO ALLOW THE ADMINISTERING OF THE CODE ENFORCEMENT OFFICIAL BOARD'S EXAMINATION AT REGIONAL LOCATIONS AND MORE FREQUENTLY THAN QUARTERLY BY THE AUTHORIZING OF CODE ENFORCEMENT OFFICIAL EXAMINATION FEES.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H D

HOUSE BILL 803
PROPOSED COMMITTEE SUBSTITUTE H803-CSRBf-4 [v.3]

4/18/2005 5:45:47 PM

Short Title: Manufactured Housing License Amendments. (Public)

Sponsors:

Referred to:

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE MANUFACTURED HOUSING BOARD TO CHARGE AND COLLECT A LATE FILING FEE FOR LICENSEES THAT APPLY FOR RENEWAL OF THE LICENSE AFTER THE LICENSE HAS EXPIRED AND TO ELIMINATE SUPPLEMENTAL LICENSING BY THE MANUFACTURED HOUSING BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-143.11 reads as rewritten:

"**§ 143-143.11. License required; application for license.**

(a) It shall be unlawful for any manufactured home manufacturer, dealer, salesperson, or set-up contractor to engage in business as such in this State without first obtaining a license from the ~~Board,~~ Board for each place of business operated by the licensee, as provided in this Article. The fact that a person is licensed by the Board as a set-up contractor or a dealer does not preempt any other licensing boards' applicable requirements for that person.

(b) Application for the license shall be made to the Board at such time, in such form, and contain information the Board requires, and shall be accompanied by the fee established by the Board. The fee shall not exceed three hundred dollars ($300.00) ~~for any license.~~ for each license issued. In addition to the license fee, the Board may also charge an applicant a fee to cover the cost of the criminal history record check required by G.S. 143-143.10A.

(c) In the application, the Board shall require information relating to the matters set forth in G.S. 143-143.13 as grounds for refusal of a license, and information relating to other pertinent matters consistent with safeguarding the public interest. All of this information shall be considered by the Board in determining the fitness of the applicant. Once the Board has determined that an applicant is fit, the Board must provide the applicant a license for each place of business operated by the applicant.

(d) All licenses shall expire, unless revoked or suspended, on June 30 of each year following the date of issue.

(e) Every licensee shall, on or before the first day of July of each year, obtain a renewal of a license for the next ~~year,~~ year by ~~application, accompanied by~~ applying to the Board, completing the necessary hours of continuing education required under G.S. 143-143.11B, and paying the required ~~fee.~~ renewal fee for each place of business operated by the licensee. The renewal fee shall not exceed three hundred dollars ($300.00) for each license issued. Upon failure to ~~renew,~~ renew by the first day of July, a license automatically expires. The license may be renewed at any time within one year after its lapse upon payment of the renewal ~~fee.~~ fee and a late filing fee. The late filing fee shall not exceed three hundred dollars ($300.00).

~~(f) Supplemental licenses shall be issued for each place of business, operated or proposed to be operated by the licensee, that is not contiguous to other premises for which a license is issued. The fee for a supplemental license shall be established by the Board and shall not exceed three hundred dollars ($300.00), provided that no supplemental license shall be required for a place of business operated by a licensee that is used exclusively for storage.~~

(g) Notwithstanding the provisions of subsection (a), the Board may provide by rule that a manufactured home salesperson will be allowed to engage in business during the time period after making application for a license but before such license is granted.

(h) As a prerequisite to obtaining a license under this Article, a person may be required to pass an examination prescribed by the Board that is based on the Code, this Article, and any other subject matter considered relevant by the Board."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 803

Short Title:	Manufactured Housing License Amendments.	(Public)
Sponsors:	Representative Holliman.	
Referred to:	Finance.	

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE MANUFACTURED HOUSING BOARD TO CHARGE AND COLLECT A LATE FILING FEE FOR LICENSEES THAT APPLY FOR RENEWAL OF THE LICENSE AFTER THE LICENSE HAS EXPIRED AND TO ELIMINATE SUPPLEMENTAL LICENSING BY THE MANUFACTURED HOUSING BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-143.11 reads as rewritten:

"**§ 143-143.11. License required; application for license.**

(a) It shall be unlawful for any manufactured home manufacturer, dealer, salesperson, or set-up contractor to engage in business as such in this State without first obtaining a license from the Board, as provided in this Article. The fact that a person is licensed by the Board as a set-up contractor or a dealer does not preempt any other licensing boards' applicable requirements for that person.

(b) Application for the license shall be made to the Board at such time, in such form, and contain information the Board requires, and shall be accompanied by the fee established by the Board. The fee shall not exceed three hundred dollars ($300.00) for any license. In addition to the license fee, the Board may also charge an applicant a fee to cover the cost of the criminal history record check required by G.S. 143-143.10A. The Board may also charge a late filing fee not to exceed three hundred dollars ($300.00) for a licensee whose application for license renewal is late pursuant to subsection (c) of this section.

(c) In the application, the Board shall require information relating to the matters set forth in G.S. 143-143.13 as grounds for refusal of a license, and information relating to other pertinent matters consistent with safeguarding the public interest. All of this information shall be considered by the Board in determining the fitness of the applicant.

(d) All licenses shall expire, unless revoked or suspended, on June 30 of each year following the date of issue.

(e) Every licensee shall, on or before the first day of July of each year, obtain a renewal of a license for the next year, by application, accompanied by the required fee. Upon failure to renew, a license automatically expires. The license may be renewed at any time within one year upon payment of the renewal ~~fee.~~fee and a late fee. If the renewal application is received postmarked after June 30 of the year of renewal, the licensee shall submit a late fee in addition to the renewal fee in order to be eligible to renew the license.

~~(f) Supplemental licenses shall be issued for each place of business, operated or proposed to be operated by the licensee, that is not contiguous to other premises for which a license is issued. The fee for a supplemental license shall be established by the Board and shall not exceed three hundred dollars ($300.00), provided that no supplemental license shall be required for a place of business operated by a licensee that is used exclusively for storage.~~

(g) Notwithstanding the provisions of subsection (a), the Board may provide by rule that a manufactured home salesperson will be allowed to engage in business during the time period after making application for a license but before such license is granted.

(h) As a prerequisite to obtaining a license under this Article, a person may be required to pass an examination prescribed by the Board that is based on the Code, this Article, and any other subject matter considered relevant by the Board."

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

HOUSE BILL 803:
Manufactured Housing License Amendments

BILL ANALYSIS

Committee:	House Finance	**Date:**	April 19, 2005
Introduced by:	Rep. Holliman	**Summary by:**	Cindy Avrette
Version:	PCS for First Edition H803-CSRBf-4		Committee Counsel

SUMMARY: House Bill 803 contains two recommendations of the North Carolina Manufactured Housing Board: it establishes a late filing fee and it eliminates the lower, supplemental license fee for additional dealer locations. The proposed committee substitute clarifies that although the person is the licensee, the licensee must obtain a separate license for each place of business operated by the licensee. The bill becomes effective when it becomes law.

CURRENT LAW: The Manufactured Housing Board is a Board within the Department of Insurance that is charged with regulating the manufactured housing industry. The Board must license a person before the person can engage in business in this State as a manufactured home manufacturer, dealer, salesperson, or set-up contractor. To receive a license, a person must apply to the Board, consent to a criminal record check, be found fit by the Board, and pay the applicable license fee. The fee may not exceed $300. The statute provides that a supplemental license may be issued for each additional place of business and the amount of the supplemental license may not exceed $300. In practice, the Board imposes a license fee of $250 and a supplemental license fee of $100.

The license must be renewed annually on or before July 1st of each year. To renew a license, a licensee must apply to the Board, complete any continuing education requirements of the Board, and pay the required fee. Upon failure to renew, a license automatically expires. However, a license can be renewed within one year of its lapse by payment of the renewal fee.

BILL ANALYSIS: House Bill 803 does two things at the request of the North Carolina Manufactured Housing Board:

- It establishes a late filing fee of not more than $300. The Board notes that many licensees fail to renew their licenses in a timely manner. This failure results in an added administrative cost of processing the late applications individually. The late fee is designed to cover the additional costs, and the Board also hopes it will encourage licensees to renew in a timely manner. To establish the late filing fee amount, the Board will have to go through the administrative rules process.[1] In addition to the notice and public comment provided for under the administrative rules process, the Board will also have to consult with the Joint Legislative Commission on Governmental Operations on the amount and purpose of the fee before the fee may become effective.[2]
- It eliminates the supplemental license for each additional place of business. The intent of the Board is to impose the full license fee for each place of business. The *proposed committee substitute* clarifies that a licensee must obtain a license for each place of business and pay the license fee for each place of business.

H0803e1-SMRB-CSRB

[1] Chapter 150B of the General Statutes.
[2] G.S. 12-3.1.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 803 (First Edition)

SHORT TITLE: Manufactured Housing License Amendments.

SPONSOR(S): Representative Holliman

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
Late fee	**35,550**	**21,300**	**12,750**	**7,700**	**4,625**
License	**6,900**	**6,900**	**6,900**	**6,900**	**6,900**
Total	**42,450**	**28,200**	**19,650**	**14,600**	**11,525**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Office of the State Fire Marshal.

EFFECTIVE DATE: When law.

BILL SUMMARY: This legislation allows the Office of the State Fire Marshal to assess a late fee for manufactured building license renewals submitted after June 30th of a given year. It also eliminates the supplemental dealer license from state statute. Approximately 25% of license renewals are submitted after the due date. The late fee is intended to discourage this practice. The elimination of the supplemental license designation is aimed at simplifying administration of the fee and treating manufactured building dealers more equitably as only the larger manufactured building retailers are the ones who benefit from the lower cost supplemental dealer license.

ASSUMPTIONS AND METHODOLOGY: This legislation has two fiscal impacts. The first results from the addition of a late fee on applications submitted after the June 30th due date. The Office of the State Fire Marshal estimates that 25% of applications for license renewals are late, and that the late applications are evenly distributed across all types of manufactured building licensees.

License Type	# Issued Annually	Current fee	Proposed late fee	% late
Manufacturer	56	$300	$100	25%
Retailer	567	$250	$100	25%
Set-up contractor	392	$250	$100	25%
Salesperson	1624	$25	$25	25%

From this data, additional late fee revenue of $35,500 is projected for 2005-2006. It is likely that the number of late license renewals will quickly decrease as a result of the late fee. The projection assumes a 30% reduction in late license renewals per year.

The second fiscal impact is the removal of the supplemental dealer license designation. A supplemental dealer is a location other than the main retailer location. Larger manufactured building dealers frequently set up and shut down different locations, and the OSFM has found it difficult to track these locations. Currently, there are 46 supplemental dealer licenses issued at a cost of $100 per license. This legislation would increase the cost of licensing those locations to the standard retailer rate of $250, resulting in an additional $6,900 in revenue each year.

SOURCES OF DATA: North Carolina Office of the State Fire Marshal

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Linda Struyk Millsaps and Brenna Erford

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: April 18, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 803 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE MANUFACTURED HOUSING BOARD TO CHARGE AND COLLECT A LATE FILING FEE FOR LICENSEES THAT APPLY FOR RENEWAL OF THE LICENSE AFTER THE LICENSE HAS EXPIRED AND TO ELIMINATE SUPPLEMENTAL LICENSING BY THE MANUFACTURED HOUSING BOARD.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 766

Short Title:	Enhance Passenger Tramway Safety Act.-AB	(Public)
Sponsors:	Representative Howard.	
Referred to:	Finance.	

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO ENHANCE LAWS RELATED TO THE PASSENGER TRAMWAY SAFETY ACT OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-117 reads as rewritten:

"**§ 95-117. Definitions.**

Each word or term defined in this Article has the meaning indicated in this section, unless a different meaning is plainly required by the context.

(1) 'Commissioner' means the Commissioner of Labor of the State of North Carolina.

(2) 'Industry' means activities of all those persons in the State who own, manage, or direct the operation of passenger tramways.

(3) 'Operator' means any person, firm, corporation, or organization which owns, manages, or directs the operation of a passenger tramway. 'Operator' may apply to the State or any political subdivision or instrumentality thereof.

(4) 'Passenger tramway' means a device used to transport passengers uphill on skis, or in cars on tracks, or suspended in the air by the use of steel cables, chains or belts, or by ropes, and usually supported by trestles or towers with one or more spans. 'Passenger tramway' shall include the following devices:

a. 'Chairlift,' a type of transportation on which passengers are carried on chairs suspended in the air and attached to a moving cable, chain or link belt supported by trestles or towers with one or more spans, or similar devices;

b. 'Conveyor,' a type of transportation on which passengers are transported uphill on a flexible moving element (conveyor belt) that travels uphill on one path and generally returns underneath the uphill portion.

~~b.~~c. 'J bar, T bar or platter pull,' so-called and similar types of devices or means of transportation which pull skiers riding on skis by means of an attachment to a main overhead cable supported by trestles or towers with one or more spans;

~~c.~~d. 'Multicar aerial passenger tramway,' a device used to transport passengers in several open or in closed cars attached to, and suspended from, a moving wire rope or attached to a moving wire rope and supported on a standing wire rope, or similar device;

~~d.~~e. 'Rope tow,' a type of transportation which pulls the skiers, riding on skis as the skier grasps the rope manually, or similar devices;

~~e.~~f. 'Skimobile,' a device in which a passenger car running on steel or wooden tracks is attached to and pulled by a steel cable, or similar device;

~~f.~~g. 'Two-car aerial passenger tramway,' a device used to transport passengers in two open or enclosed cars attached to, and suspended from, a moving wire rope or attached to a moving wire rope and supported on a standing wire rope or similar device."

SECTION 2. G.S. 95-118 reads as rewritten:

"**§ 95-118. Registration ~~required.~~ required; application procedures.**

~~No passenger tramway shall be operated in this State unless it has been registered by the Commissioner of Labor. On or before November 1 in each year, every operator of a passenger tramway shall apply to the Commissioner of Labor, on forms prepared by said Commissioner, for registration of the passenger tramway which such operator owns or manages, or the operation of which he directs.~~

(a) No person shall operate or permit to be operated or use any device subject to the provisions of this Article without a valid registration certificate.

(b) Operators of devices subject to the provisions of this Article shall apply to the Commissioner of Labor, on forms provided by the Commissioner, for registration of the devices that the operator owns or manages, or the operation of which the operator directs. The application shall contain ~~such~~ information ~~as~~ that the Commissioner may reasonably require in order for ~~him~~ the Commissioner to determine whether the passenger tramway sought to be registered by ~~such~~ the operator ~~comply~~ complies with the intent of this Article and the rules ~~and regulations promulgated~~ adopted by the ~~Commissioner as hereinafter provided.~~Commissioner."

SECTION 3. G.S. 95-119 reads as rewritten:

"**§ 95-119. ~~Registration criteria and procedure.~~Certification criteria; procedures; display of certificate.**

~~The Commissioner shall issue to the applying operator without delay a registration certificate for each passenger tramway owned, managed, or the operation of which is directed by such operator when the Commissioner is satisfied:~~

~~(1) That the facts stated in the application are sufficient to enable the Commissioner to fulfill his duties under this Article; and~~

~~(2) That each such passenger tramway sought to be registered complies with the rules and regulations of the Commissioner promulgated pursuant to the provisions of this Article.~~

~~(3) In order to satisfy himself that the conditions described in subdivisions (1) and (2) of this section have been fulfilled, the Commissioner may cause to be made such inspections hereinafter described as he may reasonably deem necessary.~~

~~(4) When an operator installs a passenger tramway subsequent to November 1, of any year, such operator shall file a supplemental application for registration of such passenger tramway. Upon the receipt of such supplemental application, the Commissioner shall proceed immediately to initiate proceedings leading to the registration or rejection of registration of such passenger tramway pursuant to the provisions of this Article.~~

~~(5) Each registration shall expire on October 31, next following the day of issue. Each operator shall cause the registration certificate for each passenger tramway thus registered to be displayed prominently at the place where passengers are loaded thereon.~~

(a) A registration certificate shall be issued without delay when the Commissioner is satisfied that the facts stated in the application are sufficient to enable the Commissioner to fulfill his or her duties under this Article and that the device sought to be registered complies with the rules adopted pursuant to this Article. Each registration certificate shall expire on October 31 of the year next following the date of issuance.

(b) The Commissioner may conduct any inspections necessary to determine whether the device sought to be registered complies with the intent of this Article and the rules adopted pursuant to this Article.

(c) The registration certificate for each device subject to the provisions of this Article shall be displayed prominently at the place where passengers are loaded onto the device."

SECTION 4. G.S. 95-120 reads as rewritten:

"**§ 95-120. Powers and duties of the Commissioner.**

In addition to all other powers and duties conferred and imposed upon the Commissioner by this Article, the Commissioner shall have and exercise the following powers and duties:

(1) To ~~adopt and enforce reasonable rules and regulations relating to public safety in the construction, operation, and maintenance of passenger tramways.~~adopt, modify, or revoke the rules necessary for carrying out the provisions of this Article, including those governing the design, construction, installation, operation, use, and maintenance of devices subject to the provisions of this Article. The rules ~~and regulations authorized~~ adopted under this section shall conform as

nearly as possible to the standards contained ~~for mechanical engineering aerial passenger tramways safety code as adopted and used by the U.S.A. Standards Institute, B77.1-1960, with addenda B77.1(a) 1963, and B77.1(b) 1965, and as said safety code from [for] tramways may be amended from time to time, and in the formulation of said regulations the Commissioner may use and adopt any other safety code for tramways as issued by recognized scientific and mechanical societies. The said regulations shall not be discriminatory in their application to operators of passenger tramways, and the procedures of the Commissioner shall be as provided in this Article;~~in the B77.1 – American National Standards Safety Requirements for Aerial Passenger Tramways and with good engineering and safety standards, formulas, and practices.

(1a) To enforce the rules adopted under this Article.

(1b) To grant exceptions from the requirements of the rules adopted under this Article and to permit the use of other devices when the exceptions and uses will not expose the public to an unsafe condition likely to result in serious personal injury or damage to property.

(2) To hold hearings and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the Commissioner, subpoena witnesses, administer oaths, and compel the testimony of witnesses and the production of books, papers and records relevant to any ~~inquiry;~~inquiry.

(3) To approve, deny, revoke, and renew the ~~registrations provided for in this Article and the procedures of the Commissioner with respect thereto shall be as provided in this Article with respect to the issuance of certificates or licenses;~~registration certificates in accordance with the rules adopted pursuant to this Article.

(4) To ~~cause the prosecution and the institution of actions for injunctions of all persons violating the provisions of this Article and to incur the necessary expenses thereof;~~institute civil actions for injunctive or other relief against violators of this Article.

(5) To cause the seal of the Commissioner of Labor to be affixed to all registrations issued by ~~him,~~ the Commissioner, and to employ, within the funds available to ~~him,~~ the Commissioner, and prescribe the duties of ~~all such~~ the personnel as the Commissioner may deem necessary in the administration of this Article.

(6) To have reasonable access, with or without notice, to the devices subject to the provisions of this Article during reasonable hours, for the purposes of inspections and testing.

(7) To investigate accidents involving devices subject to the provisions of this Article to determine the cause of the accident. The Commissioner shall have full subpoena powers in conducting the investigations.

(8) To coordinate enforcement and inspection activity relative to equipment, devices, and operations covered by this Article in order to minimize duplication of liability or regulatory responsibility on the part of the operator, owner, or employer.

(9) To establish fees not to exceed one hundred thirty-seven dollars ($137.00) for the inspection and issuance of registration certificates for devices that are in use and subject to this Article."

SECTION 5. Article 15 of Chapter 95 of the General Statutes is amended by adding a new section to read:

"**§ 95-120.1. Liability insurance.**

(a) No person shall operate a device subject to the provisions of this Article, unless at the time of operation, there is in existence:

(1) A contract of insurance providing coverage of not less than one million dollars ($1,000,000) per occurrence against liability for injury to persons or property arising out of the operation or use of the device; or

(2) A contract of insurance providing coverage of not less than five hundred thousand dollars ($500,000) per occurrence against liability for injury to persons or property arising out of the operation or use of the devices if the annual gross volume of the devices does not exceed two hundred seventy-five thousand dollars ($275,000).

The insurance contract to be provided must be made by an insurer or surety that is acceptable to the North Carolina Insurance Commissioner and authorized to transact business in this State.

(b) The Commissioner shall not issue a certificate of registration until the operator or the operator's authorized agent provides proof of the required contract of insurance.

(c) The Commissioner may request from the operator of a device subject to the provisions of this Article or the operator's authorized agent, proof of the required contract of insurance, and upon failure of the operator or authorized agent to provide proof of insurance, the Commissioner shall have the power to prevent the commencement of or to stop the operation of the device until such time as proof is provided."

SECTION 6. This act is effective when it becomes law.

HOUSE BILL 766:
Enhance Passenger Tramway Safety Act

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Howard
Date:	April 19, 2005	**Analysis by:**	Martha Walston
Version:	1st Edition		Committee Counsel

SUMMARY: House Bill 766 is an agency bill that amends the Passenger Tramway Safety Article as follows:

- *Broadens the definition of "passenger tramway" to include transportation by conveyor belt.*
- *Empowers the Commissioner of Labor to investigate accidents involving passenger tramways and to establish fees of up to $137 for the inspection and issuance of registration certificates required for devices covered by the Article*
- *Requires tramway operators to obtain liability insurance.*
- *Makes technical changes to the Article.*

BILL ANALYSIS: The Passenger Tramway Safety Article sets out the authority for the Commissioner of Labor to register passenger tramways, to establish reasonable standards of design and operational practices, and to make inspections. A passenger tramway includes a chairlift, J bar, T bar, platter pull, multi-car aerial passenger tramway, rope two, skimobile, and two-car aerial passenger tramway.

House bill 766 amends the Passenger Tramway Safety Article as follows:

- It expands the definition of passenger tramway to include a conveyor which is defined as a type of transportation on which passengers are transported uphill on a flexible moving element (conveyor belt) that travels uphill on one path and generally returns underneath the uphill portion.
- It expands the powers and duties of the Commissioner by adding the following:

  (a) to modify or revoke rules necessary to carry out the Article

  (b) to grant exceptions from the requirements of the rules and to permit the use of other devices when the exceptions and uses will not expose the public to an unsafe condition

  (c) to investigate accidents involving devices subject to the Article

  (d) to establish fees not to exceed $137 for the inspection and issuance of registration certificates for the devices.

- It adds a new section to the Article requiring tramway operators to obtain liability insurance coverage of not less than $1 million per occurrence. The required coverage

must not be less than $500,000 per occurrence for devices generating $275,000 or less in annual revenue. Proof of a contract of insurance is required before a certificate of registration will be issued. The Commissioner may prevent the commencement of the operation of a device or stop its operation if proof of coverage is not provided.

BACKGROUND: During the 2001 Session, the General Assembly repealed the statutes which set out the inspection fees for all the devices regulated by the Department of Labor. The 2001 legislation then granted the Commissioner of Labor the authority to establish fees for the inspections and issuance of certificates of operation for elevators and amusement devices. This fee-setting ability put the Department of Labor in a position to make its Elevator and Amusement Device Division fee-supported.[1] The legislation authorized the Commissioner to impose a fee not to exceed $200 for elevators, dumbwaiters, escalators, moving walks, personnel hoists, stairway chair lift, wheelchair lifts, manlifts, and special equipment. The fee for amusement devices could not exceed $250. The Department indicates that, due to an oversight, the Commissioner was not granted the same authority with regards to passenger tramways.

[1] Under prior law, these fee amounts were specifically set by statute and varied based upon factors such as the cost of the installation or alteration, the number of building floors, and the type of amusement device.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 766 (First Edition)

SHORT TITLE: Enhance Passenger Tramway Safety Act.-AB

SPONSOR(S): Representative Howard

FISCAL IMPACT

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

	($) FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES					
General Fund	**4,200**	**4,200**	**4,200**	**4,200**	**4,200**

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

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: The legislation broadens the definition of "passenger tramway" under GS 95-117 to include transportation by conveyor belt. This effectively adds ski lifts and incline railroads to the definition. It also amends GS 95-120 to empower the Department of Labor to investigate accidents involving passenger tramways and to establish fees of up to $137 for requisite registration certificates. Finally, it enacts new GS 95-120.1 requiring tramway operators to obtain liability insurance coverage of not less than $1 million per occurrence or not less than $500,000 per occurrence for devices generating $275,000 or less in annual revenue.

ASSUMPTIONS AND METHODOLOGY: Previously the North Carolina Department of Labor had authority to inspect all forms of ski lifts, including chairlifts, t-bars, and rope tows. During the 2001 session HB 232 repealed the Departments inspection and fee collection authority but replaced it with a new statute. Due to an oversight, the portion of the law related to passenger tramways was repealed but was not replaced by a new statue. Unaware of this error, the Department continued to inspect these devises and charge a fee. However, the Department recently discovered this error and refunded to taxpayers three years of fees (as the repeal took place three years ago). The legislation seeks to again allow the Department to inspect this machinery and charge a fee. The fee amounts in the legislation are the same as in the previous statutes.

According to the Department of Labor, during the most recent three years, the following revenue was raised (and later refunded) as a result of this type of inspection:

Type	Rate	Revenue		
		2001-02	2002-03	2003-04
Chairlift	137.00	3,562.00	1,781.00	2,603.00
Rope Tow	31.00	651.00	496.00	124.00
T Bar	62.00	-	62.00	-
TOTAL		**4,213.00**	**2,339.00**	**2,727.00**

Because the number of inspections has declined each year since the legislation was repealed, the highest year is used as a proxy for future years.

The Department indicates that because of the low numbers involved, there will be no additional personal costs to the Department of Labor.

The legislation also requires operators of passenger tramways to obtain a contract of insurance and offer proof of that insurance to the inspector. No fiscal impact is associated with this portion of the bill.

SOURCES OF DATA: North Carolina Department of Labor.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Linda Struyk Millsaps and Jennifer Haygood

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

Official
Fiscal Research Division
Publication

DATE: April 18, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 766 A BILL TO BE ENTITLED AN ACT TO ENHANCE LAWS RELATED TO THE PASSENGER TRAMWAY SAFETY ACT OF NORTH CAROLINA.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1056

Short Title:	Amend Carteret County Occupancy Tax.	(Local)
Sponsors:	Representative Preston.	
Referred to:	Finance.	

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DEADLINE FOR THE DEVELOPMENT OF A CONVENTION CENTER PLAN FOR CARTERET COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 5 of S.L. 2001-381 reads as rewritten:

"**SECTION 5.** Additional occupancy tax. – In addition to the occupancy tax authorized by Section 2 of this act, the Board of Commissioners of Carteret County may levy an additional room occupancy and tourism development tax of one percent (1%) of the gross receipts derived from the rental of accommodations taxable under Section 2 of this act if the following conditions have been met:

(1) A development plan for the construction of a convention center has been approved by resolution of the board of county commissioners and the governing board of the municipality where the center is to be located by June 30, ~~2006~~2008; and

(2) There is a signed contract between the appropriate local governments and a private developer that includes financing commitments for construction to begin no later than July 1, ~~2007.~~2009.

The tax authorized by this section may not become effective earlier than July 1, ~~2006.~~2008. The county may not levy a tax under this section unless it also levies the tax under Section 2 of this act. The levy, collection, administration, and repeal of the tax authorized by this section shall be in accordance with Section 2 of this act.

If the conditions in subdivisions (1) and (2) of this section have been met and the one-cent (1¢) room occupancy tax described in this section is levied, the county's authority to levy the one-cent (1¢) tax is repealed on the first day of the second month following the date that a cumulative total of ten million dollars ($10,000,000) in proceeds from this one-cent (1¢) tax has been collected. For purposes of this section, the cumulative total of ten million dollars ($10,000,000) is calculated beginning on July 1, ~~2006.~~2008.

Surplus proceeds from the one-cent (1¢) room occupancy tax described in this section beyond the ten million dollar ($10,000,000) cumulative total that are collected before the repeal date shall be redistributed to the Tourism Development Authority and used only to promote travel and tourism.

If the actual cost of the convention center is less than ten million dollars ($10,000,000), any proceeds from the one-cent (1¢) occupancy tax collected but not spent shall be redistributed to the Tourism Development Authority and used to promote travel and tourism.

If construction on the convention center has not begun by July 1, ~~2007,~~2009, the county's authority to levy the one-cent (1¢) room occupancy tax described in this section is repealed on September 1, ~~2007.~~2009. Any funds collected before the repeal date shall be redistributed to the Tourism Development Authority and used only to promote travel and tourism."

SECTION 2. Section 6(b) of S.L. 2001-381 reads as rewritten:

"**SECTION 6.(b)** If the conditions in subdivisions (1) and (2) of Section 5 of this act are met, and the additional occupancy tax authorized by Section 5 is levied, this section becomes effective the later of July 1, ~~2006,~~2008, or the effective date of the tax levied under Section 5 of this act. Otherwise, this section does not go into effect."

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

House Bill 1056
Carteret County Occupancy Tax

BILL ANALYSIS

Committee:	**Finance**	**Sponsor:**	**Representative Preston**
Date:	April 19, 2004	**Analysis:**	Ashley Huffstetler
Version:	**1st Edition**		Staff Attorney

SUMMARY: House Bill 1056 amends the Carteret Occupancy Tax by extending the period of time allowed for the Board to develop a plan and sign a contract for the construction of a convention center. It also extends the date for the Board to levy the one percent (1%) tax to the year 2008.

CURRENT LAW: Currently, Carteret County has the authority to levy a five percent (5%) occupancy tax and an additional one percent (1%) occupancy tax if certain conditions are met.

From 2002-2006, the first 2.5¢ of the 5¢ tax is to be remitted to the Carteret County Tourism Development Authority (TDA). The TDA must use all of the net proceeds to promote travel and tourism in Carteret County. The TDA's administrative expenses are limited to 10% and may not include operating visitors' centers. The second 2.5¢ is to be used for beach nourishment and for specific allocations to the municipalities in Carteret County.

Beginning with tax collections on and after July 1, 2006, the county is authorized to levy an additional 1% occupancy tax, and collect up to a maximum of $10 million dollars, only if the following conditions are met:

1. A development plan for the construction of a convention center has been approved by resolution of the county board and the board of the municipality where the center is to be located by June 30, 2006; and
2. There is a signed contract between the appropriate local governments and a private developer that includes financing commitments for construction to begin no later than July 1, 2007.

If construction does not begin by July 1, 2007, the tax will be repealed and any funds collected for this purpose prior to the repeal date will be redistributed to the TDA to promote travel and tourism. In addition, if there are surplus proceeds beyond the $10 million collected before the repeal date, those proceeds shall be redistributed to the TDA, and if the convention center costs less than $10 million, the funds collected but not spent shall be redistributed to the TDA.

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. In several instances, the General Assembly has authorized both a county and a city within that county to impose an occupancy tax. The rate of tax, the use of the tax proceeds, the administration of the tax, and the body with the authority to determine how the tax proceeds will be spent vary considerably. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – G.S. 153A-155 and G.S. 160A-215. These provisions provide uniformity in the areas of levy, administration, collection, repeal, and penalties.

The North Carolina Travel and Tourism Coalition has a policy statement for legislation authorizing local occupancy taxes. Many of the principles contained in its statement are similar to the ones established by a House Finance Subcommittee on Occupancy Taxes in 1993.

BILL ANALYSIS: House Bill 1056 does not authorize any additional tax for Carteret County, but allows the county more time to meet the two conditions required in order for it to levy the additional one percent (1%) occupancy tax. The bill extends by two years: (1) the time allowed for developing a plan for a convention center, (2) the time to execute a contract between the local government and a developer to begin construction, (3) the date the one percent (1%) may be imposed, (4) the date to begin calculating the total amount of money to be collected from the one percent (1%) tax, and (5) the date of repeal of the tax if the Board does not act.

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6%, and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism, and the remainder must be used for tourism-related expenditures.
Definitions – The terms "net proceeds," "promote travel and tourism," and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority (TDA), which determines how the tax proceeds will be used and is created by a local ordinance. At least ½ of the members must be currently active in the promotion of travel and tourism in the city or county, and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: April 13, 2005

TO: Representative Preston

FROM: Rodney Bizzell
Fiscal Research Division

RE: House Bill 1056 (First Edition)

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Carteret County

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY: Carteret County is authorized to levy an occupancy tax of 5% of the gross receipts derived from the rental of accommodations. The county may levy an additional occupancy tax of one percent (1%) with the condition that a development plan for the construction of a convention center has been approved by the board of county commissioners and the governing board of the municipality where the center is to be located by June 30, 2006. This bill extends that timeframe to June 30, 2008. The existing legislation also requires that a construction contract be signed with financing commitments for construction to begin no later than July 1, 2007. This bill extends that timeframe to July 1, 2009.

ASSUMPTIONS AND METHODOLOGY: Because the bill does not affect the occupancy tax rate and only makes changes related to the time allowed for planning and construction of the convention center, the bill does not have a fiscal impact.

SOURCES OF DATA:

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 1056 A BILL TO BE ENTITLED AN ACT TO AMEND THE DEADLINE FOR THE DEVELOPMENT OF A CONVENTION CENTER PLAN FOR CARTERET COUNTY.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

HOUSE BILL 105

Short Title:	Motor Fuel Tax Changes.	(Public)
Sponsors:	Representatives Luebke; Brubaker, Hill, McGee, Wainwright, Alexander, Brown, and Insko.	
Referred to:	Finance.	

February 8, 2005

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE TAXATION OF MOTOR FUELS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-236(2) reads as rewritten:

"**§ 105-236. Penalties.**

Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:

...

(2) Failure to Obtain a License. – For failure to obtain a license before engaging in a business, trade or profession for which a license is required, the Secretary shall assess a penalty equal to five percent (5%) of the amount prescribed for the license per month or fraction thereof until paid, not to exceed twenty-five percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars ($5.00). In cases in which the taxpayer fails to obtain a license as required under G.S. 105-449.65 or G.S. 105-449.131, the Secretary may assess a penalty of one thousand dollars ($1,000)."

SECTION 2. G.S. 105-449.39 reads as rewritten:

"**§ 105-449.39. Credit for payment of motor fuel tax.**

Every motor carrier subject to the tax levied by this Article is entitled to a credit on its quarterly report for tax paid by the carrier on fuel purchased in the State. The amount of the credit is determined using the flat cents-per-gallon rate plus the variable cents-per-gallon rate of tax in effect during the quarter covered by the report. To obtain a credit, the motor carrier must furnish evidence satisfactory to the Secretary that the tax for which the credit is claimed has been paid.

If the amount of a credit to which a motor carrier is entitled for a quarter exceeds the motor carrier's liability for that quarter, the Secretary must refund the excess to the motor ~~carrier.~~carrier in accordance with G.S. 105-266(a)(3)."

SECTION 3. G.S. 105-449.44(a) reads as rewritten:

"(a) Calculation. – The amount of motor fuel or alternative fuel a motor carrier uses in its operations in this State for a reporting period is the ~~ratio of the~~ number of miles the motor carrier travels in this State during that period divided by the calculated miles per gallon for the motor carrier for all qualified vehicles ~~to the total number of miles the motor carrier travels inside and outside this State during that period, multiplied by the total amount of fuel the motor carrier uses in its operations inside and outside the State~~ during that period."

SECTION 4. G.S. 105-449.46 reads as rewritten:

"**§ 105-449.46. Inspection of books and records.**

The Secretary and his authorized agents and representatives shall have the right at any reasonable time to inspect the books and records of any motor carrier subject to the tax imposed by this ~~Article.~~Article or to the registration fee imposed by Article 3 of Chapter 20 of the General Statutes."

SECTION 5. G.S. 105-449.47(a1) reads as rewritten:

"(a1) Registration and Identification Marker. – When the Secretary registers a motor carrier, the Secretary must issue at least one identification marker for each motor vehicle operated by the motor carrier. A motor carrier must keep records of identification markers issued to it and must be able to account for all identification markers it receives from the Secretary. Registrations and identification markers issued by the Secretary are for a calendar year. All identification markers issued by the Secretary remain the property of the State. The Secretary may ~~withhold or~~ revoke a registration or an identification marker when a motor carrier fails to comply with this ~~Article, former Article 36 or 36A of this Subchapter,~~ Article or Article 36C or 36D of this Subchapter.

A motor carrier must carry a copy of its registration in each motor vehicle operated by the motor carrier when the vehicle is in this State. A motor vehicle must clearly display an identification marker at all times. The identification marker must be affixed to the vehicle for which it was issued in the place and manner designated by the authority that issued it."

SECTION 6. Article 36B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-449.47A. Reasons why the Secretary can deny an application for a registration and identification marker.**

The Secretary may refuse to register and issue an identification marker to an individual applicant that has done any of the following and may refuse to register and issue an identification marker to an applicant that is a business entity if any principal in the business has done any of the following:

(1) Had a registration issued under Chapter 105 or Chapter 119 of the General Statutes cancelled by the Secretary for cause.

(2) Had a registration issued by another jurisdiction, pursuant to G.S. 105-449.57, cancelled for cause.
(3) Been convicted of fraud or misrepresentation.
(4) Been convicted of any other offense that indicates that the applicant may not comply with this Article if registered and issued an identification marker.
(5) Failed to remit payment for a tax debt under Chapter 105 or Chapter 119 of the General Statutes. The term 'tax debt' has the same meaning as defined in G.S. 105-243.1.
(6) Failed to file a return due under Chapter 105 or Chapter 119 of the General Statutes."

SECTION 7. G.S. 105-449.51 reads as rewritten:

"**§ 105-449.51. Violations declared to be misdemeanors.**

Any person who operates or causes to be operated on a highway in this State a motor vehicle that does not carry a registration card as required by this Article, does not properly display an identification marker as required by this Article, or is not registered in accordance with this Article is guilty of a Class 3 misdemeanor and, upon conviction thereof, shall ~~only~~ be fined ~~no less than ten dollars ($10.00) nor more than~~ two hundred dollars ($200.00). Each day's operation in violation of any provision of this section shall constitute a separate offense."

SECTION 8. G.S. 105-449.65(b) reads as rewritten:

"(b) Multiple Activity. – A person who is engaged in more than one activity for which a license is required must have a separate license for each activity, unless this subsection provides otherwise. A person who is licensed as a supplier ~~is not required to obtain a separate license for any other activity for which a license is required and~~ is considered to have a license as a distributor. A person who is licensed as an occasional importer or a tank wagon importer is not required to obtain a separate license as a ~~distributor.~~ distributor unless the importer is also purchasing motor fuel, at the terminal rack, from an elective or permissive supplier who is authorized to collect and remit the tax to the State. A person who is licensed as a distributor is not required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or a permissive supplier and is not required to obtain a separate license as an exporter. A person who is licensed as a distributor or a blender is not required to obtain a separate license as a motor fuel transporter if the distributor or blender does not transport motor fuel for others for hire."

SECTION 9. G.S. 105-449.69(b) reads as rewritten:

"(b) Most Licenses. – An applicant for a license as a refiner, a supplier, a terminal operator, an importer, a blender, ~~a bulk end user of undyed diesel fuel, a retailer of undyed diesel fuel,~~ or a distributor must meet the following requirements:

(1) If the applicant is a corporation, the applicant must either be incorporated in this State or be authorized to transact business in this State.

(2) If the applicant is a limited liability company, the applicant must either be organized in this State or be authorized to transact business in this State.

(3) If the applicant is a limited partnership, the applicant must either be formed in this State or be authorized to transact business in this State.

(4) If the applicant is an individual or a general partnership, the applicant must designate an agent for service of process and give the agent's name and address."

SECTION 10. G.S. 105-449.73 reads as rewritten:

"**§ 105-449.73. Reasons why the Secretary can deny an application for a license.**

The Secretary may refuse to issue a license to an individual applicant that has done any of the following and may refuse to issue a license to an applicant that is a business entity if any principal in the business has done any of the following:

(1) Had a license or registration issued under this Article or former Article 36 or 36A of this Chapter cancelled by the Secretary for cause.

(1a) Had a motor fuel license or registration issued by another state cancelled for cause.

(2) Had a federal Certificate of Registry issued under § 4101 of the Code, or a similar federal authorization, revoked.

(3) Been convicted of fraud or misrepresentation.

(4) Been convicted of any other offense that indicates that the applicant may not comply with this Article if issued a license.

(5) Failed to remit payment for ~~an overdue tax debt~~ tax debt under Chapter 105 or Chapter 119 of the General Statutes. The term ~~"overdue tax debt"~~ "tax debt" has the same meaning as defined in G.S. 105-243.1.

(6) Failed to file a return due under Chapter 105 or Chapter 119 of the General Statutes."

SECTION 11. G.S. 105-449.86(a) reads as rewritten:

"(a) Tax. – An excise tax at the motor fuel rate is imposed on dyed diesel fuel acquired to operate any of the following:

(1) Repealed by Session Laws 2003-349, s. 10.8, effective January 1, 2004.

(2) Either a local bus or an intercity bus that is allowed by § 4082(b)(3) of the Code to use dyed diesel fuel.

(3) A highway vehicle that is owned by or leased to an educational organization that is not a public school and is allowed by § 4082(b)(1) or (b)(3) of the Code to use dyed diesel fuel.

~~(4) A highway vehicle that is owned by or leased to the American Red Cross and is allowed by § 4082 of the Code to use dyed diesel fuel.~~"

SECTION 12. G.S. 105-449.90A reads as rewritten:

"**§ 105-449.90A. Payment by supplier of destination state tax collected on exported motor fuel.**

Tax collected by a supplier on exported motor fuel is payable by the supplier to the destination ~~state if the supplier is licensed in that state for payment of motor fuel excise~~

~~taxes.~~state. ~~Tax collected by a supplier on exported motor fuel is payable to the Secretary for remittance to the destination state if the supplier is not licensed in that state for payment of motor fuel excise taxes.~~Payments of destination state tax are due to the destination state ~~or the Secretary, as appropriate,~~ on the date set by the law of the destination state. ~~Payments of destination state tax to the Secretary must be accompanied by a form provided by the Secretary that contains the information required by the Secretary.~~"

SECTION 13. G.S. 105-449.96 is amended by adding a new subdivision to read:

"**§ 105-449.96. Information required on return filed by supplier.**

A return of a supplier must list all of the following information and any other information required by the Secretary:

...

(7) The number of gallons of motor fuel the supplier exchanged with another licensed supplier, pursuant to a two-party exchange agreement, during the month, sorted by type of fuel, person receiving the fuel, and terminal code."

SECTION 14. The catch line for G.S. 105-449.106 reads as rewritten:

"**§ 105-449.106. Quarterly refunds for ~~certain local governmental entities,~~ nonprofit organizations, taxicabs, and special mobile equipment.**"

SECTION 15. G.S. 105-449.115 reads as rewritten:

"**§ 105-449.115. Shipping document required to transport motor fuel by railroad tank car or transport truck.**

(a) Issuance. – A person may not transport motor fuel by railroad tank car or transport truck unless the person has a shipping document for its transportation that complies with this section. A terminal operator and the operator of a bulk plant must give a shipping document to the person who operates a railroad tank car or a transport truck into which motor fuel is loaded at the terminal rack or bulk plant rack.

(b) Content. – A shipping document issued by a terminal operator or the operator of a bulk plant must contain the following information and any other information required by the Secretary:

(1) Identification, including address, of the terminal or bulk plant from which the motor fuel was received.
(2) The date the motor fuel was loaded.
(3) The gross gallons loaded.
(4) The destination state of the motor fuel, as represented by the purchaser of the motor fuel or the purchaser's agent.
(5) If the document is issued by a terminal operator, the document must be machine printed and it must contain the following information:
   a. The net gallons loaded.
   b. A tax responsibility statement indicating the name of the supplier that is responsible for the tax due on the motor fuel.

(c) Reliance. – A terminal operator or bulk plant operator may rely on the representation made by the purchaser of motor fuel or the purchaser's agent concerning

the destination state of the motor fuel. A purchaser is liable for any tax due as a result of the purchaser's diversion of fuel from the represented destination state.

(d) Duties of Transporter. – A person to whom a shipping document was issued must do all of the following:

(1) Carry the shipping document in the conveyance for which it was issued when transporting the motor fuel described in it. When operating an empty transport, carry the shipping document in the conveyance for the motor fuel last contained in the conveyance.

(2) Show the shipping document to a law enforcement officer upon request when transporting the motor fuel described in it.

(3) Deliver motor fuel described in the shipping document to the destination state printed on it unless the person does all of the following:

a. Notifies the Secretary before transporting the motor fuel into a state other than the printed destination state that the person has received instructions since the shipping document was issued to deliver the motor fuel to a different destination state.

b. Receives from the Secretary a confirmation number authorizing the diversion.

c. Writes on the shipping document the change in destination state and the confirmation number for the diversion.

(4) Give a copy of the shipping document to the distributor or other person to whom the motor fuel is delivered.

(e) Duties of Person Receiving Shipment. – A person to whom motor fuel is delivered by railroad tank car or transport truck may not accept delivery of the motor fuel if the destination state shown on the shipping document for the motor fuel is a state other than North Carolina. To determine if the shipping document shows North Carolina as the destination state, the person to whom the fuel is delivered must examine the shipping document and must keep a copy of the shipping document. The person must keep a copy at the place of business where the motor fuel was delivered for 90 days from the date of delivery and must keep it at that place or another place for at least three years from the date of delivery. A person who accepts delivery of motor fuel in violation of this subsection is jointly and severally liable for any tax due on the fuel.

(f) Sanctions Against Transporter. – The following acts are grounds for a civil penalty payable to the ~~Department of Transportation, Division of Motor Vehicles,~~Department of Crime Control and Public Safety or the Department of Revenue:

(1) Transporting motor fuel in a railroad tank car or transport truck without a shipping document or with a false or an incomplete shipping document.

(2) Delivering motor fuel to a destination state other than that shown on the shipping document.

The penalty imposed under this subsection is payable by the person in whose name the conveyance is registered, if the conveyance is a transport truck, and is payable by

the person responsible for the movement of motor fuel in the conveyance, if the conveyance is a railroad tank car. The amount of the penalty is five thousand dollars ($5,000). A penalty imposed under this subsection is in addition to any motor fuel tax assessed.

(g) Sanctions Against Terminal Operator. – The Secretary may assess a civil penalty of five thousand dollars ($5,000) against a terminal operator for issuing a shipping document that does not satisfy the requirements of subsection (b) of this section."

SECTION 16. G.S. 105-449.115A reads as rewritten:

"**§ 105-449.115A. Shipping document required to transport fuel by tank wagon.**

(a) Issuance. – A person who operates a tank wagon into which motor fuel is loaded at the terminal must comply with the document requirements in G.S. 105-449.115(b). A person ~~may not transport motor fuel by~~ who operates a tank wagon into which motor fuel is loaded from some other source must have ~~unless that person has~~ an invoice, bill of sale, or shipping document containing the following information and any other information required by the Secretary:

(1) The name and address of the person from whom the motor fuel was received.
(2) The date the fuel was loaded.
(3) The type of fuel.
(4) The gross number of gallons loaded.

(b) Duties of Transporter. – A person to whom an invoice, bill of sale, or shipping document was issued must do all of the following:

(1) Carry the invoice, bill of sale, or shipping document in the conveyance for which it is issued when transporting the motor fuel described in it.
(2) Show the invoice, bill of sale, or shipping document upon request when transporting the motor fuel described in it.
(3) Keep a copy of the invoice, bill of sale, or shipping document at the place of business for at least three years from the date of delivery.

(c) Sanctions. – Transporting motor fuel in a tank wagon without an invoice, bill of sale, or shipping document containing the information required by this section is grounds for a civil penalty payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue. The penalty imposed under this subsection is payable by the person in whose name the tank wagon is registered. The amount of the penalty is one thousand dollars ($1,000). A penalty imposed under this subsection is in addition to any motor fuel tax assessed."

SECTION 17. G.S. 105-449.123 reads as rewritten:

"**§ 105-449.123. Marking requirements for dyed fuel storage facilities.**

(a) Requirements. – A person who is a retailer of dyed motor fuel or who stores both dyed and undyed motor fuel for use by that person or another person must mark the storage facility for the dyed motor fuel as follows in a manner that clearly indicates the fuel is not to be used to operate a highway vehicle. The storage facility must be marked "Dyed Diesel, Nontaxable Use Only, Penalty For Taxable Use" or "Dyed Kerosene, Nontaxable Use Only, Penalty for Taxable Use" or a similar phrase that clearly

indicates the fuel is not to be used to operate a highway vehicle. A person who fails to mark the storage facility as required by this section is subject to a civil penalty equal to the excise tax at the motor fuel rate on the inventory held in the storage tank at the time of the violation. If the inventory cannot be determined, then the penalty is calculated on the capacity of the storage tank.

(1) The storage tank of the storage facility must be marked if the storage tank is visible.

(2) The fillcap or spill containment box of the storage facility must be marked.

(3) The dispensing device that serves the storage facility must be marked.

(4) The retail pump or dispensing device at any level of the distribution system must comply with the marking requirements.

(b) Exception. – The marking requirements of this section do not apply to a storage facility that contains fuel used only for one of the purposes listed in G.S. 105-449.105A(a)(1) and is installed in a manner that makes use of the fuel for any other purpose improbable."

SECTION 18. G.S. 119-15 is amended by adding the following two new subdivisions:

"**§ 119-15. Definitions that apply to Article.**

The following definitions apply in this Article:

...

(1a) Dyed diesel fuel distributor. – A person who acquires dyed diesel fuel from either of the following:

a. A person who is not required to be licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and who maintains storage facilities for dyed diesel fuel to be used for nonhighway purposes.

b. Another dyed diesel fuel distributor.

(1b) Dyed diesel fuel. – Defined in G.S. 105-449.60."

SECTION 19. G.S. 119-15.1(a) reads as rewritten:

"(a) License. – A person may not engage in business in this State as any of the following unless the person has a license issued by the Secretary authorizing the person to engage in business:

(1) A kerosene supplier.

(2) A kerosene distributor.

(3) A kerosene terminal operator.

(4) A dyed diesel fuel distributor."

SECTION 20. G.S. 119-15.3(a) reads as rewritten:

"(a) Initial Bond. – An applicant for a license as a kerosene supplier, kerosene distributor, or kerosene terminal operator must file with the Secretary of Revenue a bond or an irrevocable letter of credit. A bond or irrevocable letter of credit must be conditioned upon compliance with the requirements of this Article, be payable to the State, and be in the form required by the Secretary. The amount of the bond or

irrevocable letter of credit may not be less than five hundred dollars ($500.00) and may not be more than twenty thousand dollars ($20,000)."

SECTION 21. G.S. 20-91 reads as rewritten:

"**§ 20-91. Audit of vehicle registrations under the International Registration Plan.**

(a) Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 9.

(b) The ~~Division~~ Department of Revenue may audit a person who registers or is required to register a vehicle under the International Registration Plan to determine if the person has paid the registration fees due under this Article. A person who registers a vehicle under the International Registration Plan must keep any records used to determine the information provided to the Division when registering the vehicle. The records must be kept for three years after the date of the registration to which the records apply. The ~~Division~~ Department of Revenue may examine these records during business hours. If the records are not located in North Carolina and an auditor must travel to the location of the records, the registrant shall reimburse North Carolina for per diem and travel expense incurred in the performance of the audit. If more than one registrant is audited on the same out-of-state trip, the per diem and travel expense may be prorated.

The ~~Commissioner~~ Secretary of Revenue may enter into reciprocal audit agreements with other agencies of this State or agencies of another jurisdiction for the purpose of conducting joint audits of any registrant subject to audit under this section.

(c) If an audit is conducted and it becomes necessary to assess the registrant for deficiencies in registration fees or taxes due based on the audit, the assessment will be determined based on the schedule of rates prescribed for that registration year, adding thereto and as a part thereof an amount equal to five percent (5%) of the tax to be collected. If, during an audit, it is determined that:

(1) A registrant failed or refused to make acceptable records available for audit as provided by law; or

(2) A registrant misrepresented, falsified or concealed records, then all plates and cab cards shall be deemed to have been issued erroneously and are subject to cancellation. The ~~Commissioner~~ Commissioner, based on information provided by the Department of Revenue audit, may assess the registrant for an additional percentage up to one hundred percent (100%) North Carolina registration fees at the rate prescribed for that registration year, adding thereto and as a part thereof an amount equal to five percent (5%) of the tax to be collected. The Commissioner may cancel all registration and reciprocal privileges.

As a result of an audit, no assessment shall be issued and no claim for refund shall be allowed which is in an amount of less than ten dollars ($10.00).

The results of any audit conducted under this section shall be provided to the Division. The notice of any assessments ~~will~~ shall be sent by the Division to the registrant by registered or certified mail at the address of the registrant as it appears in the records of the Division of Motor Vehicles in Raleigh. The notice, when sent in

accordance with the requirements indicated above, will be sufficient regardless of whether or not it was ever received.

The failure of any registrant to pay any additional registration fees or tax within 30 days after the billing date, shall constitute cause for revocation of registration license plates, cab cards and reciprocal privileges.

(d) Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 9."

SECTION 22. Sections 1, 6, 7, 8, 15, and 17 of this act become effective January 1, 2006. The remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 105

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

H105-ARBx-5 [v.1]

Date _____,2005

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

Representative Luebke

moves to amend the bill on page 1, line 18 and 19, by inserting a new section between those lines to read:

"**SECTION 1.1.** G.S. 105-241(b) is amended by adding a new subdivision to read:

'(b) Electronic Funds Transfer. – Payment by electronic funds transfer is required as provided in this subsection.

...

(2a) Motor fuel taxes. – A taxpayer that is required to file an electronic return under Article 36C or Article 36D must pay the tax by electronic funds transfer.'";

and on page 4, lines 33 and 34, by rewriting the lines to read:

"(2) ~~Either a~~ A local bus ~~or an intercity bus~~ that is allowed by § 4082(b)(1) of the Code to use dyed diesel fuel."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

HOUSE BILL 105:
Motor Fuel Tax Changes

BILL ANALYSIS

Committee:	House Finance	**Date:**	April 19, 2005
Introduced by:	Rep. Luebke	**Summary by:**	Cindy Avrette
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 105 makes several changes to the motor fuel laws. The provisions regarding penalties and licensing become effective January 1, 2006. The remainder becomes effective when it becomes law. The Revenue Laws Study Committee recommended this bill to the 2005 General Assembly. The Motor Fuels Division of the Department of Revenue recommends two additional changes contained in the attached amendment and explained below.

BACKGROUND & ANALYSIS:

Section 1 - Penalty for failure to obtain a license.

Section 1 allows the Secretary to impose a $1,000 penalty for failure to obtain a license under G.S. 105-449.65 or G.S. 105-449.131[1]. Currently, the Secretary has general authority to impose a penalty for failure to obtain a license. Under that general authority, the amount of the penalty imposed is equal to 5% of the amount prescribed for the license for each month the taxpayer fails to obtain the license, with a maximum penalty of 25% of the amount prescribed for the license. Because this general authority limits the penalty to a percentage of the amount prescribed for the license, it effectively bars assessing a penalty when there is no charge to obtain a license. There is no charge for the licenses issued pursuant to G.S. 105-449.65 or G.S. 105-449.131. This provision becomes effective January 1, 2006.

Section 2 - Conform refund provisions.

Section 2 conforms the refund statute applicable to motor carriers to the general rule applicable to tax refunds of overpaid taxes. Under the general administrative provisions of G.S. 105-266(a)(3), the Secretary does not have to refund a tax overpayment of less than $3.00 unless the taxpayer makes a written request for the refund. A motor carrier is entitled to a credit on its quarterly report for tax paid by the carrier on fuel purchased in this State. If the credit exceeds the amount of tax owed, the statute provides that the Secretary must refund the excess to the carrier. The statute does not set a minimum amount. This statute appears to conflict with the general administrative provision. This section clarifies that the general administrative law applicable to refunds applies to refunds payable to motor carriers. This provision becomes effective when it becomes law.

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[1] G.S. 105-449.65 is contained in the Article dealing with gasoline, diesel fuel, and blended fuel, and requires the following to have a license: refiners, suppliers, terminal operator, importers, exporters, blenders, motor fuel transporters, and distributors who purchase motor fuel from an elective or permissive supplier at an out-of-state terminal for import into this State. G.S. 105-449.131 is contained in the Article dealing with alternative fuels and requires the following to have a license: providers of alternative fuel, bulk-end users, and retailers.

Section 3 - Technical change.

Section 3 removes obsolete language to conform to current administrative practice. G.S. 105-449.44 establishes the calculation by which a motor carrier determines the amount of fuel used in North Carolina. The formula under current law has not been used since 1991. In 1992, North Carolina became a participant in the International Fuel Tax Agreement. The method proposed by this section conforms to the IFTA agreement and is the method motor carriers have been using to determine the amount of fuel used in this State since 1992. This provision becomes effective when it becomes law.

Sections 4 and 21 - Conforming changes.

Sections 4 and 21 transfer audit functions related to the International Registration Plan from the Department of Transportation, Division of Motor Vehicles to the Department of Revenue, Motor Fuels Tax Division. The International Registration Plan is the mechanism through which interstate motor carriers are licensed. It helps to ensure that the proper amount of motor fuels tax is credited to each jurisdiction in which the motor carrier travels. It has been suggested that the Department of Revenue has more expertise in auditing taxpayers and would be a more appropriate home for these audit functions. The positions associated with these audit functions were transferred July 1, 2004, through an administrative transfer. These provisions become effective when they become law.

Section 5 - Technical change.

Section 5 removes language that is no longer applicable. G.S. 105-449.47 provides that the Secretary must issue identification markers to motor carriers. The current statute provides that the Secretary may withhold an identification marker if a motor carrier fails to comply with *former Article 36 or 36A*. The General Assembly repealed those articles in 1996. The authority of the Department to issue an assessment under one of those articles has expired and any uncollectible assessments issued under those articles has been written off. Therefore, the language repealed by this section is obsolete. This provision becomes effective when it becomes law.

Section 6 - Reasons to refuse to register and issue identification marker to motor carrier.

Section 6 sets forth the reasons the Secretary could refuse to register and issue an identification marker to a motor carrier. The Department requests this change to enable it to only register applicants that are in good standing with North Carolina and other taxing jurisdictions. The statute proposed in this section is very similar to G.S. 105-449.73, which sets forth the reasons the Secretary may refuse to issue a license to an applicant under the motor fuel statutes. This provision becomes effective January 1, 2006.

Section 7 - Simplify criminal penalty.

Section 7 simplifies the criminal penalty imposed on persons who operate in this State as a motor carrier without obtaining the necessary registration and identification markers. A violation of the motor carrier requirements is a Class 3 misdemeanor. Under current law it is punishable by a fine that is no less than $10 nor more than $200. This section sets the amount of the fine at $200. The civil penalty for this offense is $100. This provision becomes effective January 1, 2006.

Section 8 - Clarification of licensing requirements for multiple activities.

Section 8 clarifies the current licensing requirements by conforming them to the current Department policy and practice. This provision becomes effective January 1, 2006.

Section 9 - Technical change.

Section 9 removes obsolete language. In 1999, the General Assembly removed the licensing requirements for bulk-end users and retailers of undyed diesel fuel. The legislation did not include a conforming change to G.S. 105-449.69(b). This provision becomes effective when it becomes law.

Section 10 - Clarifying change.

Section 10 changes the defined term 'overdue tax debt' to the appropriate defined term 'tax debt'. Under the general administrative provisions in G.S. 105-243.1, a tax debt is defined as the total amount of tax, penalty, and interest due for which a notice of final assessment has been mailed to the taxpayer after the taxpayer no longer has the right to contest the debt. An 'overdue tax debt' is any part of a tax debt that remains unpaid *90 days or more after the notice of final assessment* was mailed to the taxpayer. A collection assistance fee is imposed on an overdue tax debt that remains unpaid 30 days or more after the appropriate fee notice is mailed to the taxpayer. G.S. 105-449.73 sets forth the reasons the Secretary can deny a license to an applicant. One of the reasons is failure to remit taxes that remain due after a taxpayer no longer has the right to contest the tax debt. Since G.S. 105-449.73 has nothing to do with the imposition of a collection assistance fee, the term 'overdue tax debt' is not the appropriate term to use. This provision becomes effective when it becomes law.

Section 11 - Conforming change.

Section 11 exempts motor fuel acquired to operate a highway vehicle owned by or leased to the American Red Cross from the motor fuel excise tax. In Department of Employment v. United States, 385 U.S. 355, 87 S.Ct. 464 (1966), the United States Supreme Court ruled that the Red Cross is an instrumentality of the United States for state tax immunity purposes. This provision codifies the current administrative practice of the Department of Revenue. This section is effective when it becomes law.

Section 12 - Repeal obsolete payment procedure.

Section 12 removes the ability of a person exporting motor fuel to another state to pay the tax directly to the Department if the person is not licensed in the destination state of the motor fuel because it is no longer necessary. This provision was included in the statutes in 1996 when North Carolina first adopted 'tax at the rack' to accommodate persons exporting product to a state that was not a 'tax at the rack' state. Today, with the exception of Georgia, all of the surrounding states have adopted 'tax at the rack'. The Georgia border in the western part of the State would not be affected by this repeal because the closest terminal to the Georgia line is in Charlotte. This provision becomes effective when it becomes law.

Section 13 - Conforming change.

Section 13 provides that a supplier must list on its return to the Secretary the number of gallons of motor fuel the supplier exchanged with another licensed supplier pursuant to a two-

party exchange agreement. The Secretary currently requires this information on the supplier return. This provision becomes effective with it becomes law.

Section 14 - Technical change.

Section 14 removes obsolete language from the catch line of G.S. 105-449.106. In 2003, the General Assembly exempted motor fuel sold to a county or city for its use from the motor fuel tax. Although the legislation authorizing the exemption made the appropriate conforming change to the refund statute, it failed to amend the catch line. This provision becomes effective when it becomes law.

Section 15 - Shipping document.

Section 15 allows the Secretary of Revenue to assess a penalty of $5,000 on a terminal operator who fails to issue a shipping document that satisfies the requirements for the shipping document. Under G.S. 105-449.115, shipping documents issued by a terminal operator must contain the following information: 1) identification of the terminal or bulk plant from which the fuel was received, 2) the date the fuel was loaded, 3) the gross gallons loaded, 4) the destination state of the motor fuel, 5) the net gallons loaded, and 6) a tax responsibility statement indicating the name of the supplier that is responsible for the tax. The Motor Fuels Tax Division has noticed a problem with some terminal operators failing to issue proper shipping documents. Without an accurate shipping document, it is difficult, if not impossible, for the Department to ensure that the proper amount of tax is being paid.

Section 15 also requires a person operating an empty transport to carry the shipping document in the conveyance for the motor fuel last contained in the conveyance. The US Department of Transportation already requires a transporter to carry this information. This requirement will help the Motor Fuels Division in its enforcement of fuel tax evasion by identifying the product that was last hauled by the transporter and determining if the transporter is truly empty at the time of investigation. If there is product in the conveyance, then Motor Fuels would have the last known delivery to determine if the transporter 'short dropped' the product. The Division could also use the information to verify that the product that was delivered to a retail location is what the retail station had facilities to store.

Section 15 becomes effective January 1, 2006.

Section 16 - Documentation for tank wagon.

Section 16 would require the same documentation requirements for a person who operates a tank wagon into which motor fuel is loaded at the terminal as for a person who operates a transport truck into which motor fuel is loaded at the terminal. This provision becomes effective when it becomes law.

Section 17 - Penalty for failing to property mark storage facility.

Section 17 would impose a civil penalty on a person who does not properly mark the storage facility of motor fuel. Undyed fuel is subject to the motor fuel tax; dyed fuel is not. This section becomes effective January 1, 2006.

Sections 18 and 19 - Conforming changes.

Sections 18 and 19 make changes to Chapter 119 necessitated by legislation enacted in 2003. In 2003, the General Assembly voted to apply the inspection tax to dyed diesel fuels. The inspection tax is imposed on all fuel types at the rate of ¼¢ per gallon. Proceeds of the tax are used to offset the expenses of administering the motor fuels taxes. The changes in these two sections are needed to apply the tax to distributors who purchase only dyed diesel fuel. These two sections are effective when they become law.

Section 20 - Technical change.

The law provides that an applicant for a license as a kerosene supplier, kerosene distributor, or a kerosene terminal operation may file either a bond with the Secretary of Revenue or an irrevocable letter of credit. Section 20 inserts the phrase 'irrevocable letter of credit' in a sentence in which it was inadvertently omitted. This section becomes effective when it becomes law.

Section 22 - Effective dates.

Section 22 is the effective date section and it becomes effective when it becomes law.

AMENDMENT: The Department requested two additional provisions be included in this bill. The amendment contains the following two changes:

- Lines 1-10 of the Amendment: Section 1.1 proposed by the amendment would enable the Motor Fuels Division to move towards a paperless return. By statute the Secretary can require motor fuels taxpayers to file returns electronically. The Division plans to require motor fuel taxpayers that have schedule date information to file their returns electronically. 'Schedule data information' is a separate schedule that lists all bills of lading for the fuel being reported. The information enables the Department to track fuel on a load-by-load basis. The Secretary will not require electronic filing from taxpayers who request relief from this requirement in writing. The change proposed by the amendment would enable the Secretary to require those taxpayers who file electronically to also pay electronically.
- Lines 12-14 of the Amendment: The second part of the amendment conforms State law to federal law. It does not change the taxation of the fuel. Dyed diesel fuel indicates that the fuel is used for a nontaxable purpose under federal law. State law provides that in certain listed circumstances, the State motor fuel tax is imposed on dyed diesel fuel. One of those listed circumstances includes local buses and intercity buses. The amendment recognizes that federal law no longer allows dyed diesel fuel to be used in an intercity bus.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 105 (First Edition)

SHORT TITLE: Motor Fuel Tax Changes.

SPONSOR(S): Representative Luebke

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES					
Highway Fund					
Penalties	**See Assumptions and Methodology**				
Refund Repeal					
Dyed Fuel Dist.					
EXPENDITURES					
Department of Revenue	**$0**	**$0**	**$0**	**$0**	**$0**
POSITIONS (cumulative):					

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

EFFECTIVE DATE: Sections 1, 6, 7, 8, 15, and 17 become effective January 1, 2006. The remainder of the act is effective when it becomes law.

BILL SUMMARY: The legislation makes several changes to the motor fuel laws as follows: (1) Amends GS 105-236(2), effective January 1, 2006, to authorize Secretary of Revenue to impose a penalty of $1,000 for a person's failure to obtain certain motor and alternative fuel business licenses as required by GS 105-449.65 and 105-449.131. (2) Amends GS 105-449.46 and GS 20-91 to transfer audits related to the International Registration Plan from the Department of Transportation, Division of Motor Vehicles, to the Department of Revenue, Motor Fuels Tax Division. (3) Enacts new GS 105-449.47A, effective January 1, 2006, to authorize Secretary to deny a motor carrier an identification marker if carrier has: had a registration cancelled for cause; has been convicted of fraud, misrepresentation, or any other offense that indicates that applicant may not comply with motor carrier fuel tax requirements; or failed to pay a state tax or file a return. (4) Effective January 1, 2006, amends GS 105-449.51 to impose $200 fine (was, at least

$10 and up to $200) for operation of a motor vehicle without required registration and identification markers. (5) Amends GS 105-449.65(b) to provide that a person licensed as an occasional or tank wagon importer is required to obtain a distributor license if the importer is also purchasing motor fuel, at the terminal rack, from an elective or permissive supplier who is authorized to collect and remit tax to the state, effective Jan. 1, 2006. (6) Deletes GS 105-449.86(a)(4), which imposed motor fuel excise tax on American Red Cross. (7) Amends GS 105-449.90A to delete option of paying tax to NC rather than destination state when the person exporting fuel is not registered in the destination state. (8) Enacts new GS 105-449.96(7) to require that fuel supplier list on state tax return the number of gallons of motor fuel exchanged with another licensed supplier pursuant to a two-party exchange agreement. (9) Amends GS 105-449.15(d)(1), effective January 1, 2006, to require a person operating an empty fuel transport to carry the shipping document for the motor fuel last contained in the conveyance. (10) Enacts new GS 105-449.115(g) authorizing Secretary of Revenue to assess a civil penalty of $5,000 against a terminal operator that issues a shipping document that does not contain all the required information. (11) Amends GS 105-449.115A(a) to extend shipping document requirements to a person who operates a tank wagon into which motor fuel is loaded at the terminal. (12) Effective January 1, 2006, amends GS 105-449.123(a) to impose a civil penalty on a person who fails to mark a storage facility for dyed (untaxed) motor fuel. Amends GS 119-15 to define "dyed diesel fuel" and "dyed diesel fuel distributor." (13) Enacts new GS 119-15.1(a)(4) to require licensing of dyed diesel fuel distributor. (14) Makes technical and conforming changes.

ASSUMPTIONS AND METHODOLOGY:

Penalties

The legislation authorizes the Secretary of Revenue to impose a $1,000 penalty for failure to obtain certain motor and alternative fuel business licenses. The current law bars the Department from charging a penalty because there is no fee for the license. The Department estimates a maximum of five violations a year. Since the penalty is discretionary, no revenue estimate is possible. If a penalty were accessed, the proceeds would be deposited in the Highway Fund.

The bill also allows the Secretary of Revenue to impose a civil penalty of $5,000 on an oil terminal operator that issues a shipping document that does not contain all the required information. Without an accurate and complete bill of laden the Department cannot ensure proper taxation. No estimate is available due to the discretionary nature of the penalty, but proceeds are expected to be limited.

The final penalty relates to persons who operate as a motor carrier in North Carolina, but do so without obtaining the necessary registration and identification markers. Under current law the fine is between $10 and $200. This section sets the amount at $200. While no estimate is available, the impact is expected to be minimal.

Red Cross

The legislation exempts the Red Cross from paying the excise tax on dyed diesel fuel. The U.S. Supreme Court ruled in the Department of Employment v. United States that the American Red Cross is an instrumentality of the United States for state tax immunity purposes. While the Red

Cross is not exempt by statute, the Department of Revenue had administratively recognized their federal exemption status and has refunded their tax payments. Since this section conforms statute to department policy, no fiscal impact is expected.

Refunds

The bill conforms the refund statute for motor carriers to the general rule applicable to tax refunds of overpaid taxes. Under the general administrative provisions of G.S. 105-266(a)(3), the Secretary does not have to refund a tax overpayment of less than $3.00, unless the taxpayer makes a written request for the funds. However, there is no minimum payment amount for motor carriers. This provision conforms the motor carrier process to the utilized with other taxpayers. No fiscal impact is expected.

Department of Revenue (Administrative Responsibility)

Per Section 21, G.S. 20-91is amended to transfer audits related to the International Registration Plan to the Department of Revenue. In July 2004, six (6) Vehicle Plan Registration Auditor positions with salaries and related benefits were transferred through administrative process from the Department of Transportation (DOT) to the Department of Revenue/International Registration Division to handle International Registration audit functions. The support for the division is derived from receipts transferred from DOT, and there is no additional funding required for the positions. Additionally, there is no increase in receipts needed for the department to administer the new or revised statutory requirements resulting from this legislation.

Other provisions:

Sections 3,5,8,9,10,12,13,14,18, and 19 either conform the law to existing Department practice or changes obsolete language. No fiscal impact is expected as a result of these changes.

The remaining sections deal with record keeping requirements and have no fiscal impact.

SOURCES OF DATA: North Carolina Department of Revenue.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Linda Struyk Millsaps and Michele Nelson

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: April 18, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

North Carolina General Assembly

House Committee on Finance

Minutes

~

April 26, 2005

The House Committee on Finance met on Tuesday, April 26, 2005 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives Blackwood, Blust, Bordsen, Capps, Carney, Faison, Folwell, Glazier, Hackney, Harrell, Holliman, Jones, Lewis, McGee, Underhill, Vinson, Walend, and Wiley. Also present were Sergeant-at-Arms Bill Freeman, Fred Hines, Dusty Rhodes, and Walter Spell. Staff persons present included Cindy Avrette, Rodney Bizzell, Erika Churchill, Gerry Cohen, David Crotts and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Gibson called the meeting to order at 8:35 am and recognized the five (5) pages present: Ariane Belisle of Ottawa, Canada, sponsored by Speaker Black; Isaac Davis of Duplin County, sponsored by Representative Tucker; Marquis Eichelberger of Forsyth County, sponsored by Representative Womble; Tosha Murray of Harnett County, sponsored by Representative Lewis; and Antonio Sunday of Forsyth County, sponsored by Representative Womble.

The first bill under the Committee's consideration was **HB 454 – WATER/UTILITIES SAVINGS IN GOVT. FACILITIES** (see **attachment 3**). Chairman Gibson recognized Representative Tolson who explained that the bill increases from $50 million to $75 million the amount of installment finance contracts the State may allow to finance guaranteed energy savings measures. The bill also expands the types of energy savings upon which a guaranteed savings energy contract may be issued to include water and other utility savings. Chairman Gibson then recognized Representative Howard who moved that House Bill 454 be given a favorable report. Seeing no further discussion, Chairman Gibson called the motion to a vote and it carried by consent. .

The next bill considered by the Committee was **HB 1004 – MORTGAGE HOSPITAL FACILITIES** (see **attachment 4**). Chairman Gibson first sent forth a clarifying amendment (see **attachment 5**), which alters the substance of the bill and moved for the adoption of the amendment. As there was no further discussion, Chairman Gibson called the motion to a vote and the amendment was adopted. Representative Grady was then recognized and explained that this bill authorizes local governments to provide hospital facilities the ability to pledge, mortgage, or grant a security interest in the facilities and equipment affected by the revenue bond issuance. Chairman Gibson then recognized Representative Holliman who moved that the amended bill be incorporated into a proposed committee substitute and that a favorable report be given to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairman Gibson called the motion to a vote and it carried without objection.

The following bill considered by the Committee was **HB 116 - PROPERTY TAX CHANGES** (see **attachment 6**). Chairman Gibson first recognized Representative Howard who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Representative Brubaker was then recognized and explained that this bill is a recommendation from the Revenue Laws Study Commission that clarifies the property tax statutes relating to present-use value eligibility and amends the period for appeal of a present-use value determination or appraisal. Following the explanation, Chairman Gibson recognized Representative Hill who moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. As it was then discovered that some members did not have a complete copy of the bill, Chairman Gibson temporarily displaced the bill until more copies were made available.

Chairman Gibson then recognized Representative Church to explain **HB 988 – PROPERTY TAX - VALUE OF MOTOR VEHICLES** (see **attachment 7**). Before the explanation, Representative Blackwood was recognized and moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Representative Church then explained that the bill provides that when a tax assessor considers the sales price of a motor vehicle in determining the true value of the vehicle for property tax purposes, the assessor may not consider the highway use tax as part of the sales price. He also stated that the bill had no opposition and no fiscal impact. Chairman Gibson again recognized Representative Blackwood who moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. As there was no further debate, Chairman Gibson called the motion to a vote and it carried by consent.

The next bill under consideration by the Committee was **HB 691 – CARRBORO MOTOR VEHICLE TAX** (see **attachment 8**). Chairman Gibson first recognized Representative Hackney who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Representative Insko was then recognized who explained that the bill authorizes the Town of Carrboro to levy a motor vehicle tax of no more than twenty-five dollars ($25.00). Following the explanation, Representative Hackney was recognized again and moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairman Gibson called the motion to a vote and it carried without objection.

Chairman Gibson then recognized Representative McGee who moved for the adoption of the proposed committee substitute for the Committee's consideration of **HB 488 – CARY CHARTER REWRITE** (see **attachment 9**). The motion was adopted. Chairman Gibson recognized Representative Weiss next who explained that this bill simply amends the charter of the Town of Cary and does not grant or take away any powers from the Town. Chairman Gibson then recognized Representative Hackney who moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. As there was no further debate, Chairman Gibson called the motion to a vote and it carried by consent.

The next bill under consideration by the Committee was **HB 464 – WINSTON-SALEM MOTOR VEHICLE TAX INCREASE** (see **attachment 10**). Chairman Gibson first recognized Representative Womble who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Representative Parmon was then recognized who explained that the bill authorizes the City of Winston-Salem to levy a motor vehicle tax of no more than twenty dollars ($20.00) for each resident vehicle. Cindy Avrette from staff noted the difference between the original bill and the proposed committee substitute, was that the PCS

[provides for the motor vehicle tax increase to be conducted incrementally from $10 to $15 and then later from $15 to $20. Following the explanation, Representative Womble was recognized again and explained that the bill was requested and approved unanimously by the Winston-Salem City Council and has received no opposition. He then moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairman Gibson called the motion to a vote and it carried by a majority.

Chairman Gibson then recognized Representative Alexander who moved for the adoption of the proposed committee substitute for the Committee's consideration of **HB 1037 – INCREASE WRIGHTSVILLE BEACH MOTOR VEHICLE TAX** (see **attachment 11**). The motion was adopted. Representative Howard was then recognized to explain the bill on behalf of the bill sponsor, Rep. McComas, and stated that the bill authorizes the Town of Wrightsville Beach to levy a motor vehicle privilege tax of no more than fifteen dollars ($15.00) for each resident located in the town. This bill also establishes a schedule of discounts to be applied to motor vehicle taxes paid prior to July 1 to encourage residents to obtain resident vehicle decals before hurricane season so residents will have the decal in the event of an evacuation. Following the explanation, Representative Womble was recognized again and moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairman Gibson called the motion to a vote and it carried without objection.

The next bill under consideration by the Committee was **HB 1117 – PUBLIC FINANCE CHANGES** (see **attachment 12**). Chairman Gibson first recognized Representative Howard who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Representative Ross was then recognized and explained the bill section by section and in summary she informed the members that the bill cleans up the statutes dealing with public financing mechanism available to the State and localities. The bill was approved by the House Judiciary I Committee and is approved by the Local Government Commission in the Office of State Treasurer and the North Carolina Association of County Commissioners. Following the explanation, Chairman Gibson recognized Representative Howard who moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Some general questions about the bill followed Representative Howard's motion. Chairman Gibson recognized Angie Corenevsky, Public Finance Counsel for the State Treasurer's Office, and Janice Burke from the State Treasurer's office to answer the general questions about the details of the bill. Following this discussion, Chairman Gibson called the motion to a vote and it carried by consent.

Chairman Gibson then replaced **HB 116 - PROPERTY TAX CHANGES** (see **attachment 6**) before the Committee, as new copies were made available for the Committee members. Once again, Representative Brubaker was recognized to complete the explanation of the bill. Chairman Gibson then recognized Representative Hackney who requested a further explanation on sections 2 and 3 of the bill. Martha Walston of Fiscal Research was then recognized and explained the two sections further. Other general questions followed, and David Baker, the Director of the Property Tax Division of the Department of Revenue, was recognized to address the Committee's concerns. Representative Hill was recognized and reiterated his motion for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairman Gibson called the motion to a vote and it carried without objection.

The following bill considered by the Committee was **HB 35 - ADET SCHOOL/QUALIS. INCREASE** (see **attachment 13**). Chairman Gibson recognized Representative Alexander who explained that the bill increases the fee paid by participants to schools providing alcohol and drug education traffic (ADET) classes from seventy-five dollars ($75) to one hundred-sixty dollars ($160). This bill also increases the number of hours of class required to receive a certificate of completion at

an ADET school from 10 to 16 hours and requires minimum qualifications for certified ADET instructors. Representative Alexander reported that the bill was approved by the House Judiciary I Committee. Following the explanation, Representative Wainwright asked why the fee is being increased so dramatically. To answer the question, Representative Alexander explained that the fee was being increased to fund an increase in the number of hours required for a certificate of completion and to be able to provide for smaller class sizes. Jason Reynolds from the Department of Health and Human Services was recognized and added that DHHS supports the bill and the fee increase is necessary to be able to increase instruction time for the class from ten (10) hours to sixteen (16) hours and have class sizes of no more than twenty (20) students. Representative Wiley was then recognized and asked about the additional requirements needed for instructors at ADET schools. Representative Alexander responded by saying that beginning January 1, 2009, instructors at an ADET school would be required to obtain one of three certifications listed in the bill. Chairman Gibson then recognized Representative Ross who moved that House Bill 35 be given a favorable report by the Committee. As there was no further debate, Chairman Gibson called the motion to a vote and it carried by consent.

The next bill under consideration by the Committee was **HB 1194 – PHYSICAL THERAPISTS/PROFESSIONAL CORPORATIONS** (see **attachment 14**). Chairman Gibson then recognized Representative Weiss who explained that the bill permits physical therapists to form professional corporations and authorizes the Board of Physical Therapy Examiners to discipline persons for paying for referrals of physical therapy patients. Following the explanation, Chairman Gibson recognized Representative Glazier who moved that House Bill 1194 be given a favorable report. Seeing no further discussion, Chairman Gibson called the motion to a vote and it carried without objection.

The final bill considered by the Committee was **HB 646 – INSURANCE COMPANY FEE CONSOLIDATION** (see **attachment 15**). Chairman Gibson recognized Representative Holliman who sent forth a technical amendment (see **attachment 16**), which corrects a statutory reference in the bill. As there was no debate on the amendment, Chairman Gibson called the motion to a vote and the amendment was adopted. Representative Holliman then continued and explained that the bill eliminates various fees charged to insurance companies and increases the annual license continuation fee. He reported that the bill was filed upon the request of the Department of Insurance and had been approved by the House Insurance Committee. Chairman Gibson then recognized Representative Howard who moved that House Bill 646 be given a favorable report as amended. Seeing no further discussion, Chairman Gibson called the motion to a vote and it carried by consent.

As there was no further business before the Committee, Chairman Gibson then adjourned the meeting at 9:49 am.

Respectfully submitted,

Representative Pryor Gibson
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. House Bill 454 (and related materials)
4. House Bill 1004 (and related materials)
5. Gibson Amendment on HB 1004 - **ADOPTED**
6. House Bill 116 (and related materials)
7. House Bill 988 (and related materials)
8. House Bill 691 (and related materials)
9. House Bill 488 (and related materials)
10. House Bill 464 (and related materials)
11. House Bill 1037 (and related materials)
12. House Bill 1117 (and related materials)
13. House Bill 35 (and related materials)
14. House Bill 1194 (and related materials)
15. House Bill 646 (and related materials)
16. Holliman Amendment on HB 646 - **ADOPTED**

AGENDA

ATTACHMENT 1

House Finance Committee

April 26, 2005
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Gibson

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard
Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order & Introduction of Pages

Bills:

HB 35	**ADET SCHOOL/FEE/QUALIS. INCREASE**	*Rep. Alexander*
HB 116	**PRESENT-USE VALUE CLARIFICATION**	*Rep. Brubaker*
HB 454	**WATER/UTILITIES SAVINGS IN GOVT. FACILITIES**	*Rep. Tolson*
HB 464	**WINSTON-SALEM MOTOR VEHICLE TAX INCREASE**	*Rep. Parmon*
HB 488	**CARY CHARTER REWRITE**	*Reps. Weiss & Dollar*
HB 646	**INSURANCE COMPANY FEE CONSOLIDATION.-AB**	*Rep. Holliman*
HB 691	**CARRBORO MOTOR VEHICLE TAX**	*Rep. Hackney*
HB 988	**PROPERTY TAX – VALUE OF MOTOR VEHICLES**	*Rep. Blackwood*
HB 1004	**MORTGAGE HOSPITAL FACILITIES**	*Reps. Gibson & Grady*
HB 1037	**INCREASE WRIGHTSVILLE BEACH MOTOR VEHICLE TAX**	*Rep. McComas*
HB 1117	**PUBLIC FINANCE CHANGES**	*Rep. Ross*
HB 1194	**PHYSICAL THERAPISTS/PROFESSIONAL CORPORATIONS**	*Rep. Weiss*

Adjournment

CORRECTED NOTICE:
HB 782 – REMOVED

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, April 26, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 35 – ADET SCHOOL/FEE/QUALIS. INCREASE – Rep. Alexander

HB 116 – PRESENT-USE VALUE CLARIFICATION – Rep. Brubaker

HB 454 – WATER/UTILITIES SAVINGS IN GOVT. FACILITIES – Rep. Tolson

HB 464 – WINSTON-SALEM MOTOR VEHICLE TAX INCREASE – Rep. Parmon

HB 488 – CARY CHARTER REWRITE – Reps. Weiss & Dollar

HB 646 – INSURANCE COMPANY FEE CONSOLIDATION.-AB – Rep. Holliman

HB 691 – CARRBORO MOTOR VEHICLE TAX – Rep. Hackney

~~**HB 782 – FACILITY QUALITY & SAFETY IMPROVEMENT-HHS.-AB – Rep. Wright**~~

HB 988 – PROPERTY TAX – VALUE OF MOTOR VEHICLES – Rep. Blackwood

HB 1004 – MORTGAGE HOSPITAL FACILITIES – Reps. Gibson & Grady

HB 1037 – INCREASE WRIGHTSVILLE BEACH MOTOR VEHICLE TAX – Rep. McComas

HB 1117 – PUBLIC FINANCE CHANGES – Rep. Ross

HB 1194 – PHYSICAL THERAPISTS/PROFESSIONAL CORPORATIONS – Rep. Weiss

Respectfully,
Representatives Alexander, Gibson, Howard, Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **2:00 p.m.** on **April 25, 2005.**

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, April 26, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 35 – ADET SCHOOL/FEE/QUALIS. INCREASE – Rep. Alexander

HB 116 – PRESENT-USE VALUE CLARIFICATION – Rep. Brubaker

HB 454 – WATER/UTILITIES SAVINGS IN GOVT. FACILITIES – Rep. Tolson

HB 464 – WINSTON-SALEM MOTOR VEHICLE TAX INCREASE – Rep. Parmon

HB 488 – CARY CHARTER REWRITE – Reps. Weiss & Dollar

HB 646 – INSURANCE COMPANY FEE CONSOLIDATION.-AB – Rep. Holliman

HB 691 – CARRBORO MOTOR VEHICLE TAX – Rep. Hackney

HB 782 – FACILITY QUALITY & SAFETY IMPROVEMENT-HHS.-AB – Rep. Wright

HB 988 – PROPERTY TAX – VALUE OF MOTOR VEHICLES – Rep. Blackwood

HB 1004 – MORTGAGE HOSPITAL FACILITIES – Reps. Gibson & Grady

HB 1037 – INCREASE WRIGHTSVILLE BEACH MOTOR VEHICLE TAX – Rep. McComas

HB 1117 – PUBLIC FINANCE CHANGES – Rep. Ross

HB 1194 – PHYSICAL THERAPISTS/PROFESSIONAL CORPORATIONS – Rep. Weiss

Respectfully,
Representatives Alexander, Gibson, Howard, Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **9:55 a.m.** on **April 21, 2005.**

X Principal Clerk
X Reading Clerk - House Chamber
Jason A. Cannon (Committee Clerk)

ATTACHMENT 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — April 26, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kathryn Hawkins	Progress Energy
Betty Turner	Bank of America
Lisa Martin	NC Home Builders Assoc,
Bob Sloan	NC Forestry Assoc.
Rebecca L. Kay	intern – Pryor Gibson
[illegible]	NC Council
Andy Romanet	NCLM.
Johanna Reese	DENR
Stacy Flannery	NCHCFDA
Doug Heron	NC BAR ASSOC
Barbara Conklin	BSCGR
John Cymes	NC Grange

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — April 26, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	DMH/DD/SAS
[signature]	Bode Call & Stroupe
Bruce Thompson	Parker Poe
[signature]	NCHBA
Doug Lassiter	NCSTA
DAVID BARNES	Poyner Spruill LLP
[signature]	WCSR
Jim Blackburn	NC Association of County Commissioners
[signature]	Marpin Taylor
Paul Meyer	NCACC
AGP	NCFB

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — April 26, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Crawford	A/A North Carolina
Chip Killian	Nelson Mullins
Ron Aycock	County Com. Assoc
~~PAUL~~	
Rob Swift	NCCC
	Poyner & Spruill
Rebecca Troutman	NCACC
Bob Schaffer	Charlotte, NC
Martha McCarn	Carolinas Healthcare System
Smokey Bear	Forest
Andy Allen	NCPMA

VISITOR REGISTRATION SHEET

FINANCE — 4-26-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Billow	Womble Carlyle Sandridge & Rice
W. H. Potter Jr	NCPTA & NCDS
Skip Roy	NCPTA
Gardner Payne	Edmisten & Webb
Warren Gloud	OSBM
Milton Alford	OSBM
Ken Melton	D.O.R.
M. Beaton	Capitol Group
Sue Stovall	NCPTA
Betsy Bailey	NCPTA
Hal Miller	NCACCT

VISITOR REGISTRATION SHEET

FINANCE — 4-26-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
George Millsaps	DOA
Janice Burke	Treasurer
Angie Coremenski	Helms Mulliss
TIMOTHY ROMOCKI	TREASURER
Erin Kinney	NC Conservation Network
Michael Blom	NC DOR
KIRK BOONE	NC DOR
David Baker	NC DOR
Pete Roddam	Forsyth County Tax Assessor/Collector
Jodi Thent	General Motors
Rufus L. Edmisten	Edmisten & Webb

VISITOR REGISTRATION SHEET

FINANCE — 4-26-05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
FRANK W. FOLGER	NCDOT
Chad Hinton	Civitas Institute
Darlene Sekerak	N.C. Physical Therapy Assoc.
John [illegible]	[illegible]
Bill CARSTARPHEN	Charlotte Area Transit System
James Andrews	NC State AFL-CIO
Mary Musser	resident - Wake Co

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 454*

Short Title:	Water/Utilities Savings in Govt. Facilities.	(Public)
Sponsors:	Representatives Tolson, Pate (Primary Sponsors); Alexander, Fisher, Hackney, Insko, Luebke, and Weiss.	
Referred to:	State Government.	

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT GUARANTEED ENERGY SAVINGS CONTRACTS INCLUDE CONSERVATION MEASURES FOR WATER AND OTHER UTILITIES, TO RAISE THE CAP FOR GUARANTEED ENERGY SAVINGS CONTRACTS, TO EXPAND THE STATE'S ENERGY POLICY AND LIFE-CYCLE COST ANALYSIS TO INCLUDE THE CONSERVATION OF WATER AND OTHER UTILITIES, AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. The title of Article 3B of Chapter 143 of the General Statutes reads as rewritten: "~~Energy~~ Conservation of Energy, Water, and Other Utilities in ~~Public~~ Government Facilities."

SECTION 2. G.S. 143-64.17 reads as rewritten:

"**§ 143-64.17. Definitions.**

As used in this Part:

(1) "Energy conservation measure" means a facility alteration, training, or services related to the operation of the facility, when the alteration, training, or services provide anticipated energy savings. Energy conservation measure includes any of the following:

a. Insulation of the building structure and systems within the building.

b. Storm windows or doors, caulking, weatherstripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed or coated window or door systems, additional glazing, reductions in glass area, or other window or door system modifications that reduce energy consumption.

c. Automatic energy control systems.

d. Heating, ventilating, or air-conditioning system modifications or replacements.

e. Replacement or modification of lighting fixtures to increase the energy efficiency of a lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable State or local building code or is required by the light system after the proposed modifications are made.

f. Energy recovery systems.

g. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings.

~~h. Other energy conservation measures.~~

i. Faucets with automatic or metered shut-off valves, leak detection equipment, water recycling equipment, and wastewater recovery systems.

j. Other energy conservation measures that conserve energy, water, or other utilities.

(2) "Energy savings" means a measured reduction in fuel costs, energy costs, water costs, stormwater fees, other utility costs, or operating ~~costs~~costs, including environmental discharge fees and water and sewer maintenance fees, created from the implementation of one or more energy conservation measures when compared with an established baseline of previous ~~fuel costs, energy costs, or operating costs~~such costs developed by the governmental unit.

(2a) "Governmental unit" means either a local governmental unit or a State governmental unit.

(3) "Guaranteed energy savings contract" means a contract for the evaluation, recommendation, or implementation of energy conservation measures, including the design and installation of equipment or the repair or replacement of existing equipment, in which all payments, except obligations on termination of the contract before its expiration, are to be made over time, and in which energy savings are guaranteed to exceed costs.

(4) "Local governmental unit" means any board or governing body of a political subdivision of the State, including any board of a community college, any school board, or an agency, commission, or authority of a political subdivision of the State.

(5) "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy conservation measures.

(6) "Request for proposals" means a negotiated procurement initiated by a governmental unit by way of a published notice that includes the following:

a. The name and address of the governmental unit.
b. The name, address, title, and telephone number of a contact person in the governmental unit.
c. Notice indicating that the governmental unit is requesting qualified providers to propose energy conservation measures through a guaranteed energy savings contract.
d. The date, time, and place where proposals must be received.
e. The evaluation criteria for assessing the proposals.
f. A statement reserving the right of the governmental unit to reject any or all the proposals.
g. Any other stipulations and clarifications the governmental unit may require.

(7) "State governmental unit" means the State or a department, an agency, a board, or a commission of the State, including the Board of Governors of The University of North Carolina and its constituent institutions."

SECTION 3. G.S. 143-64.17G reads as rewritten:

"**§ 143-64.17G. Report on guaranteed energy savings ~~contracts.~~contracts entered into by local governmental units.**

A local governmental unit that enters into a guaranteed energy savings contract must report the contract and the terms of the contract to the Local Government Commission. The Commission shall compile the information and report it biennially to the Joint Commission on Governmental Operations. In compiling the information, the Local Government Commission shall include information on the energy savings expected to be realized from a contract and, with the assistance of the Office of State Construction, shall evaluate whether expected savings have in fact been realized."

SECTION 4. G.S. 143-64.17H reads as rewritten:

"**§ 143-64.17H. ~~Guaranteed~~ Report on guaranteed energy savings ~~contract reporting requirements.~~contracts entered into by State governmental units.**

A State governmental unit that enters into a guaranteed energy savings contract must report the contract and the terms of the contract to the State Energy Office of the Department of Administration within 30 days of the date the contract is entered into. In addition, within 60 days after each annual anniversary date of a guaranteed energy savings contract, the State governmental unit must report the status of the contract to the State Energy Office, including any details required by the State Energy Office. The State Energy Office shall compile the information for each fiscal year and report it to the Joint Legislative Commission on Governmental Operations and to the Local Government Commission annually by December 1. In compiling the information, the State Energy Office shall include information on the energy savings expected to be realized from a contract and shall evaluate whether expected savings have in fact been realized."

SECTION 5. G.S. 142-63 reads as rewritten:

"**§ 142-63. Authorization of financing contract.**

Subject to the terms and conditions set forth in this Article, a State governmental unit that has solicited a guaranteed energy conservation measure pursuant to G.S. 143-64.17A or G.S. 143-64.17B or the State Treasurer, as designated by the Council of State, is authorized to execute and deliver, for and on behalf of the State of North Carolina, a financing contract to finance the costs of the energy conservation measure. The aggregate principal amount payable by the State under financing contracts entered pursuant to this Article shall not exceed ~~fifty million dollars ($50,000,000)~~ seventy-five million dollars ($75,000,000) at any one time."

SECTION 6. G.S. 143-64.10 reads as rewritten:

"**§ 143-64.10. Findings; policy.**

(a) The General Assembly ~~hereby finds:~~finds all of the following:

(1) That the State shall take a leadership role in aggressively undertaking ~~energy~~ the conservation of energy, water, and other utilities in North ~~Carolina;~~Carolina.

(2) That State facilities have a significant impact on the State's consumption of ~~energy;~~energy, water, and other utilities.

(3) That ~~energy conservation~~ practices to conserve energy, water, and other utilities that are adopted for the design, construction, operation, maintenance, and renovation of these facilities and for the purchase, operation, and maintenance of equipment for these facilities will have a beneficial effect on the State's overall supply of ~~energy;~~energy, water, and other utilities.

(4) That the cost of the ~~energy~~ energy, water, and other utilities consumed by these facilities and the equipment for these facilities over the life of the facilities shall be considered, in addition to the initial ~~cost;~~cost.

(5) That the cost of ~~energy~~ energy, water, and other utilities is significant and facility designs shall take into consideration the total life-cycle cost, including the initial construction cost, and the cost, over the economic life of the facility, of the ~~energy~~ energy, water, and other utilities consumed, and of operation and maintenance of the facility as it affects ~~energy consumption; and~~ the consumption of energy, water, or other utilities.

(6) That State government shall undertake a program to reduce ~~energy~~ the use of energy, water, and other utilities in State facilities and equipment in those facilities in order to provide its citizens with an example of ~~energy use~~energy-use, water-use, and utility-use efficiency.

(b) It is the policy of the State of North Carolina to ensure that ~~energy conservation~~ practices to conserve energy, water, and other utilities are employed in the design, construction, operation, maintenance, and renovation of State facilities and in the purchase, operation, and maintenance of equipment for State facilities."

SECTION 7. G.S. 143-64.11(2) reads as rewritten:

"(2) "Energy-consumption analysis" means the evaluation of all energy-consuming ~~systems~~systems, including systems that consume water or

other utilities, and components of these systems by demand and type of ~~energy,~~energy or other utility use, including the internal energy load imposed on a facility by its occupants, equipment and components, and the external energy load imposed on the facility by climatic conditions."

SECTION 8. G.S. 143-64.11(2b) reads as rewritten:

"(2b) "Energy-consuming system" includes but is not limited to any of the following equipment or measures:

a. Equipment used to heat, cool, or ventilate the facility;
b. Equipment used to heat water in the facility;
c. Lighting systems;
d. On-site equipment used to generate electricity for the facility;
e. On-site equipment that uses the sun, wind, oil, natural gas, liquid propane gas, coal, or electricity as a power source; and
f. Energy conservation ~~measures~~ measures, as defined in G.S. 143-64.17, in the facility design and construction that decrease the ~~energy~~ energy, water, or other utility requirements of the facility."

SECTION 9. G.S. 143-64.11(3) reads as rewritten:

"(3) "Facility" means a building or a group of buildings served by a central ~~energy~~ distribution system for energy, water, or other utility or components of a central ~~energy~~ distribution system."

SECTION 10. G.S. 143-64.12 reads as rewritten:

"**§ 143-64.12. Authority and duties of State agencies.**

(a) The General Assembly authorizes and directs that State agencies shall carry out the construction and renovation of State facilities, under their jurisdiction in such a manner as to further the policy declared herein, ensuring the use of life-cycle cost analyses and ~~energy conservation practices.~~practices to conserve energy, water, and other utilities.

(b) The Department of Administration shall develop and implement policies, procedures, and standards to ensure that State purchasing practices improve ~~energy~~ efficiency regarding energy, water, and other utility use and take the cost of the product over the economic life of the product into consideration. The Department of Administration shall adopt and implement Building Energy Design Guidelines. These guidelines shall include energy-use goals and standards, economic assumptions for life-cycle cost analysis, and other criteria on building systems and technologies. The Department of Administration shall modify the design criteria for construction and renovation of facilities to require that a life-cycle cost analysis be conducted pursuant to G.S. 143-64.15. The Department of Administration, as part of the Facilities Condition and Assessment Program, shall identify and recommend energy conservation maintenance and operating procedures that are designed to reduce energy consumption within the facility and that require no significant expenditure of funds. State departments, institutions, or agencies shall implement these recommendations. Where

energy management equipment is proposed for State facilities, the maximum interchangeability and compatibility of equipment components shall be required.

The Department of Administration shall develop a comprehensive ~~energy management~~ program to manage energy, water, and other utility use for State government. Each State agency shall develop and implement ~~an energy~~ a management plan that is consistent with the State's comprehensive ~~energy management program.~~program to manage energy, water, and other utility use.

(c) through (g) Repealed by Session Laws 1993, c. 334, s. 4."

SECTION 11. G.S. 143-64.15 reads as rewritten:

"**§ 143-64.15. Life-cycle cost analysis.**

(a) A life-cycle cost analysis shall include, but not be limited to, all of the following elements:

(1) The coordination, orientation, and positioning of the facility on its physical ~~site;~~site.

(2) The amount and type of fenestration employed in the ~~facility;~~facility.

(3) Thermal characteristics of materials and the amount of insulation incorporated into the facility ~~design;~~design.

(4) The variable occupancy and operating conditions of the facility, including illumination ~~levels; and~~levels.

(5) Architectural features ~~which~~ that affect ~~energy consumption.~~the consumption of energy, water, and other utilities.

(b) The life-cycle cost analysis performed for any State facility shall, in addition to the requirements set forth in subsection (a) of this section, include, but not be limited to, all of the following:

(1) An energy-consumption analysis of the facility's energy-consuming systems in accordance with the provisions of subsection (g) of this ~~section;~~section.

(2) The initial estimated cost of each energy-consuming system being compared and ~~evaluated;~~evaluated.

(3) The estimated annual operating cost of all utility ~~requirements;~~requirements.

(4) The estimated annual cost of maintaining each energy-consuming ~~system; and~~system.

(5) The average estimated replacement cost for each system expressed in annual terms for the economic life of the facility.

(c) ~~The General Assembly requires each~~Each entity ~~to~~ shall conduct a life-cycle cost analysis pursuant to this section for the construction or the renovation of any State facility or State-assisted facility of 20,000 or more gross square feet. For the replacement of heating, ventilation, and air conditioning equipment in any State facility or State-assisted facility of 20,000 or more gross square feet, the entity shall conduct a life-cycle cost analysis of the replacement equipment pursuant to this section when the replacement is financed under a guaranteed energy savings contract or financed using repair and renovation funds.

(d) The life-cycle cost analysis shall be certified by a registered professional engineer or bear the seal of a North Carolina registered architect, or both. The engineer or architect shall be particularly qualified by training and experience for the type of work involved, but shall not be employed directly or indirectly by a fuel provider, utility company, or group supported by fuel providers or utility funds. Plans and specifications for facilities involving public funds shall be designed in conformance with the provisions of G.S. 133-1.1.

(e) In order to protect the integrity of historic buildings, no provision of this Article shall be interpreted to require the implementation of ~~energy cost~~ measures to conserve energy, water, or other utility use that conflict with respect to any property eligible for, nominated to, or entered on the National Register of Historic Places, pursuant to the National Historic Preservation Act of 1966, P.L. 89-665; any historic building located within an historic district as provided in Chapters 160A or 153A of the General Statutes; any historic building listed, owned, or under the jurisdiction of an historic properties commission as provided in Chapter 160A or 153A; nor any historic property owned by the State or assisted by the State.

(f) Each State agency shall use the life-cycle cost analysis over the economic life of the facility in selecting the optimum system or combination of systems to be incorporated into the design of the facility.

(g) The energy-consumption analysis of the operation of energy-consuming systems utilities in a facility shall include, but not be limited ~~to:~~to, all of the following:

(1) The comparison of two or more system ~~alternatives;~~alternatives.

(2) The simulation or engineering evaluation of each system over the entire range of operation of the facility for a year's operating ~~period; and~~period.

(3) The engineering evaluation of the ~~energy~~ consumption of energy, water, and other utilities of component equipment in each system considering the operation of such components at other than full or rated outputs."

SECTION 12. This act is effective when it becomes law.

HOUSE BILL 454:
Water/Utilities Savings in Govt. Facilities

BILL ANALYSIS

Committee:	House Finance	**Date:**	April 26, 2005
Introduced by:	Reps. Tolson, Pate	**Summary by:**	Cindy Avrette
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 454 increases from $50 million to $75 million the amount of installment finance contracts the State may let to finance guaranteed energy savings measures. It also expands the types of energy savings upon which a guaranteed savings energy contract may be issued by either the State or local governmental units to include water and 'other utility' savings. The bill becomes effective when it becomes law. The bill received a favorable report from the House State Government Committee.***

CURRENT LAW: Local governments have had the authority to enter into financing contracts to finance the cost of energy conservation measures since 1994.[1] The General Assembly extended this ability to State agencies in 2002; the law limits the aggregate principal amount payable by the State under these contracts to $50 million.[2] An energy conservation measure is an alteration, training, or services that will provide anticipated energy savings with respect to a facility. The financing contracts are known as guaranteed energy savings contracts. Under the contract to implement energy conservation measures, all payments, except obligations on early termination, are to be made over time and energy cost savings are guaranteed to exceed the cost of the contract.

The law provides that a guaranteed energy savings contract is not a pledge of the government's taxing power. The debt is secured by a lien on or a security interest in any part of the property with respect to which an energy conservation measure is undertaken and/or the land upon which the property is or will be located. It is anticipated that the energy savings will generate enough money to pay the debt service on the contract.

The State Energy Office of the Department of Administration is required to adopt rules for agencies to follow in evaluating guaranteed energy savings contracts, subject to approval by the State Treasurer. State agencies that enter into guaranteed energy savings contracts are required to report to the State Energy Office which in turn reports annually to the Joint Legislative Commission on Governmental Operations. State energy conservation measures are subject to inspection and compliance by the State Construction Office or the local building inspector. The cost of the evaluation of the contract by either an independent architect or engineer, or by the State Construction Office, and the costs of the necessary building inspections, shall be included in the cost of the contract.

Before a guaranteed energy savings contract can be entered into, the Office of State Budget and Management must certify that resources are expected to be available to pay the amounts due under the contract. Next, the Council of State must approve the contract by resolution that sets out the maximum maturity, and the maximum interest rates. The maximum maturity may not exceed 12 years. The State Treasurer also must approve the financing, finding that the amount to be borrowed is adequate and not excessive and will not require an excessive increase in any State revenues to provide for repayment, and that the special indebtedness can be incurred or issued on terms favorable to the State.

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[1] GS 160A-20 and GS 143-64.17I.

[2] GS 143-64.17J and Article 8 of Chapter 142.

BILL ANALYSIS: House Bill 454 does the following:

- It expands the definition of 'energy conservation measure' to include conservation measures that conserve not only energy, but also water or other utilities and it makes conforming changes in other statutes. (Sections 1, 2, 6, 7, 8, 9, 10, and 11) This change also expands the types of guaranteed energy savings contracts that may be entered by both units of local government and the State. (via GS 143-17I and GS 143-17J)
- It increases the aggregate principal amount payable by the State under guaranteed energy savings contracts from $50 million to $75 million. (Section 5)
- It provides that the State must conduct a life-cycle cost analysis of the replacement of heating, ventilation, and air conditioning equipment in a State facility of 20,000 or more gross square feet if the replacement is financed with a guaranteed energy savings contract or is financed using repair and renovation funds. (Section 11)
- It amends the catch-line of two statutes to make it clear which one applies to units of local governments and which one applies to State agencies. (Sections 3 and 4)

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

H0454e1-SMRB

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: April 25, 2005

TO: House Finance Committee

FROM: Marilyn Chism and David Crotts
Fiscal Research Division

RE: House Bill 454 (First Edition)

FISCAL IMPACT

	Yes (x)	No ( )	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
EXPENDITURES:		See Assumptions and Methodology			
General Fund					
Debt Service Requirement	$0	$450,000	$2,260,000	$3,556,666	$3,430,000
Energy Savings	$0	($450,000)	($2,260,000)	(3,556,666)	($3,430,000)
Net GF Impact	$0	$0	$0	$0	$0
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Division of Purchase and Contract, State Energy Office, or the Office of State Construction. The enactment of the bill is not expected to affect budget requirements.

EFFECTIVE DATE: When the bill becomes law.

BILL SUMMARY: In recent years the General Assembly has enacted legislation that authorizes guaranteed energy savings contracts, including the financing of the contracts through debt instruments. A guaranteed energy savings contract is a contract for the evaluation, recommendation, or implementation of energy conservation measures, including the design and

installation of equipment or the repair or replacement of existing equipment in which all payments, except obligations on termination of the contract before its expiration, are to be made over time, and in which energy savings are guaranteed to exceed cost. HB 454 modifies current law as follows: (1) raises the limit on the amount of debt authorized from $50 million to $75 million; (2) clarifies that water and utility conservation is included in the State's energy policy, life-cycle cost analysis requirements, and authority to borrow to finance energy savings measures; (3) provides that a life-cycle cost analysis is required for replacement of HVAC equipment in State and State-assisted facilities of 20,000 or more square feet if the replacement is financed by guaranteed energy savings contracts or repair and renovation funds.

ASSUMPTIONS AND METHODOLOGY:

Operating Resources:
The State Energy Office reported that it is generally accepted that energy savings contracts may include water conservation measures. A stand-alone water savings contract would be unusual, in that most water savings are small compared to energy savings. The industry currently does not utilize guaranteed water savings contracts because utility savings via water use are much lower than energy savings. Based on this information, Fiscal Research concludes that any additional responsibility from authorizing the use of guaranteed water savings contracts would be minimal. We further conclude that any additional responsibilities would have minimal impact on the governmental units that implement such measures or on the Division of Purchase and Contract, the State Energy Office, or the Office of State Construction within the Department of Administration as result of administering these projects.

Debt Service Burden:
The bill increases the maximum aggregate principal amount payable by the State under the financing contracts for guaranteed energy and water savings measures from $50 million to $75 million at any one-time. The Department of State Treasurer provided an analysis of debt service costs for certificates of participation in connection with various university projects. These estimates were modified to fit the revised cash flow needs by Fiscal Research, using the State Treasurer's spreadsheet model. The key assumptions in the modified analysis include:

a. $12.5 million of additional financing will be issued on August 1, 2006 and the remaining $12.5 million of new financing will be issued August 1, 2007.
b. The maximum maturity of each debt issuance is 12 years.
c. The average interest rate for both issues is 6.15%.

The principal is repaid in equal installments on the anniversary date of the debt. Interest payments are made every six months. The total interest on the financing contracts would amount to $11.9 million. Thus, the total debt service, including repayment of the $25 million in principal, will be $36.9 million.

Savings
As noted above, this bill would increase the maximum aggregate principal amount payable by the State under financing contracts for guaranteed energy and water savings measures from $50 million to $75 million at any one time. The debt service requirements over the repayment period

on $25 million, assuming $12.5 million would be issued in each of the next two years, would amount to $36.9 million. By definition of guaranteed energy and water savings contracts, savings in the form of a reduction in fuel costs, energy costs, water use costs, or operating costs are expected to exceed the cost of implementing the measures. Therefore, assuming the full authorization is used, we expect that over the same 13-year period as the debt repayment, the total savings will exceed $36.9 million. On an annual basis, the savings should equal or exceed the annual debt service requirements. However, we cannot estimate the extent to which the annual savings will exceed the annual debt service requirement.

SOURCES OF DATA:

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 454 A BILL TO BE ENTITLED AN ACT TO CLARIFY THAT GUARANTEED ENERGY SAVINGS CONTRACTS INCLUDE CONSERVATION MEASURES FOR WATER AND OTHER UTILITIES, TO RAISE THE CAP FOR GUARANTEED ENERGY SAVINGS CONTRACTS, TO EXPAND THE STATE'S ENERGY POLICY AND LIFE-CYCLE COST ANALYSIS TO INCLUDE THE CONSERVATION OF WATER AND OTHER UTILITIES, AND TO MAKE CONFORMING CHANGES.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on APPROPRIATIONS.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1004

Short Title:	Mortgage Hospital Facilities.	(Public)
Sponsors:	Representatives Gibson, Grady (Primary Sponsors); and Faison.	
Referred to:	Finance.	

March 31, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING LOCAL GOVERNMENTS TO PLEDGE AND ENCUMBER HOSPITAL FACILITIES AND EQUIPMENT IN CONNECTION WITH THE ISSUANCE OF REVENUE BONDS TO FINANCE OR REFINANCE HOSPITAL FACILITIES AND EQUIPMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 159-83(a)(5) reads as rewritten:

"(5) To borrow money for the purpose of acquiring, constructing, reconstructing, extending, bettering, improving, or otherwise paying the cost of revenue bond projects, and to issue its revenue bonds or bond anticipation notes therefor, in the name of the State or a municipality, as the case may be, but no encumbrance, mortgage, or other pledge ~~or~~ of real property of the State or a municipality may be created in any manner."

SECTION 2. G.S. 159-83 is amended by adding a new subsection to read:

"(f) Notwithstanding any other provision of law to the contrary, a municipality may mortgage, pledge, assign, grant a security interest in, or otherwise encumber all or a portion of its hospital or other health-related facility real and tangible personal property, whether owned or leased, in connection with the issuance of revenue bonds under this Article for the purpose of financing or refinancing hospital or other health-related facility real and tangible personal property. The granting of a lien on, or security interest in hospital or health-related real or tangible personal property and the conveyance of this property pursuant to the provisions of the lien or security interest are not subject to the provisions of G.S. 131E-8, 131E-13, or 131E-14."

SECTION 3. G.S. 131A-3 reads as rewritten:

"**§ 131A-3. Definitions.**

As used or referred to in this Chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

...

(5) "Non-profit agency" means any nonprofit ~~private~~ corporation existing or hereafter created and empowered to acquire, by lease or otherwise, operate or maintain health care facilities;

(6) "Public agency" means any county, city, town, hospital ~~district~~ district, hospital authority, or other political subdivision of the State existing or hereafter created pursuant to the laws of the State authorized to acquire, by lease or otherwise, operate or maintain health care facilities;

...

(9) "Federally insured mortgage note" means any loan secured by a mortgage or deed of trust on any health care facilities owned or leased by any public or nonprofit agency which is insured or guaranteed, directly or indirectly, in whole or in part as to the repayment of principal and interest by the United States of America or any instrumentality thereof, or any commitment by the United States of America or any instrumentality thereof to so insure or guarantee such a loan secured by a mortgage or a deed of trust.

...."

SECTION 4. G.S. 131A-6 reads as rewritten:

"**§ 131A-6. Additional powers of public agencies.**

For the purposes of this Chapter, public agencies are authorized and empowered to enter into contracts and agreements, including loan agreements and agreements of sale or lease, with the Commission to facilitate the financing or refinancing, acquiring, constructing, equipping, providing, operating and maintaining of health care facilities and pursuant to any such loan agreement or agreement of sale or lease to operate, repair and maintain any health care facilities and, subject to the provisions of G.S. 131A-8, to pay the cost thereof and the loan repayments, purchase price payments or rent therefor from any funds available for such purposes. In addition, public agencies may mortgage, pledge, assign, grant a security interest in, or otherwise encumber a health care facility, whether owned or leased, to secure obligations under a loan agreement or similar debt instrument in connection with the issuance of bonds or notes by the Commission under this Chapter. The granting of a lien on, or security interest in a health care facility and the conveyance of this property pursuant to the provisions of the lien or security interest are not subject to the provisions of G.S. 131E-8, 131E-13, or 131E-14."

SECTION 5. The General Assembly finds that the provisions of this act are necessary for the health and welfare of the State and as such finds that the act shall be construed liberally to effect its purposes.

SECTION 6. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application and to this end the provisions of this act are severable.

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1004

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

H1004-ARB-8 [v.1]

Date _____,2005

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

Representative _____

moves to amend the bill on page 1, line 21, by inserting the following sentence after the word "property.":
"Property subject to a mortgage, deed of trust, security interest, or similar lien pursuant to this subsection may be sold at foreclosure in any manner permitted by the instrument creating the encumbrance, without compliance with any other provision of law regarding the disposition of publicly owned property.";

and on page 2, line 32, by inserting the following sentence after the word "Chapter.":
"Property subject to a mortgage, deed of trust, security interest, or similar lien pursuant to this section may be sold at foreclosure in any manner permitted by the instrument creating the encumbrance, without compliance with any other provision of law regarding the disposition of publicly owned property.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

HOUSE BILL 1004:
Mortgage Hospital Facilities

BILL ANALYSIS

Committee:	House Finance	**Date:**	April 26, 2005
Introduced by:	Reps. Gibson, Grady	**Summary by:**	Cindy Avrette
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1004 authorizes local governments to pledge and encumber hospital facilites and equipment in connection with the issuance of revenue bonds to finance or refinance hospital facilities and equipment. The bill is effective when it becomes law.

CURRENT LAW: The State authorizes local governments to provide adequate hospital, medical, and health care. Municipalities may construct, operate, and maintain hospitals as municipal hospitals[1]; counties may construct, operate, and maintain hospitals by creating hospital districts[2]; and counties and cities may create hospital authorities to construct, operate, and maintain hospitals.[3] To finance the cost of providing adequate hospital, medical, and health care, cities and counties and hospital authorities may issue revenue bonds. City hospitals and hospital districts may enter into contracts and agreements, including loan agreements, with the Medical Care Commission to finance hospital facilities. However, they are all specifically prohibited from encumbering the related real property.

The law provides that cities, counties, and hospital authorities may sell or convey ownership of their hospital facilities to a nonprofit or for-profit corporation. In the event, the property is sold and there are general obligation bonds or revenue bonds outstanding, then the purchasing corporation must place into escrow sufficient funds to pay the principal and the interest on the outstanding indebtedness.

BILL ANALYSIS: House Bill 1004 authorizes local governments, through whatever means they choose to provide hospital facilities, the ability to pledge, mortgage, or grant a security interest in the facilities and equipment affected by the revenue bond issuance. Any property so encumbered could be sold in accordance with the encumbering document.

Section 1 makes a technical change to the statute. House Bill 1117, Public Finance Changes, also makes this change.

Section 2 authorizes the encumbrances of property in connection with the issuance of revenue bonds under the State and Local Government Revenue Bond Act. Section 4 of House Bill 1117, Public Finance Changes, would make a similar change in the Revenue Bond Act for all types of revenue bond issuances. If the General Assembly enacts House Bill 1117, its changes would encompass most of the changes made by this section of the bill. The change also provides that the sale of the facilities pursuant to the lien or security interest would not be subject to the escrow requirements, since the escrow requirements provide for the payment of the bonds.

Section 3 gives hospital authorities the same ability to finance facilities through the Medical Care Commission that cities and counties currently have. Section 4 authorizes the same encumbrance of property in connection with the issuance of revenue bonds made through the Commission that could occur through the Revenue Bond Act under Section 2 of the bill.

H1004e1-SMRB

[1] Article 1 of Chapter 131E of the General Statutes.
[2] Article 3 of Chapter 131E of the General Statutes.
[3] Article 2 of Chapter 131E of the General Statutes.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 1004 (First Edition)

SHORT TITLE: Mortgage Hospital Facilities.

SPONSOR(S): Representatives Grady and Gibson

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

EFFECTIVE DATE: When the bill becomes law.

BILL SUMMARY: Amends revenue bond section of local government finance law by allowing a city to encumber all or a portion of its hospital or other health-related facility real and tangible personal property, whether owned or leased, in connection with the issuance of revenue bonds to finance or refinance health-related facility real and tangible personal property.

ASSUMPTIONS AND METHODOLOGY: The bill grants authority for certain cities and there is no way to predict which cities will use the option. In addition, the bill has no direct impact on state General Fund revenues or statewide local revenues.

SOURCES OF DATA:

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: David Crotts

APPROVED BY:

DATE:

ATTACHMENT 5

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1004

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

H1004-ARB-8 [v.1]

Date 4-26- ,2005

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

Representative Gibson

moves to amend the bill on page 1, line 21, by inserting the following sentence after the word "property.":
"Property subject to a mortgage, deed of trust, security interest, or similar lien pursuant to this subsection may be sold at foreclosure in any manner permitted by the instrument creating the encumbrance, without compliance with any other provision of law regarding the disposition of publicly owned property.";

and on page 2, line 32, by inserting the following sentence after the word "Chapter.":
"Property subject to a mortgage, deed of trust, security interest, or similar lien pursuant to this section may be sold at foreclosure in any manner permitted by the instrument creating the encumbrance, without compliance with any other provision of law regarding the disposition of publicly owned property.".

SIGNED Gibson
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 1004 A BILL TO BE ENTITLED AN ACT AUTHORIZING LOCAL GOVERNMENTS TO PLEDGE AND ENCUMBER HOSPITAL FACILITIES AND EQUIPMENT IN CONNECTION WITH THE ISSUANCE OF REVENUE BONDS TO FINANCE OR REFINANCE HOSPITAL FACILITIES AND EQUIPMENT.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 116
PROPOSED COMMITTEE SUBSTITUTE H116-CSLAx-5 [v.9]

4/25/2005 3:53:33 PM

Short Title: Property Tax Changes. (Public)

Sponsors:

Referred to:

February 9, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY PRESENT-USE VALUE ELIGIBILITY, TO AMEND THE PERIOD FOR APPEAL OF A PRESENT-USE VALUE DETERMINATION OR APPRAISAL, TO MODIFY THE TAX YEAR FOR MOTOR VEHICLES THAT ARE TO BE SWITCHED FROM AN ANNUAL SYSTEM OF REGISTRATION TO A STAGGERED SYSTEM EFFECTIVE JANUARY 1, 2006, AND TO APPLY THE SAME PENALTY THAT CURRENTLY APPLIES TO PAYMENTS BY CHECK TO PROPERTY TAX PAYMENTS MADE BY ELECTRONIC PAYMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. **G.S. 105-277.2(3) reads as rewritten:**

"(3) Horticultural land. – Land that is a part of a horticultural unit that is actively engaged in the commercial production or growing of fruits or vegetables or nursery or floral products under a sound management program. Horticultural land includes woodland and wasteland that is a part of the horticultural unit, but the woodland and wasteland included in the unit must be appraised under the use-value schedules as woodland or wasteland. A horticultural unit may consist of more than one tract of horticultural land, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(2), and each tract must be under a sound management program. If the horticultural land includes less than 20 acres of woodland, then the woodland portion is not required to be under a sound management program. Also, woodland is not required to be under a sound management program if it is determined that the highest and best use of the woodland is to diminish wind erosion of adjacent horticultural land or protect water quality of adjacent horticultural land. Land used to grow horticultural and agricultural crops on a rotating basis or where the horticultural crop is

set out or planted and harvested within one growing season, may be treated as agricultural land as described in subdivision (1) when there is determined to be no significant difference in the cash rental rates for the land."

SECTION 2. **G.S. 105-277.2(7) reads as rewritten:**

"(7) Unit. – One or more tracts of agricultural land, horticultural land, or forestland. Multiple tracts must be under the same ~~ownership.~~ownership and be of the same type of classification. If the multiple tracts are located within different counties, they must be within 50 miles of a tract qualifying under G.S. ~~105-277.3(a) and share one of the following characteristics:~~

~~a. Type of classification.~~

~~b. Use of the same equipment or labor force.~~105-277.3(a)."

SECTION 3. **G.S. 105-277.3(b2) reads as rewritten:**

"(b2) Exception to Ownership Requirements. – Notwithstanding the provisions of subsections (b) and (b1) of this section, land may qualify for classification in the hands of the new owner if all of the conditions listed in either subdivision of this subsection are met, even if the new owner does not meet all of the ownership requirements of subsections (b) and (b1) of this section with respect to the land.

(1) Exception for assumption of deferred liability. If the land qualifies for classification in the hands of the new owner under the provisions of this ~~subsection,~~subdivision, then the deferred taxes remain a lien on the land under G.S. 105-277.4(c), the new owner becomes liable for the deferred taxes, and the deferred taxes become payable if the land fails to meet any other condition or requirement for classification. Land qualifies for classification in the hands of the new owner if all of the following conditions are met:

~~(1)~~a. The land was appraised at its present use value ~~or was eligible for appraisal at its present use value~~ at the time title to the land passed to the new owner.

~~(2)~~b. At the time title to the land passed to the new owner, the new owner acquires the land for the purposes of and continues to use the land for the purposes it was classified under subsection (a) of this section while under previous ownership.

~~(3)~~c. The new owner has timely filed an application as required by G.S. 105-277.4(a) and has certified that the new owner accepts liability for the deferred taxes and intends to continue the present use of the land.

(2) Exception for expansion of existing unit. – If deferred liability is not assumed under subdivision (1) of this subsection, the land qualifies for classification in the hands of the new owner if, at the time title passed to the new owner, the land was being used for the same purpose and was eligible for appraisal at its present-use value as other land already owned by the new owner and classified under subsection (a) of this

section. The new owner must timely file an application as required by G.S. 105-277.4(a)."

SECTION 4. **G.S. 105-277.4(b1) reads as rewritten:**

"(b1) Appeal. – Decisions of the assessor regarding the qualification or appraisal of property under this section may be appealed to the county board of equalization and review or, if that board is not in session, to the board of county commissioners. An appeal must be made within 60 days after the decision of the assessor. If an owner submits additional information to the assessor pursuant to G.S. 105-296(j), the appeal must be made within 60 days after the assessor's decision based on the additional information. Decisions of the county board may be appealed to the Property Tax Commission."

SECTION 5. **G.S. 105-277.7(c)(1) and (c)(5) read as rewritten:**

"(c) Duties. – The Board must annually submit to the Department of Revenue a recommended use-value manual. In developing the manual, the Board may consult with federal and State agencies as needed. The manual must contain all of the following:

(1) The estimated cash rental rates for agricultural lands and horticultural lands for the various classes of soils found in the State. The rental rates must recognize the productivity levels by class of soil or geographic ~~area.~~area, and the crop as either agricultural or horticultural. The rental rates must be based on the rental value of the land to be used for agricultural or horticultural purposes when those uses are presumed to be the highest and best use of the land. The recommended rental rates may be established from individual county studies or from contracts with federal or State agencies as needed.

...

(5) Recommendations concerning any changes to the capitalization rate for agricultural land and horticultural land and to the maximum value per acre for the best agricultural land and horticultural land based on a calculation to be determined by the Board. The Board shall annually report these recommendations to the Revenue Laws Study Committee and to the President Pro Tempore of the Senate and the Speaker of the House of Representatives."

SECTION 6. **G.S. 105-289(a)(7) reads as rewritten:**

"(a) It is the duty of the Department of Revenue:

...

(7) To conduct studies of the cash rents for agricultural and horticultural lands on a county or a regional basis, such as the Major Land Resource Area map designated and developed by the U.S. Department of Agriculture. The results of the studies must be furnished to the North Carolina Use-Value Advisory Board. The studies may be conducted on any reasonable basis and timetable that will be reflective of rents and values for each local area based on the productivity of the land."

SECTION 7. **G.S. 105-296(j) and (l) read as rewritten:**

"(j) The assessor must annually review at least one eighth of the parcels in the county classified for taxation at present-use value to verify that these parcels qualify for the classification. By this method, the assessor must review the eligibility of all parcels classified for taxation at present-use value in an eight-year period. The period of the review process is based on the average of the preceding three years' data. The assessor may request assistance from the Farm Service Agency, the Cooperative Extension Service, the Forest Resources Division of the Department of Environment and Natural Resources, or other similar organizations.

The assessor may require the owner of classified property to submit any information, including sound management plans for forestland, needed by the assessor to verify that the property continues to qualify for present-use value taxation. The owner has 60 days from the date a written request for the information is made to submit the information to the assessor. If the assessor determines the owner failed to make the information requested available in the time required without good cause, the property loses its present-use value classification and the property's deferred taxes become due and payable as provided in G.S. 105-277.4(c). ~~The~~ If the property loses its present-use value classification for failure to provide the requested information, the assessor must reinstate the property's present-use value classification when the owner submits the requested information within 60 days after the disqualification unless the information discloses that the property no longer qualifies for present-use value classification. When a property's present-use value classification is reinstated, it is reinstated retroactive to the date the classification was revoked and any deferred taxes that were paid as a result of the revocation must be refunded to the property owner. The owner may appeal the final decision of the assessor to the county board of equalization and review as provided in G.S. 105-277.4(b1).

In determining whether property is operating under a sound management program, the assessor must consider any weather conditions or other acts of nature that prevent the growing or harvesting of crops or the realization of income from cattle, swine, or poultry operations. The assessor must also allow the property owner to submit additional information before making this determination.

...

(l) The assessor shall annually review at least one-eighth of the parcels in the county exempted or excluded from taxation to verify that these parcels qualify for the exemption or exclusion. By this method, the assessor shall review the eligibility of all parcels exempted or excluded from taxation in an eight-year period. The assessor may require the owner of exempt or excluded property to make available for inspection any information reasonably needed by the assessor to verify that the property continues to qualify for the exemption or exclusion. The owner has 60 days from the date a written request for the information is made to submit the information to the assessor. If the assessor determines that the owner failed to make the information requested available in the time required without good cause, then the property loses its exemption or exclusion. If the property loses its exemption or exclusion for failure to provide the requested information, the~~The~~ assessor must reinstate the property's exemption or exclusion when the owner makes the requested information available within 60 days

after the disqualification unless the information discloses that the property is no longer eligible for the exemption or exclusion."

SECTION 8. G.S. 105-330.5(a) reads as rewritten:

"(a) For classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1), upon receiving the registration lists from the Division of Motor Vehicles each month, the assessor shall prepare a tax notice for each vehicle; the tax notice shall contain all county, municipal, and special district taxes due on the motor vehicle. In computing the taxes, the assessor shall appraise the motor vehicle in accordance with G.S. 105-330.2 and shall use the tax rates of the various taxing units in effect on the first day of the month in which the current vehicle registration expired or the new registration was applied for. The tax on the motor vehicle is the product of a fraction and the number of months in the motor vehicle tax year. The numerator of the fraction is the product of the appraised value of the motor vehicle and the tax rate of the various taxing units. The denominator of the fraction is 12. This procedure shall constitute the listing and assessment of each classified motor vehicle for taxation. The tax notice shall contain:

(1) The date of the tax notice.
(2) The appraised value of the motor vehicle.
(3) The tax rate of the taxing units.
(4) A statement that the appraised value of the motor vehicle may be appealed to the assessor within 30 days after the date of the notice."

SECTION 9. G.S. 105-330.6 reads as rewritten:

"**§ 105-330.6. Motor vehicle tax year; transfer of plates; surrender of plates.**

(a) Tax Year. – The tax year for a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) and registered under the staggered system begins on the first day of the first month following the date on which the former registration expires or the new registration is applied for and ends on the last day of the ~~twelfth~~ month ~~following the date on which the registration expires or the new registration is applied for.~~ in which the current registration expires. The tax year for a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) and registered under the annual system begins on the first day of the first month following the date on which the registration expires or the new registration is applied for and ends the following December 31. The tax year for a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(2) is the fiscal year that opens in the calendar year in which the vehicle is required to be listed.

(a1) Change in Tax Year. – If the tax year for a classified motor vehicle changes because of a change in its registration for a reason other than the transfer of its registration plates to another classified motor vehicle pursuant to G.S. 20-64, and the new tax year begins before the expiration of the vehicle's original tax year, the taxpayer may receive a credit, in the form of a release, against the taxes on the vehicle for the new tax year. The amount of the credit is equal to a proportion of the taxes paid on the vehicle for the original tax year. The proportion is the number of full calendar months remaining in the original tax year as of the first day of the new tax year, divided by ~~12.~~the number of months in the original tax year. To obtain the credit allowed in this subsection, the taxpayer must apply within 30 days after the taxes for the new tax year are due and must provide the county tax collector information establishing the original

tax year of the vehicle, the amount of taxes paid on the vehicle for that year, and the reason for the change in registration.

(b) Transfer of Plates. – If the owner of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) transfers the registration plates from the listed vehicle to another classified motor vehicle pursuant to G.S. 20-64 during the listed vehicle's tax year, the vehicle to which the plates are transferred is not required to be listed or taxed until the current registration expires or is renewed.

(c) Surrender of Plates. – If the owner of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) either transfers the motor vehicle to a new owner or moves out-of-state and registers the vehicle in another jurisdiction, and the owner surrenders the registration plates from the listed vehicle to the Division of Motor Vehicles, then the owner may apply for a release or refund of taxes on the vehicle for any full calendar months remaining in the vehicle's tax year after the date of surrender. To apply for a release or refund, the owner must present to the county tax collector within one year after surrendering the plates the receipt received from the Division of Motor Vehicles accepting surrender of the registration plates. The county tax collector shall then multiply the amount of the taxes for the tax year on the vehicle by a fraction, the denominator of which is ~~12~~ the number of months in the tax year and the numerator of which is the number of full calendar months remaining in the vehicle's tax year after the date of surrender of the registration plates. The product of the multiplication is the amount of taxes to be released or refunded. If the taxes have not been paid at the date of application, the county tax collector shall make a release of the prorated taxes and credit the owner's tax notice with the amount of the release. If the taxes have been paid at the date of application, the county tax collector shall direct an order for a refund of the prorated taxes to the county finance officer, and the finance officer shall issue a refund to the vehicle owner."

SECTION 10. **G.S. 105-357(b)(2) reads as rewritten:**

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

SECTION 11. Sections 1 through 7 of this act are effective for taxes imposed for taxable years beginning on or after July 1, 2005. Sections 8 and 9 of this act become effective January 1, 2006. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

HOUSE BILL 116

Short Title:	Present-Use Value Clarification.	(Public)
Sponsors:	Representatives Brubaker; Hill, Luebke, McGee, Wainwright, Alexander, Coleman, Glazier, Moore, Steen, and Stiller.	
Referred to:	Finance.	

February 9, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY PRESENT-USE VALUE ELIGIBILITY AND TO AMEND THE PERIOD FOR APPEAL OF A PRESENT-USE VALUE DETERMINATION OR APPRAISAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-277.2(7) reads as rewritten:

"(7) Unit. – One or more tracts of agricultural land, horticultural land, or forestland. Multiple tracts must be under the same ~~ownership.~~ownership and be of the same type of classification. If the multiple tracts are located within different counties, they must be within 50 miles of a tract qualifying under G.S. ~~105-277.3(a) and share one of the following characteristics:~~

~~a. Type of classification.~~

~~b. Use of the same equipment or labor force.~~105-277.3(a)."

SECTION 2. G.S. 105-277.3(b2) reads as rewritten:

"(b2) Exception to Ownership Requirements. – Notwithstanding the provisions of subsections (b) and (b1) of this section, land may qualify for classification in the hands of the new owner if all of the conditions listed in either subdivision of this subsection are met, even if the new owner does not meet all of the ownership requirements of subsections (b) and (b1) of this section with respect to the land.

(1) Exception for assumption of deferred liability. If the land qualifies for classification in the hands of the new owner under the provisions of this ~~subsection,~~subdivision, then the deferred taxes remain a lien on the land under G.S. 105-277.4(c), the new owner becomes liable for the deferred taxes, and the deferred taxes become payable if the land fails to meet any other condition or requirement for classification. Land qualifies for classification in the hands of the new owner if all of the following conditions are met:

~~(1)~~a. The land was appraised at its present use value ~~or was eligible for appraisal at its present use value~~ at the time title to the land passed to the new owner.

~~(2)~~b. At the time title to the land passed to the new owner, the new owner acquires the land for the purposes of and continues to use the land for the purposes it was classified under subsection (a) of this section while under previous ownership.

~~(3)~~c. The new owner has timely filed an application as required by G.S. 105-277.4(a) and has certified that the new owner accepts liability for the deferred taxes and intends to continue the present use of the land.

(2) Exception for expansion of existing unit. – If deferred liability is not assumed under subdivision (1) of this subsection, the land qualifies for classification in the hands of the new owner if, at the time title passed to the new owner, the land was being used for the same purpose and had the same classification as other land already owned by the new owner and classified under subsection (a) of this section. The new owner must timely file an application as required by G.S. 105-277.4(a)."

SECTION 3. G.S. 105-277.4(b1) reads as rewritten:

"(b1) Appeal. – Decisions of the assessor regarding the qualification or appraisal of property under this section may be appealed to the county board of equalization and review or, if that board is not in session, to the board of county commissioners. An appeal must be made within 60 days after the decision of the assessor. If an owner submits additional information to the assessor pursuant to G.S. 105-296(j), the appeal must be made within 60 days after the assessor's decision based on the additional information. Decisions of the county board may be appealed to the Property Tax Commission."

SECTION 4. G.S. 105-296(j) and (l) read as rewritten:

"(j) The assessor must annually review at least one eighth of the parcels in the county classified for taxation at present-use value to verify that these parcels qualify for the classification. By this method, the assessor must review the eligibility of all parcels classified for taxation at present-use value in an eight-year period. The period of the review process is based on the average of the preceding three years' data. The assessor may request assistance from the Farm Service Agency, the Cooperative Extension Service, the Forest Resources Division of the Department of Environment and Natural Resources, or other similar organizations.

The assessor may require the owner of classified property to submit any information, including sound management plans for forestland, needed by the assessor to verify that the property continues to qualify for present-use value taxation. The owner has 60 days from the date a written request for the information is made to submit the information to the assessor. If the assessor determines the owner failed to make the information requested available in the time required without good cause, the property loses its present-use value classification and the property's deferred taxes become due and

payable as provided in G.S. 105-277.4(c). ~~The~~ If the property loses its present-use value classification for failure to provide the requested information, the assessor must reinstate the property's present-use value classification when the owner submits the requested information within 60 days after the disqualification unless the information discloses that the property no longer qualifies for present-use value classification. When a property's present-use value classification is reinstated, it is reinstated retroactive to the date the classification was revoked and any deferred taxes that were paid as a result of the revocation must be refunded to the property owner. The owner may appeal the final decision of the assessor to the county board of equalization and review as provided in G.S. 105-277.4(b1).

In determining whether property is operating under a sound management program, the assessor must consider any weather conditions or other acts of nature that prevent the growing or harvesting of crops or the realization of income from cattle, swine, or poultry operations. The assessor must also allow the property owner to submit additional information before making this determination.

(l) The assessor shall annually review at least one-eighth of the parcels in the county exempted or excluded from taxation to verify that these parcels qualify for the exemption or exclusion. By this method, the assessor shall review the eligibility of all parcels exempted or excluded from taxation in an eight-year period. The assessor may require the owner of exempt or excluded property to make available for inspection any information reasonably needed by the assessor to verify that the property continues to qualify for the exemption or exclusion. The owner has 60 days from the date a written request for the information is made to submit the information to the assessor. If the assessor determines that the owner failed to make the information requested available in the time required without good cause, then the property loses its exemption or exclusion. If the property loses its exemption or exclusion for failure to provide the requested information, the~~The~~ assessor must reinstate the property's exemption or exclusion when the owner makes the requested information available within 60 days after the disqualification unless the information discloses that the property is no longer eligible for the exemption or exclusion."

SECTION 5. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2005.

HOUSE BILL 116:
Property Tax Changes

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Brubaker
Date:	April 25, 2005	**Analysis by:**	Martha Walston
Version:	H116-CSLAx-5[v.9]		Committee Counsel

SUMMARY: House Bill 116 is a recommendation of the Revenue Laws Study Committee. The bill clarifies the property tax statutes relating to present-use value eligibility and amends the period for appeal of a present-use value determination or appraisal. The bill was requested by the Property Tax Division of the Department of Revenue and has been endorsed by the North Carolina Farm Bureau.

The proposed committee substitute makes the following changes to the 1st edition:

- *Clarifies the definition of horticultural land in the present-use value statutes.*
- *Makes technical changes to the present-use value statutes.*
- *Clarifies the tax year for motor vehicles that are to be switched from an annual system of registration to a staggered system.*
- *Includes an electronic payment of property taxes that is not honored by the issuer in the statute imposing a penalty for nonpayment of property taxes.*

BILL ANALYSIS:

Present-use value

Background: North Carolina revenue laws provide preferential property tax treatment to agricultural land, horticultural land, and forestland that meets certain ownership, income, and size requirements. The land is taxed at present-use value instead of market value. In 2002, the General Assembly made numerous changes to the present-use value statutes including an updated method for calculating the value of farmland at its present-use value, clarification of the sound management requirement for qualifying for use value taxation, and allowing land subject to a conservation easement to continue to qualify for use value taxation.

The Department of Revenue has indicated that the following changes are needed to clarify the present-use value program and to help the counties and the Department with its administration:

Section 1 of the bill amends the definition of "horticultural land" to allow the following horticultural land to be treated as agricultural land: Land used to grow horticultural and agricultural crops on a rotating basis or where the horticultural crop is set out or planted and harvested within one growing season, may be treated as agricultural land when there is determined to be no significant difference in the cash rental rates for the land.

Section 2 of the bill amends the definition of "unit". Under current law, farmland must be part of a unit engaged in commercial production to qualify for present-use value. If the unit is composed of multiple tracts, these tracts must be under the same ownership. Also, if the tracts are located within different counties, they must be within 50 miles of a tract that meets the

definition of farmland and either share the same classification OR use the same equipment or labor force. House Bill 116 deletes the language that the tracts in different counties may qualify if they use the same equipment or labor force. The bill would therefore require that tracts located in different counties be the same type of classification, i.e. every tract in the unit must be all agricultural land, horticultural land, or forestland.

Section 3 of the bill deletes certain language and adds language to the statute that provides an exception to the ownership requirements of present-use value classification. The bill codifies a procedure the counties are currently following. In order to qualify for present-use value taxation under current law, farmland must be owned by certain qualifying individuals, family business entities, or trusts. Also, individual owners must live on the land or have owned the land in their family for four years. There is an exception to this ownership requirement if use value land is transferred to a person who continues to use it as farmland and meets the other conditions for use value treatment. The deferred taxes that accrued while the land was owned by the first owner continue as a lien on the property in the hands of the new owner. In addition, the new owner must file an application for present-use value treatment within 60 days after acquiring the land. The new owner must certify that the present use will continue and that the new owner will be liable for the deferred taxes if the land is later disqualified.

Section 3 of the bill allows an exception to the ownership requirements when farmland passes to a new owner who does not assume deferred liability. The proposed language codifies an exception to the ownership requirements that the counties currently recognize. This occurs when farmland, which is not appraised and taxed at its present-use value is transferred to a new owner. To qualify for present-use value under this proposal, the farmland passing to the new owner must have been used for the same purpose and have been eligible for appraisal at its present-use value as other land already owned by the new owner. The new owner must also file a timely application showing that the property comes within one of the classes of farmland.

Section 3 of the bill deletes the condition that to qualify for the current exception to the ownership requirement, the new owner may show that the land was "eligible for appraisal at its present-use value" at the time title passes to the new owner. This language is not applicable since a new owner must assume the deferred taxes when the land is transferred. There are no deferred taxes unless the property is currently appraised at its present-use value.

Sections 4 and 7 of the bill establish 60 days as the time within which a taxpayer (1) must appeal an assessor's decision regarding the qualification or appraisal of the taxpayer's property as use value property and (2) may submit additional information to reverse a disqualification of property for present-use value classification or for exemption or exclusion because of failure to submit additional information. Current law provides no time limit for presenting additional information after the assessor has disqualified the property.

Sections 5 and 6 of the bill make technical changes.

Property tax year for motor vehicles

Background: In 1991, the property tax collection procedure for motor vehicles that are registered with the Division of Motor Vehicles was changed so that registered motor vehicles

would be taxed on a revolving, year-round basis. The purpose of the change was to improve the collection rate and thereby recover the estimated $11.1 million in property tax revenue that was lost each year under the former collection system. Under the current procedure, a motor vehicle owner will receive a tax bill for the vehicle approximately three months after the vehicle is registered or the registration is renewed, and the bill is generated from lists sent to the counties by the DMV. Each month the county tax collector will collect taxes on approximately one-twelfth of the motor vehicles having a tax situs in the county. The taxes on vehicles registered under this staggered system (all private passenger vehicles) are due either on the first day of the fourth month following the date on which the registration would have expired or following the last day of the month in which the new registration was applied for. [1] The registration cycle under the staggered system begins the month of purchase or renewal and continues for 12 months until expiration.

Commercial trucks are registered under the annual system. A new registration for a vehicle under the annual system may be obtained any time during the year, but all registrations under the annual system expire December 31 and must be renewed by February 15. When an annual registration is obtained in a month other than December, the taxes must be prorated for the full months remaining in the calendar year. The taxes on vehicles with registrations renewed under the annual system are all due on the May 1 following the date the registration was renewed.

In 2004, legislation was enacted which provides for the staggered issuance of dealer license plates, effective January 1, 2006. The Department estimates this change will affect approximately 500,000 annually registered motor vehicles.

Sections 8 and 9 of the bill amend the property tax motor vehicle statutes. Section 9 of the bill modifies the explanation of the motor vehicle tax year to provide for a longer tax year than 12 months during the transition period for vehicles that are converting from annual registration to staggered registration. This change will allow the DMV to issue one-time 7 to 18 month registrations for these vehicles, thus resulting in an approximate equal number of expiring registrations throughout a 12-month period. Upon renewal of these one-time registrations, the subsequent registrations will be 12-month registrations that will expire in varying months. Section 8 of the bill explains how the calculation is made for tax bills when the registration cycle is not 12 months.

Penalty for failure to pay property tax by Electronic Payment

Current law allows a taxpayer to pay property taxes by check and electronic payment. If a worthless check is given for payment of property taxes, the penalty is $25 or 10% of the amount of the check, whichever is greater, subject to a maximum of $1,000. The penalty does not apply if the tax collector finds that the taxpayer inadvertently failed to draw the check on the taxpayer's account that had sufficient funds.

Section 10 of the bill adds language so that the same penalty and penalty waiver apply to the payment of property taxes by electronic funds transfer.

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[1] For example, if a vehicle's registration would have expired in June or a vehicle was newly registered in June, the taxes on that vehicle will be due the following October 1.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: April 25, 2005

TO: Representative Brubaker

FROM: Rodney Bizzell
Fiscal Research Division

RE: House Bill 116 (First Edition)

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
Local Governments (See Assumptions and Methodology)					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue and Local Governments

EFFECTIVE DATE: July 1, 2005

BILL SUMMARY: This bill is a recommendation of the Revenue Laws Study Committee to clarify the property tax statutes relating to present-use value eligibility and to amend the period for appeal of a present-use value determination or appraisal. The proposed committee substitute also clarifies the tax year for motor vehicles that are switched from an annual system of registration to a staggered system.

Section 1 of the bill amends the definition of horticultural land to allow some types of land currently classified as horticultural to be classified as agricultural. Section 2 of the bill changes the definition of unit. Under current law, farmland must be part of a unit engaged in commercial

production to qualify for present-use value classification. If the unit is composed of multiple tracks, these tracts must be under the same ownership. Also, if the tracts are located within different counties, they must be within 50 miles of a tract that meets the definition of farmland and either share the same classification or use the same equipment or labor force. Section 2 of this bill would eliminate the qualification under use of the same equipment or labor force.

Section 3 amends the section of the statute that allows exceptions to ownership requirements of present-use classification. The current law allows an exception to ownership requirements when use-value land is transferred to a person who continues to use it as farmland and meets the other conditions for use value treatment and assumes deferred liability for taxes accrued under the previous owner. This proposal codifies the recognized practice of allowing an exception when there is no deferred liability upon transfer of the land. This occurs when the land being transferred is not appraised and taxed at the present-use value at the time of transfer.

Sections 4 and 7 add language that establishes 60 days as the time for a taxpayer to appeal an assessor's decision regarding the qualification or appraisal of the taxpayer's property as use-value property. The 60-day timeframe would also apply as the time period for taxpayers to submit additional information to reverse a disqualification of property for present-use classification because of failure to submit additional information.

Sections 8 and 9 amend the property tax motor vehicle statutes by allowing a longer tax period than 12 months during the transition period for vehicles that are converting from annual registration to staggered registration. Section 10 adds language to apply the current penalty for worthless checks in payment of property taxes to electronic payments.

ASSUMPTIONS AND METHODOLOGY: No revenue impact is expected in the present-use clarification portion of the bill because the bill codifies existing practice among county assessors and makes technical changes. The sections of the bill related to motor vehicle property tax also have no fiscal impact. This portion of the bill allows tax assessors to issue one-time 7 to 18 month registrations for vehicles currently subject to annual registrations. This process will allow for an equal distribution of expiring registrations throughout the year. During the transition period, the property tax payments for some taxpayers will be greater than or less than the amount that they would have paid under the annual registration process, depending on the length of the registration period. However, the distribution of 7 to 18 month registration cycles will allow for minimal fiscal impact because the taxpayers who pay a lesser amount (for shorter registrations) will be off-set by other taxpayers who pay a greater amount (for longer registrations) during the transition period. After the transition period, all taxpayers will return to a 12-month registration period.

SOURCES OF DATA: NC Department of Revenue

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 116 A BILL TO BE ENTITLED AN ACT TO CLARIFY PRESENT-USE VALUE ELIGIBILITY AND TO AMEND THE PERIOD FOR APPEAL OF A PRESENT-USE VALUE DETERMINATION OR APPRAISAL.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 988
PROPOSED COMMITTEE SUBSTITUTE H988-CSRB-7 [v.1]

4/25/2005 1:55:01 PM

Short Title: Property Tax – Value of Motor Vehicles. (Public)

Sponsors:

Referred to:

March 30, 2005

A BILL TO BE ENTITLED

AN ACT TO EXCLUDE HIGHWAY USE TAXES AS A FACTOR IN DETERMINING THE TRUE VALUE IN MONEY OF MOTOR VEHICLES FOR PROPERTY TAX PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-330.2(b) reads as rewritten:

"(b) Value; Appeal. – A classified motor vehicle shall be appraised by the assessor at its true value in money as prescribed by G.S. 105-283. If the assessor considers the sales price of the motor vehicle in determining the true value of the motor vehicle, the assessor must not include any amount for which the taxpayer is liable under Article 5A of this Chapter. The owner of a classified motor vehicle may appeal the appraised value of the vehicle in the manner provided by G.S. 105-312(d) for appeals in the case of discovered property and may appeal the situs or taxability of the vehicle in the manner provided by G.S. 105-381. The owner of a classified motor vehicle must file an appeal of appraised value with the assessor within 30 days after the date of the tax notice prepared pursuant to G.S. 105-330.5. Notwithstanding G.S. 105-312(d), an owner who appeals the appraised value of a classified motor vehicle shall pay the tax on the vehicle when due, subject to a full or partial refund if the appeal is decided in the owner's favor."

SECTION 2. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 988

Short Title:	Property Tax – Value of Motor Vehicles.	(Public)
Sponsors:	Representatives Blackwood, Church (Primary Sponsors); and Gulley.	
Referred to:	Finance.	

March 30, 2005

A BILL TO BE ENTITLED

AN ACT TO EXCLUDE HIGHWAY USE TAXES AS A FACTOR IN DETERMINING THE TRUE VALUE IN MONEY OF MOTOR VEHICLES FOR PROPERTY TAX PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-330.2(b) reads as rewritten:

"(b) Value; Appeal. – A classified motor vehicle shall be appraised by the assessor at its true value in money as prescribed by G.S. 105-283. If the assessor uses the cost approach in determining the true value of the motor vehicle, the assessor must not include any amount for which the taxpayer is liable under Article 5A of this Chapter. The owner of a classified motor vehicle may appeal the appraised value of the vehicle in the manner provided by G.S. 105-312(d) for appeals in the case of discovered property and may appeal the situs or taxability of the vehicle in the manner provided by G.S. 105-381. The owner of a classified motor vehicle must file an appeal of appraised value with the assessor within 30 days after the date of the tax notice prepared pursuant to G.S. 105-330.5. Notwithstanding G.S. 105-312(d), an owner who appeals the appraised value of a classified motor vehicle shall pay the tax on the vehicle when due, subject to a full or partial refund if the appeal is decided in the owner's favor."

SECTION 2. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2005.

HOUSE BILL 988:
Property Tax – Value of Motor Vehicles

BILL ANALYSIS

Committee:	House Finance	**Date:**	April 26, 2005
Introduced by:	Reps. Blackwood, Church	**Summary by:**	Cindy Avrette
Version:	First Edition		Committee Counsel
	H988-CSRB-7		

SUMMARY: ***The proposed committee substitute for House Bill 988 provides that when a tax assessor considers the sales price of a motor vehicle in determining the true value of the vehicle for property tax purposes, the assessor may not consider the highway use tax as part of the sales price. The bill is effective for taxes imposed for taxable years beginning on or after July 1, 2005.***

CURRENT LAW: By statute, a county must appraise motor vehicles at their true value in money for property tax purposes. True value is defined as the price at which property would change hands between a willing and financially able buyer and a willing seller. In practice, assessors use a pricing guide developed by TEC Data Systems to determine the value of vehicles for property tax purposes. The pricing guide reflects the average retail price paid for motor vehicles. In determining retail prices, all costs that are necessary to acquire and operate a motor vehicle are considered. If an assessor believes the values developed in the guide are too low or too high, the assessor may consult with TEC Data Systems about the values and have a different set of values computed for use in that assessor's county. If a taxpayer disagrees with the appraised value, the taxpayer has 30 days after the date the tax notice was prepared to appeal the value. Counties will adjust an appraised value for reasons such as the vehicle's condition or excessive mileage.

BILL ANALYSIS: Counties typically do not begin their appraisal of a new motor vehicle based on the vehicle's bill of sale. However, there are instances where a taxpayer may bring in a bill of sale to show that he or she paid less than the value at which the vehicle is assessed. A vehicle's bill of sale includes the 3% highway use tax paid on the vehicle. **House Bill 988** provides that when an assessor considers the sales price of a motor vehicle in determining its true value, the assessor must not consider the highway use tax paid on the vehicle.

Martha Walston substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 988 (First Edition)

SHORT TITLE: Property Tax – Value of Motor Vehicles.

SPONSOR(S): Representatives Blackwood and Church

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:	See Assumptions and Methodology				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Local Governments, NC Department of Revenue

EFFECTIVE DATE: On or after July 1, 2005.

BILL SUMMARY: This bill prohibits tax assessors who use the cost approach for appraisal of motor vehicles from including any Highway Use Tax for purposes of determining the property tax owed on the vehicle.

ASSUMPTIONS AND METHODOLOGY: According to the North Carolina Department of Revenue, there are no counties currently using the cost approach to determine the value of motor vehicles. The cost approach bases the value of the vehicle on what a person actually paid for it. Under this method of valuation, which is often used for business personal property, all the costs associated with the purchase are considered. The market-based approach bases the value on the sales of similar vehicles. Most counties use pricing guides developed by Tax Equity Consultants (TEC) or the National Automobile Dealers Association to determine the average retail prices paid for motor vehicles.

In some instances in which the assessed value of a vehicle is appealed by the taxpayer, assessors may use the bill of sale that includes Highway Use Tax as documentation for changing the assessed value. To the extent that this occurs, this bill would result in lower revenue for local governments. It is expected that the revenue impact would be small, however, the exact amount is not known.

SOURCES OF DATA: North Carolina Department of Revenue

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: April 25, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 988 (First Edition)

SHORT TITLE: Property Tax – Value of Motor Vehicles.

SPONSOR(S): Representatives Blackwood and Church

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:	See Assumptions and Methodology				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Local Governments, NC Department of Revenue

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SOURCES OF DATA: North Carolina Department of Revenue

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

Official
Fiscal Research Division
Publication

DATE: April 25, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 988 A BILL TO BE ENTITLED AN ACT TO EXCLUDE HIGHWAY USE TAXES AS A FACTOR IN DETERMINING THE TRUE VALUE IN MONEY OF MOTOR VEHICLES FOR PROPERTY TAX PURPOSES.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 691
PROPOSED COMMITTEE SUBSTITUTE H691-CSRBx-5 [v.2]

4/22/2005 11:25:54 AM

Short Title: Carrboro Motor Vehicle Tax. (Local)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF CARRBORO TO LEVY A MOTOR VEHICLE TAX NOT TO EXCEED TWENTY-FIVE DOLLARS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-97(b) reads as rewritten:

"(b) General Municipal Vehicle Tax. – Cities and towns may levy a tax of not more than ~~five dollars ($5.00)~~ twenty-five dollars ($25.00) per year upon any vehicle resident in the city or town. The proceeds of the tax may be used for any lawful purpose."

SECTION 2. Section 3 of Chapter 392 of the 1991 Session Laws, as amended by Section 5.1 of Chapter 339 of the 1995 Session Laws, is repealed effective upon the date the Town of Carrboro acts to levy an additional tax under this act.

SECTION 3. This act applies to the Town of Carrboro only.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 691

Short Title:	Carrboro Motor Vehicle Tax.	(Local)
Sponsors:	Representatives Insko and Hackney (Primary Sponsors).	
Referred to:	Finance.	

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CARRBORO TOWN CHARTER TO AUTHORIZE THE TOWN TO RAISE THE MOTOR VEHICLE TAX FROM FIFTEEN TO TWENTY-FIVE DOLLARS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-97(a) as it applies to the Town of Carrboro under Section 3 of Chapter 392 of the Session Laws of 1991, as amended by Chapter 456 of the 1993 Session Laws, as further amended by Section 5.1 of Chapter 339 of the 1995 Session Laws, and as codified in Section 3-6 of the Carrboro Town Charter, reads as rewritten:

"(a) All taxes levied under the provisions of this Article are intended as compensatory taxes for the use and privileges of the public highways of this State, and shall be paid by the Commissioner to the State Treasurer, to be credited by him to the State Highway Fund; and no county or municipality shall levy any license or privilege tax upon any motor vehicle licensed by the State of North Carolina, except that cities and towns may levy not more than ~~fifteen dollars ($15.00)~~ twenty-five dollars ($25.00) per year upon any vehicle resident therein. Provided, further, that cities and towns may levy, in addition to the amounts hereinabove provided for, a sum not to exceed fifteen dollars ($15.00) per year upon each vehicle operated in such city or town as a taxicab."

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

HOUSE BILL 691:
Carrboro Motor Vehicle Tax

BILL ANALYSIS

Committee:	House Finance	**Date:**	April 26, 2005
Introduced by:	Reps. Insko, Hackney	**Summary by:**	Cindy Avrette
Version:	PCS for First Edition		Committee Counsel

SUMMARY: House Bill 691 increases the amount of the general municipal vehicle tax Carrboro may impose from $15 to $25. The proposed committee substitute corrects incorrect statutory references. The bill becomes effective when it becomes law.

CURRENT LAW: Under general law, counties may not impose a license or privilege tax on motor vehicles[1] and municipalities are limited in the taxes they may impose on motor vehicles to the taxes listed below:

- **General Municipal Vehicle Tax.** – A tax not to exceed $5 a year on a motor vehicle resident in the municipality. The revenue generated by this tax may be used for any lawful purpose. By local acts, the amount of the tax has been increased for several cities and towns. The cities of Durham, Henderson, Oxford, Winston-Salem[2] and the towns of Ahoskie, Cary, Chapel Hill, Creedmoor, and Hillsborough may levy a tax up to $10. The cities of Gastonia, Kinston, and Raleigh may levy a tax up to $15. The cities of Charlotte and Greenville and the towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill, Murfreesboro, and Pineville may levy a tax up to $20.
- **Local Public Transportation System.** – A tax not to exceed $5 a year on a motor vehicle resident in the municipality. Only municipalities that operate a public transportation system may impose this tax and the proceeds from the tax may be used only for local public transportation systems.[3]
- **Tax on Taxicabs.** – A tax not to exceed $15 a year on each vehicle operated in the municipality as a taxicab. The proceeds of this tax may be used for any lawful purpose.

BILL ANALYSIS: House Bill 691 increases the amount of tax the Town of Carrboro may impose from $15 to $25. The General Assembly authorized Carrboro to increase the tax it may impose on vehicles from $5 to $10 in 1991[4] and from $10 to $15 in 1995.[5]

[1] By local acts modifying G.S. 20-97, Alleghany, Caswell, and Pamlico Counties may impose an annual motor vehicle tax. The amounts vary from $5 to $15.

[2] HB 464 would authorize Winston-Salem to increase its tax to $20.

[3] This tax may not be imposed by the City of Durham or by any cities and towns in Gaston County.

[4] Sec. 3 of Chapter 392 of the 1991 Session Laws.

[5] Sec. 5.1 of Chapter 339 of the 1995 Session Laws.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 691 A BILL TO BE ENTITLED AN ACT TO AMEND THE CARRBORO TOWN CHARTER TO AUTHORIZE THE TOWN TO RAISE THE MOTOR VEHICLE TAX FROM FIFTEEN TO TWENTY-FIVE DOLLARS.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 488*
PROPOSED COMMITTEE SUBSTITUTE H488-PCS60359-LBx-27

Short Title: Cary Charter Rewrite. (Local)

Sponsors:

Referred to:

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE CHARTER OF THE TOWN OF CARY.

The General Assembly of North Carolina enacts:

SECTION 1. The Charter of the Town of Cary is revised and consolidated to read:

"THE CHARTER OF THE TOWN OF CARY

"ARTICLE I. INCORPORATION AND GENERAL POWERS

"Section 1.1. Incorporation and general powers. The Town of Cary shall continue to be a body politic and corporate under the name and style of the 'Town of Cary', and shall continue to be vested with all property and rights which now belong to the Town; shall have perpetual succession; may have a common seal and alter and renew the same at pleasure; may sue and be sued; may contract, may acquire and hold all such property, real and personal, as may be devised, bequeathed, sold, or in any manner conveyed or dedicated to it, or otherwise acquired by it, and may from time to time hold or invest, sell, or dispose of the same; and shall have and may exercise in conformity with this Charter all municipal powers, functions, rights, privileges, and immunities of every name and nature.

"Section 1.2. Enumerated powers not exclusive. The enumeration of particular powers by this Charter shall not be held or deemed to be exclusive but, in addition to the powers enumerated herein or implied hereby, or those appropriate to the exercise of such powers, the Town of Cary shall have and may exercise all powers which are granted to municipal corporations by the general laws of North Carolina and all powers which, under the Constitution of North Carolina, it would be competent for this Charter specifically to enumerate.

"Section 1.3. Exercise of powers. All powers, functions, rights, privileges, and immunities of the Town, its officers, agencies, or employees, shall be carried into execution as provided by this Charter, or if this Charter makes no provision, as provided

by ordinance or resolution of the Town Council and as provided by general law pertaining to municipal corporations.

"Section 1.4. Form of government. The form of government of the Town of Cary shall be known as the 'Council-Manager Form of Government', as set forth in Part 2 of Article 7 of Chapter 160A of the General Statutes subject to the modifications of this Charter. Nothing contained in this Charter shall be construed to prevent the form of government of the Town of Cary from being changed as by law provided.

"ARTICLE II. CORPORATE BOUNDARIES

"Section 2.1. Existing corporate boundaries. The corporate limits of the Town shall be those existing at the time of the ratification of this Charter and as the same may be altered from time to time in accordance with law. The Town Planning Director shall prepare a map to be designated 'Map of the Town of Cary Corporate Limits' showing the corporate limits as the same may exist as of the effective date of this Charter. The Town Planning Director may also prepare a written description of the corporate limits as shown on said map to be designated 'Description of Cary Corporate Limits'. Said map and description shall be retained permanently in the Office of the Town Clerk as the official map and a description of the corporate limits of the Town. Immediately upon alteration of the corporate limits made pursuant to law from time to time, the Town Planning Director shall indicate such alteration by making appropriate changes and/or additions to said official map and description. Photographic or other types of copies of said official map or description certified as by law provided for the certification of ordinances shall be admitted in evidence in all courts and shall have the same force and effect as would the official map or description.

"Section 2.2. Extension of corporate boundaries. All extensions of the corporate boundaries shall be governed by general law.

"ARTICLE III. MAYOR AND TOWN COUNCIL

"Section 3.1. Form of government. The government of the Town and the general management and control of all its affairs shall be vested in a Town Council, which shall be elected and shall exercise its powers in the manner hereinafter provided, except that the Town Manager shall have the authority hereinafter specified.

"Section 3.2. Number and qualification of council members and mayor generally.

(a) The Town Council shall consist of six members, two of whom shall be elected at large by all the qualified voters of the Town, and four of whom shall be elected by the qualified voters of each of four single-member electoral districts, respectively, as established by the Town Council pursuant to the law. Terms of council members shall be overlapping four-year terms. In the 2001 election and quadrennially thereafter, there shall be elected, for four-year terms, one council member from electoral district A, one council member from electoral district C, and one council member from the Town at large. In the 2003 election and quadrennially thereafter, there shall be elected, for four-year terms, one council member from electoral district B, one council member from electoral district D, and one council member from the Town at large.

(b) The Mayor shall be elected by all the qualified voters of the Town, for a term of four years, in the 2003 election and quadrennially thereafter. The Mayor shall have the right to vote on all matters before the Town Council.

(c) The method of election of the Mayor and Town Council shall be the nonpartisan election and runoff method to be conducted as provided in G.S.163-293.

"Section 3.3. Legislative powers. All the legislative powers of the Town shall be vested in the Mayor and Town Council. The Mayor and Town Council shall meet at the time prescribed by law following each election, and those elected shall take the oath of office as prescribed by law to perform faithfully the duties of their respective offices. The Mayor shall have all rights, duties, and responsibilities of a councilman. A Mayor Pro Tempore shall be elected by the Town Council from among its own members and shall hold office as Mayor Pro Tempore during the pleasure of the Council. The organization of the Council shall take place notwithstanding the absence, death, refusal to serve, failure to qualify, or nonelection of one or more members, but at least a quorum of the members must be present. Any member entitled to make the aforesaid oath, who was not present at the time fixed therefore, may make oath at any time thereafter.

"Section 3.5. General procedure. A majority of the members of the Town Council shall constitute a quorum. Its meetings shall be public, and the Mayor, who shall be the official head of the Town, shall, if present, preside and shall have the same power as the other members of the Council to vote upon all measures coming before it, but shall have no power of veto. In the absence of the Mayor, the Mayor Pro Tempore of the Council shall preside, and in the absence of both, a Chairman Pro Tempore shall be chosen. The Town Clerk shall be ex officio Clerk of the Town Council, and shall keep records of its proceedings; but in case of the Clerk's temporary absence, or in case of a vacancy in the office, the Town Council may elect by ballot a temporary Clerk, who shall be sworn to the faithful discharge of his duties and may act as Clerk of the Town Council until a Town Clerk is chosen and qualified. On request of one member, the vote shall be yeas, and nays, and shall be entered upon the records.

"Section 3.6. Vacancies. Vacancies in the Town Council shall be filled by the Council for the remainder of the unexpired terms. In case of a vacancy in the office of Mayor, the remaining members of the Council shall choose from their own number his successor for the unexpired term.

"Section 3.7. Compensation. The Council may fix its own compensation and the compensation of the Mayor and any other elected officers of the Town, in such sums as may be just and reasonable. Adjustments in the compensation of the Mayor and any other elected officers may be made effective at such time as the Council may direct, but the salary of elected officers shall not be reduced during the then current term of office unless he shall agree thereto. Elected officers shall be entitled to reimbursement for actual expenses incurred in the course of performing their official duties at rates not in excess of those allowed to other Town officers and employees.

"Section 3.8. Appointments by council. The Town Council shall appoint a Town Manager, a Town Attorney, a Town Clerk, and a Town Treasurer, and may authorize the appointment of such associates or assistants to such officers as the Council may deem necessary, all who shall hold office at the pleasure of the Council and receive such compensation as the Council may provide.

"Section 3.9. Powers of Town Manager.

(a) The Town Council shall appoint a Town Manager, who shall be the administrative head of the Town government, and shall be responsible for the administration of all departments. The manager shall be appointed with regard to executive and administrative abilities only and need not be a resident of the Town when appointed. The manager shall hold office at the pleasure of the Town Council and shall receive such compensation as it shall fix by ordinance.

(b) The Town Manager shall:

(1) Be the administrative head of the Town government;

(2) See that within the Town the laws of the State and the ordinances, resolutions, and regulations of the Council are faithfully executed;

(3) Attend all meetings of the Council, and recommend for adoption such measures as he shall deem expedient;

(4) Make reports to the Council from time to time upon the affairs of the Town and keep the Council fully advised of the Town's financial condition and its future financial needs.

(5) Appoint and remove all heads of departments, except those employees enumerated in Section 3.8 of this Charter, who shall be appointed by and serve at the pleasure of the Town Council.

"Section 3.10. Town Attorney. The Town Attorney shall be the legal advisor to the Town and perform such duties as may be specified by the Council or specified by law. The attorney shall be appointed with regard to merit only and need not be a resident of the Town when appointed. The attorney shall hold office at the pleasure of the Town Council and shall receive such compensation as it shall fix by ordinance.

"Section 3.11. Town Clerk. The Town Clerk shall be the clerk to the Town Council, keep all records concerning Council actions and shall exercise those powers and duties conferred by the law and shall perform such duties as may be specified by the Council. The clerk shall be appointed with regard to merit only, and need not be a resident of the Town when appointed. The clerk shall hold office at the pleasure of the Town Council and shall receive such compensation as it shall fix by ordinance.

"Section 3.12. Town Treasurer. The Town Treasurer shall be appointed with regard to merit only and need not be a resident of the Town when appointed. The treasurer shall hold office at the pleasure of the Town Council and shall receive such compensation as it shall fix by ordinance. The Town Treasurer shall be custodian of all funds of the Town.

The treasurer shall execute a bond payable to the Town, and at its expense, in such sum and with such sureties as shall be prescribed and approved by the Council conditioned upon the faithful performance of the duties of the office and proper accounting of all funds that may come into this person's possession by virtue of the office. Duties of the treasurer include:

(1) Manage the cash flows of the Town.

(2) Be responsible for the investment of excess cash under the direction of the Finance Director.

(3) Keep appropriate records for cash flow and investments.

(4) Make reports as requested by the Town Manager, the Finance Director, and the Council.

"Section 3.15. Combination of offices. The Town Council may combine the office of Town Treasurer with the office of Town Clerk in its sole discretion.

"Section 3.16. Terms of commissions, committees, and boards. The Town Council may fix the terms of members of all commissions, committees, and boards of the Town regardless of the terms established by law for particular commissions, committees or boards; to appoint the chairman or other presiding officer of each commission, committee, or board of the Town, regardless of the provisions of any law; and to limit the number of terms which any person may serve on any commission, committee, or board of the Town.

"ARTICLE VI. STREET AND SIDEWALK IMPROVEMENTS

"Section 6.1. Street improvements; assessment of cost. In addition to any authority which is now or may hereafter be granted by general law to the Town for making street improvements, the Town Council may make street improvements and assess the cost thereof against abutting property owners in accordance with the provisions of this Article.

"Section 6.2. When petition unnecessary. The Town Council may order street improvements and assess the cost thereof, exclusive of the cost incurred at street intersections, against the abutting property owners at an equal rate per front foot, without the necessity of a petition, upon the finding by the Council as a fact:

(1) That such street or part thereof is unsafe for vehicular traffic, and it is in the public interest to make such improvement, or

(2) That it is in the public interest to connect two streets, or portions of a street already improved, or

(3) That it is in the public interest to widen a street, or part thereof, which is already improved; provided, that assessments for widening any street or portions of street without petition shall be limited to the cost of widening and otherwise improving such street in accordance with the street classification and improvement standards established by the Town's thoroughfare or major street plan for the particular street or part thereof to be widened and improved under the authority granted by this Article.

"Section 6.3. Street improvement defined. For the purpose of this Article the term 'Street Improvement' shall include grading, regrading, surfacing, resurfacing, widening, paving, repaving, the acquisition of right-of-way, and the construction or reconstruction of curb, gutters, and street drainage facilities.

"Section 6.4. Sidewalks; assessment of cost. In addition to any authority which is now or may hereafter be granted by the General Statutes to the Town for making sidewalk improvements, the Town Council may order to be made or to make sidewalk improvements or repairs without petition according to standards and specifications of the Town, and to assess the total cost thereof against abutting property owners.

If a sidewalk is constructed on only one side of a street, the cost thereof may be assessed against a property abutting on both sides of the street, unless there already

exists a sidewalk, on the other side of the street, the total cost of which has been assessed against the abutting property.

"Section 6.5. Assessment procedure. In ordering street and sidewalk improvements without a petition and assessing the cost thereof under authority of this Article, the Town Council shall comply with the procedure provided in the General Statutes, except those provisions relating to the petition of property owners and the sufficiency thereof.

"Section 6.6. Effect of assessment. The effect of the act of levying assessments under the authority of this Article shall for all purposes be the same as if assessed where levied under authority of general law.

"ARTICLE VII. FINANCE AND TAXATION

"Section 7.1. Custody of Town money. All monies received by the Town for and in connection with the business of the Town government shall be paid promptly into the Town depository or depositories. Such institution shall be designated by the Town Council in accordance with such regulations and subject to such requirements as to surety for deposits and interest thereon as shall be established by general law. All interest on monies belonging to the Town shall accrue to the benefit of the Town. All monies belonging to the Town shall be disbursed only in accordance with the provisions of the Local Government Budget and Fiscal Control Act.

"Section 7.2. Independent audit. As soon as practicable after the close of each fiscal year, an independent audit shall be made of all books and accounts of the Town government by a certified public accountant or a qualified public accountant registered pursuant to general law, who shall have no personal interest directly or indirectly in the affairs of the Town or any of its officers. The Town Council shall select the public accountant and the results of such audit shall be made available for inspection by any interested citizen of the Town, and may be published if so ordered by the Town Council.

"Section 7.4. (a) The Town of Cary shall have the right, power, and authority to impose and collect a regulatory or development fee defined as a road project fee on all new construction within the Town limits and extraterritorial jurisdiction.

(b) It is the purpose and intent of this section to provide the Town with the legal mechanism granting it the right, power, and authority to impose and collect fees to finance additional improvements within the Town limits and extraterritorial jurisdiction. These additional road improvements being caused by rapid and continued growth within the Cary area. This section provides approval to the Town to actually develop and implement such a fee system, but does not in any way, describe or detail the actual fee structure and rate classification. An extensive study will subsequently be performed to establish the basis and framework for the fee system should the system be deemed necessary in order to maintain the high level of service delivery presently available to Cary residents.

"ARTICLE VIII. WATER AND SEWER IMPROVEMENTS

"Section 8.1. Laterals included in cost. In ordering water or sewer line extensions, or both, the assessment of the cost thereof under the authority given by the General Statutes, the Town Council may include in such extensions water and sewer line

laterals, and include the cost of such laterals in the total cost to be assessed upon abutting properties.

"Section 8.2. Classification and exemption. Where water or sewer lines are constructed across or through lots or tracts of land or when water or sewer lines, or both, are installed along both sides of corner lots and were or are financed in whole or in part by assessment, the Council may by uniform rule classify such lines for assessment as in its judgment will represent the benefits derived. The schedules of exemptions may be classified as to land uses (residential, business, commercial, industrial, office and institutional, agricultural, or other classifications) and shall be uniform for each such classification used; provided, however, that no schedule of exemptions may provide for exemption of more than seventy-five percent (75%) of the frontage of any side of a corner lot, or 150 feet, whichever is greater.

"Section 8.3. Alternative method of assessing. In addition to, and as alternatives to, the method provided in the General Statutes for assessing the cost of water and sewer lines and laterals, the Town Council, if in its opinion it would be more equitable to do so, may in its discretion levy any such assessments according to either of the following methods: (i) equally against each of the lots capable of being served by such line or lines, or (ii) on the basis of the footage of land upon a public street by an equal rate per foot of such frontage.

In lieu of assessing the total cost of a particular project as herein provided, the Town Council may annually, between the first days of January and July of each year, determine the average cost of installing water and sewer mains or lines, and on the basis of such determination may make assessments on such average cost during the following fiscal year beginning July 1. The average cost of such installation shall include the cost of the particular size and material of lines completed during the preceding calendar year. It may also include the anticipated increase in labor and materials cost based upon the average of such increases during the preceding five calendar years. The assessment of the average cost of such lines shall not be made until after the particular assessment project has been completed. The purpose of this section is to distribute more equitably the cost of the installation of water and sewer lines throughout the Town; to permit a property owner to know in advance what the cost of installation of water and sewer lines benefiting his property will be; and to permit the most expeditious assessment of cost against the property after completion of installation of such lines. The actual cost of acquisition of rights-of-way may also be assessed as part of the cost of an individual project. If the right-of-way costs have not been determined and assessed with the assessment of the average installation cost at the time of the completion of the project, such costs may be assessed separately when they are determined.

"Section 8.4. Payment of assessments. Any special assessment of the Town for any purpose amounting to less than one hundred dollars ($100.00) shall be paid in cash not later than the next due date of Town taxes rather than in annual installments and shall bear interest as taxes.

"Section 8.5. Water and sewer development fees. In addition to water and sewer service charges and connection charges, the Town Council may establish and collect water and sewer development fees for the privilege of connecting to the Town water and

sewerage systems, both within and outside the corporate limits, to aid in the financing of new water and sewer mains and laterals and sewer outfalls and the replacement or enlargement of existing mains, laterals, and outfalls. Such charges shall apply uniformly to all properties to which water or sewer service is extended subsequent to the establishment of such charges; provided, however, that the Council may establish higher water and sewer development fees for property developed or to be developed for business, commercial, industrial, or office and institutional uses than those established for residential and other uses and may base water and sewer development fees for residential property upon the number of dwelling units per acre of land.

"ARTICLE IX. REGULATORY POWERS

"Section 9.1. Zoning and subdivision regulations. Any subdivision control ordinance enacted by the Town Council pursuant to general law may also provide for the orderly development of subdivisions by requiring the construction of community service facilities, including water lines; sewer lines; street paving, curbing, and guttering; and street and storm drainage facilities in accordance with Town standards and specifications, and to assure compliance with such requirements, the ordinance may require the posting of bond or such other method as will offer guarantee of compliance.

In addition to the authority conferred upon it by general or local law, the Town of Cary may create, through the legislative process, general use zoning districts, in which a variety of uses are permitted; conditional use zoning districts, in which limited uses are permitted only upon approval by the Town; overlay zoning districts, which are applied coincidental with the general or conditional use district; and transitional zoning regulations.

The overlay zoning districts may impose additional regulations on some property within the underlying general or conditional use district and not on all properties within those districts.

A person petitioning for rezoning of a tract of land where conditional use districts or overlay districts are authorized by ordinance, may elect to request a general use district, a conditional use district, or an overlay district for the tract. If the petitioner elects to petition for the general use or overlay district zoning, and if the petition is approved, the rezoned property may be used for any of the uses permitted in the applicable general use or overlay district. If the petitioner elects to petition for conditional use district zoning, the petition must specify the actual use or uses, and all other development regulations authorized by State law, which are intended for the property specified in the petition. The intended use or uses and development regulations must be permitted in the corresponding general use district. If the petition is for conditional use district zoning, the Town Council is to approve or disapprove the petition on the basis of the specific use or uses and development regulations requested. If the petition is approved, the Town Council shall issue a conditional use permit authorizing the requested use with such reasonable conditions as the Town Council determines to be desirable in promoting public health, safety, and general welfare.

The conditions contained in a conditional use permit issued by the Town Council may include: location of the proposed use on the property; the number of dwelling units; the location and extent of support facilities such as parking lots, driveways, and access

streets; location and extent of buffer areas and other special purpose areas; the timing of development; and such other matters as the Town Council may find appropriate or the petitioner may propose, including architectural review or controls.

It is the further intent of this section to permit the creation of districts for specific uses and the imposition of reasonable conditions in order to secure the public health, safety and welfare, and ensure that substantial justice be done.

"Section 9.2. Regulatory codes. The Town Council may make effective and enforce within the territory under its extraterritorial zoning jurisdiction and lying outside the corporate limits and within one mile thereof, all ordinances and codes of the Town regulating the construction and repair of buildings, including building codes, plumbing codes, electrical codes, heating and air conditioning codes, fire prevention codes, minimum housing codes adopted pursuant to the General Statutes, and ordinances relating to unsafe buildings adopted pursuant to the provisions of the General Statutes. In addition, the Town Council may enforce in such area the North Carolina State Building Codes, including Accessibility, Plumbing, Mechanical, Electrical, Fire Prevention, Fuel Gas, Energy, Existing Buildings, and Residential, all as published by the North Carolina Building Code Council. Such enforcement power shall include the power to require that prior to the beginning of any construction, reconstruction, or alteration of any building or structure or any part or system thereof within such area, the appropriate permit or permits be obtained from the Town; provided, the Town Council may by ordinance require that the contractor or other person charged with such construction, reconstruction, or alteration secure such permit or permits, rather than requiring the owner of the property to do so.

"Section 9.3. Underground utilities. In addition to the powers now or hereafter granted to municipalities by law, the Town Council by ordinance may require that all utility or other pipes, wiring, conduits, cables, and fixtures installed after the adoption of such ordinance within the planning and zoning jurisdiction of the Town be installed underground, whether or not the same are installed in public rights-of-way.

"Section 9.4. Electric golf carts. Notwithstanding the provisions of G.S. 20-50 and G.S. 20-54, the Town may, by ordinance, regulate the operation of electric golf carts on any public street or road within the Town. By ordinance, the Town may require the registration of golf carts, specify the persons authorized to operate golf carts, and specify required equipment, load limits, and the hours and methods of operation of the golf carts.

"ARTICLE X. CLAIMS AGAINST THE TOWN

"Section 10.1. Settlement of claims by Town Manager. The Town Manager may, without the approval of the Town Council, settle claims against the Town for personal injuries or damages to property when the amount involved does not exceed the sum of two thousand five hundred dollars ($2,500) and does not exceed the actual loss sustained, including loss of time, medical expenses, and any other expense actually incurred. Settlement of a claim by the Town Manager pursuant to this section shall constitute a complete release of the Town from any and all damages sustained by the person involved in such settlement in any manner arising out of the accident or occasion complained of."

SECTION 2. The purpose of this act is to revise the Charter of the Town of Cary and to consolidate herein certain acts concerning the property, affairs, and government of the Town.

SECTION 3. The following acts or portions of acts, having served the purposes for which they were enacted, or having been consolidated into this act, are hereby repealed:

Chapter 868 of the 1971 Session Laws
Chapter 173 of the 1973 Session Laws
Chapter 357 of the 1973 Session Laws
Chapter 816 of the 1977 Session Laws
Chapter 51 of the 1985 Session Laws
Chapter 801 of the 1987 Session Laws
Chapter 511 of the 1989 Session Laws
Chapter 874 of the 1989 Session Laws
Section 3 of S.L. 2001-485.

SECTION 4. The following acts are not affected by this act:

Chapter 1275, Session Laws of 1979 (removal of areas from the corporate limits)
Chapter 279, Session Laws of 1989 (closing streets in ETJ)
Chapter 27, Session Laws of 1993 (removal of areas from the corporate limits and addition of areas to the corporate limits)
Chapter 137, Session Laws of 1993 (acquisition of street right-of-way outside the corporate limits)
Chapter 325, Session Laws of 1993 (motor vehicle tax)
S.L. 1998-192 (Swift Creek Management Plan)
S.L. 2000-108 (removal, replacement, and preservation of trees and shrubs)
S.L. 2001-191 (clear-cutting of trees in buffer zones, protection of specimen trees)
S.L. 2001-245 (expending funds on roads outside the corporate limits)
S.L. 2003-74 (acquisition of property for utilities)
S.L. 2001-286 (red-light cameras).

SECTION 5. No provision of this act is intended, nor shall be construed, to affect in any way any rights or interests (whether public or private):

(1) Now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law repealed by this act.
(2) Derived from, or which might be sustained or preserved in reliance upon, action heretofore taken pursuant to or within the scope of any provisions of law repealed by this act.

SECTION 6. No law heretofore repealed expressly or by implication, and no law granting authority which has been exhausted, shall be revived by:

(1) The repeal herein of any act repealing such law, or

(2) Any provision of this act that disclaims an intention to repeal or affect enumerated or designated laws.

SECTION 7. All existing ordinances and resolutions of the Town of Cary and all existing rules or regulations of departments or agencies of the Town of Cary not inconsistent with the provisions of this act shall continue in full force and effect until repealed, modified, or amended.

SECTION 8. No action or proceeding of any nature (whether civil or criminal, judicial or administrative, or otherwise) pending at the effective date of this act by or against the Town of Cary or any of its departments or agencies shall be abated or otherwise affected by the adoption of this act.

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 488*

Short Title:	Cary Charter Rewrite.	(Local)
Sponsors:	Representatives Weiss, Dollar (Primary Sponsors); and B. Allen.	
Referred to:	Finance.	

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE CHARTER OF THE TOWN OF CARY.

The General Assembly of North Carolina enacts:

SECTION 1. The Charter of the Town of Cary, being Section 1 of Chapter 868 of the 1971 Session Laws, as amended by Chapter 357 of the 1973 Session Laws, Chapter 816 of the 1977 Session Laws, Chapter 51 of the 1985 Session Laws, Chapter 801 of the 1987 Session Laws, and ordinances adopted under Part 4 of Article 5 of Chapter 160A of the General Statutes reads as rewritten:

"**Section 1.** The Charter of the Town of Cary is hereby revised and consolidated to read as follows:

"THE CHARTER OF THE TOWN OF CARY

"ARTICLE I. INCORPORATION AND GENERAL POWERS

"Section 1.1. Incorporation and general powers. The Town of Cary shall continue to be a body politic and corporate under the name and style of the 'Town of Cary', and shall continue to be vested with all property and rights which now belong to the Town; shall have perpetual succession; may have a common seal and alter and renew the same at pleasure; may sue and be sued; may contract, may acquire and hold all such property, real and personal, as may be devised, bequeathed, sold, or in any manner conveyed or dedicated to it, or otherwise acquired by it, and may from time to time hold or invest, sell, or dispose of the same; and shall have and may exercise in conformity with this Charter all municipal powers, functions, rights, privileges and immunities of every name and nature.

"Section 1.2. Enumerated powers not exclusive. The enumeration of particular powers by this Charter shall not be held or deemed to be exclusive but, in addition to the powers enumerated herein or implied hereby, or those appropriate to the exercise of such powers, the Town of Cary shall have and may exercise all powers which are granted to municipal corporations by the general laws of North Carolina and all powers which, under the Constitution of North Carolina, it would be competent for this Charter specifically to enumerate.

"Section 1.3. Exercise of powers. All powers, functions, rights, privileges, and immunities of the Town, its officers, agencies or employees, shall be carried into execution as provided by this Charter, or if this Charter makes no provision, as provided by ordinance or resolution of the Town Council and as provided by the general laws of North Carolina pertaining to municipal corporations.

"Section 1.4. Form of government. The form of government of the Town of Cary shall be known as the 'Council-Manager Form of Government', as set forth in the General Statutes of North Carolina subject to the modifications of this Charter. Nothing contained in this Charter shall be construed to prevent the form of government of the Town of Cary from being changed as by law provided.

"ARTICLE II. CORPORATE BOUNDARIES

"Section 2.1. Existing corporate boundaries. ~~(a)~~ The corporate limits of the Town shall be those existing at the time of the ratification of this Charter and as the same may be altered from time to time in accordance with law. The Town ~~Engineer~~ Planning Director shall prepare a map to be designated 'Map of the Town of Cary Corporate Limits' showing the corporate limits as the same may exist as of the effective date of this Charter. The Town ~~Engineer shall~~ Planning Director may also prepare a written description of the corporate limits as shown on said map to be designated 'Description of Cary Corporate Limits'. Said map and description shall be retained permanently in the Office of the Town Clerk as the official map and a description of the corporate limits of the Town. Immediately upon alteration of the corporate limits made pursuant to law from time to time, the Town ~~Engineer~~ Planning Director shall indicate such alteration by making appropriate changes and/or additions to said official map and description. Photographic or other types ~~or other~~ of copies of said official map or description certified as by law provided for the certification of ordinances shall be admitted in evidence in all courts and shall have the same force and effect as would the official map or description.

~~(b) The Town Clerk shall require the re-drawing of the official map and the rewriting of the official description as may from time to time be required. A redrawn map and a rewritten description shall supersede for all purposes the earlier maps and descriptions which are respectively replaced.~~

"Section 2.2. Extension of corporate boundaries. All extensions of the corporate boundaries shall be governed by the General Statutes of North Carolina.

"ARTICLE III. MAYOR AND TOWN COUNCIL

"Section 3.1. Form of government. The government of the Town and the general management and control of all its affairs shall be vested in a Town Council, which shall be elected and shall exercise its powers in the manner hereinafter provided, except that the Town Manager shall have the authority hereinafter specified.

"Section 3.2. Number and qualification of ~~councilmen~~ council members and mayor generally.

(a) The town council shall consist of six (6) members, two (2) of whom shall be elected at large by all the qualified voters of the town, and four (4) of whom shall be elected by the qualified voters of each of four (4) single-member electoral districts, respectively, as established by the town council pursuant to the law. Terms of council

members shall be overlapping four-year terms. In the 2001 election and quadrennially thereafter, there shall be elected, for four-year terms, one (1) council member from electoral district A, one (1) council member from electoral district C, and one (1) council member from the town at large. In the 2003 election and quadrennially thereafter, there shall be elected, for four-year terms, one (1) council member from electoral district B, one (1) council member from electoral district D, and one (1) council member from the town at large.

(b) The mayor shall be elected by all the qualified voters of the town, for a term of four (4) years, in the 2003 election and quadrennially thereafter. The mayor shall have the right to vote on all matters before the town council.

(c) The method of election of the mayor and town council shall be the nonpartisan election and runoff method to be conducted as provided in G.S.163-293.

"Section 3.3. Legislative powers. All the legislative powers of the town shall be vested in the mayor and town council. The mayor and town council shall meet at the time prescribed by law following each election, and those elected as aforesaid shall take the oath of office as prescribed by law to perform faithfully the duties of their respective offices. The mayor shall have all rights, duties, and responsibilities of a councilman. A mayor pro tempore shall be elected by the town council from among its own members and shall hold office as mayor pro tempore during the pleasure of the council. The organization of the ~~council~~ council shall take place notwithstanding the absence, death, refusal to serve, failure to qualify, or nonelection of one or more members, but at least a quorum of the members must be present. Any member entitled to make the aforesaid oath, who was not present at the time fixed therefor, may make oath at any time thereafter.

~~"Section 3.4. Meetings. The Town Council shall fix suitable times for its regular meetings. The Mayor, the Mayor Pro Tempore of the Town Council, or any two members thereof, may at any time call a special meeting by causing a written notice, stating the time of holding such meeting and signed by a person or persons calling the same, to be delivered in hand to each member or left at his usual dwelling place at least six (6) hours before the time of such meeting. Meetings of the Town Council may also be held at any time when all members of the Council are present and consent thereto.~~

"Section 3.5. General Procedure. A majority of the members of the Town Council shall constitute a quorum. Its meetings shall be public, and the Mayor, who shall be the official head of the Town, shall, if present, preside and shall have the same power as the other members of the Council to vote upon all measures coming before it, but shall have no power of veto. In the absence of the Mayor, the Mayor Pro Tempore of the Council shall preside, and in the absence of both, a Chairman Pro Tempore shall be chosen. The Town Clerk shall be ex officio clerk of the Town Council, and shall keep records of its proceedings; but in case of ~~his~~ the clerk's temporary absence, or in case of a vacancy in the office, the Town Council may elect by ballot a temporary clerk, who shall be sworn to the faithful discharge of his duties and may act as Clerk of the Town Council until a Town Clerk is chosen and qualified. On request of one member, the vote shall be yeas, and nays, and shall be entered upon the records. ~~Four (4) affirmative votes at least shall be necessary for the passage of any order, ordinance, resolution, or vote.~~

"Section 3.6. Vacancies. Vacancies in the Town Council shall be filled by the Council for the remainder of the unexpired terms. In case of a vacancy in the office of Mayor, the remaining members of the Council shall choose from their own number his successor for the unexpired term.

"Section 3.7. Compensation. ~~(a) The Town Council shall fix or approve the salaries and allowances of all Town officers and employees.~~

~~(b)~~ The Council may fix its own compensation and the compensation of the Mayor and any other elected officers of the Town, in such sums as may be just and reasonable. Adjustments in the compensation of the Mayor and any other elected officers may be made effective at such time as the Council may direct, but the salary of elected officers shall not be reduced during the then current term of office unless he shall agree thereto. Elected officers shall be entitled to reimbursement for actual expenses incurred in the course of performing their official duties at rates not in excess of those allowed to other Town officers and employees.

"Section 3.8. ~~Town Manager. The Town Council shall appoint a Town Manager, who shall be the administrative head of the Town government, and shall be responsible for the administration of all departments. He shall be appointed with regard to merit only, and he need not be a resident of the Town when appointed. He shall hold office at the pleasure of the Town Council, and shall receive such compensation as it shall fix by ordinance.~~ Appointments by council. The town council shall appoint a town manager, a town attorney, a town clerk, and a town treasurer, and may authorize the appointment of such associates or assistants to such officers as the council may deem necessary, all who shall hold office at the pleasure of the council and receive such compensation as the council may provide.

"Section 3.9. Powers of Town Manager.

(a) The town council shall appoint a town manager, who shall be the administrative head of the town government, and shall be responsible for the administration of all departments. The manager shall be appointed with regard to executive and administrative abilities only, and need not be a resident of the town when appointed. The manager shall hold office at the pleasure of the town council, and shall receive such compensation as it shall fix by ordinance.

(b) The Town Manager shall:

~~(a)~~ (1) Be the administrative head of the Town government;

~~(b)~~ (2) See that within the Town the laws of the State and the ordinances, resolutions, and regulations of the Council are faithfully executed;

~~(c)~~ (3) Attend all meetings of the Council, and recommend for adoption such measures as he shall deem expedient;

~~(d)~~ (4) Make reports to the Council from time to time upon the affairs of the Town and keep the Council fully advised of the Town's financial condition and its future financial needs.

~~(e)~~ (5) Appoint and remove all heads of ~~departments, superintendents, and other employees of the Town,~~ departments, except those employees ~~hereinafter enumerated,~~ enumerated in Section 3.8 of this Charter, who shall be appointed by and at the pleasure of the Town ~~Council;~~

~~provided, the Town Manager shall report every such appointment and removal to the Council at the next meeting thereof following any such appointment or removal.~~ Council.

~~(f) The Town Council shall appoint a Town Attorney, a Town Clerk, a Town Treasurer, and a Town Accountant, and may authorize the appointment of such associates or assistants to such officers as the Council may deem necessary, all who shall dold office at the pleasure of the Council and receive such compensation as the Council may provide.~~

"Section 3.10. Town Attorney. The Town Attorney shall be the legal advisor to the Town and perform such duties as may be specified by the Council, or specified by law. The attorney shall be appointed with regard to merit only, and need not be a resident of the town when appointed. The attorney shall hold office at the pleasure of the town council, and shall receive such compensation as it shall fix by ordinance.

"Section 3.11. Town Clerk. The Town Clerk shall be the secretary to the Town ~~Council~~ Council, keep all records concerning Council actions and shall exercise those powers and duties conferred by the law and shall perform such duties as may be specified by the Council. The clerk shall be appointed with regard to merit only, and need not be a resident of the town when appointed. The clerk shall hold office at the pleasure of the town council, and shall receive such compensation as it shall fix by ordinance.

"Section 3.12. Town Treasurer. The town treasurer shall be appointed with regard to merit only, and need not be a resident of the town when appointed. The treasurer shall hold office at the pleasure of the town council, and shall receive such compensation as it shall fix by ordinance.The Town Treasurer shall be custodian of all funds of the Town. The town treasurer shall be custodian of all funds of the town.

The treasurer shall execute a bond payable to the town, and at its expense, in such sum and with such sureties as shall be prescribed and approved by the council conditioned upon the faithful performance of the duties of the office and proper accounting of all funds that may come into this person's possession by virtue of the office. Duties of the treasurer include:

(1) Manage the cash flows of the town.

(2) Be responsible for the investment of excess cash under the direction of the finance director.

(3) Keep appropriate records for cash flow and investments.

(4) Make reports as requested by the town manager, the finance director, and the council.

~~"Section 3.13. Town Accountant. The Town Accountant shall have charge of the financial affairs of the Town as specified or requested by the Town Council, Town Manager, or specified or required by law.~~

~~"Section 3.14. Town Engineer. The Town Engineer shall be the engineering advisor to the Town and perform such duties as may be specified by the Council or specified by law.~~

"Section 3.15. Combination of offices. The Town Council may combine the office of Town Treasurer with the ~~offices of Town Clerk or Town Accountant,~~ office of Town Clerk in ~~their~~ its sole discretion.

"Sec. 3.16. Terms of commissions, committees and boards. The town council is authorized to fix the terms of members of all commissions, committees and boards of the town regardless of the terms established by General Statute or other law for particular commissions, committees or boards; to appoint the chairman or other presiding officer of each commission, committee or board of the town, regardless of the provisions of any General Statute or other law; and to limit the number of terms which any person may serve on any commission, committee or board of the town.

~~"ARTICLE IV. ELECTION PROCEDURE~~

~~"Section 4.1. Municipal Elections. All general elections and special elections in the Town of Cary shall be called by resolution of the Wake County Board of Elections upon resolution of the Town of Cary requesting said Board to call such election. All elections shall be held, conducted and supervised by the Wake County Board of Elections under the laws governing the conduct of general elections and special elections in the State of North Carolina, except as otherwise may be provided by this act.~~

~~"Section 4.2. General election candidates. Candidates for any elective office in the Town of Cary shall file with the Wake County Board of Elections not later then twelve o'clock Noon on the second Tuesday preceding the date prescribed for the general election by this act a statement of such candidacy in substantially the following form:~~

~~STATE OF NORTH CAROLINA~~

~~COUNTY OF WAKE~~

~~I, _____, being first duly sworn say that I reside at _____ Street, Cary, Wake County, North Carolina; that I am a candidate for the office of _____, which office is to be filled at the general election of the Town of Cary to be held on the _____ in the year _____, and I hereby request that my name be printed upon the official ballot as a candidate for said office in said general election.~~

~~Subscribed and sworn to (or affirmed) before me this _____ day of _____ in the year~~

~~Each person so filing as a candidate for elective office in the Town of Cary shall pay at the same time to the Wake County Board of Elections to be turned over to the Town of Cary a filing fee in an amount equal to one per cent of the annual salary of the office sought or five dollars ($5.00), whichever shall be greater. Immediately upon the expiration of the time for filing statements of candidacy, the Wake County Board of Elections shall cause to be published once in a daily newspaper of general circulation in the Town of Cary and further shall cause to be posted at the Town Hall in the Town of Cary, in proper form, the names of each of the persons so filing statements of candidacy and the office for which each filed as they are to appear upon the general election ballots; and the said Wake County Board of Elections thereupon shall cause the election ballots to be printed as hereinafter set forth.~~

~~"Section 4.3. Election. On Tuesday, after the first Monday in November, 1973, and every four years thereafter there shall be elected two councilmen and on Tuesday after the first Monday in November, 1975, and every four years thereafter, there shall be elected three councilmen. Councilmen so elected shall serve for a term of four years~~

~~each and until their successors are elected and qualified. Notice of any election shall be published by the Wake County Board of Elections pursuant to resolution calling said election.~~

~~"Section 4.4. Election ballots. The Wake County Board of Elections shall cause ballots to be printed for the municipal election. The ballots shall be printed upon plain substantial white paper and shall be headed CANDIDATES FOR MUNICIPAL OFFICES OF THE TOWN OF CARY AT THE GENERAL MUNICIPAL ELECTION. There shall appear upon said ballots the name of each candidate filing a statement of candidacy for the Council of the Town of Cary and paying the fee as set forth in Section 4.2 hereof, with a square at the left of each name, and immediately following said names there shall appear the words 'Vote For' followed by the designation of the number of elective offices on the Council of the Town of Cary to be filled at said general election. Following this, there shall appear the authenticating facsimile signature of the Chairman of the Wake County Board of Elections and his title. Save for the foregoing items and such instructions as the Wake County Board of Elections may direct to be placed on the ballots, no other writing shall appear on such ballots.~~

~~"Section 4.5. Voting machines. Voting machines may be used in any election upon request of the Town of Cary and by consent of the Wake County Board of Elections. Elections using machines shall be conducted as by law provided and according to such regulations as the Wake County Board of Elections shall prescribe.~~

~~"Section 4.6. Canvass. At the time and place set forth by law, the Wake County Board of Elections and the registrars of the several precincts within the Town of Cary shall meet and shall constitute the canvassing board for said election. Said canvassing board shall proceed to receive and tabulate the number of votes cast in each precinct for the several candidates as shown by the returns of the registrars and judges, and that number of candidates for offices to be filled in the particular election and receiving the highest number of votes for offices to be filled in the particular election and receiving the highest number of votes for the office of councilman of the Town of Cary shall be declared elected councilman of the Town of Cary. The canvassing board shall certify under their hands and seals the results of said election, stating the name and number of votes received by each candidate. Two copies of the results of the election shall be made under the hands of the members of said canvassing board, one of which shall be filed with the Clerk of the Town of Cary who, immediately upon receipt thereof, shall prepare and post a true copy of the results of the election at the Cary Town Hall. In the event of a tie vote among two or more candidates receiving a number of votes which, but for the tie vote, would have entitled any one or more of such candidates to be declared elected, the canvassing board shall determine by lot which shall be elected.~~

~~"Section 4.7. Special election. Every election held pursuant to resolution of the Council of the Town of Cary shall be conducted in like manner as provided in this act and the General Election laws for the State of North Carolina so far as the particular case can be governed by general rules, and shall, to all intents and purposes, be as legal and valid, and shall subject the officers holding the same and the persons elected at such special election to the same penalties and liabilities as if the same had been held at the~~

~~time and according to the rules and regulations prescribed for the regular biennial Town elections.~~

~~The Council of the Town of Cary shall have power, by appropriate resolution, to require the Wake County Board of Elections to call at any time any special election for the purpose of voting upon any municipal issue, including the question of issuing bonds for any purpose or purposes provided by law.~~

~~"Section 4.8. Absentee voting. Absentee voting will not be permitted in any Town of Cary municipal election.~~

~~"Section 4.9. Compensation of election officials. Notwithstanding the provisions of any other law, special or general, the registrars, judges and clerk of election shall receive for their services such compensation as shall be fixed by the Wake County Board of Elections; provided, the pay of such election officials in a municipal election for the Town of Cary shall not exceed the amount paid to such officials in the holding of County and State elections.~~

~~"Section 4.10. Costs of elections. The Town of Cary shall pay all expenses incurred by the Wake County Board of Elections by reason of any election conducted for the Town of Cary, including the following items of expense:~~

~~(a) The actual costs of publication of any election notice or notices.~~

~~(b) The actual costs of printing, including ballots, forms required for the filing of candidates, and any other printed matter.~~

~~(c) The compensation paid to the registrars, judges and clerks of election for the conduct of the election; provided, when any Town of Cary municipal election shall coincide with any other County, State or National election, the Town of Cary shall pay only the pro rata part of such compensation attributable to such municipal election as determined by the Wake County Board of Elections, not exceeding one half of the total compensation paid to the registrars, judges and clerks of election for the conduct of the election in precincts within the Town of Cary.~~

~~(d) The compensation paid to the members of the Board of Canvassers for canvassing the votes of the municipal election; provided, when the canvass of votes for any other City, Town, County, State or National election or elections shall coincide with the canvass of votes of a municipal election in the Town of Cary, the Town of Cary shall pay only the pro rata part of such compensation attributable to the canvass of votes for the municipal election of the Town of Cary as determined by the Wake County Board of Elections, not exceeding one half of the total compensation paid to the Board of Canvassers.~~

~~(e) The actual costs (or, in the case of costs attributable to elections for the Town of Cary and one or more other Town, City State, County or National elections, the pro rata cost as determined by the Wake County Board of Elections), of any other item of expense lawfully incurred by the Wake County Board of Elections in conducting the municipal election for the Town of Cary.~~

~~The Wake County Board of Elections, within thirty days after any election conducted for the Town of Cary, shall render a bill computed as herein set forth to the Town of Cary for all items of expense incurred by said Board in the conduct of a~~

~~municipal election for the Town of Cary, and the Town of Cary shall pay such bill within thirty days after receipt thereof.~~

~~"Section 4.11. Registrars and judges -- appointment. Registrars, judges and clerks of elections shall be appointed by the Wake County Board of Elections as required and shall be selected on a non-partisan basis.~~

~~"ARTICLE V. POLICE~~

~~"Section 5.1. Jurisdiction on town property. The jurisdiction of the police force is hereby extended to include all Town owned property and facilities, whether located within or without the corporate limits and all members of the police force shall have upon and within such property and facilities all rights, power and authority as they have within the corporate limits.~~

~~"Section 5.2. Effect of ordinances on town property. All applicable ordinances of the Town shall have full force and effect upon and within all property and facilities owned by the Town, whether located within or outside the corporate limits.~~

"ARTICLE VI. STREET AND SIDEWALK IMPROVEMENTS

"Section 6.1. Street improvements; assessment of cost. In addition to any authority which is now or may hereafter be grantd by general law to the Town for making street improvements, the Town Council is hereby authorized to make street improvements and to assess the cost thereof against abutting property owners in accordance with the provisions of this Article.

"Section 6.2. When petition unnecessary. The Town Council may order street improvements and assess the cost thereof, exclusive of the cost incurred at street intersections, against the abutting property owners at an equal rate per front foot, without the necessity of a petition, upon the finding by the Council as a fact:

(a) That such street or part thereof is unsafe for vehicular traffic and it is in the public interest to make such improvement, or

(b) That it is in the public interest to connect two streets, or portions of a street already improved, or

(c) That it is in the public interest to widen a street, or part thereof, which is already improved; provided, that assessments for widening any street or portions of street without petition shall be limited to the cost of widening and otherwise improving such street in accordance with the street classification and improvement standards established by the Town's thoroughfare or major street plan for the particular street or part thereof to be widened and improved under the authority granted by this Article.

"Section 6.3. Street improvement defined. For the purpose of this Article the term 'Street Improvement' shall include grading, regrading, surfacing, resurfacing, widening, paving, repaving, the acquisition of right-of-way, and the construction or reconstruction of curb, gutters and street drainage facilities.

"Section 6.4. Sidewalks; assessment of cost. In adition to any authority which is now or may hereafter be granted by the General Statutes to the Town for making sidewalk improvements, the Town Council is hereby authorized to order to be made or to make sidewalk improvements or repairs without petition according to standards and specifications of the Town, and to assess the total cost thereof against abutting property owners.

If a sidewalk is constructed on only one side of a street, the cost thereof may be assessed against a property abutting on both sides of the street, unless there already exists a sidewalk, on the other side of the street, the total cost of which has been assessed against the abutting property.

"Section 6.5. Assessment procedure. In ordering street and sidewalk improvements without a petition and assessing the cost thereof under authority of this Article, the Town Council shall comply with the procedure provided in the General Statutes, except those provisions relating to the petition of property owners and the sufficiency thereof.

"Section 6.6. Effect of assessment. The effect of the act of levying assessments under the authority of this Article shall for all purposes be the same as if assessed where levied under authority of the General Statutes of North Carolina.

"ARTICLE VII. FINANCE AND TAXATION

"Section 7.1. Custody of town money. All monies received by the Town for and in connection with the business of the Town government shall be paid promptly into the Town depository or depositories. Such institution shall be designated by the Town Council in accordance with such regulations and subject to such requirements as to surety for deposits and interest thereon as shall be established by the General Statutes of North Carolina. All interest on monies belonging to the Town shall accrue to the benefit of the Town. All monies belonging to the Town shall be disbursed only in accordance with the provisions of the Municipal Fiscal Control Act.

"Section 7.2. Independent audit. As soon as practicable after the close of each fiscal year, an independent audit shall be made of all books and accounts of the Town government by a certified public accountant or a qualified public accountant registered pursuant to the General Statutes of North Carolina, who shall have no personal interest directly or indirectly in the affairs of the Town or any of its officers. The Town Council shall select the public accountant and the results of such audit shall be made available for inspection by any interested citizen of the Town, and may be published if so ordered by the Town Council.

~~"Section 7.3. Appropriations for industrial development. The Town Council is hereby authorized to appropriate from any available non-tax revenues an amount not to exceed the sum of five thousand dollars ($5,000) annually to be used for advertising and publicizing the advantages and facilities of the Town in such manner as in the judgment and discretion of the Town Council will promote and enhance the industrial and economic welfare of the citizens and taxpayers of the Town. Such appropriations are hereby declared to be for a public purpose. The money so appropriated may be expended either directly by the Town Council or through the facilities of such agency as the Council may elect, and shall be used in such manner as will, in the opinion of the Council, best serve the purposes herein set forth.~~

"Section 7.4. (a) The Town of Cary shall have the right, power and authority to impose and collect a regulatory or development fee defined as a road project fee on all new construction within the Town limits and extraterritorial jurisdiction.

(b) It is the purpose and intent of this section to provide the Town with the legal mechanism granting it the right, power and authority to impose and collect fees to finance additional improvements within the Town limits and extraterritorial jurisdiction.

These additional road improvements being caused by rapid and continued growth within the Cary area. This section provides approval to the Town to actually develop and implement such a fee system, but does not in any way, describe or detail the actual fee structure and rate classification. An extensive study will subsequently be performed to establish the basis and framework for the fee system should the system be deemed necessary in order to maintain the high level of service delivery presently available to Cary residents.

"ARTICLE VIII. WATER AND SEWER IMPROVEMENTS

"Section 8.1. Laterals included in cost. In ordering water or sewer line extensions, or both, the assessment of the cost thereof under the authority given by the General Statutes, the Town Council is hereby authorized to include in such extensions water and sewer line laterals, and to include the cost of such laterals in the total cost to be assessed upon abutting properties.

"Section 8.2. Classification and exemption. Where water or sewer lines are constructed across or through lots or tracts of land or when water or sewer lines, or both, are installed along both sides of corner lots were or are financed in whole or in part by assessment, the Council may by uniform rule classify such lines for assessment as in its judgment will represent the benefits derived. The schedules of exemptions may be classified as to land uses (residential, business, commercial, industrial, office and institutional, agricultural, or other classifications) and shall be uniform for each such classification used; provided, however, that no schedule of exemptions may provide for exemption of more than seventy-five percent (75%) of the frontage of any side of a corner lot, or 150 feet, whichever is greater.

"Section 8.3. Alternative method of assessing. In addition to, and as alternatives, to the method provided in the General Statutes for assessing the cost of water and sewer lines and laterals, the Town Council, if in its opinion it would be more equitable to do so, is hereby authorized in its discretion to levy any such assessments according to either of the following methods: (1) equally against each of the lots capable of being served by such line or lines, or (2) on the basis of the footage of land upon a public street by an equal rate per foot of such frontage.

In lieu of assessing the total cost of a particular project as herein provided, the Town Council may annually, between the first days of January and July of each year, determine the average cost of installing water and sewer mains or lines, and on the basis of such determination may make assessments on such average cost during the following fiscal year beginning July 1. The average cost of such installation shall include the cost of the particular size and material of lines completed during the preceding calendar year. It may also include the anticipated increase in labor and materials cost based upon the average of such increases during the preceding five calendar years. The assessment of the average cost of such lines shall not be made until after the particular assessment project has been completed. The purpose of this Section is to distribute more equitably the cost of the installation of water and sewer lines throughout the Town; to permit a property owner to know in advance what the cost of installation of water and sewer lines benefiting his property will be; and to permit the most expeditious assessment of cost against the property after completion of installation of such lines. The actual cost of

acquisition of rights-of-way may also be assessed as part of the cost of an individual project. If the right-of-way costs have not been determined and assessed with the assessment of the average installation cost at the time of the completion of the project, such costs may be assessed separately when they are determined.

"Section 8.4. Payment of assessments. Any special assessment of the Town for any purpose amounting to less than one hundred dollars ($100.00) shall be paid in cash not later than the next due date of Town taxes rather than in annual installments, and shall bear interest as taxes.

"Section 8.5. ~~Acreage charges.~~ Water and sewer development fees. In addition to water and sewer service charges and connection charges, the Town Council may establish and collect ~~acreage charges~~ water and sewer development fees for the privilege of connecting to the Town water and sewerage systems, both within and outside the corporate limits, to aid in the financing of new water and sewer mains and laterals and sewer outfalls and the replacement or enlargement of existing mains, laterals and outfalls. Such charges shall apply uniformly to all properties to which water or sewer service is extended subsequent to the establishment of such charges; provided, however, that the Council may establish higher ~~acreage charges~~ water and sewer development fees for property developed or to be developed for business, commercial, industrial, or office and institutional uses than those established for residential and other uses, and may base ~~acreage charges~~ water and sewer development fees for residential property upon the number of dwelling units per acre of land.

"ARTICLE IX. REGULATORY POWERS

"Section 9.1. Zoning and subdivision regulations. Any subdivision control ordinance enacted by the Town Council pursuant to general law may also provide for the orderly development of subdivisions by requiring the construction of community service facilities, including water lines; sewer lines; street paving, curbing and guttering; and street and storm drainage facilities in accordance with Town standards and specifications, and to assure compliance with such requirements, the ordinance may require the posting of bond or such other method as will offer guarantee of compliance.

In addition to the authority conferred upon it by general or local law, the Town of Cary is hereby empowered to create, through the legislative process, general use zoning districts, in which a variety of uses are permitted; conditional use zoning districts, in which limited uses are permitted only upon approval by the Town; overlay zoning districts, which are applied coincidental with the general or conditional use district; and transitional zoning regulations.

The overlay zoning districts may impose additional regulations on some property within the underlying general or conditional use district and not on all properties within those districts.

A person petitioning for rezoning of a tract of land where conditional use districts or overlay districts are authorized by ordinance, may elect to request a general use district, a conditional use district, or an overlay district for the tract. If the petitioner elects to petition for the general use or overlay district zoning, and if the petition is approved, the rezoned property may be used for any of the uses permitted in the applicable general use or overlay district. If the petitioner elects to petition for conditional use district zoning,

the petition must specify the actual use or uses, and all other development regulations authorized by State law, which are intended for the property specified in the petition. The intended use or uses and development regulations must be permitted in the corresponding general use district. If the petition is for conditional use district zoning, the Town Council is to approve or disapprove the petition on the basis of the specific use or uses and development regulations requested. If the petition is approved, the Town Council shall issue a conditional use permit authorizing the requested use with such reasonable conditions as the Town Council determines to be desirable in promoting public health, safety and general welfare.

The conditions contained in a conditional use permit issued by the Town Council may include: location of the proposed use on the property; the number of dwelling units; the location and extent of support facilities such as parking lots, driveways, and access streets; location and extent of buffer areas and other special purpose areas; the timing of development; and such other matters as the Town Council may find appropriate or the petitioner may propose, including architectural review or controls.

It is the further intent of this section to permit the creation of districts for specific uses and the imposition of reasonable conditions in order to secure the public health, safety and welfare, and ensure that substantial justice be done.

"Section 9.2. Regulatory codes. The Town Council is hereby authorized to make effective and to endorce within the territory under its extraterritorial zoning jurisdiction and lying outside the corporate limits and within one mile thereof, all ordinances and codes of the Town regulating the construction and repair of buildings, including building codes, plumbing codes, electrical codes, heating and air conditioning codes, fire prevention codes, minimum housing codes adopted pursuant to the General Statutes, and ordinances relating to unsafe buildings adopted pursuant to the provisions of the General Statutes. In addition, the Town Council is hereby authorized to enforce in such area the North Carolina State Building ~~Code, the North Carolina State Plumbing Code,and the North Carolina Uniform Residential Building Code,~~ Codes, including Accessibility, Plumbing, Mechanical, Electrical, Fire Prevention, Fuel Gas, Energy, Existing Buildings, and Residential, all as published by the North Carolina Building Code Council. Such enforcement power shall include the power to require that prior to the beginning of any construction, reconstruction, or alteration of any building or structure or any part or system thereof within such area, the appropriate permit or permits be obtained from the Town; provided, the Town Council may by ordinance require that the contractor or other person charged with such construction, reconstruction, or alteration secure such permit or permits, rather than requiring the owner of the property to do so.

"Sec. 9.3. Underground utilities. In addition to the powers now or hereafter granted to municipalities by law, the town council by ordinance may require that all utility or other pipes, wiring, conduits, cables, and fixtures installed after the adoption of such ordinance within the planning and zoning jurisdiction of the town be installed underground, whether or not the same are installed in public rights-of-way.

"ARTICLE X. CLAIMS AGAINST THE TOWN

"Section 10.1. Settlement of claims by Town Manager. The Town Manager may, ~~with~~ without the approval of the Town Council, settle claims against the Town for ~~(1)~~ personal injuries or damages to property when the amount involved does not exceed the sum of ~~one hundred dollars ($100.00)~~ two thousand five hundred dollars ($2,500) and does not exceed the actual loss sustained, including loss of time, medical expenses, and any other expense actually ~~incurred and (2) the taking of small portions of private property which are needed for the rounding of corners at intersections of streets, when the amount involved in any such settlement does not exceed five hundred dollars ($500.00) and does not exceed the actual loss sustained.~~ incurred. Settlement of a claim by the Town Manager pursuant to this Section shall constitute a complete release of the Town from any and all damages sustained by the person involved in such settlement in any manner arising out of the ~~accident, occasion, or taking~~ accident or occasion complained of. ~~All such settlements, and all such releases, shall be approved in advance by the Town Attorney.~~"

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

North Carolina General Assembly
Legislative Services Office

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April 25, 2005

MEMORANDUM

TO: House Finance Committee

FROM: Gerry. F. Cohen
Director of Legislative Drafting

SUBJECT: Proposed Committee Substitute for House Bill 488, Cary Charter Rewrite

The proposed committee substitute for House Bill 488, Cary Charter Rewrite, was requested by the Town of Cary. It takes the 1971 Charter, and incorporates in it amendments made by later Session Laws (whether those amendments referred specifically to the Charter or not). It repeals obsolete portions of the Charter (such as voluminous provisions on election administration that were superceded by the Uniform Municipal Elections Act which was passed later in the 1971 Session). It repeals eight local acts that were incorporated into the charter. It also mentions 11 other local acts that apply to Cary and one or more other municipalities so that one document will point to all the local legislation applicable to the Town. It also modernizes some language, and updates statutory references in the Charter to reflect changes in general law enacted since 1971.

It makes no substantive changes to the power of the Town, and does not either grant to or take away from the Town of Cary any powers.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 488 A BILL TO BE ENTITLED AN ACT TO UPDATE THE CHARTER OF THE TOWN OF CARY.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 464
PROPOSED COMMITTEE SUBSTITUTE H464-CSRBx-8 [v.1]

4/26/2005 8:47:59 AM

Short Title: Winston-Salem Motor Vehicle Tax Increase. (Local)

Sponsors:

Referred to:

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE CITY OF WINSTON-SALEM TO LEVY A MOTOR VEHICLE PRIVILEGE TAX OF UP TO TWENTY DOLLARS FOR EACH RESIDENT VEHICLE LOCATED IN THE CITY OF WINSTON-SALEM.

The General Assembly of North Carolina enacts:

SECTION 1. This act applies to the City of Winston-Salem only.

SECTION 2. G.S. 20-97(b) reads as rewritten:

"(b) General Municipal Vehicle Tax. – Cities and towns may levy a tax of not more than ~~five dollars ($5.00)~~ fifteen dollars (15.00) per year upon any vehicle resident in the city or town. The proceeds of the tax may be used for any lawful purpose. The proceeds of these taxes derived from any levy above ten dollars ($10.00) and up to fifteen dollars ($15.00) shall be used exclusively for transportation-related purposes as follows:

(1) One-third shall be used for traffic management functions, including, but not limited to, congestion management, congestion prevention, and traffic calming; and

(2) One-third shall be used for public transit functions, including, but not limited to, bus, streetcar, and rail transit systems; and

(3) One-third shall be used for nonmotorized transportation functions, including, but not limited to, sidewalks, pedestrian safety improvements, bicycle routes, and greenways."

SECTION 3. G.S. 20-97(b), as amended by Section 2 of this act, reads as rewritten:

"(b) General Municipal Vehicle Tax. – Cities and towns may levy a tax of not more than ~~fifteen dollars (15.00)~~ twenty dollars ($20.00) per year upon any vehicle resident in the city or town. The proceeds of the tax may be used for any lawful purpose. The proceeds of these taxes derived from any levy above ten dollars ($10.00)

and up to ~~fifteen dollars ($15.00)~~ twenty dollars ($20.00) shall be used exclusively for transportation-related purposes as follows:

(1) One-third shall be used for traffic management functions, including, but not limited to, congestion management, congestion prevention, and traffic calming; and

(2) One-third shall be used for public transit functions, including, but not limited to, bus, streetcar, and rail transit systems; and

(3) One-third shall be used for nonmotorized transportation functions, including, but not limited to, sidewalks, pedestrian safety improvements, bicycle routes, and greenways."

SECTION 4. Chapter 56 of the 1993 Session Laws is repealed effective upon the date the City of Winston-Salem acts to levy an additional tax under this act.

SECTION 5. Section 3 of this act becomes effective January 1, 2007. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 464

Short Title:	Winston-Salem Motor Vehicle Tax Increase.	(Local)
Sponsors:	Representatives Parmon; and Womble.	
Referred to:	Finance.	

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE CITY OF WINSTON-SALEM TO LEVY A MOTOR VEHICLE PRIVILEGE TAX OF UP TO TWENTY DOLLARS FOR EACH RESIDENT VEHICLE LOCATED IN THE CITY OF WINSTON-SALEM.

The General Assembly of North Carolina enacts:

SECTION 1. This act applies to the City of Winston-Salem only.

SECTION 2. G.S. 20-97(b) reads as rewritten:

"(b) General Municipal Vehicle Tax. – Cities and towns may levy a tax of not more than ~~five dollars ($5.00)~~ twenty dollars ($20.00) per year upon any vehicle resident in the city or town. The proceeds of the tax may be used for any lawful purpose. The proceeds of these taxes derived from any levy above ten dollars ($10.00) and up to twenty dollars ($20.00) shall be used exclusively for transportation-related purposes as follows:

(1) One-third shall be used for traffic management functions, including, but not limited to, congestion management, congestion prevention, and traffic calming; and

(2) One-third shall be used for public transit functions, including, but not limited to, bus, streetcar, and rail transit systems; and

(3) One-third shall be used for nonmotorized transportation functions, including, but not limited to, sidewalks, pedestrian safety improvements, bicycle routes, and greenways."

SECTION 3. Chapter 56 of the 1993 Session Laws is repealed effective upon the date the City of Winston-Salem acts to levy an additional tax under this act.

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

HOUSE BILL 464:
Winston-Salem Motor Vehicle Tax Increase

BILL ANALYSIS

Committee:	House Finance	**Date:**	April 26, 2005
Introduced by:	Rep. Parmon	**Summary by:**	Cindy Avrette
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 464 increases the amount of the general municipal vehicle tax Winston-Salem may impose from $10 to $25. The proceeds of the additional tax may be used only for transportation-related purposes. The bill is effective when it becomes law.

CURRENT LAW: Under general law, counties may not impose a license or privilege tax on motor vehicles[1] and municipalities are limited in the taxes they may impose on motor vehicles to the taxes listed below:

- **General Municipal Vehicle Tax.** – A tax not to exceed $5 a year on a motor vehicle resident in the municipality. The revenue generated by this tax may be used for any lawful purpose. By local acts, the amount of the tax has been increased for several cities and towns. The cities of Durham, Henderson, and Oxford and the towns of Ahoskie, Cary, Chapel Hill, Creedmoor, and Hillsborough may levy a tax up to $10. The town of Carrboro[2] and the cities of Gastonia, Kinston, and Raleigh may levy a tax up to $15. The cities of Charlotte and Greenville and the towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill, Murfreesboro, and Pineville may levy a tax up to $20.
- **Local Public Transportation System.** – A tax not to exceed $5 a year on a motor vehicle resident in the municipality. Only municipalities that operate a public transportation system may impose this tax and the proceeds from the tax may be used only for local public transportation systems.[3]
- **Tax on Taxicabs.** – A tax not to exceed $15 a year on each vehicle operated in the municipality as a taxicab. The proceeds of this tax may be used for any lawful purpose.

BILL ANALYSIS: House Bill 464 would authorize Winston-Salem to increase its motor vehicle tax from $10 to $20. The proceeds of the additional tax must be used exclusively for transportation-related purposes as follows:

- 1/3 must be used for traffic management functions, such as congestion management and prevention.
- 1/3 must be used for public transit functions, such as bus, streetcar, and rail transit systems.
- 1/3 must be used for non-motorized transportation functions, such as sidewalks, pedestrian safety improvements, bicycle routes, and greenways.

H0464e1-SMRB

[1] By local acts modifying G.S. 20-97, Alleghany, Caswell, and Pamlico Counties may impose an annual motor vehicle tax. The amounts vary from $5 to $15.

[2] HB 691 would authorize Carrboro to increase its tax to $25.

[3] This tax may not be imposed by the City of Durham or by any cities and towns in Gaston County.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 464 A BILL TO BE ENTITLED AN ACT TO PERMIT THE CITY OF WINSTON-SALEM TO LEVY A MOTOR VEHICLE PRIVILEGE TAX OF UP TO TWENTY DOLLARS FOR EACH RESIDENT VEHICLE LOCATED IN THE CITY OF WINSTON-SALEM.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1037
PROPOSED COMMITTEE SUBSTITUTE H1037-CSRBx-6 [v.1]

4/25/2005 11:53:51 AM

Short Title: Increase Wrightsville Beach Motor Vehicle Tax. (Local)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW WRIGHTSVILLE BEACH TO LEVY A MOTOR VEHICLE PRIVILEGE TAX OF UP TO FIFTEEN DOLLARS FOR EACH RESIDENT VEHICLE LOCATED IN THE TOWN AND TO ALLOW THE TOWN OF WRIGHTSVILLE BEACH TO ESTABLISH A SCHEDULE OF DISCOUNTS TO BE APPLIED TO MOTOR VEHICLE TAXES PAID PRIOR TO JULY 1.

The General Assembly of North Carolina enacts:

SECTION 1. This act applies only to the Town of Wrightsville Beach.

SECTION 2. G.S. 20-97(b) reads as rewritten:

"(b) General Municipal Vehicle Tax. – Cities and towns may levy a tax of not more than ~~five dollars ($5.00)~~ fifteen dollars ($15.00) per year upon any vehicle resident in the city or town. The governing body of a city or town may establish a schedule of discounts to be applied to taxes paid prior to July 1. To exercise this authority, the governing body must adopt an ordinance specifying the amounts of the discounts and the periods of time during which they are to be applicable. The proceeds of the tax may be used for any lawful purpose."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1037

Short Title:	Increase Wrightsville Beach Motor Vehicle Tax.	(Local)
Sponsors:	Representative McComas.	
Referred to:	Finance.	

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW WRIGHTSVILLE BEACH TO LEVY A MOTOR VEHICLE PRIVILEGE TAX OF UP TO TEN DOLLARS FOR EACH RESIDENT VEHICLE LOCATED IN THE TOWN OF WRIGHTSVILLE BEACH.

The General Assembly of North Carolina enacts:

SECTION 1. This act applies only to the Town of Wrightsville Beach.

SECTION 2. G.S. 20-97(b) reads as rewritten:

"(b) General Municipal Vehicle Tax. – Cities and towns may levy a tax of not more than five dollars ($5.00) per year upon any vehicle resident in the city or ~~town.~~town if the tax is paid by April 1, not more than ten dollars ($10.00) if the tax is paid between April 1 and July 1, and not more than fifteen dollars ($15.00) if the tax is paid after July 1. The Town of Wrightsville Beach shall notify every person who owns real property in the corporate limits of the tax to be levied on a motor vehicle. The notice shall be mailed to the last known address of the taxpayer and shall be made within 30 days of the tax becoming due. The notice shall contain the amount of tax due and the schedule of payment deadlines. The proceeds of the tax may be used for any lawful purpose."

SECTION 3. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2006.

HOUSE BILL 1037:
Increase Wrightsville Beach Motor Vehicle Tax

BILL ANALYSIS

Committee:	House Finance	**Date:**	April 26, 2005
Introduced by:	Rep. McComas	**Summary by:**	Cindy Avrette
Version:	PCS for First Edition H1037-CSRBx-6		Committee Counsel

SUMMARY: ***The proposed committee substitute for House Bill 1037 increases the amount of the municipal motor vehicle tax Wrightsville Beach may impose from $5 to $15 and it authorizes the Town to establish a schedule of discounts for motor vehicle taxes paid prior to July 1st of each year. The bill would become effective when it becomes law.***

CURRENT LAW: Under general law, counties may not impose a license or privilege tax on motor vehicles[1] and municipalities are limited in the taxes they may impose on motor vehicles to the taxes listed below:

- **General Municipal Vehicle Tax.** – A tax not to exceed $5 a year on a motor vehicle resident in the municipality. The revenue generated by this tax may be used for any lawful purpose. By local acts, the amount of the tax has been increased for several cities and towns. The cities of Durham, Henderson, Oxford, Winston-Salem[2] and the towns of Ahoskie, Cary, Chapel Hill, Creedmoor, and Hillsborough may levy a tax up to $10. The town of Carrboro[3] and the cities of Gastonia, Kinston, and Raleigh may levy a tax up to $15. The cities of Charlotte and Greenville and the towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill, Murfreesboro, and Pineville may levy a tax up to $20.
- **Local Public Transportation System.** – A tax not to exceed $5 a year on a motor vehicle resident in the municipality. Only municipalities that operate a public transportation system may impose this tax and the proceeds from the tax may be used only for local public transportation systems.[4]
- **Tax on Taxicabs.** – A tax not to exceed $15 a year on each vehicle operated in the municipality as a taxicab. The proceeds of this tax may be used for any lawful purpose.

BILL ANALYSIS: The Town of Wrightsville Beach issues a vehicle decal for each vehicle for which a motor vehicle tax is paid. The decal serves as a re-entry device to identify residents and property owners following an evacuation. In recent years, the property owners and residents of the Town have tended to pay the tax and obtain the decal immediately before and after an evacuation. The result of this timing is often extremely long lines at a time when property owners, residents, and town personnel need to be preparing for severe weather conditions.

To encourage taxpayers to pay the motor vehicle tax and obtain the vehicle decal earlier in the year, ***House Bill 1037*** authorizes the Town of Wrightsville Beach to establish a schedule of discounts for payments of the tax made prior to July 1st of each year. The bill also increases the rate of tax the Town

[1] By local acts modifying G.S. 20-97, Alleghany, Caswell, and Pamlico Counties may impose an annual motor vehicle tax. The amounts vary from $5 to $15.

[2] HB 464 would authorize Winston-Salem to increase its tax to $20.

[3] HB 691 would authorize Carrboro to increase its tax to $25.

[4] This tax may not be imposed by the City of Durham or by any cities and towns in Gaston County.

may impose from an amount up to $5 to amount up to $15. The Town would likely impose a schedule of taxation similar to the amounts shown in the chart below:

Tax Paid	Rate of Tax, with Discount
Before April 1	Up to $5
After April 1, but before July 1	Up to $10
After July 1	Up to $15

H1037e1-SMRB

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 1037 A BILL TO BE ENTITLED AN ACT TO ALLOW WRIGHTSVILLE BEACH TO LEVY A MOTOR VEHICLE PRIVILEGE TAX OF UP TO TEN DOLLARS FOR EACH RESIDENT VEHICLE LOCATED IN THE TOWN OF WRIGHTSVILLE BEACH.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1117
Committee Substitute Favorable 4/20/05

Short Title: Public Finance Changes. (Public)

Sponsors:

Referred to:

April 5, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO STATE AND LOCAL GOVERNMENT FINANCE LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 158-7.3(c) reads as rewritten:

"(c) Development Financing District. – A development financing district created pursuant to this section must be comprised of property that is one or more of the following:

(1) Blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth.

(2) Appropriate for rehabilitation or conservation activities.

(3) Appropriate for the economic development of the community.

The total land area within development financing districts in a unit, including development financing districts created pursuant to G.S. 160A-515.1, may not exceed five percent (5%) of the total land area of the unit. For the purposes of this section, land in a district created by a county that subsequently becomes part of a city, town, or incorporated village does not count against the five-percent (5%) limit for the city, town, or incorporated village unless the city, town, or incorporated village and the county have entered into an agreement pursuant to G.S. 159-107(e). A county may not include in a district created pursuant to this section any land that, at the time the district is created, is inside a city, town, or incorporated village."

SECTION 2. G.S. 159-29(a) reads as rewritten:

"(a) The finance officer shall give a true accounting and faithful performance bond with sufficient sureties in an amount to be fixed by the governing board, not less than ~~ten thousand dollars ($10,000) nor more than two hundred fifty thousand dollars ($250,000).~~fifty thousand dollars ($50,000). The premium on the bond shall be paid by the local government or public authority."

SECTION 3. Article 4 of Chapter 159 of the General Statutes is amended by adding a new section to read:

"**§ 159-68. Certain provisions not applicable to refunding bonds.**

The provisions of G.S. 159-56 and the provisions of this Article related to the holding of a public hearing prior to the adoption of the bond order do not apply to refunding bonds issued by a unit of local government so long as the refunding bonds do not extend the final maturity of the debt or obligation to be refunded and so long as the aggregate debt service over the life of the refunding bonds is less than the aggregate debt service on the debt or obligation to be refunded. When the conditions of this section are satisfied, a unit of local government may introduce a bond order, adopt a bond order, and adopt a sale resolution with respect to refunding bonds in one or more meetings of the unit's governing body."

SECTION 4. G.S. 159-83(a)(5) reads as rewritten:

"(5) To borrow money for the purpose of acquiring, constructing, reconstructing, extending, bettering, improving, or otherwise paying the cost of revenue bond projects, ~~and~~ to issue its revenue bonds or bond anticipation notes therefor, in the name of the State or a municipality, as the case may be, ~~but no encumbrance, mortgage, or other pledge or real property of the State or a municipality may be created in any manner.~~and to pledge, mortgage, or grant a security interest in all or a portion of the real and personal property comprising the utility or public enterprise facility or system acquired, constructed, reconstructed, extended, bettered, or improved with the proceeds of the borrowing. Property subject to a mortgage, deed of trust, security interest, or similar lien pursuant to this subdivision may be sold at foreclosure in any manner permitted by the instrument creating the encumbrance, without compliance with any other provision of law regarding the disposition of publicly owned property."

SECTION 5. G.S. 159-107(e) reads as rewritten:

"(e) Increment Agreements. – Effect of Annexation on District Established by a County. – If a city annexes land in a development financing district established by a county pursuant to G.S. 158-7.3, the proceeds of all taxes levied by the city on property within the district shall be paid to the city unless the city enters into an agreement with the county pursuant to this ~~subsection.~~subsection, and the annexed land in the county's district that subsequently becomes a part of the city does not count against the city's five-percent (5%) limit under G.S. 158-7.3 or G.S. 160A-515.1 unless the city and the county enter into an agreement pursuant to this section. The city and the county may enter into an increment agreement under which the city agrees that city taxes on part or all of the incremental valuation in the district shall be paid into the revenue increment fund for the district. An increment agreement may be entered into when the district is established or at any time after the district is established. The increment agreement may extend for the duration of the district or for a shorter time agreed to by the parties."

SECTION 6. G.S. 159-111(b) reads as rewritten:

"(b) In order to provide additional security for debt instruments issued pursuant to this Article, and in lieu of pledging its faith and credit for that purpose pursuant to subsection (a) of this section, a unit of local government may ~~agree to apply to the payment of the instruments~~pledge or grant a security interest in any available sources of revenues of the unit, including special assessments against property within the development financing district made by the unit pursuant to Article 9 of Chapter 153A of the General Statutes or Article 10 of Chapter 160A of the General Statutes, as long as ~~the agreement to use the sources to make payment~~doing so does not constitute a pledge of the unit's taxing ~~power or of the unit's revenues derived from local sales taxes.~~power. In addition, to the extent the generation of the revenues is within the power of the unit, the unit may enter into covenants to take action in order to generate the revenues, as long as the covenant does not constitute a pledge of the unit's taxing power. In addition, the unit may pledge, mortgage, or grant a security interest in all or a portion of the real and personal property being financed or improved with the proceeds of the project development financing debt instrument. Property subject to a mortgage, deed of trust, security interest, or similar lien pursuant to this subsection may be sold at foreclosure in any manner permitted by the instrument creating the encumbrance, without compliance with any other provision of law regarding the disposition of publicly owned property."

SECTION 7. G.S. 159-125 reads as rewritten:

"**§ 159-125. Bid instructions; bid deposit.**

(a) Except for revenue bonds, no bid for less than the ninety-eight percent (98%) of the face value of the bonds plus one hundred percent (100%) of accrued interest may be entertained.

Different rates of interest may be bid for bonds maturing in different ~~years, but~~ years and different rates of interest may ~~not~~ be bid for bonds maturing in the same ~~year.~~year unless the Secretary of the Commission requires one interest rate per maturity in connection with the sale of the bonds. This subsection applies to public sale of bonds only.

(b) ~~Each bid shall be~~ The Secretary of the Commission may require that bids be accompanied by a bid deposit ~~equal to two percent (2%) of the aggregate principal amount of the bond issue. The~~ in an amount prescribed by the Secretary of the Commission or may determine that no bid deposit is required. If required, the bid deposit shall be made in a form approved by the Secretary of the Commission, and shall secure the issuing unit against loss resulting from the bidder's failure to comply with the terms of the bid. ~~his bid. This subsection shall not apply to bids entered by a State or federal agency.~~

(c) When a State or federal agency has agreed to purchase the bonds at a stated rate of interest unless more favorable bids are received, bids may be entertained from other purchasers for less than all of the bonds."

SECTION 8. G.S. 159-127 reads as rewritten:

"**§ 159-127. Award of bonds.**

All bids received pursuant to a public sale shall be opened in public on a date and at a time and place to be specified in the notice of sale. ~~The bond~~ Bonds sold at public sale shall be awarded to the bidder offering to purchase the bonds at the lowest interest cost

to the issuing ~~unit. In calculating such interest cost, the amount of any premium bid shall be deducted from the aggregate amount of interest on the entire issue until maturity.~~unit calculated in the manner established by the Secretary of the Commission in the notice of sale."

SECTION 9. G.S. 159-139 reads as rewritten:

"**§ 159-139. Destruction of cancelled bonds, notes, and coupons.**

(a) All cancelled bonds, notes, and interest coupons of a unit may be destroyed in one of the following ways, in the discretion of the governing board:

(1) Method 1. – The finance officer shall make an entry in ~~a substantially bound book kept by him for the purpose of recording the destruction of bonds, notes, and coupons, showing~~the official records of the unit, which may include the register for the bonds, notes, and coupons, showing:

a. With respect to bonds and notes, the purpose of issuance, the date of issue, serial numbers (if any), denomination, maturity date, and total principal amount.

b. With respect to coupons, the purpose of issue and date of the bonds to which the coupons appertain, the maturity date of the coupons and, as to each maturity date, the denomination, quantity, and total amount of coupons.

After this entry has been made, the paid bonds, notes, and coupons shall be destroyed or marked cancelled in the manner determined by the finance officer, who shall make an entry of the destruction or cancellation in the official records of the unit. ~~by either burning or shredding, in the presence of the mayor or chairman of the governing board, the finance officer, the unit's attorney, and the clerk to the governing board, or any three of them, each of whom shall certify under his hand in the book kept by the finance officer that he saw the bonds and coupons destroyed.~~ Cancelled bonds, notes, or coupons shall not be destroyed until after one year from the date of payment.

(2) Method 2. – The governing board may contract with the bank, trust company or other person acting as fiscal agent for a bond issue for the destruction of bonds and interest coupons which have been cancelled by the fiscal agent. The contract shall require that the fiscal agent give the unit a written certificate of each destruction containing the same information required by Method 1 to be entered in the record of destroyed bonds and coupons. The certificates shall be filed among the permanent records of the finance officer's office. Cancelled bonds or coupons shall not be destroyed until one year from the date of payment.

(b) The provisions of G.S. 121-5 and G.S. 132-3 ~~shall~~ do not apply to paid bonds, notes, and coupons. The information required to be ~~entered in a substantially bound book~~ recorded prior to destruction under either Method 1 or Method 2 may as an

alternative, be shown by photocopying, microfilming or other similar method of recording the information by directly reproducing the cancelled documents."

SECTION 10. G.S. 159C-3(15a) reads as rewritten:

"**§ 159C-3. Definitions.**

The following definitions apply in this Chapter:

...

(15a) Special purpose project. – Any structure, equipment, or other facility for any one or more of the following purposes:

a. Water systems or facilities, including all plants, works, instrumentalities, and properties used or useful in obtaining, conserving, treating, and distributing water for domestic or industrial use, irrigation, sanitation, fire protection, or any other public or private use.

b. Sewage disposal systems or facilities, including all plants, works, instrumentalities, and properties used or useful in the collection, treatment, purification, or disposal of sewage, other than facilities constituting a water pollution control facility.

c. Public transportation systems, facilities, or equipment, including bus, truck, ferry, and railroad terminals, depots, trackages, vehicles, and ferries, and mass transit systems.

d. Public parking lots, areas, garages, and other public vehicular parking structures and facilities.

e. Public auditoriums, gymnasiums, stadiums, and convention centers.

f. Recreational ~~facilities.~~facilities, including museums.

g. Land, equipment, and facilities for the disposal, treatment, or recycling of solid or other waste that are described in G.S. 159I-8.

h. Facilities for the provision of rehabilitation services, education, training, and employment opportunities for persons with disabilities and the disadvantaged. The term does not include a retail facility, however, unless the proposed operator of the facility certifies that at least seventy-five percent (75%) of its employees will be disadvantaged or disabled persons and at least seventy-five percent (75%) of its inventory will be composed of used, donated items and items manufactured by disadvantaged or disabled persons."

SECTION 11. G.S. 159G-18(a) reads as rewritten:

"(a) Applicants may execute debt instruments payable to the State in order to obtain revolving loans provided for in this Chapter. Applicants shall pledge as security for such obligations the user fee revenues derived from operation of the benefited facilities or systems ~~only,~~only; or other sources of ~~revenue,~~revenue; or their faith and ~~credit,~~credit; or a mortgage, deed of trust, security interest, or similar lien on all or a portion of the real and personal property comprising the utility or public enterprise

facility or system acquired, constructed, reconstructed, extended, bettered, or improved with the proceeds of the borrowing; or any combination thereof. The faith and credit of applicants that are local government units shall not be pledged or be deemed to have been pledged unless the requirements of Article 4, Chapter 159 of the General Statutes have been met. The State Treasurer, with the assistance of the Local Government Commission, shall develop and adopt appropriate debt instruments for use by applicants under this Chapter. The Local Government Commission shall develop and adopt appropriate procedures for the delivery of debt instruments by applicants to the State without any public bidding therefor."

SECTION 12. G.S. 160A-515.1(b) reads as rewritten:

"(b) Development Financing District. – A development financing district shall comprise all or portions of one or more redevelopment areas defined pursuant to this Article. The total land area within development financing districts in a city, including development financing districts created pursuant to G.S. 158-7.3, may not exceed five percent (5%) of the total land area of the city. For purposes of this section, land in a district created by a county that subsequently becomes part of a city does not count against the city's five-percent (5%) limit unless the city and the county have entered into an agreement pursuant to G.S. 159-107(e)."

SECTION 13. This act is effective when it becomes law.

HOUSE BILL HB 1117: Public Finance Changes

BILL ANALYSIS

Committee:	House Finance	**Date:**	April 22, 2005
Introduced by:	Rep. Ross and Howard	**Summary by:**	Erika Churchill
Version:	Second Edition		Committee Counsel

SUMMARY: The bill would make various amendments to statutes dealing with public finance, effective when it becomes law.

CURRENT LAW & BILL ANALYSIS:

Sections 1, 5, and 12. Counties and cities have the authority to create development financing districts. Chapter 158 and 160A-515.1. The total land area within the district may not exceed 5% of the total land area of the unit creating the district. The bill would amend the relevant statutes to provide that land in a district created by a county that subsequently becomes part of a municipality does not count against the five-percent (5%) limit for the municipality unless the municipality and the county have entered into an increment agreement under G.S. 159-107(e). The increment agreement is an agreement between the city and county under which the city agrees that city taxes on all or part of the incremental valuation of the property in the district be paid into the revenue increment fund (a separate accounting fund for the revenue generated) for the district.

Section 2. Local governments are required to appoint a finance officer to carry out certain statutorily required duties. G.S. 159-24; G.S.159-25. The finance officer is required to have a performance bond of at least $10,000 and no more than $250,000, payable to the local government. The bill would increase the minimum bond amount to $50,000 and remove the cap.

Section 3. Prior to the issuance of a general obligation bond, a local government is required to publish a notice of the bond order at least once, then hold a hearing, then publish another notice after the adoption of the bond order with a statement that any action or proceeding questioning the validity of the order must be commenced within 30 days of the date of publication. After the issuance of the bond, local governments may desire to refinance the bond to obtain a savings in the cost of the financing. In "refunding" the bond, the same publication process is required. The bill would state that the publication process is not necessary if all of the following apply:

1. The refunding bonds do not extend the final maturity of the debt or obligation to be refunded.
2. The aggregate debt service over the life of the refunding bonds is less than the aggregate debt service on the debt or obligation to be refunded.
3. The unit of local government introduces a bond order, adopts a bond order, and adopts a sale resolution with respect to refunding bonds in one or more meetings of its governing body.

Section 4. The State and units of local government are authorized to issue revenue bonds, but are specifically prohibited from encumbering the related real property. The bill would allow the State and units of local government to pledge, mortgage, or grant a security interest in real and personal property comprising the utility or public enterprise project affected by the bond issuance. Any property so encumbered could be sold in accordance with the encumbering document and would not fall under any disposition of governmental property statutes.

Section 6. Units of local government may issue project development financing debt instruments, and may agree to repay the debt with any available revenues of the unit, provided the agreement does not constitute a pledge of the unit's taxing power. The bill would allow the unit to also specifically pledge the revenues to be raised from any special assessment, provided it did not constitute a pledge of the unit's taxing power, and encumber any real or personal property being financed or improved by the project. Any property so encumbered could be sold in accordance with the encumbering document and would not fall under any disposition of governmental property statutes.

Section 7.

G.S. 159-125(a). General obligation bonds may not be issued as "split coupon" bonds, meaning the bonds may not have differing rates for same maturity years. General obligation bonds of a particular maturity must bear interest at the same rate. The bill would permit split coupon bonds unless the Local Government Commission required one rate per maturity in connection with the sale of the bonds.

G.S. 159-125(b). All bids for the purchase of general obligation bonds must be accompanied by a 2% bid deposit. The bill would eliminate the mandatory requirement for the bid deposit, and permit the Local Government Commission to set an appropriate bid deposit, including none.

Section 8. Bonds are to be awarded to the bidder offering to purchase at the lowest interest cost to the issuing unit. The interest cost is to calculated as follows: the aggregate amount of interest on the entire issue until maturity less the amount of the premium bid. This is commonly referred to as "net interest." The bill would allow the Local Government Commission to determine the method of calculating the lowest interest cost in the notice of sale.

Section 9. After entering relevant financial information into the books of the unit and waiting a year, cancelled bonds are to be destroyed either by burning or shredding in the presence of the mayor or chairman of the governing body, the finance officer, the attorney and clerk to the board, or any 3 of those persons **or** by the financial institution providing written certification. The bill would delete the requirement to burn or shred the bonds, and require the bond to be destroyed or cancelled in a manner to be determined by the finance officer.

Section 10. The bill would add museums to the list of special purpose projects for which bonds can be issued by the North Carolina Capital Facilities Finance Agency and local industrial development authorities.

Section 11. Local government units and certain non-profit water corporations may apply for clean water revolving grants and loans. The bill would permit the applicant to encumber the real and personal property benefited by the borrowing to the favor of the State.

BACKGROUND: The provisions of the bill come upon the recommendation of the Public Finance Advisory Council, formed by the State Treasurer's Office.

HB 1117e2-SMST

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: April 25, 2005

TO: House Finance Committee

FROM: David Crotts
Fiscal Research Division

RE: House Bill 1117 (Second Edition)

FISCAL IMPACT

Yes ( )	No (x)	No Estimate Available ( )		
FY 2005-06	**FY 2006-07**	**FY 2007-08**	**FY 2008-09**	**FY 2009-10**
REVENUES:				
EXPENDITURES:				
POSITIONS (cumulative):				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of State Treasurer. The enactment of the bill is not expected to affect the budget requirements of the Department.

EFFECTIVE DATE: When the bill becomes law.

BILL SUMMARY: **Development Financing Districts.** Amends the statutes dealing with development financing districts created by counties and cities to provide that land in a district created by a county that subsequently becomes part of a municipality does not count against the 5% land area limit for the district unless the municipality and the county have entered into an increment agreement (city taxes on all or part of the incremental valuation of the property in the district must be paid into the revenue increment fund for the district). **Finance Officer Bond.** Changes the performance bond requirement for local finance officers from a minimum of $10,000

and a $250,000 maximum to a minimum of $10,000 and no cap. **General Obligation Bond Notification Requirements.** Currently, the public notification and hearings requirements for refunding bonds are the same as for the original issuance. The bill would exempt refunding bonds from the publication process under certain conditions. **Revenue Bond Property Encumbrance**. The State and units of local government are authorized to issue revenue bonds but may not encumber the related real property. The bill allows the unit to pledge, mortgage, or grant a security interest in real and personal property comprising the utility or public enterprise project affected by the bond issuance. Any property so encumbered could be sold in accordance with the encumbering document and would not fall under any disposition of governmental property statutes. **Project Development Financing Debt**. Units of local government may issue project development financing debt instruments, and may agree to repay the debt with any available revenues of the unit, provided the agreement does not constitute a pledge of the unit's taxing power. The bill allows a unit to pledge the revenues to be raised from any special assessment, provided it did not constitute a pledge of the unit's taxing power, and encumber any real or personal property being financed or improved by the project. **Split Coupon Bonds**. Permits coupon bonds of the same maturity to offer different rates unless the Local Government Commission required one rate per maturity in connection with the sale of the bonds. **General Obligation Bond Bids**. Eliminates the 2% deposit on the bids for general obligation bonds in lieu of giving the Local Government Commission the authority to set an appropriate bid deposit, including none. **Net Interest Cost Calculation**. Replaces the current statutory language use to determine the net interest cost for bond bid purposes with Local Government Commission authority to determine the appropriate method. **Destruction Of Cancelled Bonds**. Replaces the outdated system for destroying cancelled bonds with local finance officer discretion as to the appropriate method. **Special Purpose Project Bonds**. Adds museums to the list of special purpose projects for which bonds can be issued by the North Carolina Capital Facilities Finance Agency and local industrial development authority. **Clean Water Bond Property Encumbrance**. Permit an applicant for clean water revolving grants and loans to encumber the real and personal property benefited by the borrowing to the favor of the State.

ASSUMPTIONS AND METHODOLOGY:

SOURCES OF DATA:

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

HB 1117 A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO STATE AND LOCAL GOVERNMENT FINANCE LAWS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H 2

HOUSE BILL 35
Committee Substitute Favorable 4/12/05

Short Title: ADET School/Fee/Qualis. Increase. (Public)

Sponsors:

Referred to:

February 2, 2005

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE FEE PAID BY DWI OFFENDERS FOR ATTENDING AN ALCOHOL AND DRUG EDUCATION TRAFFIC SCHOOL, TO INCREASE THE AMOUNT REMITTED FROM THE FEE BY AN AREA FACILITY TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, TO INCREASE THE QUALIFICATIONS OF PERSONS WHO WILL BE ELIGIBLE TO PROVIDE ADET SCHOOL INSTRUCTION, TO DIRECT THE COMMISSION ON MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES TO MODIFY THE RULES REGARDING THE NUMBER OF INSTRUCTIONAL HOURS AND MAXIMUM ADET SCHOOL CLASS SIZE, AND TO REQUIRE THE DEPARTMENT TO ESTABLISH AN OUTCOMES EVALUATION STUDY ON THE EFFECTIVENESS OF SUBSTANCE ABUSE SERVICES AS RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-142.1(f) reads as rewritten:

"(f) Fees. – A person who has a substance abuse assessment conducted for the purpose of obtaining a certificate of completion shall pay to the assessing agency a fee of one hundred dollars ($100). A person shall pay to a ~~treatment facility or~~ school a fee of ~~seventy-five dollars ($75.00).~~one hundred sixty dollars ($160.00). A person shall pay to a treatment facility a fee of seventy-five dollars ($75.00). If the defendant is treated by an area mental health facility, G.S. 122C-146 applies after receipt of the seventy-five dollar ($75.00) fee.

A facility that provides to a person who is required to obtain a certificate of completion a substance abuse assessment, an ADET school, or a substance abuse treatment program may require the person to pay a fee required by this subsection before it issues a certificate of completion. As stated in G.S. 122C-146, however, an area facility may not deny a service to a person because the person is unable to pay.

~~An area~~A facility shall remit to the Department ~~five percent (5%)~~ ten percent (10%) of each fee paid to the ~~area~~ facility under this subsection by a person who attends an ADET school conducted by the ~~area~~ facility. The Department may use amounts remitted to it under this subsection only to support, evaluate, and administer ADET schools."

SECTION 2. G.S. 122C-142.1 is amended by adding a new subsection to read:

"(d1) Persons Authorized to Provide Instruction. – Beginning January 1, 2009, individuals who provide ADET school instruction as a Department-authorized ADETS instructor must have at least one of the following qualifications:

(1) Certified Substance Abuse Counselor (CSAC), as defined by the Commission.

(2) Certified Clinical Addiction Specialist (CCAS), as defined by the Commission.

(3) Certified Substance Abuse Prevention Consultant (CSAPC), as defined by the Commission."

SECTION 3. The Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services shall revise its rules regarding the number of instructional program hours and the class size for ADET schools. The minimum program hours of instruction shall not be less than 16 hours. The maximum class size shall not be more than 20 participants.

SECTION 4. G.S. 122C-142.1 is amended by adding a new subsection to read:

"(j) The Department shall establish an outcomes evaluation study on the effectiveness of substance abuse services provided to persons who obtain a certificate of completion under G.S. 20-17.6 as a condition for restoration of a drivers license. The findings of the study shall be reported every two years to the Joint Legislative Commission on Governmental Operations. The Department shall submit an initial report on the findings of the study to the Commission no later than December 31, 2007, and shall submit a report to the Commission every two years following that date."

SECTION 5. Section 1 becomes effective when the rules adopted under Section 3 of this act become effective and shall apply to fees charged for ADET school instruction that commences on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 35:
ADET School/Qualis. Increase.

BILL ANALYSIS

Committee:	House Finance	**Date:**	April 22, 2005
Introduced by:	Rep. Alexander	**Summary by:**	Erika Churchill
Version:	Second Edition		Committee Counsel

SUMMARY: ***The bill would increase the fee paid by participants to schools providing an alcohol and drug education traffic (ADET) school; increase the amount remitted to the Department of Health and Human Services by area mental health facilities; require minimum qualifications for instructors for the ADET schools; increase the number of hours of ADET school; and require the Department to establish an evaluation tool for the ADET school.***

CURRENT LAW: Persons convicted of DWI, commercial vehicle DWI, or driving while less than 21 years old after consuming alcohol must receive a "certificate of completion" in order to have their drivers license restored. The ADET school is a requirement for that certificate completion if the required substance abuse assessment does not identify a substance abuse handicap, the person has no previous DWI offense conviction, the person had an alcohol concentration of .14 or less, the person did not refuse to submit to a chemical test, and the person meets the admission criteria for Level .5 (Early Intervention).
The fee for ADET is $100 for the assessment, and a fee $75 to the treatment facility or school.

BILL ANALYSIS:

Section 1. The bill would increase the fee paid to schools from $75 to $160, and maintain the fee paid to treatment facilities at 75. The bill would also increase the amount remitted to the Department of Health and Human Services from the fees collected by facilities from 5% to 10%. **Effective when the Commission revises it's rules as required under Section 3 of the bill.**

Section 2. Beginning **January 1, 2009**, the bill would require persons providing instruction at ADET school to have at least one of the following qualifications:

1. Certified Substance Abuse Counselor (CSAC), as defined by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services ("Commission").
2. Certified Clinical Addiction Specialist (CCAS), as defined by the Commission.
3. Certified Substance Abuse Prevention Consultant (CSAPC), as defined by the Commission."

Section 3. The bill would direct the Commission to revise its rules regarding ADET school to increase the number of hours to at least 16 hours and reduce class size to no more than 20 participants.

Section 4. The bill would required the Department of Health and Human Services to establish an outcomes evaluation study on the effectiveness of substance abuse services provided persons obtaining services as a condition of restoring their drivers license. The study shall be reported to Gov Ops every two years beginning on or before December 31, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 35 (First Edition)

SHORT TITLE: ADET School/Fee/Qualis. Increase.

SPONSOR(S): Representatives Alexander, Insko, and Sauls

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
Local Mgt. Entities	$50,720	$50,720	$50,720		
DMH/DD/SAS	$57,661	$57,661	$57,661	$57,661	$57,661
EXPENDITURES:					
Local Mgt. Entities	See Assumptions and Methodology: The additional cost associated with establishing the minimum number of class hours and maximum class size could not be estimated				
DMH/DD/SAS	$57,661	$57,661	$57,661	$57,661	$57,661

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Health and Human Services and Local Management Entities

EFFECTIVE DATE: Sections 1, 3, & 4 – Effective once the bill is enacted; Section 2 – January 1, 2009.

BILL SUMMARY:

Amends GS 122C-142.1(f) to increase amount of fee paid to schools for alcohol and drug education to $160 (was, $75) and to increase percentage of fee remitted to Department of Health and Human Services from area mental health facilities to 10% (was, 5%) of amount paid by person attending alcohol and drug education traffic (ADET) school. Enacts new GS 122C-142.1(d1) to require that ADET instructors have a CSAC, CCAS, or CSAPC certification beginning January 1, 2009. Requires Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services to revise rules on hours of instruction for ADET schools so that minimum is at least 16 hours and revise rules on class size so that maximum is not more than 20 participants. Enacts new GS 122C-142.1(j) to require that Department study effectiveness of substance abuse services provided to persons required to have a certificate of completion for drivers license restoration, initial report on study due to the Joint Legislative Commission on

Governmental Operations on Dec. 31, 2007, and every two years thereafter. Fee increases effective upon adoption of rules regarding instructional hours and class size.

Source: Bill Digest H.B. 35 (02/02/2005)

ASSUMPTIONS AND METHODOLOGY:
The following assumptions were made in performing this fiscal analysis:

Increased Revenues to LME's in FY 2005-06	
Persons Served by LME's FY 2003-04	663
Current Fee per Person	$75
Proposed Fee per Person	$160
Fee Difference per Person	$85
Less the 10% Charge by DMH/DD/SAS	$76.50
Estimated Revenue Increase for LME's	**$50,720**

- 16 Area and County Authorities, referred to in the document as local management entities (LME's), currently provide ADET schools as a direct service.
- While all 16 LME's will divest their ADET schools as part of mental health reform, this divestiture will occur over the next three years.
- For the purpose of this analysis, the LME's are assumed to retain their ADET schools for the next three years.
- The Division of Mental Health, Developmental Disabilities, and Substance Abuse Services (DMH/DD/SAS) will receive the full 10% remittance that the Division is authorized to take under statute. The increased remittance would be used to fund the outcomes study required in Section 4 of the proposed bill.
- The number of DWI offenders that enroll in ADET schools is assumed to remain constant at FY 2003-04 levels.

Impacts of the Fee Increase
By increasing the fee charged to DWI offenders from $75 to $160, ADET school providers will see an overall increase in revenues. These providers include 16 local management entities (LME's), which manage the delivery of community mental health, developmental disabilities, and substance abuse services. In order to determine the likely increase in revenue for the LME's, DHHS provided data on the number of persons served through LME ADET schools in FY 2003-04. Assuming that the number of ADET students remains relatively constant, the expected increase in revenue for the LME's should remain constant for the next two to three years.

This revenue increase for the LME's is affected by the current mental health system reform that DHHS is implementing. As part of reform, the LME's must divest of their direct services and contract for those services with private and other public providers. As a result, within the next three years, the 16 LME's currently providing ADET schools will need to contract for those services. This analysis assumes that revenues for the LME's providing ADET schools will remain constant until FY 2008-09, and at that time, the LME's will no longer administer the ADET schools directly. The following chart shows the estimated revenue increase for the LME's in FY 2005-06.

In addition to the revenue impact to the LME's, DMH/DD/SAS would also experience an increase in revenues. According to G.S. 122C-142.1, the Division has the authority to receive up to 5% of each fee paid by the DWI offender for ADET services. The increase in the fee will result in an increased amount of dollars remitted to DMH/DD/SAS. In addition to the fee increase, the proposed bill increases the percentage that is remitted to DMH/DD/SAS from 5% to 10%. The following chart describes the anticipated impact of the remittance and fee changes for the Division:

Increased Revenues for DMH/DD/SAS	
Persons Served in all ADETS FY 2003-04	4707
Current Fee per Person	$75.00
Estimated Current Revenue for All Providers	$353,025
Percentage Increase Remitted to DMH/DD/SAS	5%
Increased Revenue to DMH/DD/SAS for the current fee	**$17,651**
Propose Fee per Person	$160.00
Difference from Increased Fee	$85
Estimated Revenue Increase for All Providers	$400,095
Fee Percentage Remitted to DMH/DD/SAS	10%
Estimated Revenue Increase for DMH/DD/SAS from the Increased Fee	**$40,010**
Total Revenue Increase for DMH/DD/SAS	**$57,661**

Impacts to Expenditures

Sections 2 and 3 may impact the expenditures of any or all providers of ADET school services. Section 2 establishes in statute the instructor requirements for persons who administer the ADET classes. For any provider that hires instructors that do not meet this requirement, an additional expense would be incurred in hiring higher qualified instructors or purchasing training for existing instructors. Considering that the 16 LME's that current administer ADET schools will divest of those schools within the next three years, section 2 will not apply. The instructor standards will not go into effect until 2009, after the LME's will have divested of these services. No expenditure impact is expected for the LME from this section.

Section 3 requires the ADET school providers to deliver classes that are at least 16 hours long and have no more than 20 persons per class. For ADETS that are not in compliance, the minimum number of class hours could result in increased costs for additional instructor time. In addition, the maximum number of students could result in the need for more class space and/or additional classes. This provision would become effective in FY 2005-06, so an impact to LME expenditures is possible. This analysis does not estimate the expenditure impact to LME's. It is unclear whether any LME's are delivering ADET classes that are not in compliance with Section 3 of this draft bill.

Section 4 directs DHHS to perform an outcome study of the Certificate of Completion program. This study would be ongoing, and DHHS would be required to report to the Legislature every two years. According to DMH/DD/SAS, the cost of this study would be $150,000 in the first year and

$125,000 in subsequent years. As conceived by DMH/DD/SAS, this study would involve creating web-based method for providers to enter records for DWI offenders. This web-based system would allow DMH/DD/SAS to track outcomes for DWI offenders in the Certificate of Completion program and track the performance of providers. Absent an appropriation for such a system, the Division might incur fewer expenses through a paper-based system. This fiscal analysis assumes that the Division will perform a study equal in cost to the revenues available for the study. These revenues are collected through the 10% remittance on each ADET school fee paid by DWI offenders. This analysis assumes annual expenditures totaling $57,661 for the outcome study.

SOURCES OF DATA: Department of Health and Human Services

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Jim Klingler

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: February 18, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

HB 35 A BILL TO BE ENTITLED AN ACT TO INCREASE THE FEE PAID BY DWI OFFENDERS FOR ATTENDING AN ALCOHOL AND DRUG EDUCATION TRAFFIC SCHOOL, TO INCREASE THE AMOUNT REMITTED FROM THE FEE BY AN AREA FACILITY TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, TO INCREASE THE QUALIFICATIONS OF PERSONS WHO WILL BE ELIGIBLE TO PROVIDE ADET SCHOOL INSTRUCTION, TO DIRECT THE COMMISSION ON MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES TO MODIFY THE RULES REGARDING THE NUMBER OF INSTRUCTIONAL HOURS AND MAXIMUM ADET SCHOOL CLASS SIZE, AND TO REQUIRE THE DEPARTMENT TO ESTABLISH AN OUTCOMES EVALUATION STUDY ON THE EFFECTIVENESS OF SUBSTANCE ABUSE SERVICES AS RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1194
Committee Substitute Favorable 4/19/05

Short Title: Physical Therapists/Professional Corporations. (Public)

Sponsors:

Referred to:

April 12, 2005

A BILL TO BE ENTITLED

AN ACT TO DEFINE PHYSICAL THERAPY AS A PROFESSIONAL SERVICE UNDER THE PROFESSIONAL CORPORATION ACT, TO AUTHORIZE THE NORTH CAROLINA BOARD OF PHYSICAL THERAPY EXAMINERS TO DISCIPLINE PERSONS FOR PAYING FOR REFERRALS OF PHYSICAL THERAPY PATIENTS, AND TO PREVENT CORPORATE OR BUSINESS INTERESTS FROM INTERFERING WITH PROFESSIONAL PHYSICAL THERAPY JUDGMENTS CONCERNING THE BEST INTERESTS OF PATIENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 55B-2(6) reads as rewritten:

"(6) The term "professional service" means any type of personal or professional service of the public which requires as a condition precedent to the rendering of such service the obtaining of a license from a licensing board as herein defined, and pursuant to the following provisions of the General Statutes: Chapter 83A, "Architects"; Chapter 84, "Attorneys-at-Law"; Chapter 93, "Public Accountants"; and the following Articles in Chapter 90: Article 1, "Practice of Medicine," Article 2, "Dentistry," Article 6, "Optometry," Article 7, "Osteopathy," Article 8, "Chiropractic," Article 9A, "Nursing Practice Act," with regard to registered nurses, Article 11, "Veterinarians," Article 12A, "Podiatrists," Article 18A, "Practicing Psychologists," Article 18B, "Physical Therapy," Article 18C, "Marriage and Family Therapy Licensure," Article 18D, "Occupational Therapy," Article 22, "Licensure Act for Speech and Language Pathologists and Audiologists," and Article 24, "Licensed Professional Counselors"; Chapter 89C, "Engineering and Land Surveying"; Chapter 89A, "Landscape Architects"; Chapter 90B, "Social Worker Certification and Licensure Act" with regard to Licensed Clinical Social Workers as

defined by G.S. 90B-3; Chapter 89E, "Geologists"; Chapter 89B, "Foresters"; and Chapter 89F, "North Carolina Soil Scientist Licensing Act"."

SECTION 2. G.S. 90-270.26 is amended to add a new subdivision to read:

"(7a) Regulate physical therapy professional corporations pursuant to Chapter 55B of the General Statutes and this Article, including adopting rules for the registration of physical therapy professional corporations."

SECTION 3. Article 18B of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-270.31A. Physical therapy professional corporations.**

The Board shall not issue a certification to a professional corporation pursuant to G.S. 55B-6 for the transfer of stock to an individual who is not licensed under this Article unless the individual presents evidence satisfactory to the Board that the laws governing or regulating physical therapy practices and professional corporations in the jurisdiction where the individual is duly licensed and performs physical therapy professional services are equivalent to, or require a higher standard than, the provisions of this Article and Chapter 55B of the General Statutes."

SECTION 4. G.S. 90-270.35 is amended by adding a new subdivision to read:

"(4a) Practice physical therapy and make physical therapy patient treatment decisions based on corporate or business standards or parameters rather than on the best interest of the patient in the physical therapist's sound professional judgment;".

SECTION 5. G.S. 90-270.36 is amended by adding a new subdivision to read:

"(6a) Violation of G.S. 90-401 by financially compensating or rewarding another person, firm, or corporation for recommending, arranging, or securing employment by a patient."

SECTION 6. This act becomes effective January 1, 2006, and applies to acts occurring or offenses committed on or after that date.

HOUSE BILL 1194:
Physical Therapists/Professional Corporations

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Reps. Weiss, Insko
Date:	April 23, 2005	**Summary by:**	Martha Walston
Version:	2nd Edition		Committee Counsel

SUMMARY: ***House Bill 1194 would permit physical therapists to form professional corporations and would authorize the Board of Physical Therapy Examiners to discipline persons for paying for referrals of physical therapy patients. The act would become effective January 1, 2006 and would apply to acts occurring or offenses committed on or after that date.***

Before forming a professional corporation, the physical therapists must obtain a certificate of registration from the Board of Physical Therapy Examiners and pay a registration fee not to exceed $50. The renewal fee may not exceed $25.

House bill 1194 was given a favorable report in the House Committee on Health.

CURRENT LAW: Persons engaging in certain professional services[1] may form a professional corporation under State law, with the following limitations:

- At least one incorporator must be someone duly licensed by the applicable licensing board i.e. a "licensee".
- All of the shares of stock of the corporation must be owned and held by a licensee or licensees.
- At least one director and one officer must be a licensee.
- The articles of incorporation, in addition to the requirements of the NC Business Corporations Act, shall designate the personal services to be rendered by the professional corporation and shall be accompanied by a certification by the appropriate licensing board that the ownership of the shares of stock is in compliance with statutory requirements.

Generally, shares of capital stock in a professional corporation may be issued only to licensees, and may only be transferred to other licensees. However, corporate stock may be held by a person licensed in another state who performs services for the corporation in that state, so long as at least one shareholder is a licensee and the corporation renders its professional services in this State through those shareholders that are licensed in this State. No share or shares may be transferred unless the corporation has received a certification of the licensing board that the transferee is a licensee. Any share of stock issued or transferred in violation of these requirements is void.

Professional corporations must obtain a certificate of registration from the applicable licensing board before opening, operating, or maintaining an establishment in this State. The fee for this certificate of registration may not exceed $50, and the renewal fee may not exceed $25.

Physical therapists must be licensed by the North Carolina Board of Physical Therapy Examiners (Board) in order to engage in the practice of physical therapy in this State.

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[1] "Professional service" means any type of personal or professional service of the public that requires as a condition precedent to the rendering of the service the obtaining of a license from a licensing board, and includes the professions listed in G.S. 55-2(6), shown in Section 1 of the bill.

BILL ANALYSIS: Section 1 of House Bill 1194 would define physical therapy as a professional service so that physical therapists could form professional corporations in this State.

Section 2 would expand the powers and duties of the Board to include the regulation of physical therapy professional corporations.

Section 3 would prohibit the Board from issuing certification for the transfer of stock to a person who is not licensed as a physical therapist in this State unless the person presents evidence satisfactory to the Board that the laws regulating physical therapy in the State in which the person is licensed are equivalent to, or require a higher standard than, the standards in this State.

Section 4 would make it unlawful to practice physical therapy and make physical therapy patient treatment decisions based on corporate or business standards or parameters rather than on the best interest of the patient. A person violating this provision would be guilty of a Class 1 misdemeanor, and would subject a licensee to disciplinary action by the Board.

Section 5 would make the financial compensation of another person for recommending, arranging, or securing employment by a patient grounds for disciplinary action by the Board.

Section 6 would make the act effective January 1, 2006 and apply to acts occurring or offenses committed on or after that date.

Dianna Jessup, counsel to the House Committee on Health, contributed substantially to this summary.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

HB 1194 A BILL TO BE ENTITLED AN ACT TO DEFINE PHYSICAL THERAPY AS A PROFESSIONAL SERVICE UNDER THE PROFESSIONAL CORPORATION ACT, TO AUTHORIZE THE NORTH CAROLINA BOARD OF PHYSICAL THERAPY EXAMINERS TO DISCIPLINE PERSONS FOR PAYING FOR REFERRALS OF PHYSICAL THERAPY PATIENTS, AND TO PREVENT CORPORATE OR BUSINESS INTERESTS FROM INTERFERING WITH PROFESSIONAL PHYSICAL THERAPY JUDGMENTS CONCERNING THE BEST INTERESTS OF PATIENTS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 646

Short Title:	Insurance Company Fee Consolidation.-AB	(Public)
Sponsors:	Representative Holliman.	
Referred to:	Insurance, if favorable, Finance.	

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO CONSOLIDATE VARIOUS FEES INTO THE ANNUAL LICENSE CONTINUATION FEE PAID BY LICENSED INSURANCE COMPANIES TO ENHANCE EFFICIENT ADMINISTRATION OF FEE COLLECTION AND PROCESSING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-6-5 reads as rewritten:

"**§ 58-6-5. Schedule of fees and charges.**

The Commissioner shall collect and pay into the State treasury fees and charges as follows:

(1) For filing and examining an insurance company application for admission, a nonrefundable fee of two hundred fifty dollars ($250.00), to be submitted with ~~such filing; for filing and auditing annual statement, one hundred dollars ($100.00); for filing any other papers required by law, twenty-five dollars ($25.00); for each certificate of examination, condition, or qualification of company or association, fifteen dollars ($15.00); for each seal when required, ten dollars ($10.00); for a list of licensed insurance companies, ten dollars ($10.00).~~ the filing; for each certification or confirmation of an insurance company deposit held by the Commissioner pursuant to this Chapter, twenty-five dollars ($25.00).

(2) Repealed by Session Laws 1977, c. 376, s. 2.

(3) The Commissioner shall receive for copy of any record or paper in his office fifty cents (50¢) per copy ~~sheet and ten dollars ($10.00) for certifying same, or any fact or data from the records of his office and for the examination and approval of charters of companies, twenty-five dollars ($25.00).~~ sheet.

(4) He shall collect all other fees and charges due and payable into the State treasury by any company, association, order, or individual under his Department.

(5) Repealed by Session Laws 1999-435, s. 1."

SECTION 2. G.S. 58-6-7 reads as rewritten:

"**§ 58-6-7. Licenses; perpetual licensing; annual license continuation fees for insurance companies.**

(a) In order to do business in this State, an insurance company shall apply for and obtain a license from the Commissioner. The license shall be perpetual and shall continue in full force and effect, subject to timely payment of the annual license continuation fee in accordance with this Chapter and subject to any other applicable provision of the insurance laws of this State. Except as provided in subsection (b) of this section, the insurance company shall pay a fee for each year the license is in effect, as follows:

For each domestic farmer's mutual assessment fire insurance company ..... $ 25.00

For each fraternal order ..... ~~100.00~~ 500.00

For each of all other insurance companies, except mutual burial associations taxed under G.S.105-121.1 ..... ~~1,000.00~~ 1,500.00

The fees levied in this subsection are in addition to those specified in G.S. 58-6-5.

~~(b) When the paid-in capital stock or surplus, or both, of an insurance company, other than a farmer's mutual assessment company or a fraternal order, does not exceed one hundred thousand dollars ($100,000), the fee levied in this section shall be one-half the amount specified.~~

(c) Upon payment of the fee specified above and the fees and taxes elsewhere specified each insurance company, exchange, bureau, or agency, shall be entitled to do the types of business specified in Chapter 58, of the General Statutes of North Carolina as amended, to the extent authorized ~~therein, except that: Insurance companies authorized to do either the types of business specified for (i) life insurance companies, or (ii) for fire and marine companies, or (iii) for casualty and fidelity and surety companies, in G.S. 58-7-75, which shall also do the types of business authorized in one or both of the other of the above classifications shall in addition to the fees above specified pay one hundred dollars ($100.00) for each such additional classification of business done.~~ therein. All fees and charges collected by the Commissioner under this Chapter are nonrefundable.

(d) Any rating bureau established by action of the General Assembly of North Carolina shall be exempt from the fees in this section."

SECTION 3. G.S. 58-7-150 and G.S. 58-7-155 are repealed.

SECTION 4. G.S. 58-8-60(b) reads as rewritten:

"(b) The articles of incorporation shall provide for the name of the corporation, to be approved by the Commissioner; the kinds of insurance it proposes to transact and on what business plan or principle; and the place of its location in the State. The certificate of incorporation must be subscribed and sworn to by a majority of the board of directors before an officer authorized to take acknowledgement of deeds, who shall certify the

certificate to the Commissioner. The Commissioner shall review the certificate and articles of incorporation and file them with the Secretary of State in accordance with ~~G.S. 58-7-35 upon payment of the required fees.~~ G.S. 58-7-35."

SECTION 5. G.S. 58-65-55 reads as rewritten:

"**§ 58-65-55. Issuance and continuation of license.**

(a) Every corporation subject to this Article shall pay to the Commissioner a fee of two hundred fifty dollars ($250.00) for filing an application for a license. Fee payment shall be contemporaneous with the filing. Before issuing or continuing any such license or certificate the Commissioner may make such an examination or investigation as the Commissioner deems expedient. The Commissioner shall issue a license upon the payment of a fee of ~~one thousand dollars ($1,000)~~ one thousand five hundred dollars ($1,500) and upon being satisfied on the following points:

(1) The applicant is established as a bona fide nonprofit hospital service corporation as defined by this Article and Article 66 of this Chapter.

(2) The rates charged and benefits to be provided are fair and reasonable.

(3) The amounts provided as working capital of the corporation are repayable only out of earned income in excess of amounts paid and payable for operating expenses and hospital and medical and/or dental expenses and such reserve as the Department deems adequate, as provided hereinafter.

(4) That the amount of money actually available for working capital be sufficient to carry all acquisition costs and operating expenses for a reasonable period of time from the date of the issuance of the certificate.

(b) The license shall continue in full force and effect, subject to payment of an annual license continuation fee of ~~one thousand dollars ($1,000),~~ one thousand five hundred dollars ($1,500), subject to all other provisions of subsection (a) of this section and subject to any other applicable provisions of the insurance laws of this State."

SECTION 6. G.S. 58-67-160 reads as rewritten:

"**§ 58-67-160. Fees.**

Every health maintenance organization subject to this Article shall pay to the Commissioner a fee of two hundred fifty dollars ($250.00) for filing an application for a license and an annual license continuation fee of ~~one thousand dollars ($1,000)~~ one thousand five hundred dollars ($1,500) for each license. The license shall continue in full force and effect, subject to timely payment of the annual license continuation fee in accordance with G.S. 58-6-7 and subject to any other applicable provisions of the insurance laws of this State."

SECTION 7. This act becomes effective July 1, 2005, and applies to applications filed, licenses issued, and licenses continued on or after that date.

ATTACHMENT 16

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 646

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

H646-ARB-7 [v.1]

Date 4-26- ,2005

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

Representative Holliman

moves to amend the bill on page 2, line 38, by rewriting the line to read:
"**SECTION 3.** G.S. 58-7-150(c) and G.S. 58-7-155 are repealed.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

HOUSE BILL 646:
Insurance Company Fee Consolidation.-AB

BILL ANALYSIS

Committee:	House Finance	**Date:**	April 26, 2005
Introduced by:	Rep. Holliman	**Summary by:**	Cindy Avrette
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 646 is a recommendation of the Department of Insurance and has received a favorable recommendation from the House Insurance Committee. The bill eliminates various fees charged to insurance companies and increases the annual license continuation fee. The purpose of the fee consolidations is to lessen the administrative time spent by both the Department and the companies collecting and processing the various fees. The bill becomes effective July 1, 2005, and applies to applications filed, licenses issued, and licenses continued on or after that date.

THE BILL NEEDS A TECHNICAL AMENDMENT TO CORRECT AN INCORRECT STATUTORY CITE.

BILL ANALYSIS: House Bill 646 makes changes to fees paid by insurers to the Department of Insurance. It eliminates fees for filing and auditing annual statements, filing papers required by law, issuance of certificates of examination, condition, or qualification of a company or association, for required seals, lists of insurance companies, certifying records or data from the Commissioner's office, the examination or approval of charters, and fees for additional classifications of business beyond an insurer's primary classification.

To offset the loss of revenue from the elimination of the above fees, licensing and license continuation fees for most insurers are equalized and increased from $1,000 to $1,500. Section 2 of the bill eliminates the reduction of fees payable by insurance companies with less than $100,000 in paid-in capital stock or surplus. Under current law, the license fee payable by these companies is one-half of the general license fees. Section 2 of the bill would provide that these companies would be subject to the same $1,500 fee as other insurance companies.

However, the proposed license fee changes do preserve the lower license fee amounts paid by farmer's mutual assessment companies and fraternal orders. The bill increases the annual license fee for a fraternal order from $100 to $500 and it retains the $25 annual license fee amount for farmer's mutual assessment companies.

The bill also imposes the $250 application fee on Article 65 medical service corporations such as Blue Cross & Blue Shield and Delta Dental. Currently, Article 65 corporations do not pay an application fee.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 646 A BILL TO BE ENTITLED AN ACT TO CONSOLIDATE VARIOUS FEES INTO THE ANNUAL LICENSE CONTINUATION FEE PAID BY LICENSED INSURANCE COMPANIES TO ENHANCE EFFICIENT ADMINISTRATION OF FEE COLLECTION AND PROCESSING.

☒ With a favorable report, as amended.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

North Carolina General Assembly

House Committee on Finance

Minutes

~

May 3, 2005

The House Committee on Finance met on Tuesday, May 3, 2005 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, Luebke, McComas and Wainwright; Vice-Chairs Daughtridge, Ross, Weiss, and Womble; and Representatives Blackwood, Blust, Bordsen, Capps, Carney, Faison, Folwell, Glazier, Hackney, Holliman, Jones, Lewis, McGee, Rayfield, Underhill, and Walend. Also present were Sergeant-at-Arms Bill Freeman, Fred Hines, Dusty Rhodes, and Bill Sullivan. Staff persons present included Cindy Avrette, Rodney Bizzell, Ashley Huffstetler, and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairwoman Howard called the meeting to order at 8:32 am and recognized the two (2) pages present: Kevin Myers of Johnston County, sponsored by Representative Langdon; and Kym Rumley of Wake County, sponsored by Representative Dollar.

The first bill under the Committee's consideration was **HB 1217 – NOTARY FEE INCREASE** (see **attachment 3**). Chairwoman Howard recognized Representative Earle who explained that the bill increases the fee that may be collected by notaries from three dollars ($3) to six dollars ($6). Chairwoman Howard then recognized Representative Gibson who moved that House Bill 1217 be given a favorable report. Seeing no discussion, Chairwoman Howard called the motion to a vote, and it carried by consent.

Chairwoman Howard then recognized Representative Haire to explain **HB 896 – STATE BAR/APPEAL/FEE** (see **attachment 4**). Representative Haire stated that this bill increases the annual enrollment fee for the North Carolina State Bar from no more than two hundred dollars ($200) to no more than three hundred dollars ($300). The bill also provides the North Carolina State Bar with an appeal of right from any final order of the Disciplinary Hearing Commission. Representative Haire reported that he knew of no opposition to the bill and that the bill came at the request of the North Carolina Bar Association and the North Carolina State Bar. Following the explanation, Chairwoman Howard recognized Representative Luebke who moved that House Bill 896 be given a favorable report by the Committee. As there was no further debate, Chairwoman Howard called the motion to a vote, and it carried without objection.

The next bill under consideration by the Committee was **HB 105 – MOTOR FUEL TAX CHANGES** (see **attachment 5**). Chairwoman Howard first recognized Representative Alexander who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Representative Luebke was then recognized and explained that this bill was essentially a cleanup bill that made several changes regarding the licensing and

penalties of the motor fuel laws. He also noted that this bill provided for no tax increases. Representative Daughtridge was then recognized and moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairwoman Howard called the motion to a vote, and it carried without objection.

Chairwoman Howard then took a moment to recognize the birthdays of Jason Cannon, the Committee Clerk; and Bill Freeman with the Sergeant-at-Arms staff. The Committee proceeded to sing the birthday song in celebration of this momentous occasion. The room was filled with joyous song and an abundance of gleeful laughter as the spirit of festivity temporarily dwelt in the people who gathered in Room 544 of the Legislative Office Building. Chairwoman Howard announced the serving of a vanilla cake with chocolate icing after the meeting's conclusion.

Chairwoman Howard then recognized Representative Alexander who moved for the adoption of the proposed committee substitute for the Committee's consideration for **HB 1030 – INCREASE AIPORT AUTHORITY POWERS** (see **attachment 6**). The motion was adopted. Chairwoman Howard then recognized Representative Stiller who explained that this bill clarifies the powers of the Brunswick Airport Commission and authorizes the local airport authorities across the State to borrow money. He stated that there had originally been some constitutional concerns on the bill but also noted that the PCS before the Committee addressed those concerns. Following the explanation, Representative Holliman moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. As there was no further debate, Chairwoman Howard called the motion to a vote and it carried by consent.

The final bill under consideration by the Committee was **HB 689 – MONROE MEALS TAX** (see **attachment 7**). Chairman Howard first recognized Representative Alexander who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Representative Gibson was then recognized who sent forth an amendment (see **attachment 8**) and moved its adoption. He explained that the amendment provided for the meals tax to be voted on in a referendum by the citizens of Monroe. As there was no debate on the amendment, Chairwoman Howard called the motion to a vote, and the amendment was adopted. Representative Gibson then continued to explain that the bill authorizes the City to levy a one percent (1%) sales tax on prepared food and beverages if the voters approve the tax in an election held in 2006. He further stated that the additional tax would go to support the construction of a civic center in the City of Monroe. Following the explanation, former Senator Fern Shubert was recognized by the Chair and announced her opposition to the bill. She stated as one of her objections that no one has seen the plans for a civic center. She also stated that the City is taxing the poor people of Union County to make up for the budget shortfalls and the mismanagement of the City of Monroe. Chairwoman Howard then recognized Representative Blackwood who claimed that eighty percent (80%) of the food and beverage tax would be the burden of the people of Union County, while only twenty percent (20%) would be paid from visitors from outside the county. Representative Jones was then recognized who felt that this bill is favorable to democracy because it allows the people of Monroe to vote on the bill in a referendum. Chairwoman Howard next recognized Representative Carney who, citing the benefits attributable to the additional food and beverage tax passed by the General Assembly for Charlotte/Mecklenburg, moved for a favorable report to a new proposed committee substitute, incorporating the adopted Gibson amendment, and an unfavorable report to the original bill. Chairwoman Howard then recognized T.J. Williams from the North Carolina Restaurant Association who spoke in opposition to the bill and submitted a letter to the Committee (see **attachment 9**). He stated that a better alternative would be a half-cent local sales tax increase, instead of a one percent prepared food and beverage tax. Representative Daughtridge was then recognized who noted that this bill would be an additional burden on small businesses, as they would be required to keep special book keeping

records. Chairwoman Howard then recognized Representative Luebke who asked why the referendum called for in the bill would be held in 2006, instead of 2005. Representative Gibson was recognized to respond and replied that the Monroe City Council requested the referendum in 2006. Seeing no further discussion, Chairwoman then called the Representative Carney's motion to a vote and it carried by a majority.

As there was no further business before the Committee, Chairwoman Howard then adjourned the meeting at 9:07 am.

Respectfully submitted,

Representative Julia Howard
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. House Bill 1217 (and related materials)
4. House Bill 896 (and related materials)
5. House Bill 105 (and related materials)
6. House Bill 1030 (and related materials)
7. House Bill 689 (and related materials)
8. Gibson Amendment on HB 689 - **ADOPTED**
9. Letter to the Committee from T.J. Williams, North Carolina Restaurant Association

North Carolina General Assembly

House Committee on Finance

Minutes

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Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

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6. House Bill 1030 (and related materials)
7. House Bill 689 (and related materials)
8. Gibson Amendment on HB 689 - **ADOPTED**
9. Letter to the Committee from T.J. Williams, North Carolina Restaurant Association

AGENDA

ATTACHMENT 1

House Finance Committee

May 3, 2005
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Howard

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard
Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order

Introduction of Pages

Bills:

HB 105 MOTOR FUEL TAX CHANGES *Rep. Luebke*

HB 689 MONROE MEALS TAX *Rep. Gibson*

HB 896 STATE BAR/APPEAL/FEE *Rep. Haire*

HB 1030 BRUNSWICK COUNTY AIRPORT AUTHORITY *Rep. Stiller*

HB 1217 NOTARY FEE INCREASE *Rep. Earle*

Adjournment

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, May 3, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 105 – MOTOR FUEL TAX CHANGES – Rep. Luebke

HB 689 – MONROE MEALS TAX – Rep. Gibson

HB 896 – STATE BAR/APPEAL/FEE – Rep. Haire

HB 1030 – BRUNSWICK COUNTY AIRPORT AUTHORITY – Rep. Stiller

HB 1217 – NOTARY FEE INCREASE – Rep. Earle

Respectfully,
Representatives Alexander, Gibson, Howard, Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **8:05 a.m.** on **April 28, 2005.**

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

ATTACHMENT 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — May 3, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Fenton	N.C. State Bar
John McMillan	MFOS
[illegible]	Disney
Fay F. Harris	NCPMA
John Mabry	Governing
Amy Hobbs	Hobbs & Co
[illegible]	NCRD
[illegible]	Capitol Group
Ken Melton	D.O.R.
Donna Alderman	DOR
Reggie Little	DOR

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — May 3, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Peter Skillern	CRA-NC
Erin Kenney	NC Conservation Network
Candle Lanier	EGHS
Paul Hogeman	Infomart Inc.
Warren Plonk	OSBM
Bill Weathersbee	NC-APJ
Sharon Spence	Lee County Schools
Howard Hunter	N.C.S.D.A.
Doug Lassiter	NCSTA
Jessica Sage	NCPPC
Jim Blackburn	NC Association of County Commissioners

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — May 3, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Romanet	NC-AM.
Jami Fitzgerald	NCFPC
Doug Heron	NC BAR ASSOC.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1217

Short Title:	Notary Fee Increase.	(Public)
Sponsors:	Representatives Earle; Bell, Cunningham, Parmon, Wainwright, and Wright.	
Referred to:	Finance.	

April 13, 2005

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE FEE THAT MAY BE COLLECTED BY NOTARIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 10A-10 reads as rewritten:

"**§ 10A-10. Fees of notaries.**

The maximum fees that may be charged by a notary for notarial acts are as follows:

(1) For acknowledgments, ~~three dollars ($3.00)~~ six dollars ($6.00) per signature.

(2) For oaths or affirmations without a verification or proof, ~~three dollars ($3.00)~~ six dollars ($6.00) per person.

(3) For verifications or proofs, ~~three dollars ($3.00)~~ six dollars ($6.00) per signature."

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

HOUSE BILL H1217:
Notary Fee Increase

BILL ANALYSIS

Committee:	House Finance	**Date:**	May 3, 2005
Introduced by:	Earle	**Summary by:**	Martha Walston
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1217 increases the maximum fees that a notary public may charge from $3 to $6.

CURRENT LAW: A qualified person commissioned as a notary by the Secretary of State may perform any of the following notarial acts:

1. Acknowledgment – A notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has admitted, in the notary's presence, having signed a document voluntarily.
2. Oath or affirmation – A notarial act, in which a notary certifies that a person made a vow or affirmation in the presence of the notary, with reference made to a Supreme Being for an oath and with no reference made to a Supreme Being for an affirmation.
3. Verification or proof – A notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has, in the notary's presence, voluntarily signed a document and taken an oath or affirmation concerning the document.

To qualify as a notary public a person must be at least 18, reside or work in the State, satisfactorily complete a course of study approved b the Secretary, purchase and keep a reference manual approved by the Secretary, submit an application, and pay a nonrefundable $50 fee. A notary's commission is for a term of five years.

BILL ANALYSIS: House Bill 1217 increases the fee that a notary public may charge for the following services:

- For acknowledgments, the fee increases from $3 per signature to $6 per signature
- For oaths or affirmations without a verification or proof, the fee increases from $3 per person to $6 per person.
- For verifications or proof, the fee increases from $3 per person to $6 per person.

These fees were last increased in 1998. At that time they were increased from $2 to $3.

EFFECTIVE DATE: House Bill 1217 is effective when it becomes law.

h1217e1-SMLA

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 1217 (First Edition)

SHORT TITLE: Notary Fee Increase.

SPONSOR(S): Representative Earle

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:	**See Assumptions and Methodology**				
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Secretary of State

EFFECTIVE DATE: When law.

BILL SUMMARY: HB 1217 increases from $3 to $6 the maximum fee that may be charged by a notary for acknowledgments, for oaths or affirmations without a verification or proof, and for verifications or proofs.

ASSUMPTIONS AND METHODOLOGY: The fees increased by HB 1217 are paid directly to the notary. The number of acknowledgements, oaths, and affirmations a notary provides in a given year varies greatly. Because the fees are paid to the notaries themselves, the legislation has no fiscal impact on the State.

There are 168,000 licensed notaries in North Carolina according to the Secretary of State's Notary Public Section.

SOURCES OF DATA: Secretary of State Notary Public Section

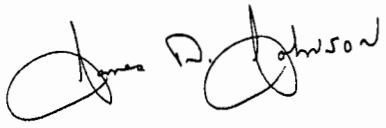
TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Linda Struyk Millsaps and Brenna Erford

Official
Fiscal Research Division
Publication

APPROVED BY: James D. Johnson, Director
Fiscal Research Division



DATE: May 2, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 1217 A BILL TO BE ENTITLED AN ACT TO INCREASE THE FEE THAT MAY BE COLLECTED BY NOTARIES.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H 1

HOUSE BILL 896

Short Title:	State Bar/Appeal/Fee.	(Public)
Sponsors:	Representative Haire.	
Referred to:	Finance.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THE STATE BAR WITH AN APPEAL OF RIGHT FROM FINAL ORDERS OF THE DISCIPLINARY HEARING COMMISSION AND TO INCREASE THE MAXIMUM AMOUNT OF THE ANNUAL MEMBERSHIP FEES FOR MEMBERS OF THE STATE BAR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 84-28(h) reads as rewritten:

"(h) There shall be an appeal of right by either party from any final order of the Disciplinary Hearing Commission ~~imposing admonition, reprimand, censure, suspension, stayed suspension, or disbarment upon an attorney, or involuntarily transferring a member of the North Carolina State Bar to disability inactive status~~ to the North Carolina Court of Appeals. Review by the appellate division shall be upon matters of law or legal inference. The procedures governing any appeal shall be as provided by statute or court rule for appeals in civil cases. A final order which imposes disbarment or suspension for 18 months or more shall not be stayed except upon application, under the rules of the Court of Appeals, for a writ of supersedeas. A final order imposing suspension for less than 18 months or any other discipline except disbarment shall be stayed pending determination of any appeal of right."

SECTION 2. G.S. 84-34 reads as rewritten:

"**§ 84-34. Membership fees and list of members.**

Every active member of the North Carolina State Bar shall, prior to the first day of July of each year, pay to the secretary-treasurer an annual membership fee in an amount determined by the Council but not to exceed ~~two hundred dollars ($200.00),~~ three hundred dollars ($300.00), and every member shall notify the secretary-treasurer of the member's correct mailing address. Any member who fails to pay the required dues by the last day of June of each year shall be subject to a late fee in an amount determined by the Council but not to exceed thirty dollars ($30.00). All dues for prior years shall be as were set forth in the General Statutes then in effect. The membership fee shall be regarded as a service charge for the maintenance of the several services authorized by

this Article, and shall be in addition to all fees required in connection with admissions to practice, and in addition to all license taxes required by law. The fee shall not be prorated: Provided, that no fee shall be required of an attorney licensed after this Article shall have gone into effect until the first day of January of the calendar year following that in which the attorney was licensed; but this proviso shall not apply to attorneys from other states admitted on certificate. The fees shall be disbursed by the secretary-treasurer on the order of the Council. The secretary-treasurer shall annually, at a time and in a law magazine or daily newspaper to be prescribed by the Council, publish an account of the financial transactions of the Council in a form to be prescribed by it. The secretary-treasurer shall compile and keep currently correct from the names and mailing addresses forwarded to the secretary-treasurer and from any other available sources of information a list of members of the North Carolina State Bar and furnish to the clerk of the superior court in each county, not later than the first day of October in each year, a list showing the name and address of each attorney for that county who has not complied with the provisions of this Article. The name of each of the active members who are in arrears in the payment of membership fees shall be furnished to the presiding judge at the next term of the superior court after the first day of October of each year, by the clerk of the superior court of each county wherein the member or members reside, and the court shall thereupon take action that is necessary and proper. The names and addresses of attorneys so certified shall be kept available to the public. The Secretary of Revenue is hereby directed to supply the secretary-treasurer, from records of license tax payments, with any information for which the secretary-treasurer may call in order to enable the secretary-treasurer to comply with this requirement.

The list submitted to several clerks of the superior court shall also be submitted to the Council at its October meeting of each year and it shall take the action thereon that is necessary and proper."

SECTION 3. Section 2 of this act becomes effective July 1, 2005. The remainder of this act is effective when it becomes law and applies to final orders of the Disciplinary Hearing Commission issued on or after that date.

HOUSE BILL H896:
State Bar/Appeal/Fee

BILL ANALYSIS

Committee:	House Finance	**Date:**	May 3, 2005
Introduced by:	Haire	**Summary by:**	Martha Walston
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 896 amends the laws governing the North Carolina State Bar by:

- Providing the North Carolina State Bar an appeal of right from any final order of the Disciplinary Hearing Commission.
- Increasing the annual membership fee from an amount not to exceed $200 to an amount not to exceed $300.

CURRENT LAW: The North Carolina State Bar is an agency of the State with statutory authority to regulate the professional conduct of licensed attorneys. Governance of the State Bar is vested in a Council composed of 55 councilors (active members of the State Bar) and three public members not licensed to practice law. The Council has the power to take actions to ensure the competence of lawyers, adopt rules of professional ethics and conduct, investigate and prosecute matters of professional misconduct, grant or deny petitions of reinstatement, arbitrate disputes concerning legal fees, certify legal specialists, and determine whether a member is disabled.

The Disciplinary Hearing Commission of the State Bar is authorized to hold hearings in discipline, incapacity and disability matters, to make findings of fact and conclusions of law after the hearings, and to enter orders necessary to carry out the duties delegated to it by the Council. The Commission is composed of 20 members. Twelve of these members are members of the State Bar appointed by the Council and eight are laypersons (four appointed by the Governor and four appointed by the General Assembly).

BILL ANALYSIS: Section 1 of the bill provides that either party may appeal the final order of the Disciplinary Hearing Commission to the North Carolina Court of Appeals. This appeal of right would apply to both the State Bar and the attorney who is a party to the disciplinary action. Under current law, the statute provides "an appeal of right from any final order imposing admonition, reprimand, censure, suspension, stayed suspension, or disbarment upon an attorney, or involuntarily transferring a member of the North Carolina State Bar to disability inactive status." In a 2003 decision, the North Carolina Court of Appeals ruled that the language in the current statute provided no appeal from a final order that did not impose discipline. *State Bar v. Rudisill, 583.S.E. 2d 413,discretionary review denied, 589 S.E.2d 127 (2003).* In this case, the Disciplinary Hearing Commission granted summary judgment in favor of the attorney. The North Carolina State Bar appealed the Commission's decision to the North Carolina Court of Appeals. The appellate court dismissed the State Bar's appeal on grounds that its jurisdiction was limited to that provided by the General Assembly, and the statute in question did not provide an appeal of right from a final order that does not impose discipline. House Bill 896 would allow the State Bar to appeal from a final order where no discipline is imposed.

Section 2 of the bill increases the annual membership fee from an amount not to exceed $200 to an amount not to exceed $300. The State Bar last requested a dues increase in 1995. Currently the State Bar is assessing dues at the $200 statutory maximum. Every lawyer desiring to practice in North Carolina, including judges and district attorneys, is required to pay dues. This fee is regarded as a service charge for the maintenance of the services authorized by the State Bar. These services include administering professional discipline, assisting members of the public who have problems with lawyers

and the legal system, mediating fee disputes between lawyers and their clients, giving lawyers ethics advice, randomly auditing attorney trust accounts, reimbursing victims of dishonest lawyers, assisting lawyers suffering from addiction and mental illness, and making grants to support the provision of legal services to poor people.

EFFECTIVE DATE: Section 2 of the bill becomes effective July 1, 2005. The remainder is effective when it becomes law and applies to final orders of the Commission issued on or after that date.

H896e1-SMLA

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 896 (First Edition)

SHORT TITLE: State Bar/Appeal/Fee.

SPONSOR(S): Representative Haire

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund	**No General Fund Impact**				
State Bar	**$727,525**	**$749,351**	**$771,831**	**$794,986**	**$1,169,766**
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: State Bar

EFFECTIVE DATE: Section 1, effective when law; Section 2, effective July 1, 2005.

BILL SUMMARY: The first section of HB 896 has no fiscal impact. The second section of HB 896 increases the annual State Bar membership fee from an amount not to exceed $200 to an amount not to exceed $300. The State Bar last requested a dues increase in 1995. Currently the State Bar is assessing dues at the $200 statutory maximum. Every lawyer desiring to practice in North Carolina, including judges and district attorneys, is required to pay dues. This fee is regarded as a service charge for the maintenance of the services authorized by the State Bar. These services include administering professional discipline, assisting members of the public who have problems with lawyers and the legal system, mediating fee disputes between lawyers and their clients, giving lawyers ethics advice, randomly auditing attorney trust accounts, reimbursing victims of dishonest lawyers, assisting lawyers suffering from addiction and mental illness, and making grants to support the provision of legal services to poor people.

ASSUMPTIONS AND METHODOLOGY: The State Bar derives most of its funding from member dues and does not receive any support for its operations from the General Fund, although it does distribute State funds in the form of grants to other entities in accordance with

statutory directives. Member dues are paid directly to the State Bar. Under current law, member dues may not exceed $200. The agency has requested an increase in the statutory maximum since their annual revenue from dues is projected to fall short of their operating expenses beginning in 2006 if left at the current $200 level.

The State Bar intends to increase their annual dues by $35 beginning in 2006. They expect this will provide sufficient funding for all operations over the next three to four years, after which they may consider another increase. The $100 increase in the statutory maximum is based on the agency's 10-year projections and is designed to allow the State Bar to increase membership dues as needed over the next decade without seeking statutory changes.

This projection assumes a $35 increase for a total annual membership fee of $235 from 2006 through 2009. It then assumes a $15 increase over the $235 annual membership fee for a total of $250 in 2010.

State Bar members numbered 20,181 in 2005, and this projection assumes an annual 3% increase in membership through 2010. This is slightly higher than the 2.65% historical 5-year average derived from the table below.

Historic State Bar Membership and Fees 2000-2005						
	2000	**2001**	**2002**	**2003**	**2004**	**2005**
# of members	17,660	18,310	18,721	19,321	19,745	20,181
% change in membership	2.37%	3.68%	2.24%	3.20%	2.19%	2.21%
Annual dues*	$175	$175	$175	$175	$200	$200
Total revenue from dues (in millions)	**$3.09**	**$3.20**	**$3.28**	**$3.38**	**$3.95**	**$4.04**

Nationwide, law schools are experiencing full enrollment and the number of law school graduates taking the bar exam has steadily increased. Additionally, two North Carolina universities will open new law schools in coming years, one in 2006 and one in 2007. These factors make it likely that North Carolina will see a higher number of attorneys seeking State Bar membership in upcoming years.

Projected State Bar Membership and Fees 2005-2010					
	2005-06	**2006-07**	**2007-08**	**2008-09**	**2009-10**
# of members (3% increase per year)	20,786	21,410	22,052	22,714	23,395
Proposed increase in dues	$35	$35	$35	$35	$50
Total revenue from increase	**$727,525**	**$749,351**	**$771,831**	**$794,986**	**$1,169,766**

The State Bar projects that the total revenue derived from a $35 increase over the existing membership fee will allow the agency to maintain a positive operating fund balance through 2009, at which time another increase may be necessary.

SOURCES OF DATA: State Bar

TECHNICAL CONSIDERATIONS: None

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Official
Fiscal Research Division
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Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 896 A BILL TO BE ENTITLED AN ACT TO PROVIDE THE STATE BAR WITH AN APPEAL OF RIGHT FROM FINAL ORDERS OF THE DISCIPLINARY HEARING COMMISSION AND TO INCREASE THE MAXIMUM AMOUNT OF THE ANNUAL MEMBERSHIP FEES FOR MEMBERS OF THE STATE BAR.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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HOUSE BILL 105
PROPOSED COMMITTEE SUBSTITUTE H105-CSRBx-11 [v.3]

5/2/2005 7:23:54 PM

Short Title: Motor Fuel Tax Changes. (Public)

Sponsors:

Referred to:

February 8, 2005

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE TAXATION OF MOTOR FUELS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-236(2) reads as rewritten:

"**§ 105-236. Penalties.**

Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:

...

(2) Failure to Obtain a License. – For failure to obtain a license before engaging in a business, trade or profession for which a license is required, the Secretary shall assess a penalty equal to five percent (5%) of the amount prescribed for the license per month or fraction thereof until paid, not to exceed twenty-five percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars ($5.00). In cases in which the taxpayer fails to obtain a license as required under G.S. 105-449.65 or G.S. 105-449.131, the Secretary may assess a penalty of one thousand dollars ($1,000)."

SECTION 2. G.S. 105-241(b) is amended by adding a new subdivision to read:

'(b) Electronic Funds Transfer. – Payment by electronic funds transfer is required as provided in this subsection.

...

(2a) Motor fuel taxes. – A taxpayer that is required to file an electronic return under Article 36C or Article 36D must pay the tax by electronic funds transfer."

SECTION 3. G.S. 105-449.39 reads as rewritten:

"**§ 105-449.39. Credit for payment of motor fuel tax.**

Every motor carrier subject to the tax levied by this Article is entitled to a credit on its quarterly report for tax paid by the carrier on fuel purchased in the State. The amount of the credit is determined using the flat cents-per-gallon rate plus the variable cents-per-gallon rate of tax in effect during the quarter covered by the report. To obtain a credit, the motor carrier must furnish evidence satisfactory to the Secretary that the tax for which the credit is claimed has been paid.

If the amount of a credit to which a motor carrier is entitled for a quarter exceeds the motor carrier's liability for that quarter, the Secretary must refund the excess to the motor ~~carrier.~~carrier in accordance with G.S. 105-266(a)(3)."

SECTION 4. G.S. 105-449.44(a) reads as rewritten:

"(a) Calculation. – The amount of motor fuel or alternative fuel a motor carrier uses in its operations in this State for a reporting period is the ~~ratio of the~~ number of miles the motor carrier travels in this State during that period divided by the calculated miles per gallon for the motor carrier for all qualified vehicles ~~to the total number of miles the motor carrier travels inside and outside this State during that period, multiplied by the total amount of fuel the motor carrier uses in its operations inside and outside the State~~ during that period."

SECTION 5. G.S. 105-449.46 reads as rewritten:

"**§ 105-449.46. Inspection of books and records.**

The Secretary and his authorized agents and representatives shall have the right at any reasonable time to inspect the books and records of any motor carrier subject to the tax imposed by this ~~Article.~~Article or to the registration fee imposed by Article 3 of Chapter 20 of the General Statutes."

SECTION 6. G.S. 105-449.47(a1) reads as rewritten:

"(a1) Registration and Identification Marker. – When the Secretary registers a motor carrier, the Secretary must issue at least one identification marker for each motor vehicle operated by the motor carrier. A motor carrier must keep records of identification markers issued to it and must be able to account for all identification markers it receives from the Secretary. Registrations and identification markers issued by the Secretary are for a calendar year. All identification markers issued by the Secretary remain the property of the State. The Secretary may ~~withhold or~~ revoke a registration or an identification marker when a motor carrier fails to comply with this ~~Article, former Article 36 or 36A of this Subchapter,~~ Article or Article 36C or 36D of this Subchapter.

A motor carrier must carry a copy of its registration in each motor vehicle operated by the motor carrier when the vehicle is in this State. A motor vehicle must clearly display an identification marker at all times. The identification marker must be affixed to the vehicle for which it was issued in the place and manner designated by the authority that issued it."

SECTION 7. Article 36B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-449.47A. Reasons why the Secretary can deny an application for a registration and identification marker.**

The Secretary may refuse to register and issue an identification marker to an applicant that has done any of the following:

(1) Had a registration issued under Chapter 105 or Chapter 119 of the General Statutes cancelled by the Secretary for cause.

(2) Had a registration issued by another jurisdiction, pursuant to G.S. 105-449.57, cancelled for cause.

(3) Been convicted of fraud or misrepresentation.

(4) Been convicted of any other offense that indicates that the applicant may not comply with this Article if registered and issued an identification marker.

(5) Failed to remit payment for a tax debt under Chapter 105 or Chapter 119 of the General Statutes. The term 'tax debt' has the same meaning as defined in G.S. 105-243.1.

(6) Failed to file a return due under Chapter 105 or Chapter 119 of the General Statutes."

SECTION 8. G.S. 105-449.51 reads as rewritten:

"**§ 105-449.51. Violations declared to be misdemeanors.**

Any person who operates or causes to be operated on a highway in this State a motor vehicle that does not carry a registration card as required by this Article, does not properly display an identification marker as required by this Article, or is not registered in accordance with this Article is guilty of a Class 3 misdemeanor and, upon conviction thereof, shall ~~only~~ be fined ~~no less than ten dollars ($10.00) nor more than~~ two hundred dollars ($200.00). Each day's operation in violation of any provision of this section shall constitute a separate offense."

SECTION 9. G.S. 105-449.65(b) reads as rewritten:

"(b) Multiple Activity. – A person who is engaged in more than one activity for which a license is required must have a separate license for each activity, unless this subsection provides otherwise. A person who is licensed as a supplier ~~is not required to obtain a separate license for any other activity for which a license is required and~~ is considered to have a license as a distributor. A person who is licensed as an occasional importer or a tank wagon importer is not required to obtain a separate license as a ~~distributor.~~ distributor unless the importer is also purchasing motor fuel, at the terminal rack, from an elective or permissive supplier who is authorized to collect and remit the tax to the State. A person who is licensed as a distributor is not required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or a permissive supplier and is not required to obtain a separate license as an exporter. A person who is licensed as a distributor or a blender is not required to obtain a separate license as a motor fuel transporter if the distributor or blender does not transport motor fuel for others for hire."

SECTION 10. G.S. 105-449.69(b) reads as rewritten:

"(b) Most Licenses. – An applicant for a license as a refiner, a supplier, a terminal operator, an importer, a blender, ~~a bulk end user of undyed diesel fuel, a retailer of undyed diesel fuel,~~ or a distributor must meet the following requirements:

(1) If the applicant is a corporation, the applicant must either be incorporated in this State or be authorized to transact business in this State.

(2) If the applicant is a limited liability company, the applicant must either be organized in this State or be authorized to transact business in this State.

(3) If the applicant is a limited partnership, the applicant must either be formed in this State or be authorized to transact business in this State.

(4) If the applicant is an individual or a general partnership, the applicant must designate an agent for service of process and give the agent's name and address."

SECTION 11. G.S. 105-449.73 reads as rewritten:

"**§ 105-449.73. Reasons why the Secretary can deny an application for a license.**

The Secretary may refuse to issue a license to an ~~individual~~ applicant that ~~has done any of the following and may refuse to issue a license to an applicant that is a business entity if any principal in the business~~ has done any of the following:

(1) Had a license or registration issued under this Article or former Article 36 or 36A of this Chapter cancelled by the Secretary for cause.

(1a) Had a motor fuel license or registration issued by another state cancelled for cause.

(2) Had a federal Certificate of Registry issued under § 4101 of the Code, or a similar federal authorization, revoked.

(3) Been convicted of fraud or misrepresentation.

(4) Been convicted of any other offense that indicates that the applicant may not comply with this Article if issued a license.

(5) Failed to remit payment for ~~an overdue tax debt~~ tax debt under Chapter 105 or Chapter 119 of the General Statutes. The term ~~"overdue tax debt"~~ "tax debt" has the same meaning as defined in G.S. 105-243.1.

(6) Failed to file a return due under Chapter 105 or Chapter 119 of the General Statutes."

SECTION 12. G.S. 105-449.86(a) reads as rewritten:

"(a) Tax. – An excise tax at the motor fuel rate is imposed on dyed diesel fuel acquired to operate any of the following:

(1) Repealed by Session Laws 2003-349, s. 10.8, effective January 1, 2004.

(2) ~~Either a~~ A local bus ~~or an intercity bus~~ that is allowed by § 4082(b)(3) of the Code to use dyed diesel fuel.

(3) A highway vehicle that is owned by or leased to an educational organization that is not a public school and is allowed by § 4082(b)(1) or (b)(3) of the Code to use dyed diesel fuel.

~~(4) A highway vehicle that is owned by or leased to the American Red Cross and is allowed by § 4082 of the Code to use dyed diesel fuel.~~"

SECTION 13. G.S. 105-449.90A reads as rewritten:

"**§ 105-449.90A. Payment by supplier of destination state tax collected on exported motor fuel.**

Tax collected by a supplier on exported motor fuel is payable by the supplier to the destination ~~state if the supplier is licensed in that state for payment of motor fuel excise taxes.~~state. ~~Tax collected by a supplier on exported motor fuel is payable to the Secretary for remittance to the destination state if the supplier is not licensed in that state for payment of motor fuel excise taxes.~~Payments of destination state tax are due to the destination state ~~or the Secretary, as appropriate,~~ on the date set by the law of the destination state. ~~Payments of destination state tax to the Secretary must be accompanied by a form provided by the Secretary that contains the information required by the Secretary.~~"

SECTION 14. G.S. 105-449.96 is amended by adding a new subdivision to read:

"**§ 105-449.96. Information required on return filed by supplier.**

A return of a supplier must list all of the following information and any other information required by the Secretary:

...

(7) The number of gallons of motor fuel the supplier exchanged with another licensed supplier, pursuant to a two-party exchange agreement, during the month, sorted by type of fuel, person receiving the fuel, and terminal code."

SECTION 15. The catch line for G.S. 105-449.106 reads as rewritten:

"**§ 105-449.106. Quarterly refunds for ~~certain local governmental entities,~~ nonprofit organizations, taxicabs, and special mobile equipment.**"

SECTION 16. G.S. 105-449.115 reads as rewritten:

"**§ 105-449.115. Shipping document required to transport motor fuel by railroad tank car or transport truck.**

...

(f) Sanctions Against Transporter. – The following acts are grounds for a civil penalty payable to the ~~Department of Transportation, Division of Motor Vehicles,~~Department of Crime Control and Public Safety or the Department of Revenue:

(1) Transporting motor fuel in a railroad tank car or transport truck without a shipping document or with a false or an incomplete shipping document.

(2) Delivering motor fuel to a destination state other than that shown on the shipping document.

The penalty imposed under this subsection is payable by the person in whose name the conveyance is registered, if the conveyance is a transport truck, and is payable by the person responsible for the movement of motor fuel in the conveyance, if the conveyance is a railroad tank car. The amount of the penalty is five thousand dollars ($5,000). A penalty imposed under this subsection is in addition to any motor fuel tax assessed.

(g) Sanctions Against Terminal Operator. – The Secretary may assess a civil penalty of five thousand dollars ($5,000) against a terminal operator who willfully and with intent issues a shipping document that does not satisfy the requirements of subsection (b) of this section."

SECTION 17. G.S. 105-449.115A reads as rewritten:

"**§ 105-449.115A. Shipping document required to transport fuel by tank wagon.**

(a) Issuance. – A person who operates a tank wagon into which motor fuel is loaded at the terminal must comply with the document requirements in G.S. 105-449.115(b). A person ~~may not transport motor fuel by~~ who operates a tank wagon into which motor fuel is loaded from some other source must have ~~unless that person has~~ an invoice, bill of sale, or shipping document containing the following information and any other information required by the Secretary:

(1) The name and address of the person from whom the motor fuel was received.

(2) The date the fuel was loaded.

(3) The type of fuel.

(4) The gross number of gallons loaded.

(b) Duties of Transporter. – A person to whom an invoice, bill of sale, or shipping document was issued must do all of the following:

(1) Carry the invoice, bill of sale, or shipping document in the conveyance for which it is issued when transporting the motor fuel described in it.

(2) Show the invoice, bill of sale, or shipping document upon request when transporting the motor fuel described in it.

(3) Keep a copy of the invoice, bill of sale, or shipping document at a centralized place of business for at least three years from the date of delivery.

(c) Sanctions. – Transporting motor fuel in a tank wagon without an invoice, bill of sale, or shipping document containing the information required by this section is grounds for a civil penalty payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue. The penalty imposed under this subsection is payable by the person in whose name the tank wagon is registered. The amount of the penalty is one thousand dollars ($1,000). A penalty imposed under this subsection is in addition to any motor fuel tax assessed."

SECTION 18. G.S. 105-449.123 reads as rewritten:

"**§ 105-449.123. Marking requirements for dyed fuel storage facilities.**

(a) Requirements. – A person who is a retailer of dyed motor fuel or who stores both dyed and undyed motor fuel for use by that person or another person must mark the storage facility for the dyed motor fuel as follows in a manner that clearly indicates the fuel is not to be used to operate a highway vehicle. The storage facility must be marked "Dyed Diesel, Nontaxable Use Only, Penalty For Taxable Use" or "Dyed Kerosene, Nontaxable Use Only, Penalty for Taxable Use" or a similar phrase that clearly indicates the fuel is not to be used to operate a highway vehicle. A person who knowingly and with intent fails to mark the storage facility as required by this section is subject to a civil penalty equal to the excise tax at the motor fuel rate on the inventory

held in the storage tank at the time of the violation. If the inventory cannot be determined, then the penalty is calculated on the capacity of the storage tank.

(1) The storage tank of the storage facility must be marked if the storage tank is visible.

(2) The fillcap or spill containment box of the storage facility must be marked.

(3) The dispensing device that serves the storage facility must be marked.

(4) The retail pump or dispensing device at any level of the distribution system must comply with the marking requirements.

(b) Exception. – The marking requirements of this section do not apply to a storage facility that contains fuel used only for one of the purposes listed in G.S. 105-449.105A(a)(1) and is installed in a manner that makes use of the fuel for any other purpose improbable."

SECTION 19. G.S. 119-15 is amended by adding the following two new subdivisions:

"**§ 119-15. Definitions that apply to Article.**

The following definitions apply in this Article:

...

(1a) Dyed diesel fuel distributor. – A person who acquires dyed diesel fuel from either of the following:

a. A person who is not required to be licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and who maintains storage facilities for dyed diesel fuel to be used for nonhighway purposes.

b. Another dyed diesel fuel distributor.

(1b) Dyed diesel fuel. – Defined in G.S. 105-449.60."

SECTION 20. G.S. 119-15.1(a) reads as rewritten:

"(a) License. – A person may not engage in business in this State as any of the following unless the person has a license issued by the Secretary authorizing the person to engage in business:

(1) A kerosene supplier.

(2) A kerosene distributor.

(3) A kerosene terminal operator.

(4) A dyed diesel fuel distributor."

SECTION 21. G.S. 119-15.3(a) reads as rewritten:

"(a) Initial Bond. – An applicant for a license as a kerosene supplier, kerosene distributor, or kerosene terminal operator must file with the Secretary of Revenue a bond or an irrevocable letter of credit. A bond or irrevocable letter of credit must be conditioned upon compliance with the requirements of this Article, be payable to the State, and be in the form required by the Secretary. The amount of the bond or irrevocable letter of credit may not be less than five hundred dollars ($500.00) and may not be more than twenty thousand dollars ($20,000)."

SECTION 22. G.S. 20-91 reads as rewritten:

"**§ 20-91. Audit of vehicle registrations under the International Registration Plan.**

(a) Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 9.

(b) The ~~Division~~ Department of Revenue may audit a person who registers or is required to register a vehicle under the International Registration Plan to determine if the person has paid the registration fees due under this Article. A person who registers a vehicle under the International Registration Plan must keep any records used to determine the information provided to the Division when registering the vehicle. The records must be kept for three years after the date of the registration to which the records apply. The ~~Division~~ Department of Revenue may examine these records during business hours. If the records are not located in North Carolina and an auditor must travel to the location of the records, the registrant shall reimburse North Carolina for per diem and travel expense incurred in the performance of the audit. If more than one registrant is audited on the same out-of-state trip, the per diem and travel expense may be prorated.

The ~~Commissioner~~ Secretary of Revenue may enter into reciprocal audit agreements with other agencies of this State or agencies of another jurisdiction for the purpose of conducting joint audits of any registrant subject to audit under this section.

(c) If an audit is conducted and it becomes necessary to assess the registrant for deficiencies in registration fees or taxes due based on the audit, the assessment will be determined based on the schedule of rates prescribed for that registration year, adding thereto and as a part thereof an amount equal to five percent (5%) of the tax to be collected. If, during an audit, it is determined that:

(1) A registrant failed or refused to make acceptable records available for audit as provided by law; or

(2) A registrant misrepresented, falsified or concealed records, then all plates and cab cards shall be deemed to have been issued erroneously and are subject to cancellation. The ~~Commissioner~~ Commissioner, based on information provided by the Department of Revenue audit, may assess the registrant for an additional percentage up to one hundred percent (100%) North Carolina registration fees at the rate prescribed for that registration year, adding thereto and as a part thereof an amount equal to five percent (5%) of the tax to be collected. The Commissioner may cancel all registration and reciprocal privileges.

As a result of an audit, no assessment shall be issued and no claim for refund shall be allowed which is in an amount of less than ten dollars ($10.00).

The results of any audit conducted under this section shall be provided to the Division. The notice of any assessments ~~will~~ shall be sent by the Division to the registrant by registered or certified mail at the address of the registrant as it appears in the records of the Division of Motor Vehicles in Raleigh. The notice, when sent in accordance with the requirements indicated above, will be sufficient regardless of whether or not it was ever received.

The failure of any registrant to pay any additional registration fees or tax within 30 days after the billing date, shall constitute cause for revocation of registration license plates, cab cards and reciprocal privileges.

(d) Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 9."

SECTION 23. Sections 1, 7, 8, 9, 16, and 18 of this act become effective January 1, 2006. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 105

Short Title:	Motor Fuel Tax Changes.	(Public)
Sponsors:	Representatives Luebke; Brubaker, Hill, McGee, Wainwright, Alexander, Brown, and Insko.	
Referred to:	Finance.	

February 8, 2005

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE TAXATION OF MOTOR FUELS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-236(2) reads as rewritten:

"**§ 105-236. Penalties.**

Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:

...

(2) Failure to Obtain a License. – For failure to obtain a license before engaging in a business, trade or profession for which a license is required, the Secretary shall assess a penalty equal to five percent (5%) of the amount prescribed for the license per month or fraction thereof until paid, not to exceed twenty-five percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars ($5.00). In cases in which the taxpayer fails to obtain a license as required under G.S. 105-449.65 or G.S. 105-449.131, the Secretary may assess a penalty of one thousand dollars ($1,000)."

SECTION 2. G.S. 105-449.39 reads as rewritten:

"**§ 105-449.39. Credit for payment of motor fuel tax.**

Every motor carrier subject to the tax levied by this Article is entitled to a credit on its quarterly report for tax paid by the carrier on fuel purchased in the State. The amount of the credit is determined using the flat cents-per-gallon rate plus the variable cents-per-gallon rate of tax in effect during the quarter covered by the report. To obtain a credit, the motor carrier must furnish evidence satisfactory to the Secretary that the tax for which the credit is claimed has been paid.

If the amount of a credit to which a motor carrier is entitled for a quarter exceeds the motor carrier's liability for that quarter, the Secretary must refund the excess to the motor ~~carrier.~~carrier in accordance with G.S. 105-266(a)(3)."

SECTION 3. G.S. 105-449.44(a) reads as rewritten:

"(a) Calculation. – The amount of motor fuel or alternative fuel a motor carrier uses in its operations in this State for a reporting period is the ~~ratio of the~~ number of miles the motor carrier travels in this State during that period divided by the calculated miles per gallon for the motor carrier for all qualified vehicles ~~to the total number of miles the motor carrier travels inside and outside this State during that period. multiplied by the total amount of fuel the motor carrier uses in its operations inside and outside the State~~ during that period."

SECTION 4. G.S. 105-449.46 reads as rewritten:

"**§ 105-449.46. Inspection of books and records.**

The Secretary and his authorized agents and representatives shall have the right at any reasonable time to inspect the books and records of any motor carrier subject to the tax imposed by this ~~Article.~~Article or to the registration fee imposed by Article 3 of Chapter 20 of the General Statutes."

SECTION 5. G.S. 105-449.47(a1) reads as rewritten:

"(a1) Registration and Identification Marker. – When the Secretary registers a motor carrier, the Secretary must issue at least one identification marker for each motor vehicle operated by the motor carrier. A motor carrier must keep records of identification markers issued to it and must be able to account for all identification markers it receives from the Secretary. Registrations and identification markers issued by the Secretary are for a calendar year. All identification markers issued by the Secretary remain the property of the State. The Secretary may ~~withhold or~~ revoke a registration or an identification marker when a motor carrier fails to comply with this ~~Article, former Article 36 or 36A of this Subchapter,~~ Article or Article 36C or 36D of this Subchapter.

A motor carrier must carry a copy of its registration in each motor vehicle operated by the motor carrier when the vehicle is in this State. A motor vehicle must clearly display an identification marker at all times. The identification marker must be affixed to the vehicle for which it was issued in the place and manner designated by the authority that issued it."

SECTION 6. Article 36B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-449.47A. Reasons why the Secretary can deny an application for a registration and identification marker.**

The Secretary may refuse to register and issue an identification marker to an individual applicant that has done any of the following and may refuse to register and issue an identification marker to an applicant that is a business entity if any principal in the business has done any of the following:

(1) Had a registration issued under Chapter 105 or Chapter 119 of the General Statutes cancelled by the Secretary for cause.

(2) Had a registration issued by another jurisdiction, pursuant to G.S. 105-449.57, cancelled for cause.
(3) Been convicted of fraud or misrepresentation.
(4) Been convicted of any other offense that indicates that the applicant may not comply with this Article if registered and issued an identification marker.
(5) Failed to remit payment for a tax debt under Chapter 105 or Chapter 119 of the General Statutes. The term 'tax debt' has the same meaning as defined in G.S. 105-243.1.
(6) Failed to file a return due under Chapter 105 or Chapter 119 of the General Statutes."

SECTION 7. G.S. 105-449.51 reads as rewritten:

"**§ 105-449.51. Violations declared to be misdemeanors.**

Any person who operates or causes to be operated on a highway in this State a motor vehicle that does not carry a registration card as required by this Article, does not properly display an identification marker as required by this Article, or is not registered in accordance with this Article is guilty of a Class 3 misdemeanor and, upon conviction thereof, shall ~~only~~ be fined ~~no less than ten dollars ($10.00) nor more than~~ two hundred dollars ($200.00). Each day's operation in violation of any provision of this section shall constitute a separate offense."

SECTION 8. G.S. 105-449.65(b) reads as rewritten:

"(b) Multiple Activity. – A person who is engaged in more than one activity for which a license is required must have a separate license for each activity, unless this subsection provides otherwise. A person who is licensed as a supplier ~~is not required to obtain a separate license for any other activity for which a license is required and~~ is considered to have a license as a distributor. A person who is licensed as an occasional importer or a tank wagon importer is not required to obtain a separate license as a ~~distributor.~~ distributor unless the importer is also purchasing motor fuel, at the terminal rack, from an elective or permissive supplier who is authorized to collect and remit the tax to the State. A person who is licensed as a distributor is not required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or a permissive supplier and is not required to obtain a separate license as an exporter. A person who is licensed as a distributor or a blender is not required to obtain a separate license as a motor fuel transporter if the distributor or blender does not transport motor fuel for others for hire."

SECTION 9. G.S. 105-449.69(b) reads as rewritten:

"(b) Most Licenses. – An applicant for a license as a refiner, a supplier, a terminal operator, an importer, a blender, ~~a bulk end user of undyed diesel fuel, a retailer of undyed diesel fuel,~~ or a distributor must meet the following requirements:

(1) If the applicant is a corporation, the applicant must either be incorporated in this State or be authorized to transact business in this State.

(2) If the applicant is a limited liability company, the applicant must either be organized in this State or be authorized to transact business in this State.

(3) If the applicant is a limited partnership, the applicant must either be formed in this State or be authorized to transact business in this State.

(4) If the applicant is an individual or a general partnership, the applicant must designate an agent for service of process and give the agent's name and address."

SECTION 10. G.S. 105-449.73 reads as rewritten:

"**§ 105-449.73. Reasons why the Secretary can deny an application for a license.**

The Secretary may refuse to issue a license to an individual applicant that has done any of the following and may refuse to issue a license to an applicant that is a business entity if any principal in the business has done any of the following:

(1) Had a license or registration issued under this Article or former Article 36 or 36A of this Chapter cancelled by the Secretary for cause.

(1a) Had a motor fuel license or registration issued by another state cancelled for cause.

(2) Had a federal Certificate of Registry issued under § 4101 of the Code, or a similar federal authorization, revoked.

(3) Been convicted of fraud or misrepresentation.

(4) Been convicted of any other offense that indicates that the applicant may not comply with this Article if issued a license.

(5) Failed to remit payment for ~~an overdue tax debt~~ tax debt under Chapter 105 or Chapter 119 of the General Statutes. The term ~~"overdue tax debt"~~ "tax debt" has the same meaning as defined in G.S. 105-243.1.

(6) Failed to file a return due under Chapter 105 or Chapter 119 of the General Statutes."

SECTION 11. G.S. 105-449.86(a) reads as rewritten:

"(a) Tax. – An excise tax at the motor fuel rate is imposed on dyed diesel fuel acquired to operate any of the following:

(1) Repealed by Session Laws 2003-349, s. 10.8, effective January 1, 2004.

(2) Either a local bus or an intercity bus that is allowed by § 4082(b)(3) of the Code to use dyed diesel fuel.

(3) A highway vehicle that is owned by or leased to an educational organization that is not a public school and is allowed by § 4082(b)(1) or (b)(3) of the Code to use dyed diesel fuel.

~~(4) A highway vehicle that is owned by or leased to the American Red Cross and is allowed by § 4082 of the Code to use dyed diesel fuel.~~"

SECTION 12. G.S. 105-449.90A reads as rewritten:

"**§ 105-449.90A. Payment by supplier of destination state tax collected on exported motor fuel.**

Tax collected by a supplier on exported motor fuel is payable by the supplier to the destination ~~state if the supplier is licensed in that state for payment of motor fuel excise~~

~~taxes.~~state. ~~Tax collected by a supplier on exported motor fuel is payable to the Secretary for remittance to the destination state if the supplier is not licensed in that state for payment of motor fuel excise taxes.~~Payments of destination state tax are due to the destination state ~~or the Secretary, as appropriate,~~ on the date set by the law of the destination state. ~~Payments of destination state tax to the Secretary must be accompanied by a form provided by the Secretary that contains the information required by the Secretary.~~"

SECTION 13. G.S. 105-449.96 is amended by adding a new subdivision to read:

"**§ 105-449.96. Information required on return filed by supplier.**

A return of a supplier must list all of the following information and any other information required by the Secretary:

...

(7) The number of gallons of motor fuel the supplier exchanged with another licensed supplier, pursuant to a two-party exchange agreement, during the month, sorted by type of fuel, person receiving the fuel, and terminal code."

SECTION 14. The catch line for G.S. 105-449.106 reads as rewritten:

"**§ 105-449.106. Quarterly refunds for ~~certain local governmental entities,~~ nonprofit organizations, taxicabs, and special mobile equipment.**"

SECTION 15. G.S. 105-449.115 reads as rewritten:

"**§ 105-449.115. Shipping document required to transport motor fuel by railroad tank car or transport truck.**

(a) Issuance. – A person may not transport motor fuel by railroad tank car or transport truck unless the person has a shipping document for its transportation that complies with this section. A terminal operator and the operator of a bulk plant must give a shipping document to the person who operates a railroad tank car or a transport truck into which motor fuel is loaded at the terminal rack or bulk plant rack.

(b) Content. – A shipping document issued by a terminal operator or the operator of a bulk plant must contain the following information and any other information required by the Secretary:

(1) Identification, including address, of the terminal or bulk plant from which the motor fuel was received.
(2) The date the motor fuel was loaded.
(3) The gross gallons loaded.
(4) The destination state of the motor fuel, as represented by the purchaser of the motor fuel or the purchaser's agent.
(5) If the document is issued by a terminal operator, the document must be machine printed and it must contain the following information:
   a. The net gallons loaded.
   b. A tax responsibility statement indicating the name of the supplier that is responsible for the tax due on the motor fuel.

(c) Reliance. – A terminal operator or bulk plant operator may rely on the representation made by the purchaser of motor fuel or the purchaser's agent concerning

the destination state of the motor fuel. A purchaser is liable for any tax due as a result of the purchaser's diversion of fuel from the represented destination state.

(d) Duties of Transporter. – A person to whom a shipping document was issued must do all of the following:

(1) Carry the shipping document in the conveyance for which it was issued when transporting the motor fuel described in it. When operating an empty transport, carry the shipping document in the conveyance for the motor fuel last contained in the conveyance.

(2) Show the shipping document to a law enforcement officer upon request when transporting the motor fuel described in it.

(3) Deliver motor fuel described in the shipping document to the destination state printed on it unless the person does all of the following:

a. Notifies the Secretary before transporting the motor fuel into a state other than the printed destination state that the person has received instructions since the shipping document was issued to deliver the motor fuel to a different destination state.

b. Receives from the Secretary a confirmation number authorizing the diversion.

c. Writes on the shipping document the change in destination state and the confirmation number for the diversion.

(4) Give a copy of the shipping document to the distributor or other person to whom the motor fuel is delivered.

(e) Duties of Person Receiving Shipment. – A person to whom motor fuel is delivered by railroad tank car or transport truck may not accept delivery of the motor fuel if the destination state shown on the shipping document for the motor fuel is a state other than North Carolina. To determine if the shipping document shows North Carolina as the destination state, the person to whom the fuel is delivered must examine the shipping document and must keep a copy of the shipping document. The person must keep a copy at the place of business where the motor fuel was delivered for 90 days from the date of delivery and must keep it at that place or another place for at least three years from the date of delivery. A person who accepts delivery of motor fuel in violation of this subsection is jointly and severally liable for any tax due on the fuel.

(f) Sanctions Against Transporter. – The following acts are grounds for a civil penalty payable to the ~~Department of Transportation, Division of Motor Vehicles.~~Department of Crime Control and Public Safety or the Department of Revenue:

(1) Transporting motor fuel in a railroad tank car or transport truck without a shipping document or with a false or an incomplete shipping document.

(2) Delivering motor fuel to a destination state other than that shown on the shipping document.

The penalty imposed under this subsection is payable by the person in whose name the conveyance is registered, if the conveyance is a transport truck, and is payable by

the person responsible for the movement of motor fuel in the conveyance, if the conveyance is a railroad tank car. The amount of the penalty is five thousand dollars ($5,000). A penalty imposed under this subsection is in addition to any motor fuel tax assessed.

(g) Sanctions Against Terminal Operator. – The Secretary may assess a civil penalty of five thousand dollars ($5,000) against a terminal operator for issuing a shipping document that does not satisfy the requirements of subsection (b) of this section."

SECTION 16. G.S. 105-449.115A reads as rewritten:

"**§ 105-449.115A. Shipping document required to transport fuel by tank wagon.**

(a) Issuance. – A person who operates a tank wagon into which motor fuel is loaded at the terminal must comply with the document requirements in G.S. 105-449.115(b). A person ~~may not transport motor fuel by~~ who operates a tank wagon into which motor fuel is loaded from some other source must have ~~unless that person has~~ an invoice, bill of sale, or shipping document containing the following information and any other information required by the Secretary:

(1) The name and address of the person from whom the motor fuel was received.
(2) The date the fuel was loaded.
(3) The type of fuel.
(4) The gross number of gallons loaded.

(b) Duties of Transporter. – A person to whom an invoice, bill of sale, or shipping document was issued must do all of the following:

(1) Carry the invoice, bill of sale, or shipping document in the conveyance for which it is issued when transporting the motor fuel described in it.
(2) Show the invoice, bill of sale, or shipping document upon request when transporting the motor fuel described in it.
(3) Keep a copy of the invoice, bill of sale, or shipping document at the place of business for at least three years from the date of delivery.

(c) Sanctions. – Transporting motor fuel in a tank wagon without an invoice, bill of sale, or shipping document containing the information required by this section is grounds for a civil penalty payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue. The penalty imposed under this subsection is payable by the person in whose name the tank wagon is registered. The amount of the penalty is one thousand dollars ($1,000). A penalty imposed under this subsection is in addition to any motor fuel tax assessed."

SECTION 17. G.S. 105-449.123 reads as rewritten:

"**§ 105-449.123. Marking requirements for dyed fuel storage facilities.**

(a) Requirements. – A person who is a retailer of dyed motor fuel or who stores both dyed and undyed motor fuel for use by that person or another person must mark the storage facility for the dyed motor fuel as follows in a manner that clearly indicates the fuel is not to be used to operate a highway vehicle. The storage facility must be marked "Dyed Diesel, Nontaxable Use Only, Penalty For Taxable Use" or "Dyed Kerosene, Nontaxable Use Only, Penalty for Taxable Use" or a similar phrase that clearly

indicates the fuel is not to be used to operate a highway vehicle. A person who fails to mark the storage facility as required by this section is subject to a civil penalty equal to the excise tax at the motor fuel rate on the inventory held in the storage tank at the time of the violation. If the inventory cannot be determined, then the penalty is calculated on the capacity of the storage tank.

(1) The storage tank of the storage facility must be marked if the storage tank is visible.

(2) The fillcap or spill containment box of the storage facility must be marked.

(3) The dispensing device that serves the storage facility must be marked.

(4) The retail pump or dispensing device at any level of the distribution system must comply with the marking requirements.

(b) Exception. – The marking requirements of this section do not apply to a storage facility that contains fuel used only for one of the purposes listed in G.S. 105-449.105A(a)(1) and is installed in a manner that makes use of the fuel for any other purpose improbable."

SECTION 18. G.S. 119-15 is amended by adding the following two new subdivisions:

"**§ 119-15. Definitions that apply to Article.**

The following definitions apply in this Article:

...

(1a) Dyed diesel fuel distributor. – A person who acquires dyed diesel fuel from either of the following:

a. A person who is not required to be licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and who maintains storage facilities for dyed diesel fuel to be used for nonhighway purposes.

b. Another dyed diesel fuel distributor.

(1b) Dyed diesel fuel. – Defined in G.S. 105-449.60."

SECTION 19. G.S. 119-15.1(a) reads as rewritten:

"(a) License. – A person may not engage in business in this State as any of the following unless the person has a license issued by the Secretary authorizing the person to engage in business:

(1) A kerosene supplier.

(2) A kerosene distributor.

(3) A kerosene terminal operator.

(4) A dyed diesel fuel distributor."

SECTION 20. G.S. 119-15.3(a) reads as rewritten:

"(a) Initial Bond. – An applicant for a license as a kerosene supplier, kerosene distributor, or kerosene terminal operator must file with the Secretary of Revenue a bond or an irrevocable letter of credit. A bond or irrevocable letter of credit must be conditioned upon compliance with the requirements of this Article, be payable to the State, and be in the form required by the Secretary. The amount of the bond or

irrevocable letter of credit may not be less than five hundred dollars ($500.00) and may not be more than twenty thousand dollars ($20,000)."

SECTION 21. G.S. 20-91 reads as rewritten:

"**§ 20-91. Audit of vehicle registrations under the International Registration Plan.**

(a) Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 9.

(b) The ~~Division~~ Department of Revenue may audit a person who registers or is required to register a vehicle under the International Registration Plan to determine if the person has paid the registration fees due under this Article. A person who registers a vehicle under the International Registration Plan must keep any records used to determine the information provided to the Division when registering the vehicle. The records must be kept for three years after the date of the registration to which the records apply. The ~~Division~~ Department of Revenue may examine these records during business hours. If the records are not located in North Carolina and an auditor must travel to the location of the records, the registrant shall reimburse North Carolina for per diem and travel expense incurred in the performance of the audit. If more than one registrant is audited on the same out-of-state trip, the per diem and travel expense may be prorated.

The ~~Commissioner~~ Secretary of Revenue may enter into reciprocal audit agreements with other agencies of this State or agencies of another jurisdiction for the purpose of conducting joint audits of any registrant subject to audit under this section.

(c) If an audit is conducted and it becomes necessary to assess the registrant for deficiencies in registration fees or taxes due based on the audit, the assessment will be determined based on the schedule of rates prescribed for that registration year, adding thereto and as a part thereof an amount equal to five percent (5%) of the tax to be collected. If, during an audit, it is determined that:

(1) A registrant failed or refused to make acceptable records available for audit as provided by law; or

(2) A registrant misrepresented, falsified or concealed records, then all plates and cab cards shall be deemed to have been issued erroneously and are subject to cancellation. The ~~Commissioner~~ Commissioner, based on information provided by the Department of Revenue audit, may assess the registrant for an additional percentage up to one hundred percent (100%) North Carolina registration fees at the rate prescribed for that registration year, adding thereto and as a part thereof an amount equal to five percent (5%) of the tax to be collected. The Commissioner may cancel all registration and reciprocal privileges.

As a result of an audit, no assessment shall be issued and no claim for refund shall be allowed which is in an amount of less than ten dollars ($10.00).

The results of any audit conducted under this section shall be provided to the Division. The notice of any assessments ~~will~~ shall be sent by the Division to the registrant by registered or certified mail at the address of the registrant as it appears in the records of the Division of Motor Vehicles in Raleigh. The notice, when sent in

accordance with the requirements indicated above, will be sufficient regardless of whether or not it was ever received.

The failure of any registrant to pay any additional registration fees or tax within 30 days after the billing date, shall constitute cause for revocation of registration license plates, cab cards and reciprocal privileges.

(d) Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 9."

SECTION 22. Sections 1, 6, 7, 8, 15, and 17 of this act become effective January 1, 2006. The remainder of this act is effective when it becomes law.

HOUSE BILL 105:
Motor Fuel Tax Changes

BILL ANALYSIS

Committee:	House Finance	**Date:**	May 3, 2005
Introduced by:	Rep. Luebke	**Summary by:**	Cindy Avrette
Version:	PCS for First Edition H105-CSRBx-11		Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 105 makes several changes to the motor fuel laws. The provisions regarding penalties and licensing become effective January 1, 2006. The remainder becomes effective when it becomes law. The Revenue Laws Study Committee recommended this bill to the 2005 General Assembly.

BACKGROUND & ANALYSIS:

Section 1 - Penalty for failure to obtain a license.

Section 1 allows the Secretary to impose a $1,000 penalty for failure to obtain a license under G.S. 105-449.65 or G.S. 105-449.131[1]. Currently, the Secretary has general authority to impose a penalty for failure to obtain a license. Under that general authority, the amount of the penalty imposed is equal to 5% of the amount prescribed for the license for each month the taxpayer fails to obtain the license, with a maximum penalty of 25% of the amount prescribed for the license. Because this general authority limits the penalty to a percentage of the amount prescribed for the license, it effectively bars assessing a penalty when there is no charge to obtain a license. There is no charge for the licenses issued pursuant to G.S. 105-449.65 or G.S. 105-449.131. This provision becomes effective January 1, 2006.

Section 2 - Electronic Funds Transfer

The *PCS added Section 2* to the bill at the request of the Department of Revenue. Section 2 would enable the Motor Fuels Division to move towards a paperless return by enabling the Secretary to require those taxpayers who file electronically to also pay electronically. By statute the Secretary can require motor fuels taxpayers to file returns electronically. The Division plans to require motor fuel taxpayers that have schedule date information to file their returns electronically. 'Schedule data information' is a separate schedule that lists all bills of lading for the fuel being reported. The information enables the Department to track fuel on a load-by-load basis. The Secretary will not require electronic filing from taxpayers who request relief from this requirement in writing.

Section 3 - Conform refund provisions.

[1] G.S. 105-449.65 is contained in the Article dealing with gasoline, diesel fuel, and blended fuel, and requires the following to have a license: refiners, suppliers, terminal operator, importers, exporters, blenders, motor fuel transporters, and distributors who purchase motor fuel from an elective or permissive supplier at an out-of-state terminal for import into this State. G.S. 105-449.131 is contained in the Article dealing with alternative fuels and requires the following to have a license: providers of alternative fuel, bulk-end users, and retailers.

Section 3 conforms the refund statute applicable to motor carriers to the general rule applicable to tax refunds of overpaid taxes. Under the general administrative provisions of G.S. 105-266(a)(3), the Secretary does not have to refund a tax overpayment of less than $3.00 unless the taxpayer makes a written request for the refund. A motor carrier is entitled to a credit on its quarterly report for tax paid by the carrier on fuel purchased in this State. If the credit exceeds the amount of tax owed, the statute provides that the Secretary must refund the excess to the carrier. The statute does not set a minimum amount. This statute appears to conflict with the general administrative provision. This section clarifies that the general administrative law applicable to refunds applies to refunds payable to motor carriers. This provision becomes effective when it becomes law.

Section 4 - Technical change.

Section 4 removes obsolete language to conform to current administrative practice. G.S. 105-449.44 establishes the calculation by which a motor carrier determines the amount of fuel used in North Carolina. The formula under current law has not been used since 1991. In 1992, North Carolina became a participant in the International Fuel Tax Agreement. The method proposed by this section conforms to the IFTA agreement and is the method motor carriers have been using to determine the amount of fuel used in this State since 1992. This provision becomes effective when it becomes law.

Sections 5 and 22 - Conforming changes.

Sections 5 and 22 transfer audit functions related to the International Registration Plan from the Department of Transportation, Division of Motor Vehicles to the Department of Revenue, Motor Fuels Tax Division. The International Registration Plan is the mechanism through which interstate motor carriers are licensed. It helps to ensure that the proper amount of motor fuels tax is credited to each jurisdiction in which the motor carrier travels. It has been suggested that the Department of Revenue has more expertise in auditing taxpayers and would be a more appropriate home for these audit functions. The positions associated with these audit functions were transferred July 1, 2004, through an administrative transfer. These provisions become effective when they become law.

Section 6 - Technical change.

Section 6 removes language that is no longer applicable. G.S. 105-449.47 provides that the Secretary must issue identification markers to motor carriers. The current statute provides that the Secretary may withhold an identification marker if a motor carrier fails to comply with *former Article 36 or 36A*. The General Assembly repealed those articles in 1996. The authority of the Department to issue an assessment under one of those articles has expired and any uncollectible assessments issued under those articles has been written off. Therefore, the language repealed by this section is obsolete. This provision becomes effective when it becomes law.

Section 7 - Reasons to refuse to register and issue identification marker to motor carrier.

Section 7 sets forth the reasons the Secretary could refuse to register and issue an identification marker to a motor carrier. The Department requests this change to enable it to only register applicants that are in good standing with North Carolina and other taxing jurisdictions. The statute proposed in this section is very similar to G.S. 105-449.73, which sets forth the reasons

the Secretary may refuse to issue a license to an applicant under the motor fuel statutes. This provision becomes effective January 1, 2006. ***The PCS removed the distinction between an individual and a business entity. It made a conforming change to G.S. 105-449.73 in section 11 of the PCS.***

Section 8 - Simplify criminal penalty.

Section 8 simplifies the criminal penalty imposed on persons who operate in this State as a motor carrier without obtaining the necessary registration and identification markers. A violation of the motor carrier requirements is a Class 3 misdemeanor. Under current law it is punishable by a fine that is no less than $10 nor more than $200. This section sets the amount of the fine at $200. The civil penalty for this offense is $100. This provision becomes effective January 1, 2006.

Section 9 - Clarification of licensing requirements for multiple activities.

Section 9 clarifies the current licensing requirements by conforming them to the current Department policy and practice. This provision becomes effective January 1, 2006.

Section 10 - Technical change.

Section 10 removes obsolete language. In 1999, the General Assembly removed the licensing requirements for bulk-end users and retailers of undyed diesel fuel. The legislation did not include a conforming change to G.S. 105-449.69(b). This provision becomes effective when it becomes law.

Section 11 - Clarifying change.

Section 11 changes the defined term 'overdue tax debt' to the appropriate defined term 'tax debt'. Under the general administrative provisions in G.S. 105-243.1, a tax debt is defined as the total amount of tax, penalty, and interest due for which a notice of final assessment has been mailed to the taxpayer after the taxpayer no longer has the right to contest the debt. An 'overdue tax debt' is any part of a tax debt that remains unpaid *90 days or more after the notice of final assessment* was mailed to the taxpayer. A collection assistance fee is imposed on an overdue tax debt that remains unpaid 30 days or more after the appropriate fee notice is mailed to the taxpayer. G.S. 105-449.73 sets forth the reasons the Secretary can deny a license to an applicant. One of the reasons is failure to remit taxes that remain due after a taxpayer no longer has the right to contest the tax debt. Since G.S. 105-449.73 has nothing to do with the imposition of a collection assistance fee, the term 'overdue tax debt' is not the appropriate term to use. This provision becomes effective when it becomes law.

Section 12 - Conforming change.

Section 12 exempts motor fuel acquired to operate a highway vehicle owned by or leased to the American Red Cross from the motor fuel excise tax. In Department of Employment v. United States, 385 U.S. 355, 87 S.Ct. 464 (1966), the United States Supreme Court ruled that the Red Cross is an instrumentality of the United States for state tax immunity purposes. This provision codifies the current administrative practice of the Department of Revenue. This section is effective when it becomes law.

The PCS makes another conforming change to federal law by recognizing that federal law no longer allows dyed diesel fuel to be used in intercity buses. Dyed diesel fuel indicates that the

fuel is used for a nontaxable purpose under federal law. State law provides that in the circumstances listed in this statute, the State motor fuel tax is imposed on dyed diesel fuel. This amendment does not change the taxation of the fuel used in intercity buses: the State tax continues to apply.

Section 13 - Repeal obsolete payment procedure.

Section 13 removes the ability of a person exporting motor fuel to another state to pay the tax directly to the Department if the person is not licensed in the destination state of the motor fuel because it is no longer necessary. This provision was included in the statutes in 1996 when North Carolina first adopted 'tax at the rack' to accommodate persons exporting product to a state that was not a 'tax at the rack' state. Today, with the exception of Georgia, all of the surrounding states have adopted 'tax at the rack'. The Georgia border in the western part of the State would not be affected by this repeal because the closest terminal to the Georgia line is in Charlotte. This provision becomes effective when it becomes law.

Section 14 - Conforming change.

Section 14 provides that a supplier must list on its return to the Secretary the number of gallons of motor fuel the supplier exchanged with another licensed supplier pursuant to a two-party exchange agreement. The Secretary currently requires this information on the supplier return. This provision becomes effective with it becomes law.

Section 15 - Technical change.

Section 15 removes obsolete language from the catch line of G.S. 105-449.106. In 2003, the General Assembly exempted motor fuel sold to a county or city for its use from the motor fuel tax. Although the legislation authorizing the exemption made the appropriate conforming change to the refund statute, it failed to amend the catch line. This provision becomes effective when it becomes law.

Section 16 - Shipping document.

Section 16 allows the Secretary of Revenue to assess a penalty of $5,000 on a terminal operator who ***willfully and with intent (added by PCS)*** fails to issue a shipping document that satisfies the requirements for the shipping document, effective January 1, 2006. Under G.S. 105-449.115, shipping documents issued by a terminal operator must contain the following information: 1) identification of the terminal or bulk plant from which the fuel was received, 2) the date the fuel was loaded, 3) the gross gallons loaded, 4) the destination state of the motor fuel, 5) the net gallons loaded, and 6) a tax responsibility statement indicating the name of the supplier that is responsible for the tax. The Motor Fuels Tax Division has noticed a problem with some terminal operators failing to issue proper shipping documents. Without an accurate shipping document, it is difficult, if not impossible, for the Department to ensure that the proper amount of tax is being paid.

Section 16 also makes a technical change to subsection (f). ***The PCS removes a change from the original bill that would have required transporters of an empty transport to carry a shipping document.***

Section 17 - Documentation for tank wagon.

Section 17 would require the same documentation requirements for a person who operates a tank wagon into which motor fuel is loaded at the terminal as for a person who operates a transport truck into which motor fuel is loaded at the terminal. It would also require that a copy of the invoice be kept at a centralized place of business for at least three years from the date of delivery. ***The PCS modified this provision by limiting it to a central place of business as opposed to each place of business.*** This section becomes effective when it becomes law.

Section 19 - Penalty for failing to property mark storage facility.

Section 19 would impose a civil penalty on a person who ***knowingly and with intent (added by PCS)*** does not properly mark the storage facility of motor fuel. Undyed fuel is subject to the motor fuel tax; dyed fuel is not. This section becomes effective January 1, 2006.

Sections 20 and 21 - Conforming changes.

Sections 20 and 21 make changes to Chapter 119 necessitated by legislation enacted in 2003. In 2003, the General Assembly voted to apply the inspection tax to dyed diesel fuels. The inspection tax is imposed on all fuel types at the rate of ¼¢ per gallon. Proceeds of the tax are used to offset the expenses of administering the motor fuels taxes. The changes in these two sections are needed to apply the tax to distributors who purchase only dyed diesel fuel. These two sections are effective when they become law.

Section 21- Technical change.

The law provides that an applicant for a license as a kerosene supplier, kerosene distributor, or a kerosene terminal operation may file either a bond with the Secretary of Revenue or an irrevocable letter of credit. Section 2 inserts the phrase 'irrevocable letter of credit' in a sentence in which it was inadvertently omitted. This section becomes effective when it becomes law.

Section 23 - Effective dates.

Section 23 is the effective date section and it becomes effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 105 (First Edition)

SHORT TITLE: Motor Fuel Tax Changes.

SPONSOR(S): Representative Luebke

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES					
Highway Fund					
Penalties	**See Assumptions and Methodology**				
Refund Repeal					
Dyed Fuel Dist.					
EXPENDITURES					
Department of Revenue	**$0**	**$0**	**$0**	**$0**	**$0**
POSITIONS (cumulative):					

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

EFFECTIVE DATE: Sections 1, 6, 7, 8, 15, and 17 become effective January 1, 2006. The remainder of the act is effective when it becomes law.

BILL SUMMARY: The legislation makes several changes to the motor fuel laws as follows: (1) Amends GS 105-236(2), effective January 1, 2006, to authorize Secretary of Revenue to impose a penalty of $1,000 for a person's failure to obtain certain motor and alternative fuel business licenses as required by GS 105-449.65 and 105-449.131. (2) Amends GS 105-449.46 and GS 20-91 to transfer audits related to the International Registration Plan from the Department of Transportation, Division of Motor Vehicles, to the Department of Revenue, Motor Fuels Tax Division. (3) Enacts new GS 105-449.47A, effective January 1, 2006, to authorize Secretary to deny a motor carrier an identification marker if carrier has: had a registration cancelled for cause; has been convicted of fraud, misrepresentation, or any other offense that indicates that applicant may not comply with motor carrier fuel tax requirements; or failed to pay a state tax or file a return. (4) Effective January 1, 2006, amends GS 105-449.51 to impose $200 fine (was, at least

$10 and up to $200) for operation of a motor vehicle without required registration and identification markers. (5) Amends GS 105-449.65(b) to provide that a person licensed as an occasional or tank wagon importer is required to obtain a distributor license if the importer is also purchasing motor fuel, at the terminal rack, from an elective or permissive supplier who is authorized to collect and remit tax to the state, effective Jan. 1, 2006. (6) Deletes GS 105-449.86(a)(4), which imposed motor fuel excise tax on American Red Cross. (7) Amends GS 105-449.90A to delete option of paying tax to NC rather than destination state when the person exporting fuel is not registered in the destination state. (8) Enacts new GS 105-449.96(7) to require that fuel supplier list on state tax return the number of gallons of motor fuel exchanged with another licensed supplier pursuant to a two-party exchange agreement. (9) Amends GS 105-449.15(d)(1), effective January 1, 2006, to require a person operating an empty fuel transport to carry the shipping document for the motor fuel last contained in the conveyance. (10) Enacts new GS 105-449.115(g) authorizing Secretary of Revenue to assess a civil penalty of $5,000 against a terminal operator that issues a shipping document that does not contain all the required information. (11) Amends GS 105-449.115A(a) to extend shipping document requirements to a person who operates a tank wagon into which motor fuel is loaded at the terminal. (12) Effective January 1, 2006, amends GS 105-449.123(a) to impose a civil penalty on a person who fails to mark a storage facility for dyed (untaxed) motor fuel. Amends GS 119-15 to define "dyed diesel fuel" and "dyed diesel fuel distributor." (13) Enacts new GS 119-15.1(a)(4) to require licensing of dyed diesel fuel distributor. (14) Makes technical and conforming changes.

ASSUMPTIONS AND METHODOLOGY:

Penalties

The legislation authorizes the Secretary of Revenue to impose a $1,000 penalty for failure to obtain certain motor and alternative fuel business licenses. The current law bars the Department from charging a penalty because there is no fee for the license. The Department estimates a maximum of five violations a year. Since the penalty is discretionary, no revenue estimate is possible. If a penalty were accessed, the proceeds would be deposited in the Highway Fund.

The bill also allows the Secretary of Revenue to impose a civil penalty of $5,000 on an oil terminal operator that issues a shipping document that does not contain all the required information. Without an accurate and complete bill of laden the Department cannot ensure proper taxation. No estimate is available due to the discretionary nature of the penalty, but proceeds are expected to be limited.

The final penalty relates to persons who operate as a motor carrier in North Carolina, but do so without obtaining the necessary registration and identification markers. Under current law the fine is between $10 and $200. This section sets the amount at $200. While no estimate is available, the impact is expected to be minimal.

Red Cross

The legislation exempts the Red Cross from paying the excise tax on dyed diesel fuel. The U.S. Supreme Court ruled in the Department of Employment v. United States that the American Red Cross is an instrumentality of the United States for state tax immunity purposes. While the Red

Cross is not exempt by statute, the Department of Revenue had administratively recognized their federal exemption status and has refunded their tax payments. Since this section conforms statute to department policy, no fiscal impact is expected.

Refunds

The bill conforms the refund statute for motor carriers to the general rule applicable to tax refunds of overpaid taxes. Under the general administrative provisions of G.S. 105-266(a)(3), the Secretary does not have to refund a tax overpayment of less than $3.00, unless the taxpayer makes a written request for the funds. However, there is no minimum payment amount for motor carriers. This provision conforms the motor carrier process to the utilized with other taxpayers. No fiscal impact is expected.

Department of Revenue (Administrative Responsibility)

Per Section 21, G.S. 20-91is amended to transfer audits related to the International Registration Plan to the Department of Revenue. In July 2004, six (6) Vehicle Plan Registration Auditor positions with salaries and related benefits were transferred through administrative process from the Department of Transportation (DOT) to the Department of Revenue/International Registration Division to handle International Registration audit functions. The support for the division is derived from receipts transferred from DOT, and there is no additional funding required for the positions. Additionally, there is no increase in receipts needed for the department to administer the new or revised statutory requirements resulting from this legislation.

Other provisions:

Sections 3,5,8,9,10,12,13,14,18, and 19 either conform the law to existing Department practice or changes obsolete language. No fiscal impact is expected as a result of these changes.

The remaining sections deal with record keeping requirements and have no fiscal impact.

SOURCES OF DATA: North Carolina Department of Revenue.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

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Official
Fiscal Research Division
Publication

DATE: April 18, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 105 A BILL TO BE ENTITLED AN ACT TO MODIFY THE TAXATION OF MOTOR FUELS.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H D

HOUSE BILL 1030
PROPOSED COMMITTEE SUBSTITUTE H1030-CSLAx-4 [v.2]

5/2/2005 4:00:25 PM

Short Title: Increase Airport Authority Powers. (Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE POWERS OF THE BRUNSWICK AIRPORT COMMISSION AND TO AUTHORIZE LOCAL AIRPORT AUTHORITIES TO BORROW MONEY.

The General Assembly of North Carolina enacts:

SECTION 1. In addition to all other powers authorized by law, the Brunswick County Airport Commission shall have the following powers:

(1) To sell, lease, or otherwise dispose of any property, real or personal, belonging to the Airport Commission, according to the procedures described in Article 12 of Chapter 160A of the General Statutes, but no sale of real property shall be made without the approval of the Brunswick County Board of County Commissioners.

(2) To contract with persons, firms, or corporations for terms not to exceed 20 years, for the operation of airline-scheduled passenger and freight flights, nonscheduled flights, and any other airplane activities not inconsistent with the grant agreements under which the airport property is held.

(3) To erect and construct buildings, hangars, shops, and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; and to lease these improvements and facilities for a term or terms not to exceed 20 years.

SECTION 2. The Brunswick County Airport Commission shall be exempt from any beach renourishment fees imposed by the Town of Oak Island.

SECTION 3. The Brunswick County Airport Commission is considered to be an airport authority for the purpose of any general law pertaining to airport authorities.

SECTION 4. Subchapter IV of Chapter 159 of the General Statutes is amended by adding a new article to read:

"Article 14.

"Borrowing by Airport Authorities.

"**§ 159-201. Borrowing authority.**

Whenever an airport authority is authorized by general or local act to erect and construct improvements and facilities and to lease these improvements and facilities, the authority may borrow money for use in making and paying for these improvements and facilities, secured by and on the credit only of the lease agreements in respect to these improvements and facilities, and to pledge and assign the leases and lease agreements as security for the authorized loans. The airport authority's power to borrow money under this section is subject to the approval of the Commission.

To the extent this section conflicts with any local act, then this section shall control."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1030

Short Title:	Brunswick County Airport Authority.	(Local)
Sponsors:	Representative Stiller.	
Referred to:	Finance.	

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE ACTS REGULATING THE BRUNSWICK COUNTY AIRPORT COMMISSION AND TO CLARIFY THE POWERS OF THE COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of Chapter 411 of the 1961 Session Laws, as amended by Section 2 of Chapter 385 of the 1991 Session Laws, reads as rewritten:

"Section 1. There is hereby created a board to be known as the Brunswick County Airport Commission whose membership shall consist of Southport, ~~Yaupon Beach, Long Beach,~~ Oak Island, and Brunswick County and which board is hereby constituted a body politic and corporate. The said board shall be comprised of seven members, four of whom shall be appointed by the Board of County Commissioners of Brunswick ~~County and one~~ County, two of whom shall be appointed by ~~each member town,~~ the governing body of the Town of Oak Island, and one of whom shall be appointed by the governing body of the City of Southport, all of whom shall be experienced businessmen with no qualifications as to residence. The membership of said board shall be named as provided for in Chapter 63 of the General Statutes of North Carolina. The members of said board shall receive no compensation per diem or otherwise, but shall be allowed and paid actual expenses incurred in the transaction of business and at the instance of the said Commission. In the event that either the Aldermen of the City of Southport, the Commissioners of the Town of ~~Yaupon Beach, the Commissioners of the Town of Long Beach,~~ Oak Island, or the Brunswick County Commissioners do not deem it advisable or any one or two of said municipal bodies do not enter into an agreement to set up said Airport Commission as provided for under Chapter 63 of the General Statutes of North Carolina, then in such event the municipality or county desiring to create such a commission may do so having all powers herein conferred with the right and privilege of calling such commission in the name of the particular municipality and/or county government."

SECTION 2. In addition to all other powers authorized by law, the Brunswick County Airport Commission shall have the following powers:

(1) To sell, lease, or otherwise dispose of any property, real or personal, belonging to the Airport Commission, according to the procedures described in Article 12 of Chapter 160A of the General Statutes, but no sale of real property shall be made without the approval of the Brunswick County Board of County Commissioners.

(2) To contract with persons, firms, or corporations for terms not to exceed 20 years, for the operation of airline-scheduled passenger and freight flights, nonscheduled flights, and any other airplane activities not inconsistent with the grant agreements under which the airport property is held.

(3) To erect and construct buildings, hangars, shops, and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; to lease these improvements and facilities for a term or terms not to exceed 20 years; to borrow money for use in making and paying for these improvements and facilities, secured by and on the credit only of the lease agreements in respect to these improvements and facilities, and to pledge and assign the leases and lease agreements as security for the authorized loans.

SECTION 3. The Brunswick County Airport Commission shall be exempt from any beach renourishment fees imposed by the Town of Oak Island.

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

HOUSE BILL H1030:
Increase Airport Authority Powers

BILL ANALYSIS

Committee:	House Finance	**Date:**	May 2, 2005
Introduced by:	Stiller	**Summary by:**	Martha Walston Committee Counsel
Version:	PCS to First Edition HH1030-CSLAx-4		

SUMMARY: The proposed committee substitute for House Bill 1030 does the following:

- gives the Brunswick County Airport Commission additional powers.
- exempts the Commission from any beach renourishment fees imposed by the Town of Oak Island.
- Provides that the Commission is considered an airport authority for the purposes of any general law pertaining to airport authorities.
- Amends the Local Government Finance Chapter of the General Statutes to allow an airport authority to borrow money for use in making and paying for the construction of improvements and facilities at the airport and to secure the debt by lease agreements regarding the improvements and facilities.
- Deletes unnecessary language in the original bill. This language described proposed legislation that was enacted in 2000.

BILL ANALYSIS: Section 1 of House Bill 1030 gives the Brunswick County Airport Commission the following additional powers:

1. To sell, lease, or otherwise dispose of any property, real or personal, belonging to the Airport Commission, according to the procedures described in Article 12 of Chapter 160A, but no sale of real property shall be made without the approval of the Brunswick County Board of Commissioners. In 2003, the General Assembly gave airport authorities created by a local act of the General Assembly the authority to finance real and personal property by installment contracts and other means of indebtedness authorized by G.S. 160A-20.
2. To contract with persons, firms, or corporations for terms not to exceed 20 years, for the operation of airline-scheduled passenger and freight flights, nonscheduled flights, and any other airplane activities not inconsistent with the grant agreements under which the airport property is held.
3. To erect and construct buildings, hangars, shops, and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; and to lease these improvements and facilities for a term or terms not to exceed 20 years.

Section 2 of House bill 1030 exempts the Airport Commission from any beach renourishment fees imposed by the Town of Oak Island.

Section 3 of the bill deems the Airport Commission to be an airport authority for the purpose of any general law pertaining to airport authorities.

Section 4 of the bill amends the Local Government Finance Chapter of the General Statutes to allow an airport authority to borrow money for use in making and paying for the construction of improvements and facilities at the airport and to secure the debt by lease agreements regarding the improvements and facilities. The 1st edition of House Bill 1030 was a local bill that authorized the Brunswick County Airport Commission to borrow money for this purpose. This part of the original bill was unconstitutional since it was a local act relating to debt.[1] Section 4 would allow the Brunswick County Airport Commission to borrow money. Local legislation has been enacted in the past which contained language giving certain airport authorities the power to borrow money. Section 4 would remedy the constitutional problem raised by this local language.

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

BACKGROUND: In 1961, the General Assembly authorized legislation creating the Airport Commission of Southport, Boiling Springs Lake, Long Beach, and Brunswick County. In 1991, the General Assembly amended the earlier legislation and authorized the town of Yaupon Beach, the town of Long Beach, and Brunswick County to establish the Brunswick County Airport Commission. In 1999, the General Assembly authorized the Airport Commission to receive refunds of sales and use taxes.[2] In 2000, the General Assembly amended the membership of the Commission to reflect the consolidation of the charters of the towns of Yaupon Beach and Long Beach into the newly created town of Oak Island.

H1030e1-SMLA-CSLA

[1] Article V, Section 4(1) of the North Carolina Constitution provides: "The General Assembly shall enact general laws relating to the borrowing of money secured by a pledge of the faith and credit and the contracting of other debts by counties, cities and towns, special districts, and other units, authorities, and agencies of local government.

[2] G.S. 105-164.14(c) allows certain governmental entities, including a local airport authority that was created under a local act of the General Assembly, to receive refunds of sales and use taxes paid on direct purchases of personal property and services.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 1030 A BILL TO BE ENTITLED AN ACT TO AMEND THE ACTS REGULATING THE BRUNSWICK COUNTY AIRPORT COMMISSION AND TO CLARIFY THE POWERS OF THE COMMISSION.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H D

HOUSE BILL 689
PROPOSED COMMITTEE SUBSTITUTE H689-CSLAx-6 [v.5]

5/2/2005 10:32:47 AM

Short Title: Monroe Meals Tax. (Local)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF MONROE TO LEVY A PREPARED FOOD AND BEVERAGES TAX.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Authority; Vote. – If the majority of those voting on the question pursuant to this section vote for the levy of the tax, the Monroe City Council may, by ordinance, levy a prepared food and beverages tax of up to one percent (1%) of the sales price of prepared food and beverages sold within the City of Monroe at retail for consumption on or off the premises by a retailer subject to sales tax under G.S. 105-164(a)(1). This tax is in addition to State and local sales tax.

The Monroe City Council may direct the county board of elections to submit to the qualified voters of the city during any election held in 2006 the question of whether to levy a local prepared food and beverages tax of one percent (1%) as provided in this section. The election must be held on a date jointly agreed upon by the boards and held in accordance with the procedures of G.S. 163-287. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

One percent (1%) local prepared food and beverages tax, in addition to the current local sales and use taxes, to be used for the Civic Center Project for the City of Monroe."

SECTION 1.(b) Definitions. – The definitions in G.S. 105-164.3 apply to this section to the extent they are not inconsistent with the provisions of this section. In addition, the following definitions apply in this act:

(1) Net proceeds. – Gross proceeds less the cost to the city of administering and collecting the tax.

(2) Prepared food and beverages. – The term includes the following:

a. Prepared food, as defined in G.S. 105-164.3.

b. An alcoholic beverage, as defined in G.S. 18B-101, that meets at least one of the conditions of prepared food under G.S. 105-164.3.

SECTION 1.(c) Exemptions. – The prepared food and beverages tax does not apply to the following sales of prepared food and beverages:

(1) Prepared food and beverages served to residents in boarding houses and sold together on a periodic basis with rental of a sleeping room or lodging.
(2) Retail sales exempt from taxation under G.S. 105-164.13.
(3) Retail sales through or by means of vending machines.
(4) Prepared food and beverages served by a retailer subject to the local occupancy tax if the charge for the prepared food and beverages is included in a single, nonitemized sales price together with the charge for rental of a room, lodging, or accommodation furnished by the retailer.
(5) Prepared food and beverages furnished without charge by an employer to an employee.
(6) Retail sales by grocers or by grocery sections of supermarkets or other diversified retail establishments, other than sales of prepared food and beverages in the delicatessen or similar department of the grocer or grocery section.
(7) Prepared food and beverages served on a federal military reservation.

SECTION 1.(d) Collection. – Every retailer subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing prepared food and beverages. The tax shall be stated separately on the sale document and shall be paid by the purchaser to the retailer as trustee for and on account of the city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the retailer. The city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax.

SECTION 1.(e) Administration. – The city shall administer a tax levied under this section. A tax levied under this section is due and payable to the city's director of finance and administration in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every retailer liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the city. The return shall show the total gross receipts derived in the preceding month from sales to which the tax applies.

A return filed with the city's director of finance and administration under this section is not a public record and may not be disclosed except in accordance with G.S. 160A-208.1.

The provisions of Article 5 and Article 9 of Chapter 105 of the General Statutes apply to this section to the extent they are not inconsistent with the provisions

of this section. The uniform meals tax penalty provisions of G.S. 160A-214.1 apply to a tax levied under this section.

SECTION 1.(f) Refunds. – The city shall refund to a nonprofit or governmental entity the prepared food and beverages tax paid by the entity on eligible purchases of prepared food and beverages. A nonprofit or governmental entity's purchase of prepared food and beverages is eligible for a refund under this subsection if the entity is entitled to a refund under G.S. 105-164.14(b) or (c) of local sales and use tax paid on the purchase or if the sale is exempt under G.S. 105-164.13. The time limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(b) and (d) apply to refunds to nonprofit entities; the time, limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(c) and (d) apply to refunds to governmental entities. When an entity applies for a refund of the prepared food and beverages tax paid by it on purchases, it must attach to its application a copy of the application submitted to the Department of Revenue under G.S. 105-164.14 for a refund of the sales and use tax on the same purchases or a written statement that the purchases were exempt from the tax. An applicant for a refund under this subsection must provide any information required by the city to substantiate the claim.

SECTION 1.(g) Use of Net Proceeds. – The City of Monroe must use the net proceeds of a tax levied under this section for the construction, operation, and maintenance of a civic center.

SECTION 1.(h) Effective Date of Levy. – A tax levied under this section shall become effective on the date specified in the ordinance levying the tax. The date must be the first day of a calendar month and may not be before the first day of the fourth month after the date the ordinance is adopted.

SECTION 1.(i) Repeal. – A tax levied under this section may be repealed by an ordinance adopted by the Monroe City Council. The Monroe City Council shall repeal the tax when the Civic Center Project for which the tax was imposed is constructed and any debt for the Project has been paid. Any repeal shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal ordinance is adopted. Repeal of a tax levied under this section does not affect a liability for a tax that attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 689

Short Title:	Monroe Meals Tax.	(Local)
Sponsors:	Representative Gibson.	
Referred to:	Finance.	

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF MONROE TO LEVY A PREPARED FOOD TAX.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Authority; Vote. – If the majority of those voting on the question pursuant to this section vote for the levy of the tax, the Monroe City Council may, by ordinance, levy a prepared food tax of up to one percent (1%) of the sales price of prepared food sold within the City of Monroe at retail for consumption on or off the premises by a retailer subject to sales tax under G.S. 105-164(a)(1). This tax is in addition to State and local sales tax.

The Monroe City Council may direct the county board of elections to submit to the qualified voters of the city at the 2006 municipal election the question of whether to levy a local prepared food tax of one percent (1%) as provided in this section. The election must be held on a date jointly agreed upon by the boards and held in accordance with the procedures of G.S. 163-287. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

One percent (1%) local prepared food and beverage tax, in addition to the current local sales and use taxes, to be used for the Civic Center Project for the City of Monroe."

SECTION 1.(b) Definitions; Sales and Use Tax Statutes. – The definitions in G.S. 105-164.3 apply to this section to the extent they are not inconsistent with the provisions of this section. The provisions of Article 5 and Article 9 of Chapter 105 of the General Statutes apply to this section to the extent they are not inconsistent with the provisions of this section.

SECTION 1.(c) Exemptions. – The prepared food tax does not apply to the following sales of prepared food:

(1) Prepared food served to residents in boarding houses and sold together on a periodic basis with rental of a sleeping room or lodging.

(2) Retail sales exempt from taxation under G.S. 105-164.13.
(3) Retail sales through or by means of vending machines.
(4) Prepared food served by a retailer subject to the local occupancy tax if the charge for the meals or prepared food or drink is included in a single, nonitemized sales price together with the charge for rental of a room, lodging, or accommodation furnished by the retailer.
(5) Prepared food furnished without charge by an employer to an employee.
(6) Retail sales by grocers or by grocery sections of supermarkets or other diversified retail establishments, other than sales of prepared food in the delicatessen or similar department of the grocer or grocery section.
(7) Prepared food served on a federal military reservation.

SECTION 1.(d) Collection. – Every retailer subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing prepared food. The tax shall be stated separately on the sale document and shall be paid by the purchaser to the retailer as trustee for and on account of the city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the retailer. The city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax.

SECTION 1.(e) Administration. – The city shall administer a tax levied under this section. A tax levied under this section is due and payable to the city's director of finance and administration in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every retailer liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the city. The return shall show the total gross receipts derived in the preceding month from sales to which the tax applies.

A return filed with the city's director of finance and administration under this section is not a public record and may not be disclosed except in accordance with G.S. 160A-208.1.

SECTION 1.(f) Refunds. – The city shall refund to a nonprofit or governmental entity the prepared food tax paid by the entity on eligible purchases of prepared food. A nonprofit or governmental entity's purchase of prepared food is eligible for a refund under this subsection if the entity is entitled to a refund under G.S. 105-164.14(b) or (c) of local sales and use tax paid on the purchase or if the sale is exempt under G.S. 105-164.13. The time limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(b) and (d) apply to refunds to nonprofit entities; the time, limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(c) and (d) apply to refunds to governmental entities. When an entity applies for a refund of the prepared food tax paid by it on purchases, it must attach to its application a copy of the application submitted to the Department of Revenue under G.S. 105-164.14 for a refund of the sales and use tax on the same purchases or a written statement that the purchases were exempt from the tax.

An applicant for a refund under this subsection must provide any information required by the city to substantiate the claim.

SECTION 1.(g) Penalties. – A person, firm, corporation, or association who fails or refuses to file the return or pay the tax required by this section is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The Monroe City Council has the same authority to waive the penalties for a tax levied under this section that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

SECTION 1.(h) Use of Proceeds. – The City of Monroe must use the proceeds of a tax levied under this section for the construction, operation, and maintenance of a civic center.

SECTION 1.(i) Effective Date of Levy. – A tax levied under this section shall become effective on the date specified in the ordinance levying the tax. The date must be the first day of a calendar month and may not be before the first day of the fourth month after the date the ordinance is adopted.

SECTION 1.(j) Repeal. – A tax levied under this section may be repealed by an ordinance adopted by the Monroe City Council. Any repeal shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal ordinance is adopted. Repeal of a tax levied under this section does not affect a liability for a tax that attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

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

ATTACHMENT 8

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 689

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

H689-ALA-3 [v.1]

Date _____,2005

Comm. Sub. [YES]
Amends Title [NO]
H689-CSLAx-6

Representative Gibson

moves to amend the bill on page 1. line 15,
by rewriting the line to read:
"board of elections and city council and held in accordance with the Chapter 163 of the
General Statutes. The question to be"
on page 1, line 3, by rewriting the line to read:
"FOOD TAX BY VOTE OF THE PEOPLE."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

HOUSE BILL H689:
Monroe Meals Tax

BILL ANALYSIS

Committee:	House Finance	**Date:**	May 3, 2005
Introduced by:	Gibson	**Summary by:**	Martha Walston
Version:	First Edition		Committee Counsel
	H689-CCSLAx-6		

SUMMARY: House Bill 689 authorizes the city of Monroe to levy a 1% sales tax on prepared food and beverages in addition to the 7% State and local sales tax. The proceeds from the tax may be used only for the construction, operation, and maintenance of a civic center. The proposed committee substitute does the following:

- Adds definitions to the act for the following terms: "net proceeds" and "prepared food and beverages"
- Amends the penalties section to state that the uniform meals tax penalty provisions in G.S. 160A-214.1 apply to the tax.
- Adds a section that the tax will sunset when the Civic Center project is constructed and any debt for the Project has been paid.

BILL ANALYSIS: House Bill 689 authorizes the Monroe City Council to levy a 1% sales tax on prepared food if the voters vote for the tax in an election held in 2006. The ballot must state:

"[ ]FOR [ ]AGAINST

One percent (1%) local prepared food and beverage tax, in addition to the current local sales and use taxes, to be used for the Civic Center Project for the City of Monroe."

The net proceeds of the tax must be used for the construction, operation, and maintenance of a civic center.

The tax does not apply to any of the following:

- Prepared food served to residents in boarding houses and sold together on a periodic basis with rental of sleeping room or lodging.
- Sales exempt from the State sales tax.
- Sales made through vending machines
- Prepared food subject to the occupancy tax because it is included in a single, non-itemized sales price for the rental of a room.
- Prepared food furnished without charge by an employer to an employee
- Sales by grocers or by grocery sections of supermarkets or other diversified retail establishment, other than sales of prepared food in the delicatessen or similar department of the grocer or grocery section.
- Prepared food served on a federal military reservation.

A nonprofit or governmental entity entitled to a refund of State sales tax on prepared food is also entitled to a refund of the local prepared food tax.

EFFECTIVE DATE: House Bill 689 is effective when it becomes law.

BACKGROUND: Four counties and two municipalities currently have the authority to levy a prepared food tax: Cumberland (1993), Dare (1991), Mecklenburg (1989), and Wake (1991) Counties, the City of Charlotte (1989) and the Town of Hillsborough(1993). Charlotte can levy the tax only if Mecklenburg County has not levied it.

The City of Monroe plans to build a civic center. The proposed facility would consist of approximately 40,000 to 45,000 square feet at an estimated cost of $8 million. The facility would include meeting rooms that could accommodate between 800 to 1000 individuals at one time or be separated into smaller meeting rooms for smaller groups. During the 2001 Session, a 5% Monroe occupancy tax was enacted. (S.L. 2001-439) A portion of the Monroe occupancy tax proceeds may be used for tourism-related expenditures which are defined as expenditures that are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a city.

H689e1-SMLA-CCSLA

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 689 (First Edition)

SHORT TITLE: Monroe Meals Tax.

SPONSOR(S): Representative Gibson

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund					
City of Monroe	**$370,431**	**$770,497**	**$801,317**	**$833,369**	**$866,704**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: City of Monroe

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY:

The bill authorizes the Monroe City Council to levy a prepared food tax of up to 1% of the sales price of these items sold within the city limits. The bill exempts sales through vending machines, meals provided without charge to employees, items sold together with the rental of a sleeping room or lodging; and sales exempt from the State sales tax. Sales by retailers who collect an occupancy tax and do not separate the meal from the room are also exempt, as are grocery store sales that are not through the deli or similar department of the store. The legislation stipulates that the city shall administer the tax. Refunds will be given to non-profits that are offered a sales tax refund. The City of Monroe is authorized to levy the tax if the voters approve the tax in a referendum in 2006. The City of Monroe must use the proceeds of the tax for the construction, operation, and maintenance of a civic center. The tax would sunset when the civic center project is constructed and any debt for the project has been paid.

ASSUMPTIONS AND METHODOLOGY:

Because the bill impacts only local revenues there is no General Fund impact.

According to the 1997 Economic Census, during that year Monroe foodservice and drinking place establishments reported $52,052,000 in sales. Assuming this number is a reasonable proxy for prepared meals sales, a 1% tax would have generated approximately $520,520 in revenue. Using a 4% growth rate since that time suggests the following revenue stream associated with this bill.

Fiscal Year	Revenue
2005-06	370,431
2006-07	770,497
2007-08	801,317
2008-09	833,369
2009-10	866,704

The estimate in the fiscal impact box assumes a January 1, 2006 implementation date.

SOURCES OF DATA: U.S. Census

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell

Official
Fiscal Research Division
Publication

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: May 2, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 689 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE CITY OF MONROE TO LEVY A PREPARED FOOD TAX.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

T. JERRY WILLIAMS

LOBBYIST & CONSULTANT

Powerhouse Square
116 North West Street, Suite 240
Raleigh, North Carolina (USA) 27603

Phone: (919) 834-3338
Fax: (919) 834-3349
Email: Tjerry@aol.com

April 26, 2005

The Honorable J. Curtis Blackwood
North Carolina House of Representatives
State Legislative Building, Room 1317
Raleigh, North Carolina 27601-1096

Dear Representative Blackwood:

We were shocked to learn that you had been advised that 60 percent of the proposed meals tax for Monroe, if adopted, would be paid by "outsiders." Frankly, that is baloney. Our estimate is that no more than 20 percent would be paid by outsiders while at least 80 percent or more would be paid by the people who live and work in Union County.

For example, one restaurant on I-95 in Smithfield, North Carolina, was surprised to learn about three years ago that only 19 percent of their business comes from the Interstate and 81 percent from locals who live and work in Johnston County. The Bojangles' franchisee there continues to be astounded by that fact.

Another example would be Big Ed's Restaurant here in Raleigh. Many think of Big Ed's as a "tourist restaurant." For example, some of the Raleigh Convention and Visitors Bureau staff do send people there or take them there for the Big Ed's country cooking experience. Yet, on any single day of the week, Monday through Saturday, you will find that well over 80 percent of their customers are local Wake County people; most from the within the city of Raleigh. The same applies to the Angus Barn and Vinnie's, two fine dining places here in Raleigh and Wake County.

There is no way that 60 percent of the meals tax dollars in Monroe will come from outside Union County. In fact, there is no county in the state where that would happen. However, a large chunk of those tax dollars will be paid by the people who live in the county and who are subsequently penalized for going to town for a meal.

Further, it is entirely possible that in some instances a few county residents who do not live in Monroe will maintain a high resentment factor towards the tax to the extent that they go to Cabarrus, Stanley or Anson county to eat out. This is not likely to be a huge problem but it will happen. Others may simply choose to eat at home because of the 2 percent sales tax on that food compared to the much higher tax that would apply to restaurant sales.

We should not allow any jurisdiction to tax a hot dog at a rate higher than a Rolex or fur coat.

Sincerely,

T. Jerry Williams

-----Original Message-----
From: jim@unioncountycoc.com [mailto:jim@unioncountycoc.com]
Sent: Tuesday, March 25, 2003 8:27 PM
To: Fern Shubert
Cc: Doug Spell; Karl Cahoon; John Roberts; Doug Harris; Woody Faulk; Stan Hojnacki; Dave Cowan; Pam Duke
Subject: Monroe Civic

Union County Chamber of Commerce

. . . to enhance economic growth and quality of life.

Center

March 26, 2003

The Honorable Fern Shubert
North Carolina Senate
1414 Legislative Building
Raleigh, NC 27601

Dear Senator Shubert:

I am writing to ask that you vote for enactment this year of the one-percent prepared food and beverage tax to fund construction of the Monroe Civic Center.

Completion of this facility will be of great benefit to our citizens:

- It will enhance the city's ability to recruit industry to locate here, adding jobs, wealth and tax base to Monroe and Union County. I am confident that a majority in the community wants this civic center now.

- Union County suffers for lack of a facility of this size and scope. Many events - wedding receptions, trade shows, corporate meetings, annual meetings, retreats, high school proms, graduations and parties are conducted by Union County organizations in Mecklenburg County. This situation penalizes us from realizing financial benefits, convenience and satisfaction from having events here. Piedmont High School is seeking to conduct its graduation ceremonies at the Cabarrus County civic center. This is a shameful state of affairs.

- Construction of this state of the art facility will revitalize Skyway Drive, the principal gateway into Monroe from US 74. Presence of the civic center will likely result in conversion of an adjacent turn of the century textile mill into a mixed use residential, office facility. Another adjacent and blighted/abandoned mill could be demolished and the property developed. Revitalization of a predominantly African American single-family neighborhood nearby would be positively impacted.

- Financing of construction by this one percent tax is not burdensome to taxpayers. Tourists and other travelers visiting Union County will pay approximately 60 percent of the tax. It is a minimal and voluntary tax. If an individual consumed $1,000 annually in prepared food and beverages, their total tax would be only $10. The tax sunsets in 15 years and can only be used to pay the debt service on this facility. Union County residents dine regularly in Mecklenburg County where they are assessed a two percent tax, which funds Charlotte Mecklenburg amenities. This is not a deterrent to their patronage and I dare say most are unaware of the tax.

Your assistance is needed and very much appreciated in making this dream come true now for Monroe and Union County.

Sincerely,

Jim Carpenter

James G. Carpenter
President

April 30, 2005

Dear Representative Blackwood:

I am a citizen of Monroe, and an announced candidate for Mayor of the City. I wish to register my opposition to proposed House Bill 689. I do not believe that this Bill to authorize the City of Monroe to levy a prepared food tax of up to 1% of the sales price is in the best interest of the citizens of both the City and Union County.

As a proven conservative public official (County Commissioner for past 12 years), I would only resort to ANY tax increase on our citizens only for the most dire of public needs. With the recent increases in both unprepared groceries and restaurant meals that we are currently facing; yet another tax on top of these increases is not conservatively wise at this time. I believe that it is commonly acknowledged by our citizens that a Civic Center (possibly including a new City Hall), would be nice, but is not a current necessity.

In my opinion, the citizens who work and/or live in Monroe, and by necessity must eat lunch in the many fast-food establishments in order to meet lunch hour deadlines, are the people least likely to afford yet another tax. I believe the funding of civic projects and city offices, both of which require long-term maintenance, would be more fairly imposed on the citizen's property tax obligations.

I respectfully request that the proposed House Bill 689 be withdrawn, or that you actively work against its passage. If it must be imposed at this time; then I strongly suggest, at the very least, a public referendum on this matter only appear on the general election ballot in October. This would save the City several thousands of dollars in voting and precinct costs, and allow more time for public debate prior to the October election.

Yours most Sincerely,

Paul A. Standridge
400 Lancaster Ave.
Monroe, NC 28112
(704) 226-2621

cc: Entire Union County Legislative Delegation

City of Monroe Occupancy Tax Fund

	October 1, 2003 Through June 30, 2004	July 1, 2004 Through April 18, 2005
REVENUES:		
Occupancy Tax	$ 202,641	$ 208,596
EXPENDITURES:		
Administrative Transfer To General Fund	$ 30,397	$ 31,289
Transfer To Monroe Tourism Development Authority	172,244	177,307
	$ 202,641	$ 208,596

Monroe Tourism Development Authority

	October 1, 2003 Through June 30, 2004	July 1, 2004 Through April 18, 2005
REVENUES:		
Transfer From City Of Monroe Occupancy Tax Fund	$ 172,244	$ 177,307
Investment Earnings	-	167
	$ 172,244	$ 177,474
EXPENDITURES:		
Administrative Costs	$ 63	$ 39,947
Transfer To City Of Monroe Performing Arts/Civic Center Fund	114,830	118,205
	$ 114,893	$ 158,152

43 F
more..

The Enquirer-Journal

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Wednesday, March 2, 2005

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Should the county raise sales taxes?

- Yes
- Only with a referendum
- No

Vote

Monroe City Council to seek legislation for prepared meals tax

By RITCHIE E. STARNES -- MONROE (March 2, 2005)

The Monroe City Council on Tuesday unanimously approved a resolution that requests local legislation to authorize a referendum for residents to consider a 1 percent prepared meal tax as a source for funding a civic center.

The vote followed an earlier meeting by the City Facilities Committee that identified the funding source for a 45,000-square-foot civic center, estimated to cost between $6.75 million and $9 million. If approved, the local referendum would be planned for May 2006. A provision also states that the tax would conclude consistent with the debt service, estimated at 20 years.

The council debated the question of funding at its recent annual strategic planning retreat. Plans for a performing arts center soured when estimates doubled from $3 million to $6 million because of rising construction costs, prompting the board to revisit the idea of a civic center. The former Scott Aviation building on Charlotte Avenue or a commercial site on Skyway Drive have been named as possible locations.

The city is already collecting a 1-cent occupancy tax from Monroe motels and hotels, implemented as a means to pay for the performing arts center.

Talk of a civic center and the tax, levied against diners at citywide restaurants, has surfaced before, but the tax never materialized and the board turned its attention on the performing arts center. The city already paid about $370,000 for the architectural plans to build the performing arts center before shelving the idea.

Also on Tuesday, the council unanimously approved the city entering a 10-year joint-use agreement with the Union County Board of Education. The agreement, dating back to 1997, means that the city and the school system will continue to share the sporting facilities at Walter Bickett.

Also in this s

Monroe City Cou seek legislation f prepared meals

Local baseball st McNeely openin Batting Zone

Flasher suspect slacker cop soug

Wesley Chapel F Board makes no recommendation shopping center

Scouts use socc Latinos

Planners to weig growth repeal

Central Academy Technology and applications

Civic center back Monroe City Cou

New code expec downtown revital

Wesley Chapel r hear about propc shopping center

As part of the shared relationship, the Board of Education funded the construction of the Walter Bickett field house and has used the city-owned property at Walter Bickett Stadium. The city has also made improvements on school-owned property and has continued to use the property for recreational use, like the soccer fields at Monroe Middle School. The school system and the Monroe Parks and Recreation Department also share sporting facilities.

Councilman Robert Smith suggested a change in the relationship is in order.

"We need to continue to talk with them about swapping the property," he said. "This is a temporary fix for what they own and what we lease. It really should have been done before the merger."

Immediately after the vote, the council also unanimously approved making $41,450 in improvements at the Walter Bickett Stadium. The lion's share of the expense, $30,000 for drainage repair, will be paid out of the next fiscal year budget that begins in July.

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CITY OF MONROE

P.O. BOX 69 • MONROE, NORTH CAROLINA 28111-0069
PHONE 704-282-4511 • FAX 704- 283-9098

May 2, 2005

VIA: EMAIL
pryorg@ncleg.net

The Honorable Pryor A. Gibson, III
North Carolina House of Representatives
Legislative Office Building – Room 419 A
16 West Jones Street
Raleigh, NC 27601-1096

SUBJECT: Support of Monroe Meals Tax – HB 689

Dear Representative Gibson:

On behalf of the City Council of the City of Monroe, I would like to express appreciation for your support of the City of Monroe's request for local legislation to levy a prepared food tax in the City of Monroe subject to a local referendum. The purpose of the Monroe Meals Tax is to provide a funding source for a proposed Civic Center. The Civic Center would be located on property which the City of Monroe has already acquired.

I would also outline that the City has received Resolutions of Support for this facility from an overwhelming majority of the 14 municipalities located in Union County. Likewise, this widespread support has been evidenced by support from the Union County Chamber of Commerce and also the Monroe Economic Development Commission.

As you are aware, there are several revisions which have been incorporated into the requested legislation consisting of a local referendum, sunset provision, and necessitating that the proceeds would be used for the purpose of a Civic Center. Once again, I would reiterate the widespread Community support for this tax in recognition of the significant need for such a facility in Union County. As the County seat, along with our central location in Union County, it seems appropriate that such a facility would be located in the City of Monroe.

Should you have questions or require any additional information which I may provide, please do not hesitate to contact me.

Sincerely,

Judy L. Davis
Mayor

JLD:bhr
cc: City Council Members
S. Douglas Spell, City Manager
05020501

Union County
Chamber of Commerce
Vision2020

May 2, 2005

To Members of the North Carolina General Assembly:

The Board of Directors of the Union County Chamber of Commerce respectfully requests that you to vote for enactment this year of legislation to allow a city of Monroe referendum regarding a one-percent prepared food and beverage tax to fund construction of a civic center.

Completion of this facility will be of great benefit to our citizens:

- It will enhance the ability of Monroe and Union County to recruit industry to locate here, adding jobs, wealth and tax base. A majority in the community wants this civic center now.

- Union County suffers for lack of a facility of this size and scope. Many events – wedding receptions, trade shows, corporate meetings, annual meetings, retreats, high school proms, graduations and parties are conducted by Union County organizations in Mecklenburg County. This situation penalizes us from realizing financial benefits, convenience and satisfaction from having events here. Local high schools are compelled to conduct graduation ceremonies outside of Union County. This is a shameful state of affairs.

- Financing of construction by this one percent tax is not burdensome to taxpayers. Tourists and other travelers visiting Union County will pay approximately 60 percent of the tax. Many of these individuals are non-residents of North Carolina. It is a minimal and voluntary tax. If an individual consumed $1,000 annually in prepared food and beverages, their total tax would be only $10. The tax sunsets in 15 years and can only be used to pay the debt service on this facility. Union County residents dine regularly in Mecklenburg County where they are assessed a two percent tax, which funds Charlotte Mecklenburg amenities. This is not a deterrent to their patronage and I dare say most are unaware of the tax.

While the Chamber is hesitant to endorse any new taxation, we are bolstered by the fact funding for the civic center will be decided by and hopefully approved by citizens and taxpayers of Monroe. Your consideration of this important legislation is gratefully appreciated.

Sincerely

Woody Faulk
Chair

903 Skyway Drive PO Box 1789, Monroe, NC 28111 704-289-4567 Fax 704-282- 0122
info@unioncountycoc.com www.unioncountycoc.com

North Carolina General Assembly

House Committee on Finance

Minutes

~

May 10, 2005

The House Committee on Finance met on Tuesday, May 10, 2005 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, Luebke, and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; Representatives Blackwood, Blust, Bordsen, Capps, Carney, Dockham, Faison, Folwell, Glazier, Hackney, Holliman, Jones, McGee, Rayfield, Underhill, Walend, and Wiley; and Ex-Officio member Representative Culpepper. Also present were Sergeant-at-Arms Earl Coker, Bill Freeman, Fred Hines, and Dusty Rhodes. Staff persons present included Cindy Avrette, Rodney Bizzell, Erika Churchill, Brenna Erford, Ashley Huffstetler, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2.**

Chairman Luebke called the meeting to order at 8:33 am and recognized the two (2) pages present: Jonathan Mestas of Wake County, sponsored by Representative Eddins; and Matthew Knight of Durham County, sponsored by Representative Wilkins.

The first bill under the Committee's consideration was **HB 1136 – MERCURY SWITCH REMOVAL** (see **attachment 3**). Chairman Luebke first recognized Representative Weiss who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion carried. The bill sponsor, Representative Culpepper, was then recognized to explain the bill. He stated that HB 1136 requires manufacturers of vehicles sold in the North Carolina to develop, submit, and implement a mercury minimization plan that provides for the removal, collection, and recovery of mercury switches from "end-of-life vehicles" in order to reduce the quantity of mercury that is released into the environment. The plan must involve a five-dollar ($5) fee minimum charged to the car companies and given to the scrap metal recycling facilities for each mercury switch stripped off a vehicle. Cindy Avrette from Research was recognized and offered an explanation of the difference between the 2nd edition of the bill and the proposed committee substitute stating that it added a provision that would allow for the protection of any information designated by a vehicle manufacturer to be a trade secret. Following the explanation, Representative Holliman was recognized and asked how the mercury switches would be disposed. Responding to the question, Representative Culpepper stated that a plan would be developed to remove the mercury switches and then recycle the mercury. Chairman Luebke then recognized Representative Blackwood who inquired as to why the automobile companies were being charged for the cleanup when they are already facing huge profit losses. Representative Capps was also recognized and followed Representative Blackwood's comment by stating that the burden of the tax should be shared by the ones making the profits, those being the scrap metal and recycling facilities. To respond to the comments, Representative Culpepper was then recognized and pointed out that the vehicle manufacturers have known about the environmental risks associated with mercury switches

and have had the opportunity to voluntarily use an alternative mechanism for some time. He continued by stating that the vehicle manufacturers should carry the burden because they are responsible for the environmental hazard now under discussion. Chairman Luebke then recognized Representative Underhill who moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Chairman Luebke recognized Ross Good, a representative from Daimler Chrysler Corporation, who spoke in opposition to the bill and pointed out that only 1.5% of mercury releases in the environment come from automobiles. Ricky Young of Custom Auto Recycling was also recognized and, speaking in support of the bill, stated that although the five-dollar ($5) fee listed in the bill was not high enough to cover the costs of removing the switches, his association was nonetheless in support of the legislation. Seeing no further discussion, Chairman Luebke then called Representative Underhill's earlier motion to a vote, and it carried by majority.

Chairman Luebke then recognized Representative Fisher to explain **HB 1357 – AMEND ACUPUNCTURE LAWS/FEES** (see **attachment 4**). Before the explanation, Representative Gibson was recognized to send forth a technical amendment (see **attachment 5**) and moved its adoption. As there was no debate on the amendment, Chairman Luebke called the motion to a vote and the amendment was adopted. Representative Fisher then explained the bill stating that it alters certain statutes governing the Acupuncture Licensing Board and increases some of the maximum fees that can be charged by the Board. Following the explanation, Chairman Luebke recognized Representative Jones who moved for a favorable report to a new proposed committee substitute, incorporating the adopted Gibson amendment, and an unfavorable report to the original bill. Representative Wainwright was then recognized and asked why the Board could wait as long as 120 days before acting on a licensure renewal. Chairman Luebke then recognized Barbara Berry, the Chairwoman of the North Carolina Acupuncture Licensing Board, who stated that the Board only meets every sixty (60) days and that the 120 day period was necessary given this meeting schedule. Other general questions were asked about the fee increases and were answered by Barbara Berry. Seeing no further discussion, Chairman Luebke then called Representative Jones' earlier motion to a vote, and it carried by majority.

The next bill under consideration by the Committee was **HB 1005 – PINEVILLE ANNEXATION** (see **attachment 6**). The bill sponsor, Representative McMahan, was recognized and explained that this bill annexes 1100 acres into the Town of Pineville. He stated that the residents living within the proposed annexation had requested this legislation and that he knew of no opposition. Chairman Luebke then recognized Representative Carney who moved that House Bill 1005 be given a favorable report by the Committee. As there was no further debate, Chairman Luebke called the motion to a vote and it carried without objection.

Chairman Luebke then recognized Representative Ross to explain **HB 1115 – ELECTION ADMINISTRATION AMENDMENTS** (see **attachment 7**). Representative Ross informed the Committee members that the bill was given a favorable report from the Election Law and Campaign Finance Reform Committee. She continued by stating that the bill updated and "cleaned up" the current election statutes. She further informed the members that the reason the bill was before the Finance Committee was a change in candidate filing fees (see attached bill summary for further details). Chairman Luebke then recognized Representative Holliman who moved that House Bill 1115 be given a favorable report by the Committee. Seeing no further discussion, Chairman Luebke called the motion to a vote, and it carried by consent.

The following bill considered by the Committee was **SB 420 – OAK RIDGE VOLUNTARY ANNEXATIONS** (see **attachment 8**). Representative Brown was first recognized and, on behalf of the bill sponsor Sen. P. Berger, explained that the bill authorizes the

Town of Oak Ridge to voluntarily annex non-contiguous property by petition. Chairman Luebke then recognized Representative Howard who moved that Senate Bill 420 be given a favorable report. As there was no further debate, Chairman Luebke called the motion to a vote, and it carried without objection.

The final bill under consideration by the Committee was **HB 1411 – UPDATE CONSUMER CREDIT SALES CAP** (see **attachment 9**). As Chairman Luebke was the sponsor of this bill, Representative Howard assumed the chair. Representative Luebke first sent forth an amendment (see **attachment 10**) correcting a drafting error in the bill and moved for its adoption. As there was no debate on the amendment, Chairwoman Howard called the motion to a vote, and the amendment was adopted. Representative Luebke then explained that the bill increases the maximum amount that may be financed in a consumer credit sale from $25,000 to $75,000. He stated that this amount had not been increased since 1971. Chairwoman Howard then recognized Representative Womble who moved for a favorable report to a new proposed committee substitute, incorporating the adopted Luebke amendment, and an unfavorable report to the original bill. Seeing no further discussion, Chairwoman Howard called the motion to a vote and it carried without objection

Following the consideration of House Bill 1411, Representative Luebke reassumed the chair. He then referred **HB 470 – TRANSYLVANIA OCCUPANCY TAX** to the Subcommittee on Occupancy Tax.

As there was no further business before the Committee, Chairman Luebke then adjourned the meeting at 9:39 am.

Respectfully submitted,

Representative Paul Luebke
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. House Bill 1136 (and related materials)
4. House Bill 1357 (and related materials)
5. Gibson Amendment on HB 1357 - **ADOPTED**
6. House Bill 1005 (and related materials)
7. House Bill 1115 (and related materials)
8. Senate Bill 420 (and related materials)
9. House Bill 1411 (and related materials)
10. Luebke Amendment on HB 1411 - **ADOPTED**

AGENDA

ATTACHMENT 1

House Finance Committee

May 10, 2005
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Luebke

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard
Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order

Introduction of Pages

Bills:

HB 1005 PINEVILLE ANNEXATION *Rep. McMahan*

HB 1115 ELECTION ADMINISTRATION AMENDMENTS
Reps. Moore & Ross

HB 1136 MERCURY SWITCH REMOVAL-2
Reps. Culpepper, Hackney, & Hunter

HB 1357 AMEND ACUPUNCTURE LAWS/FEES *Reps. Fisher & Gibson*

HB 1411 UPDATE CONSUMER CREDIT SALES CAP *Reps. Luebke*

SB 420 OAK RIDGE VOLUNTARY ANNEXATIONS *Sen. Berger*

Adjournment

ATTACHMENT 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — May 10, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DONNIE REDMOND	NC DENR DAQ
Rufus L. Edmisten	Edmisten & Webb
Robert M Lawrence	NCAAOM
Roz Savitt	NCCOC
DAVID BARNES	Paynter Spruill
John McMillan	MFAS
KEN MELTON	D.O.R.
John Mc[illegible]	Economics
Andy Romanet	NCLM
Melanie Bradley	Mayor's office
Lisa Martin	NC Home Builders

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — May 10, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Henry Jones	Attorney Raleigh
Molly Diggins	Sierra Club
Liz Clarke	Intern
[illegible] Barbara	NCDOC
[illegible] McConnell	Carolinas HealthCare Sys.
Erin Emery	NC Conservation Network
ANN LORE	OUTS
[illegible]	NCSA
[illegible]	NCAFP
[illegible]	SEANC
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — May 10, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ross Good	Alliance of Automobile Mfrs. Washington D.C. – USA
Brad Lamb	NC Consumers Council
Paola Ribadeneira	NC Acupuncture Licensing Board
John Spainhour	NC Acupuncture Licensing Board
Ann Christian	Atty
Barbara Barry	NC Acupuncture Licensing Board
Bob Cucchi	Ford Motor Company
Johnnie McLean	SBE
Gary O. Bartlett	SBE
Gary Bandl	Wayne Auto Salvage North Carolina Salvage Dealers
Vicky Young	Young's Auto Center Benson, NC
John Stydlowski	MVA

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Johanna Reese	DENR
Jimmy Gentry	NC State Grange
John Cyrus	NCSG
Steve Keene	NC Medical Society
Roger Bone	Bone + Assoc
Paul Meyer	NCACC
Holly Howington	Representative Eddins
Mike Causey	Causey + Associates

CORRECTED NOTICE #2:
HB 768 – REMOVED

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, May 10, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

~~**HB 768 – 2005 OMNIBUS LABOR LAW CHANGES. AB – Rep. Howard**~~

HB 1005 – PINEVILLE ANNEXATION – Rep. McMahan

HB 1115 – ELECTION ADMINISTRATION AMENDMENTS – Reps. Moore & Ross

HB 1136 – MERCURY SWITCH REMOVAL-2 – Reps. Culpepper, Hackney, & Hunter

HB 1357 – AMEND ACUPUNCTURE LAWS/FEES – Reps. Fisher & Gibson

HB 1411 – UPDATE CONSUMER CREDIT SALES CAP – Reps. Luebke

SB 420 – OAK RIDGE VOLUNTARY ANNEXATIONS – Sen. P. Berger

Respectfully,
Representatives Alexander, Gibson, Howard,
Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **4:02 p.m.** on **May 9, 2005.**

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

CORRECTED NOTICE:
HBs 723, 1084, 1349, & 1481 – REMOVED

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, May 10, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

~~**HB 723 – UNC/CRIMINAL RECORD CHECKS/FEE.-AB – Reps. Glazier & Dickson**~~

HB 768 – 2005 OMNIBUS LABOR LAW CHANGES.-AB – Rep. Howard

HB 1005 – PINEVILLE ANNEXATION – Rep. McMahan

~~**HB 1084 – EXPUNGE NONVIOLENT FELONIES/YOUNG OFFENDERS – Reps. Bordsen & Crawford**~~

HB 1115 – ELECTION ADMINISTRATION AMENDMENTS – Reps. Moore & Ross

HB 1136 – MERCURY SWITCH REMOVAL-2 – Reps. Culpepper, Hackney, & Hunter

~~**HB 1349 – RAISE CEILING ON FEES/BOARD OF PHARMACY – Rep. Wilkins**~~

HB 1357 – AMEND ACUPUNCTURE LAWS/FEES – Reps. Fisher & Gibson

HB 1411 – UPDATE CONSUMER CREDIT SALES CAP – Reps. Luebke

~~**HB 1481 – COMPOUNDING PHARMACY PERMITS/FEES – Rep. Wilkins**~~

SB 420 – OAK RIDGE VOLUNTARY ANNEXATIONS – Sen. P. Berger

Respectfully,
Representatives Alexander, Gibson, Howard, Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **1:10 p.m.** on **May 9, 2005.**

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, May 10, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 723 – UNC/CRIMINAL RECORD CHECKS/FEE.-AB – Reps. Glazier & Dickson

HB 768 – 2005 OMNIBUS LABOR LAW CHANGES.-AB – Rep. Howard

HB 1005 – PINEVILLE ANNEXATION – Rep. McMahan

HB 1084 – EXPUNGE NONVIOLENT FELONIES/YOUNG OFFENDERS – Reps. Bordsen & Crawford

HB 1115 – ELECTION ADMINISTRATION AMENDMENTS – Reps. Moore & Ross

HB 1136 – MERCURY SWITCH REMOVAL-2 – Reps. Culpepper, Hackney, & Hunter

HB 1349 – RAISE CEILING ON FEES/BOARD OF PHARMACY – Rep. Wilkins

HB 1357 – AMEND ACUPUNCTURE LAWS/FEES – Reps. Fisher & Gibson

HB 1411 – UPDATE CONSUMER CREDIT SALES CAP – Reps. Luebke

HB 1481 – COMPOUNDING PHARMACY PERMITS/FEES – Rep. Wilkins

SB 420 – OAK RIDGE VOLUNTARY ANNEXATIONS – Sen. P. Berger

Respectfully,
Representatives Alexander, Gibson, Howard, Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **11:40 a.m.** on **May 5, 2005.**

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1136

Committee Substitute Favorable 4/20/05

PROPOSED COMMITTEE SUBSTITUTE H1136-CSRT-8 [v.1]

5/9/2005 10:39:26 AM

Short Title: Mercury Switch Removal-2. (Public)

Sponsors:

Referred to:

April 6, 2005

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE RELEASE OF MERCURY INTO THE ENVIRONMENT BY THE REMOVAL, COLLECTION, AND RECOVERY OF MERCURY SWITCHES FROM CERTAIN MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 6. Mercury Switch Removal Act of 2005.

"**§ 130A-310.50. Short title.**

This Part may be cited as the Mercury Switch Removal Act of 2005.

"**§ 130A-310.51. Definitions.**

As used in this Part:

(1) "Capture rate" means the annual removal, collection, and recovery of mercury switches as a percentage of the total number of mercury switches available for removal from end-of-life vehicles.

(2) "End-of-life vehicle" means a vehicle that is sold, given, or otherwise conveyed to a vehicle recycler or scrap metal recycling facility for the purpose of recycling.

(3) "Manufacturer" means a person, firm, association, partnership, corporation, governmental entity, organization, combination, or joint venture that is the last person in the production or assembly process of a new vehicle that utilizes mercury switches, or in the case of an imported vehicle, the importer or domestic distributor of the vehicle.

(4) "Mercury minimization plan" means a plan for removing, collecting, and recovering mercury switches from end-of-life vehicles that is prepared as provided in G.S. 130A-310.53.

(5) "Mercury switch" means each mercury-containing capsule, commonly known as a "bullet", that is part of a convenience light switch assembly installed in a vehicle.

(6) "Scrap metal recycling facility" means a fixed location where machinery and equipment are used to process scrap metal into specific grades of scrap metal for sale and whose primary product is scrap iron, scrap steel, or nonferrous metallic scrap.

(7) "Vehicle" means any passenger automobile or passenger car, station wagon, truck, van, or sport utility vehicle with a gross vehicle weight rating of less than 12,000 pounds.

(8) "Vehicle recycler" means an individual or entity engaged in the business of acquiring, dismantling, or destroying six or more end-of-life vehicles in a calendar year for the primary purpose of resale of parts of the vehicle.

"**§ 130A-310.52. Purpose.**

The purpose of this Part is to reduce the quantity of mercury that is released into the environment by removing mercury switches from end-of-life vehicles and by creating a removal, collection, and recovery program for mercury switches that are removed from end-of-life vehicles in this State.

"**§ 130A-310.53. Mercury minimization plan.**

(a) Every manufacturer of vehicles sold within this State shall develop a mercury minimization plan prepared pursuant to this section and submit the plan to the Department for review and approval pursuant to G.S. 130A-310.54. Manufacturers of vehicles may develop and submit a plan either individually or as part of a group of manufacturers. A manufacturer shall not be required to develop or implement a mercury minimization plan if the manufacturer demonstrates to the satisfaction of the Department that there is no significant risk of a release of mercury from any vehicle manufactured by the manufacturer.

(b) The mercury minimization plan prepared and submitted pursuant to this section shall include at a minimum all of the following:

(1) The make, model, and year of any vehicle, including current and anticipated future production models, that are sold or offered for sale by the vehicle manufacturer and that may contain one or more mercury switches. For each make, model, and year the vehicle manufacturer shall provide a description and the location of each mercury switch in the vehicle and all safe and environmentally sound methods for removal of mercury switches from end-of-life vehicles. If the manufacturer does not know or is uncertain as to whether or not a switch contains mercury, the plan shall be based on a presumption that the switch does contain mercury.

(2) A system to mark end-of-life vehicles that are to be shredded or crushed to indicate the presence or absence of a mercury switch.

(3) Educational materials to assist a vehicle recycler or a scrap metal recycling facility in undertaking a safe and environmentally sound

method for the removal of the mercury switches from end-of-life vehicles. The materials shall include information on hazards related to mercury and on the proper handling of mercury.

(4) A proposed method for storage and disposal of the mercury switches, including packaging and shipping of mercury switches to permitted recycling, storage, or disposal facilities. To the extent adequate, affordable, and environmentally sound mercury switch disposal technology is unavailable, the plan shall provide for the temporary storage of mercury switches.

(5) A proposed procedure for the transfer of information among entities subject to the mercury minimization plan to enable vehicle manufacturers and the Department to comply with the reporting requirements set out in G.S. 130A-310.56.

(6) A proposal to implement and finance the plan in accordance with subsection (d) of this section.

(c) To the extent practicable, a mercury minimization plan shall utilize the currently available end-of-life vehicle recycling infrastructure. To the extent adequate, affordable, and environmentally sound end-of-life vehicle recycling infrastructure is unavailable, the plan shall provide for the development of this infrastructure.

(d) A mercury minimization plan shall provide a method to finance the removal, collection, and recovery of mercury switches installed in vehicles manufactured by the manufacturer and its predecessors and affiliates. In order to ensure that the costs of removal, collection, and recovery of mercury switches are not borne by automobile dealers, consumers, vehicle recyclers, scrap metal recycling facilities, the State or local governments, or other persons who become responsible for end-of-life vehicles, these costs shall be borne by the manufacturers of vehicles sold in the State. The plan shall provide for prompt reimbursement by manufacturers to vehicle recyclers, scrap metal recycling facilities, the Department, and others of any costs incurred for removal, collection, and recovery of mercury switches. Costs shall include, but are not limited to, the following:

(1) A minimum of five dollars ($5.00) for each mercury switch removed by a vehicle recycler pursuant to G.S. 130A-310.55(a) as partial compensation for the labor and other costs incurred by a vehicle recycler in the removal of the mercury switch.

(2) A minimum of five dollars ($5.00) for each mercury switch removed by a scrap metal recycling facility pursuant to G.S. 130A-310.55(b) as partial compensation for the labor and other costs incurred by a scrap metal recycling facility in the removal of the mercury switch.

(3) One dollar ($1.00) for each mercury switch removed by a vehicle recycler pursuant to G.S. 130A-310.55(a) or by a scrap metal recycling facility pursuant to G.S. 130A-310.55(b) as partial compensation to the Department for costs incurred in administering and enforcing the provisions of this Part.

(4) The cost of packaging necessary to store or transport mercury switches to recycling, storage, or disposal facilities.

(5) The cost of shipping mercury switches to recycling, storage, or disposal facilities.

(6) The cost of recycling, storage, or disposal of mercury switches.

(7) The preparation and distribution to vehicle recyclers and scrap metal recycling facilities of the educational materials required by subdivision (3) of subsection (b) of this section.

(8) Maintenance of all appropriate record-keeping systems.

(e) Manufacturers of vehicles sold within this State shall reimburse vehicle recyclers or scrap metal recycling facilities for each mercury switch removed, collected, and recovered as provided in this section. Manufacturers shall reimburse vehicle recyclers or scrap metal recycling facilities that maintain the records required by G.S. 130A-310.55 for each mercury switch as provided in this section without regard to the date on which the mercury switch is removed, collected, or recovered.

"**§ 130A-310.54. Plan approval and implementation.**

(a) The Department shall review a mercury minimization plan within 120 days after receiving the plan. As a part of its review the Department shall consider comments received from vehicle recyclers, persons who operate scrap metal recycling facilities, and other interested parties. The Department may approve or disapprove the entire plan or may approve part of the plan and disapprove the remainder of the plan. If the Department approves the plan in its entirety, the manufacturer shall begin implementation of the plan within 30 days unless the Department approves a later implementation date. If the Department disapproves the plan in its entirety, the Department shall notify the manufacturer of the reasons for the disapproval. The manufacturer shall submit a revised mercury minimization plan within 30 days. If the Department approves a mercury minimization plan in part, the manufacturer shall implement the approved parts of the mercury minimization plan within 30 days unless the Department approves a later implementation date and shall submit a revision of those parts of the plan that are disapproved within 30 days. Any part of a mercury minimization plan that is not approved or disapproved within 120 days shall be deemed approved, and the manufacturer shall begin implementation within 30 days.

(b) A manufacturer must obtain approval of all required parts of a mercury minimization plan within 240 days of the date on which the manufacturer is required to submit a plan for review under this Part. If a manufacturer fails to obtain approval of all required parts of a mercury minimization plan within the 240 days, the Department shall prepare a plan, notify the manufacturer of the plan, and direct the manufacturer to begin implementation of the plan within 30 days.

(c) The Department may review an approved mercury minimization plan and recommend or require the manufacturer to modify the plan at any time upon finding that the approved mercury minimization plan as implemented no longer meets the requirements of this Part.

"**§ 130A-310.55. Removal of mercury switches from end-of-life vehicles.**

(a) A vehicle recycler that is subject to an approved mercury minimization plan and that conveys ownership of an end-of-life vehicle to a scrap metal recycling facility shall remove all mercury switches identified in the mercury minimization plan prior to delivery of the vehicle to the scrap metal recycling facility. If a mercury switch is inaccessible due to the condition of the vehicle, the fact that the mercury switch remains in the vehicle shall be noted on the vehicle recycler's invoice.

(b) A scrap metal recycling facility that is subject to an approved mercury minimization plan and that accepts an end-of-life vehicle that has not been flattened, crushed, baled, or shredded and that contains mercury switches shall remove the mercury switches before the end-of-life vehicle is flattened, crushed, baled, or shredded unless the mercury switch is inaccessible due to the condition of the vehicle.

(c) It shall be unlawful for any person to knowingly flatten, crush, bale, shred, or otherwise alter the condition of a vehicle from which accessible mercury switches have not been removed.

(d) A mercury switch is inaccessible if, due to the condition of the vehicle, the switch cannot be removed in accordance with the approved mercury minimization plan and removal of the switch would significantly increase the risk of a release of mercury into the environment.

(e) A vehicle recycler or scrap metal recycling facility that removes mercury switches pursuant to subsection (a) or (b) of this section shall maintain records of:

(1) The number of vehicles of each make that are processed for recycling.

(2) The number of mercury switches removed from each vehicle make, model, and year.

(3) The number of vehicles processed for recycling.

(f) Each vehicle recycler and scrap metal recycling facility that is required to maintain records under subsection (e) of this section shall retain the records for a minimum of three years and shall make the records available for inspection by the Department upon request.

(g) It shall be unlawful for a person who is required to remove mercury switches under this Part to willfully fail to do so. It shall be unlawful for a person who is required to make and maintain records under this Part to willfully fail to do so. It shall be unlawful to knowingly make a false report that a mercury switch has been removed from an end-of-life vehicle.

(h) Mercury switches that are removed from end-of-life vehicles shall be considered 'universal waste' as defined in 40 Code of Federal Regulations § 273.9 (1 July 2004 Edition). Mercury switches that are removed from end-of-life vehicles shall be collected, transported, treated, stored, disposed of, and otherwise handled in accordance with rules adopted by the Commission governing universal waste.

(i) Mercury switches shall be removed from end-of-life vehicles so as to achieve a capture rate of at least ninety percent (90%).

"**§ 130A-310.56. Evaluation of vehicle design changes that affect mercury recyclability; reporting requirements.**

(a) Each vehicle manufacturer shall, either individually or as part of a group, prepare an annual report that describes in detail the status of vehicle design changes that

are intended to facilitate recycling of vehicle components that contain mercury. At a minimum, the report shall include all of the following:

(1) For each make and model, a list of all vehicle components that contain mercury for the previous three model years, the current model year, and the next upcoming model year.

(2) A description of all design changes that each manufacturer has implemented or will implement to reduce or eliminate vehicle components that contain mercury, the achieved or anticipated amount of each reduction, and when the design change will be implemented.

(3) A summary of all policies that each manufacturer has implemented or will implement to ensure that the manufacturers' vehicles are designed to be recycled in a safe, cost-effective, and environmentally sound manner.

(4) A summary of any recommendations, complaints, or reports that the manufacturer has received within the previous 12 months from vehicle recyclers, scrap metal recycling facilities, government entities, or other persons, as well as any other information available to the manufacturer, regarding vehicle design features that adversely affect the recyclability of vehicle components that contain mercury.

(b) A vehicle manufacturer or group of vehicle manufacturers that submits the report required by subsection (a) of this section may designate any information in the report that constitutes a trade secret, as defined in G.S. 66-152, as confidential information in accordance with G.S. 132-1.2. Information so designated shall be protected as provided in G.S. 130A-304.

(c) Each vehicle manufacturer shall submit, either individually or as part of a group, the report required by subsection (a) of this section on or before 1 July of each year.

(d) The Department may evaluate the extent to which vehicle design promotes or impedes recycling of vehicle components that contain mercury. The Department may conduct hearings from time to time to receive public comment regarding vehicle design changes that affect recycling of vehicle components that contain mercury. The Department may develop recommendations as to changes in vehicle design that would further promote the recyclability of these components. The Department shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission on or before 1 October of each year.

(e) Each vehicle manufacturer that is required to implement a mercury minimization plan shall prepare, either individually or as part of a group, an annual report on the implementation of the plan. The report shall be submitted to the Department within 90 days after the end of the anniversary of the date on which the manufacturer is required to begin implementation of the plan. The report shall include, at a minimum, all of the following:

(1) A detailed description and documentation of the capture rate achieved.

(2) In the event that a capture rate of at least ninety percent (90%) is not achieved, a description of additional or alternative actions that may be

implemented to improve the mercury minimization plan and its implementation.

(3) The number of mercury switches collected, the number of end-of-life vehicles containing mercury switches, the number of end-of-life vehicles processed for recycling, and a description of how the mercury switches were managed.

(4) A statement that details the costs required to implement the mercury minimization plan.

"**§ 130A-310.57. Adoption of rules; administrative procedure; enforcement.**

(a) The Commission may adopt rules to implement this Part.

(b) Chapter 150B of the General Statutes governs implementation of this Part.

(c) This Part may be enforced as provided in Part 2 of Article 1 of this Chapter."

SECTION 2. The Commission for Health Services shall amend 15A NCAC 13A .0119 to adopt rules governing the management of waste mercury-containing devices, as defined in the Notice of Proposed Rulemaking published on 12 June 2002 in the Federal Register, Volume 67, Number 113, Page 40507 through 40528, as universal waste.

SECTION 3. G.S. 130A-310.53, as enacted by Section 1 of this act, becomes effective 1 January 2006. G.S. 130A-310.56, as enacted by Section 1 of this act, becomes effective 1 July 2007. All other provisions of Part 6 of Article 9 of Chapter 130A of the General Statutes, as enacted by Section 1 of this act and Sections 2 and 3 of this act, become effective when this act becomes law. This act expires on 1 July 2026.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1136

Committee Substitute Favorable 4/20/05

Short Title: Mercury Switch Removal-2. (Public)

Sponsors:

Referred to:

April 6, 2005

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE RELEASE OF MERCURY INTO THE ENVIRONMENT BY THE REMOVAL, COLLECTION, AND RECOVERY OF MERCURY SWITCHES FROM CERTAIN MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 6. Mercury Switch Removal Act of 2005.

"**§ 130A-310.50. Short title.**

This Part may be cited as the Mercury Switch Removal Act of 2005.

"**§ 130A-310.51. Definitions.**

As used in this Part:

(1) "Capture rate" means the annual removal, collection, and recovery of mercury switches as a percentage of the total number of mercury switches available for removal from end-of-life vehicles.

(2) "End-of-life vehicle" means a vehicle that is sold, given, or otherwise conveyed to a vehicle recycler or scrap metal recycling facility for the purpose of recycling.

(3) "Manufacturer" means a person, firm, association, partnership, corporation, governmental entity, organization, combination, or joint venture that is the last person in the production or assembly process of a new vehicle that utilizes mercury switches, or in the case of an imported vehicle, the importer or domestic distributor of the vehicle.

(4) "Mercury minimization plan" means a plan for removing, collecting, and recovering mercury switches from end-of-life vehicles that is prepared as provided in G.S. 130A-310.53.

(5) "Mercury switch" means each mercury-containing capsule, commonly known as a "bullet", that is part of a convenience light switch assembly installed in a vehicle.

(6) "Scrap metal recycling facility" means a fixed location where machinery and equipment are used to process scrap metal into specific grades of scrap metal for sale and whose primary product is scrap iron, scrap steel, or nonferrous metallic scrap.

(7) "Vehicle" means any passenger automobile or passenger car, station wagon, truck, van, or sport utility vehicle with a gross vehicle weight rating of less than 12,000 pounds.

(8) "Vehicle recycler" means an individual or entity engaged in the business of acquiring, dismantling, or destroying six or more end-of-life vehicles in a calendar year for the primary purpose of resale of parts of the vehicle.

"**§ 130A-310.52. Purpose.**

The purpose of this Part is to reduce the quantity of mercury that is released into the environment by removing mercury switches from end-of-life vehicles and by creating a removal, collection, and recovery program for mercury switches that are removed from end-of-life vehicles in this State.

"**§ 130A-310.53. Mercury minimization plan.**

(a) Every manufacturer of vehicles sold within this State shall develop a mercury minimization plan prepared pursuant to this section and submit the plan to the Department for review and approval pursuant to G.S. 130A-310.54. Manufacturers of vehicles may develop and submit a plan either individually or as part of a group of manufacturers. A manufacturer shall not be required to develop or implement a mercury minimization plan if the manufacturer demonstrates to the satisfaction of the Department that there is no significant risk of a release of mercury from any vehicle manufactured by the manufacturer.

(b) The mercury minimization plan prepared and submitted pursuant to this section shall include at a minimum all of the following:

(1) The make, model, and year of any vehicle, including current and anticipated future production models, that are sold or offered for sale by the vehicle manufacturer and that may contain one or more mercury switches. For each make, model, and year the vehicle manufacturer shall provide a description and the location of each mercury switch in the vehicle and all safe and environmentally sound methods for removal of mercury switches from end-of-life vehicles. If the manufacturer does not know or is uncertain as to whether or not a switch contains mercury, the plan shall be based on a presumption that the switch does contain mercury.

(2) A system to mark end-of-life vehicles that are to be shredded or crushed to indicate the presence or absence of a mercury switch.

(3) Educational materials to assist a vehicle recycler or a scrap metal recycling facility in undertaking a safe and environmentally sound method for the removal of the mercury switches from end-of-life vehicles. The materials shall include information on hazards related to mercury and on the proper handling of mercury.

(4) A proposed method for storage and disposal of the mercury switches, including packaging and shipping of mercury switches to permitted recycling, storage, or disposal facilities. To the extent adequate, affordable, and environmentally sound mercury switch disposal technology is unavailable, the plan shall provide for the temporary storage of mercury switches.

(5) A proposed procedure for the transfer of information among entities subject to the mercury minimization plan to enable vehicle manufacturers and the Department to comply with the reporting requirements set out in G.S. 130A-310.56.

(6) A proposal to implement and finance the plan in accordance with subsection (d) of this section.

(c) To the extent practicable, a mercury minimization plan shall utilize the currently available end-of-life vehicle recycling infrastructure. To the extent adequate, affordable, and environmentally sound end-of-life vehicle recycling infrastructure is unavailable, the plan shall provide for the development of this infrastructure.

(d) A mercury minimization plan shall provide a method to finance the removal, collection, and recovery of mercury switches installed in vehicles manufactured by the manufacturer and its predecessors and affiliates. In order to ensure that the costs of removal, collection, and recovery of mercury switches are not borne by automobile dealers, consumers, vehicle recyclers, scrap metal recycling facilities, the State or local governments, or other persons who become responsible for end-of-life vehicles, these costs shall be borne by the manufacturers of vehicles sold in the State. The plan shall provide for prompt reimbursement by manufacturers to vehicle recyclers, scrap metal recycling facilities, the Department, and others of any costs incurred for removal, collection, and recovery of mercury switches. Costs shall include, but are not limited to, the following:

(1) A minimum of five dollars ($5.00) for each mercury switch removed by a vehicle recycler pursuant to G.S. 130A-310.55(a) as partial compensation for the labor and other costs incurred by a vehicle recycler in the removal of the mercury switch.

(2) A minimum of five dollars ($5.00) for each mercury switch removed by a scrap metal recycling facility pursuant to G.S. 130A-310.55(b) as partial compensation for the labor and other costs incurred by a scrap metal recycling facility in the removal of the mercury switch.

(3) One dollar ($1.00) for each mercury switch removed by a vehicle recycler pursuant to G.S. 130A-310.55(a) or by a scrap metal recycling facility pursuant to G.S. 130A-310.55(b) as partial compensation to the Department for costs incurred in administering and enforcing the provisions of this Part.

(4) The cost of packaging necessary to store or transport mercury switches to recycling, storage, or disposal facilities.

(5) The cost of shipping mercury switches to recycling, storage, or disposal facilities.

(6) The cost of recycling, storage, or disposal of mercury switches.
(7) The preparation and distribution to vehicle recyclers and scrap metal recycling facilities of the educational materials required by subdivision (3) of subsection (b) of this section.
(8) Maintenance of all appropriate record-keeping systems.

(e) Manufacturers of vehicles sold within this State shall reimburse vehicle recyclers or scrap metal recycling facilities for each mercury switch removed, collected, and recovered as provided in this section. Manufacturers shall reimburse vehicle recyclers or scrap metal recycling facilities that maintain the records required by G.S. 130A-310.55 for each mercury switch as provided in this section without regard to the date on which the mercury switch is removed, collected, or recovered.

"**§ 130A-310.54. Plan approval and implementation.**

(a) The Department shall review a mercury minimization plan within 120 days after receiving the plan. As a part of its review the Department shall consider comments received from vehicle recyclers, persons who operate scrap metal recycling facilities, and other interested parties. The Department may approve or disapprove the entire plan or may approve part of the plan and disapprove the remainder of the plan. If the Department approves the plan in its entirety, the manufacturer shall begin implementation of the plan within 30 days unless the Department approves a later implementation date. If the Department disapproves the plan in its entirety, the Department shall notify the manufacturer of the reasons for the disapproval. The manufacturer shall submit a revised mercury minimization plan within 30 days. If the Department approves a mercury minimization plan in part, the manufacturer shall implement the approved parts of the mercury minimization plan within 30 days unless the Department approves a later implementation date and shall submit a revision of those parts of the plan that are disapproved within 30 days. Any part of a mercury minimization plan that is not approved or disapproved within 120 days shall be deemed approved, and the manufacturer shall begin implementation within 30 days.

(b) A manufacturer must obtain approval of all required parts of a mercury minimization plan within 240 days of the date on which the manufacturer is required to submit a plan for review under this Part. If a manufacturer fails to obtain approval of all required parts of a mercury minimization plan within the 240 days, the Department shall prepare a plan, notify the manufacturer of the plan, and direct the manufacturer to begin implementation of the plan within 30 days.

(c) The Department may review an approved mercury minimization plan and recommend or require the manufacturer to modify the plan at any time upon finding that the approved mercury minimization plan as implemented no longer meets the requirements of this Part.

"**§ 130A-310.55. Removal of mercury switches from end-of-life vehicles.**

(a) A vehicle recycler that is subject to an approved mercury minimization plan and that conveys ownership of an end-of-life vehicle to a scrap metal recycling facility shall remove all mercury switches identified in the mercury minimization plan prior to delivery of the vehicle to the scrap metal recycling facility. If a mercury switch is

inaccessible due to the condition of the vehicle, the fact that the mercury switch remains in the vehicle shall be noted on the vehicle recycler's invoice.

(b) A scrap metal recycling facility that is subject to an approved mercury minimization plan and that accepts an end-of-life vehicle that has not been flattened, crushed, baled, or shredded and that contains mercury switches shall remove the mercury switches before the end-of-life vehicle is flattened, crushed, baled, or shredded unless the mercury switch is inaccessible due to the condition of the vehicle.

(c) It shall be unlawful for any person to knowingly flatten, crush, bale, shred, or otherwise alter the condition of a vehicle from which accessible mercury switches have not been removed.

(d) A mercury switch is inaccessible if, due to the condition of the vehicle, the switch cannot be removed in accordance with the approved mercury minimization plan and removal of the switch would significantly increase the risk of a release of mercury into the environment.

(e) A vehicle recycler or scrap metal recycling facility that removes mercury switches pursuant to subsection (a) or (b) of this section shall maintain records of:

(1) The number of vehicles of each make that are processed for recycling.

(2) The number of mercury switches removed from each vehicle make, model, and year.

(3) The number of vehicles processed for recycling.

(f) Each vehicle recycler and scrap metal recycling facility that is required to maintain records under subsection (e) of this section shall retain the records for a minimum of three years and shall make the records available for inspection by the Department upon request.

(g) It shall be unlawful for a person who is required to remove mercury switches under this Part to willfully fail to do so. It shall be unlawful for a person who is required to make and maintain records under this Part to willfully fail to do so. It shall be unlawful to knowingly make a false report that a mercury switch has been removed from an end-of-life vehicle.

(h) Mercury switches that are removed from end-of-life vehicles shall be considered 'universal waste' as defined in 40 Code of Federal Regulations § 273.9 (1 July 2004 Edition). Mercury switches that are removed from end-of-life vehicles shall be collected, transported, treated, stored, disposed of, and otherwise handled in accordance with rules adopted by the Commission governing universal waste.

(i) Mercury switches shall be removed from end-of-life vehicles so as to achieve a capture rate of at least ninety percent (90%).

"**§ 130A-310.56. Evaluation of vehicle design changes that affect mercury recyclability; reporting requirements.**

(a) Each vehicle manufacturer shall, either individually or as part of a group, prepare an annual report that describes in detail the status of vehicle design changes that are intended to facilitate recycling of vehicle components that contain mercury. At a minimum, the report shall include all of the following:

(1) For each make and model, a list of all vehicle components that contain mercury for the previous three model years, the current model year, and the next upcoming model year.

(2) A description of all design changes that each manufacturer has implemented or will implement to reduce or eliminate vehicle components that contain mercury, the achieved or anticipated amount of each reduction, and when the design change will be implemented.

(3) A summary of all policies that each manufacturer has implemented or will implement to ensure that the manufacturers' vehicles are designed to be recycled in a safe, cost-effective, and environmentally sound manner.

(4) A summary of any recommendations, complaints, or reports that the manufacturer has received within the previous 12 months from vehicle recyclers, scrap metal recycling facilities, government entities, or other persons, as well as any other information available to the manufacturer, regarding vehicle design features that adversely affect the recyclability of vehicle components that contain mercury.

(b) Each vehicle manufacturer shall submit, either individually or as part of a group, the report required by subsection (a) of this section on or before 1 July of each year.

(c) The Department may evaluate the extent to which vehicle design promotes or impedes recycling of vehicle components that contain mercury. The Department may conduct hearings from time to time to receive public comment regarding vehicle design changes that affect recycling of vehicle components that contain mercury. The Department may develop recommendations as to changes in vehicle design that would further promote the recyclability of these components. The Department shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission on or before 1 October of each year.

(d) Each vehicle manufacturer that is required to implement a mercury minimization plan shall prepare, either individually or as part of a group, an annual report on the implementation of the plan. The report shall be submitted to the Department within 90 days after the end of the anniversary of the date on which the manufacturer is required to begin implementation of the plan. The report shall include, at a minimum, all of the following:

(1) A detailed description and documentation of the capture rate achieved.

(2) In the event that a capture rate of at least ninety percent (90%) is not achieved, a description of additional or alternative actions that may be implemented to improve the mercury minimization plan and its implementation.

(3) The number of mercury switches collected, the number of end-of-life vehicles containing mercury switches, the number of end-of-life vehicles processed for recycling, and a description of how the mercury switches were managed.

(4) A statement that details the costs required to implement the mercury minimization plan.

"**§ 130A-310.57. Adoption of rules; administrative procedure; enforcement.**

(a) The Commission may adopt rules to implement this Part.

(b) Chapter 150B of the General Statutes governs implementation of this Part.

(c) This Part may be enforced as provided in Part 2 of Article 1 of this Chapter."

SECTION 2. The Commission for Health Services shall amend 15A NCAC 13A .0119 to adopt rules governing the management of waste mercury-containing devices, as defined in the Notice of Proposed Rulemaking published on 12 June 2002 in the Federal Register, Volume 67, Number 113, Page 40507 through 40528, as universal waste.

SECTION 3. G.S. 130A-310.53, as enacted by Section 1 of this act, becomes effective 1 January 2006. G.S. 130A-310.56, as enacted by Section 1 of this act, becomes effective 1 July 2007. All other provisions of Part 6 of Article 9 of Chapter 130A of the General Statutes, as enacted by Section 1 of this act and Sections 2 and 3 of this act, become effective when this act becomes law. This act expires on 1 July 2026.

HOUSE BILL 1136:
Mercury Switch Removal-2

BILL ANALYSIS

Committee:	House Finance	**Date:**	May 10, 2005
Introduced by:	Reps. Culpepper, Hackney, Hunter	**Summary by:**	Jennifer McGinnis and George Givens, Staff Attorneys
Version:	PCS to Second Edition H1136-CSRT-8		

SUMMARY: ***House bill 1136 would require manufacturers of vehicles sold in the State to develop, submit, and implement a mercury minimization plan (plan) that provides for the removal, collection, and recovery of mercury switches from end-of-life vehicles in order to reduce the quantity of mercury that is released into the environment. The bill would also require: (i) vehicle recyclers and scrap metal recycling facilities subject to an approved plan to remove all accessible mercury switches from end-of-life vehicles, and specifies procedures for inaccessible switches; (ii) maintenance of certain records by manufacturers, vehicle recyclers, and scrap metal recycling facilities; and (iii) that mercury switches be removed from end-of-life vehicles so as to achieve a capture rate of at least 90%. The bill would make it unlawful for anyone to: knowingly flatten, crush, bale, or shred a vehicle from which accessible mercury switches have not been removed; willfully fail to remove switches if required to do so; willfully fail to maintain records as required; knowingly make a false report that a switch has been removed from an end-of-life vehicle. The bill would create various reporting requirements.***

Under the bill "mercury switch" is defined as a mercury-containing capsule, commonly known as a "bullet", that is part of a convenience light switch assembly installed in a vehicle.

PCS CHANGES TO 2ND EDITION: The bill requires vehicle manufacturers to submit an annual report that describes the status of vehicle design changes intended to facilitate recycling of vehicle components that contain mercury. The PCS would add a provision that would allow a vehicle manufacturer or group of manufacturers to designate any information that constitutes a trade secret submitted pursuant to the report as confidential, and provides that information so designated will be protected.

BILL ANALYSIS: The bill would require manufacturers of vehicles sold in the State to develop, submit, and implement a mercury minimization plan (plan) that provides for the removal, collection, and recovery of mercury switches from end-of-life vehicles in order to reduce the quantity of mercury released in to the environment. Manufacturers of vehicles would be allowed to develop and submit a plan either individually or as part of a group of manufacturers. A manufacturer that could demonstrate to the satisfaction of the Department of Environment and Natural Resources (DENR) that there is no significant risk of a release of mercury from any vehicle manufactured by the manufacturer would not be required to develop or implement a plan. The plan must include at a minimum all of the following:

- Information about: vehicles that are sold or offered for sale that may contain mercury switches; the switch's location in the vehicle; and safe and environmentally sound methods for removal of the switches.
- A system to mark end-of-life vehicles that are to be shredded or crushed to indicate the presence or absence of a switch.
- Educational materials to assist vehicle recyclers or scrap metal recycling facilities in undertaking safe and environmentally sound removal of the switches.
- Methods for storage and disposal of the switches.
- Methods to finance the removal, collection, and recovery of mercury switches installed in vehicles. The bill provides that these costs should be borne by manufacturers, and not by

automobile dealers, consumers, vehicle recyclers, the State or local governments, or other persons who become responsible for end-of-life vehicles. The bill would establish certain minimum costs for removing, recycling, and storing mercury switches and requires manufacturers to promptly reimburse recyclers, scrap metal recycling facilities, DENR, and others for those services.

In addition, the bill would:

- Provide that a plan must use currently available end-of-life recycling infrastructure to the extent practicable, and to the extent the infrastructure is unavailable, the plan should provide for its development.
- Provide that a plan must be submitted to DENR for review, and would establish timelines for DENR's review of the plans. If a manufacturer failed to obtain approval of all required parts of the plan with 240 days of the submittal deadline, DENR would be directed to prepare a plan for the manufacturer to implement. In addition, DENR would be authorized to review an approved plan and recommend or require the manufacturer to modify the plan at any time upon finding that the approved plan as implemented no longer meets the requirements of this act.
- Require that a vehicle recycler subject to an approved plan must remove all mercury switches from end-of-life vehicles before they are delivered to a scrap metal recycling facility, and specifies procedures for inaccessible switches. Scrap metal recycling facilities subject to an approved plan that accept end-of-life vehicles that have not been flattened, crushed, baled, or shredded would be required to remove switches that are not inaccessible before the vehicles are flattened, crushed, baled, or shredded. Vehicle recyclers and scrap metal recycling facilities would be required to maintain records of the number of vehicles processed for recycling and the number of switches removed.
- Make it unlawful for anyone to: knowingly flatten, crush, bale, or shred a vehicle from which accessible mercury switches have not been removed; willfully fail to remove switches if required to do so; willfully fail to maintain records as required; or knowingly make a false report that a switch has been removed from an end-of-life vehicle.
- Provide that mercury switches that are removed from end-of-life vehicles shall be considered "universal waste" as defined in the Code of Federal Regulations. Provide that the switches must be collected, transported, treated, stored, disposed of, and otherwise handled in accordance with rules adopted by the Commission for Health Services (Commission) governing universal waste. Provide that the Commission must amend 15A NCAC 13A .0119, Standards for Universal Waste Management, in this regard.
- Provide that mercury switches are to be removed from end-of-life vehicles so as to achieve a capture rate of at least 90%.
- Require manufacturers to prepare an annual report that describes the status of vehicle design changes that are intended to facilitate recycling of components that contain mercury and submit an annual report on implementation of a plan to DENR.
- Provide that DENR may evaluate the extent to which vehicle design promotes or impedes recycling of vehicle components that contain mercury; may conduct public hearings and receive public comments from time to time on the matter; may develop recommendations as to design changes that would promote recyclability of components that contain mercury; and must report its findings and recommendations to the Environmental Review Commission annually.
- Authorize the Commission to adopt rules to implement the provisions of this act.
- Provide that the provisions of the bill may be enforced as provided in Part 2 of Article 1 of Chapter 130A of the General Statutes, which provides that a violation may result in the imposition of administrative penalties and subject a person to conviction of a misdemeanor. In addition, the Secretary of Environment and Natural Resources or a local health director may institute an action for injunctive relief in the superior court of the county where a violation occurs.

BACKGROUND: Automobiles have historically used switches containing mercury to turn on the hood, trunk, or door lights when they are opened, and to operate some anti-lock brake systems. While most manufacturers are committed to designing new cars without mercury in the switches, the problem remains for the more than 215 million mercury switches contained in cars on the road today. Unless mercury switches are recovered before the automobiles get crushed and recycled, mercury can be released into the air, soil, and water during crushing, or from subsequent management in electric arc furnaces (EAFs).

Once the high value parts have been removed from retired automobiles, vehicle hulks are sent to shredder facilities where ferrous (steel) and nonferrous metals are recovered, or sent directly to EAFs. These EAFs use electrical energy to melt the scrap to make new steel products. During the dismantling and recycling processes, there is the potential for mercury contained in vehicles to be released to the environment. Based on mercury test data and industry responses to a survey conducted in 2004, the current estimate of mercury emitted from electric arc furnaces is ten tons per year.[1]

Over 15 million automobiles are recycled in the US every year. North Carolina-based Nucor Corporation alone recycles 5 million automobiles.[2]

Two states, Maine and Arkansas, have enacted similar legislation and several other states have legislation pending. The Maine act required among other things that certain manufacturers pay a $1.00 bounty for mercury switches removed from their automobiles and established consolidation facilities in that state for the collection of mercury switches. The Alliance of Automobile Manufacturers filed suit challenging that the Maine law violated the federal Constitution with respect to the Commerce Clause, the Equal Protection Clause, and the Due Process Clause of the Fourteenth Amendment. On 17 July 2003, the United States Magistrate Judge filed a Recommended Decision with the United States District Court for the District of Maine (Court) that the Court grant the Defendant's (Commissioner of the Maine Department of Environmental Protection) Motion for Summary Judgment. On 31 July 2003, the Plaintiff filed an Objection to the Recommended Decision. On 17 February 2004 the Court affirmed the decision of the Magistrate Judge and ordered that the Defendant's Motion for Summary Judgment be granted.

In 1993, Sweden banned mercury switches in new automobiles. All companies selling automobiles in Europe, including U.S. automobile manufacturers, discontinued the use of mercury switches at that time. Some companies, mainly in Japan, (for instance, Honda) have never used mercury switches. U.S. automobile manufacturers voluntarily discontinued the domestic use of mercury switches in new automobiles in 2003 after the enactment of the Maine Mercury Switch Removal Act of 2002.[3]

EFFECTIVE DATE: G.S. 130A-310.53, which requires development of mercury minimization plans, would become effective 1 January 2006. G.S. 130A-310.56, which contains various reporting requirements applicable to vehicle manufacturers and DENR, would become effective 1 July 2007. All other provisions of the act would become effective when the act becomes law. The act would sunset on 1 July 2026.

H1136e2-SMRI-CSRI

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[1] Information provided by the United States Environmental Protection Agency (USEPA), see http://www.epa.gov/epaoswer/hazwaste/mercury/ntl-switch.htm. USEPA has issued a statement concerning mercury switch control that indicates the agency plans to propose a rule in 2005 that establishes standards for hazardous air pollutants emitted by EAFs, and plans to incorporate approaches to remove mercury switches into the proposed rule.

[2] Information provided by Moore & Van Allen, PLLC.

[3] Information provided by Moore & Van Allen, PLLC.

NORTH CAROLINA MERCURY ESTMATES		
North Carolina		
Mercury Retired From Fleet Per Calendar Year		
Year		
	Lighting Switches Retired	Pounds Mercury
2003	193,017	510
2004	186,903	494
2005	170,549	451
2006	163,778	433
2007	155,977	412
2008	147,705	390
2009	136,681	361
2010	126,229	334
2011	115,753	306
2012	105,963	280
2013	96,879	256
2014	81,994	217
2015	78,100	206
2016	68,221	180
2017	58,416	154
2018	50,224	133
2019	42,211	112
2020	35,092	93
2021	29,501	78
2022	24,304	64
2023	20,384	54
2024	16,173	43
2025	12,365	33
2026	9,973	26
2027	8,304	22
2028	7,342	19
2029	6,132	16
2030	4,483	12
2031	2,875	8
2032	1,104	3
Total	2,156,632	5,700

Data Provided by the Department of Environment and Natural Resources (DENR).

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

HB 1136 A BILL TO BE ENTITLED AN ACT TO REDUCE THE RELEASE OF MERCURY IN THE ENVIRONMENT BY THE REMOVAL, COLLECTION, AND RECOVERY OF MERCURY SWITCHES FROM CERTAIN MOTOR VEHICLES.

☒ With a favorable report as to the committee substitute bill 2, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1357

Short Title:	Amend Acupuncture Laws/Fees.	(Public)
Sponsors:	Representatives Fisher, Gibson (Primary Sponsors); B. Allen, Bordsen, and Harrison.	
Referred to:	Finance.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE ACUPUNCTURE LICENSING BOARD TO EMPLOY CERTAIN PROFESSIONAL ADVISORS; TO CLARIFY QUALIFICATIONS FOR INITIAL LICENSURE, LICENSE RENEWAL, AND INACTIVE, SUSPENDED, EXPIRED, AND LAPSED LICENSES; TO CLARIFY CONTINUING EDUCATION; AND TO INCREASE AND ESTABLISH CERTAIN FEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-454 reads as rewritten:

"**§ 90-454. Powers and duties of Board.**

The Board may:

(1) Deny, issue, suspend, and revoke licenses in accordance with rules adopted by the Board, and may collect fees, investigate violations of this Article, and otherwise administer the provisions of this Article.

(2) Sponsor or authorize other entities to offer continuing education programs, and approve continuing education requirements for license renewal.

(3) Establish requirements ~~for~~ for, collect fees from, and approve schools of acupuncture in this State. The requirements shall be at least as stringent as the core curricula standards of the Council of Colleges of Acupuncture and Oriental Medicine.

(4) Sue to enjoin violations of G.S. 90-452. The court may issue an injunction even though no person has yet been injured as a result of the unauthorized practice.

(5) Adopt and use a seal to authenticate official documents of the Board.

(6) Employ and fix the compensation of personnel and professional advisors, including legal counsel, as may be needed to carry out its

functions, and purchase, lease, rent, sell, or otherwise dispose of personal and real property for the operations of the Board.

(7) Expend funds as necessary to carry out the provisions of this Article from revenues and interest generated by fees collected under this Article.

(8) Adopt rules to implement this Article in accordance with Chapter 150B of the General Statutes.

(9) Establish practice parameters to become effective July 1, 1995. The practice parameters shall be applicable to general and specialty areas of practice. The Board shall review the parameters on a regular basis and shall require licensees to identify parameters being utilized, the plan of care, and treatment modalities utilized in accordance with the plan of care."

SECTION 2. G.S. 90-455 reads as rewritten:

"**§ 90-455. Qualifications for license; ~~renewal.~~renewal; inactive, suspended, expired, or lapsed license.**

(a) Initial License. – To receive a license to practice acupuncture, a person shall meet all of the following requirements:

(1) Submit a completed application as required by the Board.

(2) Submit any fees required by the Board.

(3) ~~Successfully complete~~Submit proof of successful completion of a licensing examination administered or approved by the Board.

(4) Provide documentary evidence of having met one of the following standards of education, training, or demonstrated experience:

a. ~~Successfully complete~~Successful completion of a three-year postgraduate acupuncture college or training program approved by the Board.

b. Continuous licensure to practice acupuncture by an agency or another state for at least 10 years before application for licensure in this State during which time no disciplinary actions were taken or are pending against the applicant and submitting proof to the Board that the applicant has fulfilled at least an average of 20 continuing education credits in acupuncture or health care-related studies for each of the 10 years preceding application for licensure.

(5) ~~Successfully complete~~Submit proof of successful completion of the Clean Needle Technique Course offered by the Council of Colleges of Acupuncture and Oriental Medicine.

(6) Be of good moral character.

(7) Is not currently or has not engaged in any practice or conduct that would constitute grounds for disciplinary action pursuant to G.S. 90-456.

(8) Submit a form signed by the applicant attesting to the intention of the applicant to adhere fully to the ethical standards adopted by the Board.

(b) Renewal of License. – The license to practice acupuncture shall be renewed every two years. Upon submitting all required declarations, documents, and fees required by the Board for renewal, the applicant's license shall remain in good standing for a period of up to 120 days during which time the Board shall meet to review and act upon the application for renewal. To renew a license, ~~a person shall complete 40 hours of Board-approved Continuing Education Units within each renewal period.~~an applicant shall:

(1) Submit a completed application as required by the Board.

(2) Submit any fees required by the Board.

(3) Upon request by the Board, submit proof of completion of 40 hours of Board-approved continuing education units within each renewal period.

(c) Inactive License. – A licensed acupuncturist who is not actively engaged in the practice of acupuncture in this State and who does not wish to renew the license may direct the Board to place the license on inactive status. A license may remain on inactive status for a period not to exceed eight years from the date the license was placed on inactive status. Upon an applicant's proof of completion of 40 hours of Board-approved continuing education units, payment of all fees, a determination by the Board that the applicant is not engaged in any prohibited activities that would constitute the basis for discipline as set forth in G.S. 90-456, and has not engaged in any of those prohibited activities during the period of time the license has been on inactive status, the Board may activate the license of the applicant.

(d) Suspended License. – A suspended license is subject to the renewal requirements of this section and may be renewed as provided in this section. This renewal does not entitle the licensed person to engage in the licensed activity or in any other conduct or activity in violation of the order or judgment by which the license was suspended, until the license is reinstated. If a license revoked on disciplinary grounds is reinstated and requires renewal, the licensed person shall pay the renewal fee and any applicable late fee.

(e) Expired License. – A license that has expired as a result of failure to renew pursuant to subsection (b) of this section may be renewed no later than two years after its expiration. The date of renewal shall be the date the Board acts to approve the renewal. To apply for renewal of an expired license, the applicant shall:

(1) File an application for renewal on a form provided by the Board.

(2) Submit proof of completion of all continuing education requirements.

(3) Pay all accrued renewal fees, along with an expired license fee.

(f) Lapsed License. – A license that has lapsed as a result of not being renewed within two years after the license expired or not reactivated within eight years after the license lapsed is deemed inactive. A lapsed license may not be renewed, reactivated, or reinstated. A person with a lapsed license may apply to obtain a new license pursuant to subsection (a) of this section."

SECTION 3. G.S. 90-457 reads as rewritten:

"**§ 90-457. Fees.**

The Board may establish fees, not to exceed the following ~~amounts, to cover the cost of services rendered:~~amounts:

(1) ~~For an application~~Application and an examination, one hundred dollars ($100.00).

(2) ~~For issuance~~Issuance of a license, five hundred dollars ($500.00).

(3) ~~For renewal~~Renewal of a license, three hundred dollars ($300.00).

(4) ~~For the late renewal~~Renewal of a license, an additional late fee of ~~seventy-five dollars ($75.00).~~two hundred dollars ($200.00).

(5) Duplicate license fee, twenty-five dollars ($25.00).

(6) Duplicate wall certificate fee, fifty dollars ($50.00).

(7) Labels for licensed acupuncturists, one hundred fifty dollars ($150.00).

(8) Returned check fee, forty dollars ($40.00).

(9) Licensure verification, forty dollars ($40.00).

(10) Name change, twenty-five dollars ($25.00).

(11) Continuing education program approval fee, fifty dollars ($50.00).

(12) Continuing education provider approval fee, two hundred dollars ($200.00).

(13) Initial school application fee, one thousand dollars ($1,000).

(14) Renewal school approval fee, seven hundred fifty dollars ($750.00).

(15) Inactive license renewal fee, fifty dollars ($50.00), payment due for each two-year extension."

SECTION 4. Article 30 of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"**§ 90-457.1. Continuing education.**

(a) Applicants for license renewal shall complete all required continuing education units during the two calendar years immediately preceding the license renewal date.

(b) The Board shall set the minimum hours for study of specific subjects within the scope of practice of acupuncture. The Board shall set the maximum hours for subjects that have content relating to any health service and are relevant to the practice of acupuncture. In addition to formally organized courses, the Board may approve courses, such as personal training in nonaccredited programs and teaching diagnosis and treatment, as long as these courses have received prior approval by the Board.

(c) For purposes of this Article, one continuing education unit is defined as one contact hour or 50 minutes.

(d) The Board may choose to audit the records of any licensee who has reported and sworn compliance with the continuing education requirement. The audit of any licensee shall not take place more than every two years.

(e) Failure to comply with the continuing education requirements shall prohibit license renewal and result in the license reverting to expired status at the end of the renewal period.

(f) A licensee may apply to the Board for an extension of time to complete the portion of continuing education requirements that the licensee is unable to meet due to such unforeseeable events as military duty, family emergency, or prolonged illness. The

Board may, at its discretion, grant an extension for a maximum of one licensing period. The Board shall receive the request no later than 30 days before the license renewal date. The applicant shall attest that the request is a complete and accurate statement, and the request shall contain the following:

(1) An explanation of the licensee's failure to complete the continuing education requirements.

(2) A list of continuing education courses and hours that the licensee has completed.

(3) The licensee's plan for satisfying the continuing education requirements."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 5

EDITION No. 1

H. B. No. 1357 DATE May 10, 2005

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

COMMITTEE SUBSTITUTE _____

Rep.) Gibson
)
Sen.)

moves to amend the bill on page 2, line 33

( ) WHICH CHANGES THE TITLE

by deleting the word "credits" and substituting the word "units".

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 1357:
Amend Acupuncture Laws/Fees.

BILL ANALYSIS

Committee:	House Finance	**Date:**	May 10, 2005
Introduced by:	Fisher and Gibson	**Summary by:**	Martha Walston
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 1357 makes the following changes to the statutes governing the Acupuncture Licensing Board:***

- Authorizes the Board to hire professional advisors, including legal counsel, and to fix their compensation.
- Allows licensure of applicants licensed for at least 10 years in another state if the applicant has no disciplinary actions in that period and meets minimum continuing education standards.
- Adds requirements for renewal of licenses.
- Adds new language providing for an inactive license and for the renewal of suspended, expired, and lapsed licenses.
- Increases some fees related to licensure and adds new fees.

CURRENT LAW: The Acupuncture Licensing Board was established by the General Assembly in 1993. The Board is composed of six members: two appointed by the Governor and four appointed by the General Assembly. The Governor's appointees must be a layperson and a physician trained in acupuncture. The General Assembly's appointees must be non-physicians licensed to practice acupuncture.

Acupuncture is defined as a form of health care developed from traditional and modern Chinese medical concepts that employ acupuncture diagnosis and treatment, and adjunctive therapies and diagnostic techniques, for the promotion, maintenance, and restoration of health and the prevention of disease.

BILL ANALYSIS:

Section 1 of the bill gives the Board the authority to employ professional advisors, including legal counsel, and to fix their compensation.

Section 2 of the bill amends the licensing qualifications as follows:

Initial License

- Adds language allowing licensure of an applicant who has been continuously licensed to practice acupuncture in another state for at least 10 years and who has no disciplinary actions during that time. The applicant must also have fulfilled at least an average of 20 continuing education credits for each of the 10 years preceding the application for N.C. licensure.
- Adds language requiring that the applicant be of good moral character, not currently engaged in any conduct that would constitute grounds for disciplinary action, and submit a form signed by the applicant that he or she will adhere to the ethical standards of the Board.

Renewal of License

- Adds language that when an applicant submits an application for license renewal, the applicant's license will remain in good standing for up to 120 days while the Board reviews and acts upon the application for renewal. Current law requires that a license must be renewed every two years for a fee not to exceed $300.

Inactive License, Suspended License, Expired License, and Lapsed License (This is new language)

- Inactive License – allows a licensed acupuncturist to remain on inactive status for a period not to exceed eight years. The Board may activate the license upon the applicant's completion of 40 hours of continuing education units, payment of all fees, and upon the Board's finding that the applicant has not engaged in any prohibited activity.
- Suspended License – subject to the license renewal requirements.
- Expired License – A license that has expired as a result of failure to renew may be renewed no later than two years after its expiration.
- Lapsed License – A person with a lapsed license must apply to obtain a new license and meet the requirements for initial licensure.

Section 3 of the bill amends the statute that sets out the maximum fees as follows:

- Increases the late fee for license renewal from $75 to $200.
- Adds the following new maximum fees:
  - Duplicate license fee - $25
  - Duplicate wall certificate fee - $50
  - Labels for licensed acupuncturists - $150
  - Returned check fee - $40
  - Licensure verification - $40
  - Name change - $25
  - Continuing education program approval fee - $50
  - Continuing education provider approval fee - $200
  - Initial school application fee - $1,000
  - Renewal school approval fee - $750
  - Inactive license renewal fee - $50 (Payment due for each two-year extension)

Section 4 of the bill clarifies continuing education requirements. The bill requires an applicant for renewal to complete 40 hours of continuing education units within the two-year renewal period. One unit is defined as one contact hour or 50 minutes. A licensee may apply to the Board for an extension to complete these requirements due to unforeseeable events.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 1357 (First Edition)

SHORT TITLE: Amend Acupuncture Laws/Fees.

SPONSOR(S): Representatives Gibson and Fisher

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund	*** No General Fund Impact ***				
Licensing board	**$2,000 - $5,000**				
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Acupuncture Licensing Board

EFFECTIVE DATE: When law.

BILL SUMMARY: House Bill 1357 makes the following changes to the statutes governing the Acupuncture Licensing Board:

- Authorizes the Board to hire professional advisors, including legal counsel, and set their compensation.
- Allows licensure of applicants licensed for at least 10 years in another state if the applicant has no disciplinary actions in that period and meets minimum continuing education standards.
- Adds requirements for renewal of licenses.
- Adds new language providing for an inactive license and for the renewal of suspended, expired, and lapsed licenses.
- Increases some fees related to licensure and adds new fees.

ASSUMPTIONS AND METHODOLOGY: The Acupuncture Licensing Board was created in 1993 and has licensed a total of 321 acupuncturists since its creation. There are currently 235 licensed acupuncturists in North Carolina and two soon-to-be accredited schools of acupuncture, one in Mars Hill and the other in Sugar Grove. The number of acupuncturists applying for licensure has increased significantly in recent years. In 2003, the Acupuncture Licensing Board received 21 new applications for licensure; in 2004, the board received 41 new applications. As of May 2005 the board has received 30 new applications.

New (First-Time) Acupuncturist Applications			
	2003	2004	2005
# of applications	21	41	30

The board currently assesses fees for applications, licensure, and other services as provided in their administrative rules, but these practices have not been set in statute. Fees are paid directly to the board and do not impact the General Fund. This legislation does not increase the major fees (for application, licensure, and renewal of licenses) from which the board derives most of its funding from the 1993 levels. The table below presents only fees that will increase pursuant to this legislation:

Schedule of Proposed Fee Increases		
	Current fee	Proposed Fee
Late license renewal	$75.00	$200.00
Returned check	$25.00	$40.00
License verification	$25.00	$40.00
School application	$750.00	$1,000.00
Continuing education provider	$50.00	**
**The board seeks statutory authority to increase the continuing education provider fee up to $200, but does not plan to increase the fee at this time		

Total board revenues for FY 2004 were $50,733. Of that amount, 99.2% ($50,313) was fee revenue. The board does not receive any state appropriations.

The increases in fee revenue anticipated by the board are small and difficult to project accurately due to the small number of licensees and biannual renewal requirements. No data was available on the number of late license renewals. The board estimates the fee changes in this bill will result in $2,000 to $5,000 in additional fee revenue per year, the largest variable being whether one of the two acupuncture schools is due for a renewal in a given year.

SOURCES OF DATA: Acupuncture Licensing Board

TECHNICAL CONSIDERATIONS: None

PREPARED BY: Linda Struyk Millsaps and Brenna Erford

Official
Fiscal Research Division
Publication

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: May 9, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 1357 A BILL TO BE ENTITLED AN ACT AUTHORIZING THE ACUPUNCTURE LICENSING BOARD TO EMPLOY CERTAIN PROFESSIONAL ADVISORS; TO CLARIFY QUALIFICATIONS FOR INITIAL LICENSURE, LICENSE RENEWAL, AND INACTIVE, SUSPENDED, EXPIRED, AND LAPSED LICENSES; TO CLARIFY CONTINUING EDUCATION; AND TO INCREASE AND ESTABLISH CERTAIN FEES.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1005

Short Title:	Pineville Annexation.	(Local)
Sponsors:	Representatives McMahan; Gulley, Rhodes, and Vinson.	
Referred to:	Finance.	

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO ANNEX CERTAIN DESCRIBED TERRITORY TO THE CORPORATE LIMITS OF THE TOWN OF PINEVILLE.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Pineville are extended to include the entire territory located in the Town's Sphere of Influence on January 1, 2005, excepting and excluding that area bounded by the easterly margin of the right-of-way of Lancaster Highway on the east and McAlpine Creek on the north. As used in this act, "sphere of influence" means that area designated as such in annexation agreements between the Town of Pineville and other municipalities under Chapter 953 of the 1983 Session Laws, or under other general or local acts.

SECTION 2. The Town of Pineville shall record in the office of the Register of Deeds of Mecklenburg County a detailed map of the area annexed by this act.

SECTION 3. This act becomes effective June 30, 2005.

HOUSE BILL 1005: Pineville Annexation

BILL ANALYSIS

Committee:	House Finance	**Date:**	May 10, 2005
Introduced by:	Rep. McMahan	**Summary by:**	Cindy Avrette
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 1005 annexes approximately 1100 acres into the Town of Pineville. The annexed areas involve seven areas that are either on the edge of the current corporate limits or are 'doughnut holes' within the Town's current boundaries. All of the areas are within the Town's ETJ and are within the Town's Sphere of Influence, as designated in an annexation agreement between the Town of Pineville and the other municipalities located in Mecklenburg County. The bill becomes effective June 30, 2005.***

BILL ANALYSIS: House Bill 1005 would annex into the Town of Pineville seven areas in and around the current corporate limits of Pineville that are largely developed for urban purposes. The areas are either on the edge of the corporate limits or are 'doughnut holes' within its boundaries. The areas lie within the Town's extraterritorial jurisdiction for planning purposes and combined total approximately 1100 acres.

The seven areas include four apartment complexes, a business park, large commercial developments, a retirement community, and scattered residential units. The areas also include some vacant land for which there are plans for a major development that includes 175,000 square feet of commercial space mixed with approximately 200 residential units. Construction for this development is scheduled to begin this spring.

Mecklenburg County currently serves the areas although the areas are in closer proximity to Pineville. Annexation of the areas will help alleviate confusion over boundaries and extend municipal services to the areas: sanitation services, access to parks and recreation programs, and extension of public safety. The additional Pineville tax rate paid by the residents will be partially offset by the decrease in the county tax rate related to public safety.[1]

The bill becomes effective June 30, 2005.

H1005e1-SMRB

[1] The additional tax rate in unincorporated areas of the county for public service is $0.1626/$100 value in taxes. Therefore, the net tax increase is $0.1374/$100 value. This amount will include the provision of sanitation services for single-family residences, a service that is currently provided through contracted services by the individual.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 1005 A BILL TO BE ENTITLED AN ACT TO ANNEX CERTAIN DESCRIBED TERRITORY TO THE CORPORATE LIMITS OF THE TOWN OF PINEVILLE.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1115

Committee Substitute Favorable 5/2/05

Short Title: Election Administration Amendments. (Public)

Sponsors:

Referred to:

April 5, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW POLITICAL PARTIES TO USE "RUNNERS" TO PICK UP VOTER LISTS FROM POLLS; TO PROHIBIT A CANDIDATE FROM BEING AN OBSERVER OR RUNNER AT THE POLLS; TO AUTHORIZE THE EXECUTIVE DIRECTOR OF THE STATE BOARD OF ELECTIONS TO PERMIT DIFFERENT VOTING SYSTEMS IN THE SAME PRECINCT; TO ALLOW THE CHANGING OF REGISTERED VOTERS BASED ON ADJUSTED COUNTY LINE; TO CHANGE THE DEADLINE FOR FILING A PROTEST FROM SIX O'CLOCK P.M. TO FIVE O'CLOCK P.M.; TO PERMIT THE SAME KIND OF VOTER ASSISTANCE IN ONE-STOP SITES AS AT VOTING PLACES ON ELECTION DAY; TO CHANGE THE REQUIREMENT FOR A STATEWIDE UNAFFILIATED CANDIDATE TO CONFORM TO A FEDERAL COURT DECISION; TO PROHIBIT PIECE PAYMENT FOR VOTER REGISTRATION DRIVES; TO EXPRESSLY PROVIDE THAT PRECINCT TRANSFER VOTERS AT ONE-STOP SITES NEED NOT VOTE PROVISIONAL BALLOTS; TO DELETE THE REQUIREMENT THAT ONE-STOP VOTERS BE INSTRUCTED IN HOW TO VOTE MAIL ABSENTEE BALLOTS; TO FIX THE SALARY ON WHICH A FILING FEE FOR AN OFFICE IS BASED; TO REMOVE THE OUTDATED REFERENCE IN THE FILING FEE STATUTE TO OFFICES "COMPENSATED ENTIRELY BY FEES"; TO ALLOW FOR THE CANCELLATION OF A VOTER'S REGISTRATION IN A FORMER COUNTY WHEN THE VOTER REGISTERS IN A NEW COUNTY; TO UPDATE AND MAKE MORE TECHNOLOGY-NEUTRAL THE LANGUAGE IN THE STATUTE PROVIDING FOR ACCESS TO VOTER REGISTRATION DATA; TO EXTEND FOR THREE DAYS THE COUNTY CANVASS AFTER A GENERAL ELECTION IN NOVEMBER OF AN EVEN-NUMBERED YEAR AND CHANGE OTHER RELATED DATES; TO CLARIFY HOW WINNERS OF ELECTIONS SHALL BE DETERMINED; AND TO EXPRESSLY ALLOW ELECTRONIC

POLLBOOKS, AS RECOMMENDED BY THE HOUSE COMMITTEE ON ELECTION LAWS AND CAMPAIGN FINANCE REFORM.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 163-45 reads as rewritten:

"**§ 163-45. Observers; appointment.**

The ~~chairman~~ chair of each political party in the county shall have the right to designate two observers to attend each voting place at each primary and election and such observers may, at the option of the designating party ~~chairman,~~ chair, be relieved during the day of the primary or election after serving no less than four hours and provided the list required by this section to be filed by each ~~chairman~~ chair contains the names of all persons authorized to represent such ~~chairman's~~chair's political party. Not more than two observers from the same political party shall be permitted in the voting enclosure at any time. This right shall not extend to the ~~chairman~~ chair of a political party during a primary unless that party is participating in the primary. In any election in which an unaffiliated candidate is named on the ballot, the candidate or the candidate's campaign manager shall have the right to appoint two observers for each voting place consistent with the provisions specified herein. Persons appointed as observers must be registered voters of the county for which appointed and must have good moral character. No person who is a candidate on the ballot in a primary or election may serve as an observer or runner in that primary or election. Observers shall take no oath of office.

Individuals authorized to appoint observers must submit in writing to the chief judge of each precinct a signed list of the observers appointed for that precinct. Individuals authorized to appoint observers must, prior to 10:00 A.M. on the fifth day prior to any primary or general election, submit in writing to the ~~chairman~~ chair of the county board of elections two signed copies of a list of observers appointed by them, designating the precinct for which each observer is appointed. Before the opening of the voting place on the day of a primary or general election, the ~~chairman~~ chair shall deliver one copy of the list to the chief judge for each affected precinct. ~~He~~ The chair shall retain the other copy. The ~~chairman,~~ chair, or the chief judge and judges for each affected precinct, may for good cause reject any appointee and require that another be appointed. The names of any persons appointed in place of those persons rejected shall be furnished in writing to the chief judge of each affected precinct no later than the time for opening the voting place on the day of any primary or general election, either by the ~~chairman~~ chair of the county board of elections or the person making the substitute appointment.

An observer shall do no electioneering at the voting place, and ~~he~~ shall in no manner impede the voting process or interfere or communicate with or observe any voter in casting ~~his~~ a ballot, but, subject to these restrictions, the chief judge and judges of elections shall permit ~~him~~ the observer to make such observation and take such notes as ~~he~~ the observer may desire.

Whether or not the observer attends to the polls for the requisite time provided by this section, each observer shall be entitled to obtain at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart, a list of the persons who have voted in the precinct so far in

that election day. Counties that use an "authorization to vote document" instead of poll books may comply with the requirement in the previous sentence by permitting each observer to inspect election records so that the observer may create a list of persons who have voted in the precinct so far that election day; each observer shall be entitled to make the inspection at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart. Instead of having an observer receive the voting list, the county party chair may send a runner to do so. The runner may be the precinct party chair or any person named by the county party chair. That party chair must notify the chair of the county board of elections or the board chair's designee of the names of all runners to be used in each precinct before the runner goes to the precinct. The runner may receive a voter list from the precinct on the same schedule as an observer. Whether obtained by observer or runner, each party is entitled to only one voter list at each of the scheduled times. No runner may enter the voting enclosure except when necessary to announce that runner's presence. The runner must leave immediately after being provided with the list."

SECTION 1.(b) G.S. 163-166.3 reads as rewritten:

"**§ 163-166.3. Limited access to the voting enclosure.**

During the time allowed for voting in the voting place, only the following persons may enter the voting enclosure:

(1) An election official.

(2) An observer appointed pursuant to G.S. 163-45.

(2a) A runner appointed pursuant to G.S. 163-45, but only to the extent necessary to announce that runner's presence and to receive the voter list as provided in G.S. 163-45.

(3) A person seeking to vote in that voting place on that day but only while in the process of voting or seeking to vote.

(4) A voter in that precinct while entering or explaining a challenge pursuant to G.S. 163-87 or G.S. 163-88.

(5) A person authorized under G.S. 163-166.8 to assist a voter but, except as provided in subdivision (6) of this section, only while assisting that voter.

(6) Minor children of the voter under the age of 18, or minor children under the age of 18 in the care of the voter, but only while accompanying the voter and while under the control of the voter.

(7) Persons conducting or participating in a simulated election within the voting place or voting enclosure, if that simulated election is approved by the county board of elections.

(8) Any other person determined by election officials to have an urgent need to enter the voting enclosure but only to the extent necessary to address that need."

SECTION 2. G.S. 163-165.10 reads as rewritten:

"**§ 163-165.10. Adequacy of voting system for each precinct.**

The county board of elections shall make available for each precinct voting place an adequate quantity of official ballots or ~~equipment so that all voters qualified to vote at~~

~~the precinct may do so.~~ equipment. When the board of county commissioners has decided to adopt and purchase or lease a voting system for voting places under the provisions of G.S. 165-165.8, the board of county commissioners shall, as soon as practical, provide for each of those voting places sufficient equipment of the approved voting system in complete working order. If it is impractical to furnish each voting place with the equipment of the approved voting system, that which has been obtained may be placed in voting places chosen by the county board of elections. In that case, the county board of elections shall choose the voting places and allocate the equipment in a way that as nearly as practicable provides equal access to the voting system for each voter. The county board of elections shall appoint as many voting system custodians as may be necessary for the proper preparation of the system for each election and for its maintenance, storage, and care. The Executive Director of the State Board of Elections may permit a county board of elections to provide more than one type of voting system in a precinct, but only upon a finding that doing so is necessary to comply with federal or State law."

SECTION 3.(a) Article 7A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-82.15A. Administrative change of registration when county line is adjusted.**

When a boundary between counties is established by legislation or under G.S. 153A-18, the Executive Director shall direct the county boards of elections involved to administratively change the voter registration of any voter whose county of residence is altered by the establishment of the boundary. The voter shall not be required to submit a new application to register, and the provisions of G.S. 163-57 shall apply to the determination of residency. The Executive Director shall prescribe a method of notifying the voter of the change of county registration, the correct precinct, and other relevant information."

SECTION 3.(b) G.S. 163-57 reads as rewritten:

"**§ 163-57. Residence defined for registration and voting.**

All election officials in determining the residence of a person offering to register or vote, shall be governed by the following rules, so far as they may apply:

(1) That place shall be considered the residence of a person in which that person's habitation is fixed, and to which, whenever that person is absent, has the intention of returning.

a. In the event that a person's habitation is divided by a State, county, municipal, precinct, ward, or other election district, then the location of the bedroom or usual sleeping area for that person with respect to the location of the boundary line at issue shall be controlling as the residency of that person.

b. If the person disputes the determination of residency, the person may request a hearing before the county board of elections making the determination of residency. The procedures for notice of hearing and the conduct of the hearing shall be as provided in G.S. 163-86. The presentation of an accurate and current determination of a person's residence and the boundary

line at issue by map or other means available shall constitute prima facie evidence of the geographic location of the residence of that person.

(2) A person shall not be considered to have lost that person's residence if that person leaves home and goes into another ~~state or county~~state, county, municipality, precinct, ward, or other election district of this State, for temporary purposes only, with the intention of returning.

(3) A person shall not be considered to have gained a residence in any ~~county~~county, municipality, precinct, ward, or other election district of this State, into which that person comes for temporary purposes only, without the intention of making that ~~county~~county, municipality, precinct, ward, or other election district a permanent place of abode.

(4) If a person removes to another ~~state or county~~state, county, municipality, precinct, ward, or other election district within this State, with the intention of making that ~~state or county~~state, county, municipality, precinct, ward, or other election district a permanent residence, that person shall be considered to have lost residence in the ~~state or county~~state, county, municipality, precinct, ward, or other election district from which that person has removed.

(5) If a person removes to another ~~state or county~~state, county, municipality, precinct, ward, or other election district within this State, with the intention of remaining there an indefinite time and making that ~~state or county~~state, county, municipality, precinct, ward, or other election district that person's place of residence, that person shall be considered to have lost that person's place of residence in this ~~State or the county~~State, county, municipality, precinct, ward, or other election district from which that person has removed, notwithstanding that person may entertain an intention to return at some future time.

(6) If a person goes into another~~state or county~~ state, county, municipality, precinct, ward, or other election district, or into the District of Columbia, and while there exercises the right of a citizen by voting in an election, that person shall be considered to have lost residence in this ~~State or county.~~ State, county, municipality, precinct, ward, or other election district.

(7) School teachers who remove to a ~~county~~county, municipality, precinct, ward, or other election district for the purpose of teaching in the schools of that county temporarily and with the intention or expectation of returning during vacation periods to live in the ~~county~~state, county, municipality, precinct, ward, or other election district in which their parents or other relatives reside, and who do not have the intention of becoming residents of the ~~county~~state, county, municipality, precinct, ward, or other election district to which they have moved to teach, for purposes of registration and voting shall be considered residents of the ~~county~~state, county, municipality, precinct,

ward, or other election district in which their parents or other relatives reside.

(8) If a person removes to the District of Columbia or other federal territory to engage in the government service, that person shall not be considered to have lost residence in this State during the period of such service unless that person votes in the place to which the person removed, and the place at which that person resided at the time of that person's removal shall be considered and held to be the place of residence.

(9) If a person removes to a ~~county~~ county, municipality, precinct, ward, or other election district to engage in the service of the State government, that person shall not be considered to have lost residence in the ~~county~~ county, municipality, precinct, ward, or other election district from which that person removed, unless that person votes in the place to which the person removed, and the place at which that person resided at the time of that person's removal shall be considered and held to be the place of residence.

(9a) The establishment of a secondary residence by an elected official outside the district of the elected official shall not constitute prima facie evidence of a change of residence.

(10) For the purpose of voting a spouse shall be eligible to establish a separate domicile.

(11) So long as a student intends to make the student's home in the community where the student is physically present for the purpose of attending school while the student is attending school and has no intent to return to the student's former home after graduation, the student may claim the college community as the student's domicile. The student need not also intend to stay in the college community beyond graduation in order to establish domicile there. This subdivision is intended to codify the case law."

SECTION 4. G.S. 163-182.9(b)(4) reads as rewritten:

"(4) The timing for filing a protest shall be as follows:

a. If the protest concerns the manner in which votes were counted or results tabulated, the protest shall be filed before the beginning of the county board of election's canvass meeting.

b. If the protest concerns the manner in which votes were counted or results tabulated and the protest states good cause for delay in filing, the protest may be filed until ~~6:00~~ 5:00 P.M. on the second business day after the county board of elections has completed its canvass and declared the results.

c. If the protest concerns an irregularity other than vote counting or result tabulation, the protest shall be filed no later than ~~6:00~~ 5:00 P.M. on the second business day after the county board has completed its canvass and declared the results.

d. If the protest concerns an irregularity on a matter other than vote counting or result tabulation and the protest is filed before election day, the protest proceedings shall be stayed, unless a party defending against the protest moves otherwise, until after election day if any one of the following conditions exists:
1. The ballot has been printed.
2. The voter registration deadline for that election has passed.
3. Any of the proceedings will occur within 30 days before election day."

SECTION 5.(a) G.S. 163-227.2(e) reads as rewritten:

"(e) The voter shall vote that voter's absentee ballot in a voting booth in the office of the county board of elections, and the county board of elections shall provide a voting booth for that purpose, provided however, that the county board of elections may in the alternative provide a private room for the voter adjacent to the office of the board, in which case the voter shall vote that voter's absentee ballot in that room. ~~If the voter needs assistance in getting to and from the voting booth and in preparing and marking that voter's ballots or if the voter is a blind voter, only a member of the county board of elections, the director of elections, an employee of the board of elections authorized by the board, a near relative of the voter or the voter's verifiable legal guardian shall be entitled to assist the voter.~~ A voter at a one-stop site shall be entitled to the same assistance as a voter at a voting place on election day under G.S. 163-166.8. The State Board of Elections shall, where appropriate, adapt the rules it adopts under G.S. 163-166.8 to one-stop voting."

SECTION 5.(b) G.S. 163-226.3(a) reads as rewritten:

"(a) Any person who shall, in connection with absentee voting in any election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a Class I felony. It shall be unlawful:

(1) For any person except the voter's near relative or the voter's verifiable legal guardian to assist the voter to vote an absentee ballot when the voter is voting an absentee ballot other than under the procedure described in G.S. 163-227.2; provided that if there is not a near relative or legal guardian available to assist the voter, the voter may request some other person to give assistance;

(2) For any person to assist a voter to vote an absentee ballot under the absentee voting procedure authorized by G.S. 163-227.2 except ~~a member of the county board of elections, the director of elections, an employee of the board authorized by the board, the voter's near relative or the voter's verifiable legal guardian;~~as provided in that section;

(3) For a voter who votes an absentee ballot under the procedures authorized by G.S. 163-227.2 to vote that voter's absentee ballot outside of the voting booth or private room provided to the voter for that purpose in or adjacent to the office of the county board of elections or at the additional site provided by G.S. 163-227.2(f1), or to

receive assistance ~~in getting to and from the voting booth or private room and in preparing and marking that voter's ballots from any person other than a member of the county board of elections, the director of elections, an employee of the board of elections authorized by the board, a near relative of the voter or the voter's verifiable legal guardian;~~except as provided in G.S. 163-227.2;

(4) For any owner, manager, director, employee, or other person, other than the voter's near relative or verifiable legal guardian, to make a written request pursuant to G.S. 163-230.1 or an application on behalf of a registered voter who is a patient in any hospital, clinic, nursing home or rest home in this State or for any owner, manager, director, employee, or other person other than the voter's near relative or verifiable legal guardian, to mark the voter's absentee ballot or assist such a voter in marking an absentee ballot;

(5) Repealed by Session Laws 1987, c. 583, s. 8.

(6) For any person to take into that person's possession for delivery to a voter or for return to a county board of elections the absentee ballot of any voter, provided, however, that this prohibition shall not apply to a voter's near relative or the voter's verifiable legal guardian;

(7) Except as provided in subsections (1), (2), (3) and (4) of this section, G.S. 163-231(a), G.S. 163-250(a), and G.S. 163-227.2(e), for any voter to permit another person to assist the voter in marking that voter's absentee ballot, to be in the voter's presence when a voter votes an absentee ballot, or to observe the voter mark that voter's absentee ballot."

SECTION 6. G.S. 163-122(a) reads as rewritten:

"(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. – Any qualified voter who seeks to have ~~his~~ that voter's name printed on the general election ballot as an unaffiliated candidate shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting ~~his~~ candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the State equal in number to two percent (2%) of the total number of ~~registered voters in the State as reflected by the most recent statistical report issued by the State Board of Elections.~~ voters who voted in the most recent general election for Governor. Also the petition must be signed by at least 200 registered voters in each of four congressional districts in North Carolina. No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the ~~chairman~~ chair of the board of elections of the county in which the signatures were obtained. Provided the petitions are timely submitted, the ~~chairman~~ chair shall

examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in ~~his~~ that county and shall attach to the petition ~~his~~ the petitioner's signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in ~~his~~ that county. The ~~chairman~~ chair shall return each petition, together with the certificate required in this section, to the person who presented it ~~to him~~ for checking. Verification by the ~~chairman~~ chair of the county board of elections shall be completed within two weeks from the date such petitions are presented."

SECTION 7.(a) Article 7A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-82.25A. Piece payment in voter registration drives prohibited.**

No person who employs or contracts with another person to register voters or assist or encourage voters to fill out voter registration forms shall pay that person per voter registration application completed. No person shall accept payment per voter registration application. A violation of this section is a Class 2 misdemeanor."

SECTION 7.(b) G.S. 163-274 is amended by adding a new subdivision to read:

"(14) For any person to pay or accept payment per voter registration application completed in violation of G.S. 163-82.25A."

SECTION 8.(a) G.S. 163-227.2 is amended by adding a new subsection to read:

"(e2) A voter who has moved within the county more than 30 days before election day but has not reported the move to the board of elections shall not be required on that account to vote a provisional ballot at the one-stop site, as long as the one-stop site has available all the information necessary to determine whether a voter is registered to vote in the county and which ballot the voter is eligible to vote based on the voter's proper residence address. The voter with that kind of unreported move shall be allowed to vote the same kind of absentee ballot as other one-stop voters."

SECTION 8.(b) G.S. 163-166.11 is amended by adding a new subdivision to read:

"(2a) A voter who has moved within the county more than 30 days before election day but has not reported the move to the board of elections shall not be required on that account to vote a provisional ballot at the one-stop site, as long as the one-stop site has available all the information necessary to determine whether a voter is registered to vote in the county and which ballot the voter is eligible to vote based on the voter's proper residence address. The voter with that kind of unreported move shall be allowed to vote the same kind of absentee ballot as other one-stop voters as provided in G.S. 163-227.2(e2)."

SECTION 9. G.S. 163-227.2(c) reads as rewritten:

"(c) If the application is properly filled out, the authorized member or employee shall enter the voter's name in the register of absentee requests, applications, and ballots ~~issued; shall furnish the voter with the instruction sheets called for by G.S. 163-229(c); and~~ issued and shall furnish the voter with the ballots to which the application for absentee ballots applies. The voter thereupon shall vote in accordance with subsection (e) of this section.

All actions required by this subsection shall be performed in the office of the board of elections, except that the voting may take place in an adjacent room as provided by subsection (e) of this section. The application under this subsection shall be signed in the presence of the ~~chairman~~chair, member, director of elections of the board, or full-time employee, authorized by the board who shall sign the application and certificate as the witness and indicate the official title held by him or her. Notwithstanding G.S. 163-231(a), in the case of this subsection, only one witness shall be required on the certificate."

SECTION 10. G.S. 163-107(a) reads as rewritten:

"(a) Fee Schedule. – At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	**Amount of Filing Fee**
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All District Attorneys of the General Court of Justice	One percent (1%) of the annual salary of the office sought
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
~~County commissioners, if compensated entirely by fees~~	~~Ten dollars ($10.00)~~
~~Members of county board of education, if compensated entirely by fees~~	~~Five dollars ($5.00)~~

~~Sheriff, if compensated entirely by fees~~	~~Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)~~
~~Clerk of superior court, if compensated entirely by fees~~	~~Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)~~
~~Register of deeds, if compensated entirely by fees~~	~~Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)~~
~~Any other county office, if compensated entirely by fees~~	~~Twenty dollars ($20.00), plus one percent (1%) of the income of the office above two thousand dollars ($2,000)~~
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)

The salary of any office that is the basis for calculating the filing fee is the starting salary for the office, rather than the salary received by the incumbent, if different. If no starting salary can be determined for the office, then the salary used for calculation is the salary of the incumbent, as of January 1 of the election year."

SECTION 11. G.S. 163-82.9 reads as rewritten:

"**§ 163-82.9. Cancellation of prior registration.**

If an applicant indicates on an application form described in G.S. 163-82.3 a current registration to vote in any other county, municipality, or state, the county board of elections, upon registering the person to vote, shall send a notice to the appropriate officials in the other county, municipality, or state and shall ask them to cancel the person's voter registration there. If an applicant completes an application form described in G.S. 163-82.3 except that the applicant neglects to complete the portion of the form that authorizes cancellation of previous registration in another county, the State Board of Elections shall notify the county board of elections in the previous county of the new registration, and the board in the previous county shall cancel the registration. The State Board of Elections shall adopt rules to prevent disenfranchisement in the implementation of this section. Those rules shall include adequate notice to the person whose previous registration is to be cancelled."

SECTION 12.(a) G.S. 163-82.10(b) reads as rewritten:

"(b) Access to Registration Records. – Upon request by that person, the county board of elections shall provide to any person a list of the registered voters of the county or of any precinct or precincts in the county. The county board may furnish selective lists according to party affiliation, gender, race, date of registration, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts, or any other reasonable category. No list produced under this section shall contain a voter's date of birth. However, lists may be produced

according to voters' ages. ~~The~~ Both the following shall apply ~~if a county maintains or has its voter registration list maintained on a computer:~~to all counties:

(1) ~~In addition to the typed, mimeographed, photocopied, computer printout or label lists, the~~ The county board of elections shall make the voter registration information available to the public on electronic or magnetic medium. ~~Magnetic medium for the purpose of this section shall consist of nine track tape or 3.5 inch diskettes and 5.25 inch diskettes readily accessible using MS-DOS or Microsoft Windows operating systems or both such systems; and~~ For purposes of this section, "electronic or magnetic medium" means any of the media in use by the State Board of Elections at the time of the request.

(2) Information requested on electronic or magnetic medium shall contain the following: voter name, county voter identification number, residential address, mailing address, sex, race, age but not date of birth, party affiliation, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and any other district information available, and voter history including primary, general, and special districts, or any other reasonable ~~category;~~category.

~~provided that this subsection shall not require a county to computerize its lists, but if a county does computerize it shall comply with subdivisions (1) and (2) of this subsection.~~ The county board shall require each person to whom a list is furnished to reimburse the board for the actual cost incurred in preparing it, except as provided in subsection (c) of this section. Actual cost for the purpose of this section shall not include the cost of any equipment or any imputed overhead expenses. ~~It may include the actual cost of paper, labels, and magnetic medium. The purchaser at its discretion may provide the magnetic medium.~~ When furnishing information under this subsection to a purchaser on a magnetic medium provided by the county board or the purchaser, the county board may impose a service charge of up to twenty-five dollars ($25.00)."

SECTION 12.(b) G.S. 163-82.10(c) reads as rewritten:

"(c) Free Lists. ~~Free lists of all registered voters in the county shall be provided in the following cases:~~

~~(1)~~ A county board ~~that maintains voter records on computer~~ shall provide, upon written request, one free list ~~to:~~of all the registered voters in the county to

~~a.~~ ~~The~~ the State chair of each political ~~party;~~ party and

~~b.~~ ~~The~~to the county chair of each political party once in every odd-numbered year, once during the first six calendar months of every even-numbered year, and once during the latter six calendar months of every even-numbered year.

~~(2) A county board that does not maintain voter records on computer shall provide one free paper list every two years to the county chair of each political party.~~

Each free list shall include the name, address, gender, age but not date of birth, race, political affiliation, voting history, precinct, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts of each registered voter. ~~The free paper list to the county party chairs shall group voters by precinct.~~ All free lists shall be provided as soon as practicable on one of any electronic or magnetic media, but no later than 30 days after written request. Each State party chair shall provide ~~the discs or tapes~~ the information on the media received from the county boards or a copy of the media containing the data itself to candidates of that party who request the ~~discs or tapes~~ data in writing. ~~Each State party chair shall return discs and tapes to the county boards within 30 days after receiving them.~~ As used in this section, "political party" means a political party as defined in G.S. 163-96."

SECTION 13.(a) G.S. 163-182.5(b) reads as rewritten:

"(b) Canvassing by County Board of Elections. – The county board of elections shall meet at 11:00 A.M. on the ~~seventh~~ tenth day after every election held on the same day as a general election in November of the even-numbered year, and at 11:00 A.M. on the seventh day after every other election, to complete the canvass of votes cast and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly. If, despite due diligence by election officials, the initial counting of all the votes has not been completed by that time, the county board may hold the canvass meeting a reasonable time thereafter. The canvass meeting shall be at the county board of elections office, unless the county board, by unanimous vote of all its members, designates another site within the county. The county board shall examine the returns from precincts, from absentee official ballots, and from provisional official ballots and shall conduct the canvass."

SECTION 13.(b) G.S. 163-182.7 reads as rewritten:

"**§ 163-182.7. Ordering recounts.**

(a) Discretionary Recounts. – The county board of elections or the State Board of Elections may order a recount when necessary to complete the canvass in an election. The county board may not order a recount where the State Board of Elections has already denied a recount to the petitioner.

(b) Mandatory Recounts for Ballot Items Within the Jurisdiction of the County Board of Elections. – In a ballot item within the jurisdiction of the county board of elections, a candidate shall have the right to demand a recount of the votes if the difference between the votes for that candidate and the votes for a prevailing candidate is not more than one percent (1%) of the total votes cast in the ballot item, or in the case of a multiseat ballot item not more than one percent (1%) of the votes cast for those two candidates. The demand for a recount must be made in writing and must be received by the county board of elections by 5:00 P.M. on the first business day after the canvass. The recount shall be conducted under the supervision of the county board of elections.

(c) Mandatory Recounts for Ballot Items Within the Jurisdiction of the State Board of Elections. – In a ballot item within the jurisdiction of the State Board of Elections, a candidate shall have the right to demand a recount of the votes if the difference between the votes for that candidate and the votes for a prevailing candidate are not more than the following:

(1) For a nonstatewide ballot item, one percent (1%) of the total votes cast in the ballot item, or in the case of a multiseat ballot item, one percent (1%) of the votes cast for those two candidates.

(2) For a statewide ballot item, one-half of one percent (0.5%) of the votes cast in the ballot item, or in the case of a multiseat ballot item, one-half of one percent (0.5%) of the votes cast for those two candidates, or 10,000 votes, whichever is less.

The demand for a recount must be in writing and must be received by the State Board of Elections by noon on the second ~~Thursday after the election.~~ business day after the county canvass. If ~~on that Thursday~~ at that time the available returns show a candidate not entitled to a mandatory recount, but the Executive Director determines subsequently that the margin is within the threshold set out in this subsection, the Executive Director shall notify the eligible candidate immediately and that candidate shall be entitled to a recount if that candidate so demands within 48 hours of notice. The recount shall be conducted under the supervision of the State Board of Elections.

(d) Rules for Conducting Recounts. – The State Board of Elections shall promulgate rules for conducting recounts. Those rules shall be subject to the following guidelines:

(1) The rules shall specify, with respect to each type of voting system, when and to what extent the recount shall consist of machine recounts and hand-to-eye recounts.

(2) The rules shall provide guidance in interpretation of the voter's choice.

(3) The rules shall specify how the goals of multipartisan participation, opportunity for public observation, and good order shall be balanced. "

SECTION 14. G.S. 163-166.7(c) reads as rewritten:

"(c) The State Board of Elections shall promulgate rules for the process of voting. Those rules shall emphasize the appearance as well as the reality of dignity, good order, impartiality, and the convenience and privacy of the voter. Those rules, at a minimum, shall include procedures to ensure that all the following occur:

(1) The voting system remains secure throughout the period voting is being conducted.

(2) Only properly voted official ballots are introduced into the voting system.

(3) Except as provided by G.S. 163-166.9, no official ballots leave the voting enclosure during the time voting is being conducted there.

(4) All improperly voted official ballots are returned to the precinct officials and marked as spoiled.

(5) Voters leave the voting place promptly after voting.

(6) Voters not clearly eligible to vote in the precinct but who seek to vote there are given proper assistance in voting a provisional official ballot or guidance to another voting place where they are eligible to vote.

(7) Information gleaned through the voting process that would be helpful to the accurate maintenance of the voter registration records is recorded and delivered to the county board of elections.

(8) The registration records are kept secure. The State Board of Elections shall permit the use of electronic registration records in the voting place in lieu of or in addition to a paper pollbook or other registration record.

(9) Party observers are given access as provided by G.S. 163-45 to current information about which voters have voted.

(10) The voter, before voting, shall sign that voter's name on the pollbook, other voting record, or voter authorization document. If the voter is unable to sign, a precinct official shall enter the person's name on the same document before the voter votes."

SECTION 15. G.S. 163-182.15 is amended by adding a subsection to read:

"(d) Determining Results. – In a primary for party nomination, the results shall be determined in accordance with G.S. 163-111 and the certificate issued accordingly. In a general election, the individuals having the highest number of votes for each office shall be declared elected to the office, and the certificate shall be issued accordingly. In a referendum, the ballot proposal receiving the highest number of votes shall be declared to have prevailed, and the certificate shall be issued accordingly."

SECTION 16. Sections 2, 6, 8, 9, 10, 12, and 14 of this act are effective when this act becomes law and apply to all primaries and elections held on or after that date. The remainder of this act becomes effective January 1, 2006, and applies to all primaries and elections held on or after that date.

HOUSE BILL 1115:
Election Administration Amendments

BILL ANALYSIS

Committee:	House Finance	**Date:**	May 6, 2005
Introduced by:	Reps. Moore, Ross	**Summary by:**	R. Erika Churchill
Version:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 1115 would make several changes to the laws concerning election administration. The changes are based on proposals made by the staff of the State Board of Elections. The bill has been referred to House Finance due to a filing fee clarification (see Section 10).***

CURRENT LAW AND BILL ANALYSIS:

Section 1. Current law allows county political parties to appoint "observers" to be inside a polling place to monitor what is going on, as long as they do not disrupt. One of the things they may do is pick up lists at certain times of the day of the people who have voted at the precinct. A practice has grown up of parties sending "runners," who have not gone through the process of being appointed observers, to pick up the voter lists and nothing more. The bill would recognize the practice of permitting runners by allowing a party chair to send a runner to the precinct to pick up the voter list. The runner could be the precinct party chair or anyone appointed by the party chair, other than a candidate. The party chair must provide the county board of elections a list of which runners will go to which precincts before the runners are sent. The runner may enter the voting enclosure only where necessary to announce his or her presence. Upon receiving the list, they must leave immediately. The bill would also state that no candidate in an election might be an observer. **Effective January 1, 2006.**

Section 2. The bill would authorize the Executive Director of the State Board of Elections to permit a county to use more than one voting system in a precinct where doing so would be necessary to comply with State or federal law. The 2002 Help America Vote Act requires a fully disabled-accessible station in every precinct, and there is an expectation that some counties may need to have two different voting systems in the same precinct in order to comply with the federal law. **Effective when the bill becomes law.**

Sections 3. Voter registration in North Carolina is based upon county residency. County boundaries may be altered by act of the General Assembly or by following the procedure for settling a disputed boundary as set forth in G.S. 153A-18. In the past, county boundary adjustments have resulted in a voter residing in a county other than the one in which the voter was registered. The bill would authorize the Executive Director of the State Board of Elections to move the voter's registration to the correct county administratively, and provide notice to the voter this has been done. The voter, who has not moved, would not need to submit a new voter registration application.

The bill would also provide guidance to the boards of election in determining which precinct, ward or other election district the voter resides. If the residence of the voter were divided by a county, municipal, precinct, ward, or other election district, the bill would state the bedroom or usual sleeping area of the voter would be used to determine the district in which the voter resides. **Effective January 1, 2006.**

Section 4. Current law sets the certain deadlines for filing an election protests at 6:00 p.m. on the second day after the county canvass. Most county boards of election offices close at 5:00 p.m. The bill would change the statutory deadline to coincide with operating hours of most county boards of election, and clarify that it is the second business day after the county canvass. **Effective January 1, 2006.**

Section 5. Current law provides that on election day a voter whose illiteracy or disability requires them to have assistance to vote may receive assistance from anyone other than their employer or union representative. If not illiterate or disabled, a voter may receive assistance from an immediate family member. Those provisions reflect federal law regarding assistance at federal elections. Current law also provides that at a one-stop site a voter who needs assistance or who is blind may receive assistance only from a county board of elections member, a county election director, a board employee, a near relative of the voter or the voter's verifiable legal guardian. The bill would amend the one-stop law on voter assistance to be the same as that at the polls on election day. **Effective when the bill becomes law.**

Section 6. Currently, an unaffiliated candidate desiring to be on the general election ballot in a statewide race is required to collect signatures from voters on petitions equal to 2% of all the registered voters in the State, which is currently approximately 107,000 signatures. Currently a new party desiring to be on the ballot is required to collect signatures equal to 2% of the turnout in the latest Governor's race, which is now 69,734. Last year the U.S. District Court in *Delaney v. Bartlett* found the disparity between the two thresholds unconstitutional and held the statewide unaffiliated threshold unconstitutional. The State did not appeal. The bill would make the statewide unaffiliated threshold 2% of the latest Governor's race turnout, the same as the new party threshold. **Effective when the bill becomes law.**

Section 7. Current law does not regulate how voter registration drives may pay persons conducting drive. In 2004 some drives turned in questionable voter registration applications, which ultimately were determined to be false. Some of the drives allowed persons to be compensated based on the number of voter registrations obtained. The U.S. Supreme Court has ruled, in the similar situation of initiative petition drives, that a State cannot prohibit paying people for doing the petition work. Courts have been less clear on whether payment on a piecework or commission basis can be banned. The bill would prohibit anyone from paying someone to register voters per voter registration application completed. A violation would be a Class 2 misdemeanor. **Effective January 1, 2006.**

Section 8. Currently, if a person moves more than 30 days before an election within the county where registered to vote but does not notify the board of elections of the move, a voter may show up at the new voting place and be allowed to vote there. But, since the voter's name is not on the pollbook for that precinct, the voter must vote a provisional ballot. If such a voter with an unreported move went to vote at a one-stop site, most counties have allowed that voter to vote the same kind ballot as other one-stop voters rather than a provisional ballot. The bill would clarify that a voter who has not reported a move within the county is not required to vote a provisional ballot at a one-stop site. **Effective when the bill becomes law.**

Section 9. Currently, statutes require officials at a one-stop sites to furnish one-stop voters, who are there voting in person, with instructions in how to vote mail absentee. The bill would remove that requirement. **Effective when it becomes law.**

Section 10. Currently, candidate's filing fees are set at 1% of the annual salary of the office sought, except for an office "compensated entirely by fees," which is a flat dollar amount. No offices "compensated entirely by fees" exist today. The bill would remove the references to offices compensated entirely by fees. The bill would also specify that the salary used in calculating the filing fee is the starting salary for the office, rather than the incumbent's salary, if the two are different. If no starting salary can be determined, then the salary used for calculating the filing fee is the incumbent's salary as of January 1ST of the election year. **Effective when bill becomes law.**

Section 11. Currently the voter registration form requires a person registering in a new county to cancel any prior registration in another county. Sometimes voters do not complete the cancellation part of the form. The bill would require the State Board of Elections to notify the county board in the old county of the new registration if this happened. The board in the old county would then be required to cancel the registration. The State Board is required to adopt rules to prevent disenfranchisement, including adequate notice to the voter whose registration is going to be cancelled. **Effective January 1, 2006.**

Section 12. The current statute allowing free and paid access to voter registration data was written in the mid-1990s in language that was specific to the technology of the time. It also contains language implying that a county has an option in having or not having computerized voter registration data. The bill updates the access to records statute, removing references to old technology and to the option not to have lists on computer. It does not require the county boards to provide its list to county party chairs on paper. **Effective when the bill becomes law.**

Section 13. Current law requires the county board of elections to hold its canvass on the 7th day after a primary or election. The bill would change the county canvass to the 10th day for even-year general elections only. For other elections ("election" is defined to include primary), the canvass stays on the 7th day. **Effective when the bill becomes law.**

Section 14. The bill adds to the State Board's criteria that it must permit to use of electronic registration records in the voting place in lieu of paper pollbooks or other records.

*H1115e2-SMST *Bill Gilkeson contributed substantially to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1115 (Second Edition)

SHORT TITLE: Election Administration Amendments.

SPONSOR(S): Representatives Ross and Moore

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
GENERAL FUND					
Correction	Exact amount cannot be determined; no substantial impact anticipated.				
Judicial	Exact amount cannot be determined; no substantial impact anticipated.				
LOCAL GOVERNMENTS	Exact amount cannot be determined; no substantial impact anticipated.				
COUNTY BOARDS OF ELECTION	No substantial impact estimated/See Assumptions and Methodology				
ADDITIONAL PRISON BEDS*	No additional prison beds anticipated.				
POSITIONS: (cumulative)	No additional positions anticipated.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Local Governments, and County Boards of Election

EFFECTIVE DATE: Sections 1, 3, 4, 5, 7, 11: January 1, 2006; All other sections: Upon Ratification.

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY:[1]

This bill would make several changes to the laws concerning election administration. The changes are based on proposals made by the staff of the State Board of Elections. There are three sections that could have a fiscal impact: sections 5 and 7, which have criminal penalties, and section 10, which makes a clarification to the filing fee requirements. These three sections are summarized below.

Section 5: Current law provides that on election day a voter whose illiteracy or disability requires them to have assistance to vote may receive assistance from anyone other than their employer or union representative. If not illiterate or disabled, a voter may receive assistance from an immediate family member. Those provisions reflect federal law regarding assistance at federal elections. Current law also provides that at a one-stop site a voter who needs assistance or who is blind may receive assistance only from a county board of elections member, a county election director, a board employee, a near relative of the voter or the voter's verifiable legal guardian. Section 5 of this bill would amend the one-stop law on voter assistance to be the same as that at the polls on election day.

Section 7: Current law does not regulate how voter registration drives may pay persons conducting the drives. This section of the bill would prohibit anyone from paying someone to register voters per voter registration application completed. A violation would be a Class 2 misdemeanor.

Section 10: Currently, candidate's filing fees are set at 1% of the annual salary of the office sought, except for an office "compensated entirely by fees," which is a flat dollar amount. No offices "compensated entirely by fees" exist today. The bill would remove the references to offices compensated entirely by fees. The bill would also specify that the salary used in calculating the filing fee is the starting salary for the office, rather than the incumbent's salary, if the two are different. If no starting salary can be determined, then the salary used for calculating the filing fee is the incumbent's salary as of January 1ST of the election year.

ASSUMPTIONS AND METHODOLOGY:

Election Administration Changes

The bill provides compliance and/or clarifying legislation to existing statutes. As noted in the bill summary, only sections 5, 7, and 10 could have a fiscal impact. The fiscal impact of sections 5 & 7 are discussed below in the ***Modification of Criminal Offenses*** subsection.

Section 10 clarifies the filing fee requirement. The bill would remove the statutory references to the filing fees for offices that are compensated entirely by fees. Because no offices compensated entirely by fees exist today, removing these statutory references would not have a fiscal impact. Section 10 also clarifies that the salary to be used in calculating the filing fee, which is a percentage of the annual salary of the office sought, is the starting salary for the office, rather than the incumbent's salary. The State Board of Elections estimates that the clarification of which salary to use in calculating the filing fees could result in a slight reduction in filing fee receipts by boards of elections, assuming that (1) the starting salary is lower than the incumbent's salary and (2) the counties have been using the incumbent's salary. The Board estimates, however, that the reduction would not be significant.

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[1] Adopted from May 6, 2005 Bill Analysis prepared by House Finance Committee Counsel

Modification of Criminal Offenses

General

Section 5 of this bill would modify the specified list of individuals authorized to provide assistance to voters at a one-stop voting site and would, thus, alter the types of individuals eligible to commit a Class I felony for illegally providing such assistance. Section 7 of the bill would create a new Class 2 misdemeanor for paying or accepting payment for registering voters on a per voter basis. As these provisions modify criminal offenses, they would be expected to lead to changes in adjudication and incarceration rates and an associated fiscal impact to the Department of Correction and the Judicial Branch. However, as the provisions of both sections would not be expected to lead to a significant number of new felony or misdemeanor charges or convictions, the fiscal impact is not anticipated to be substantial.

Current G.S. 163-274(1) and G.S. 163-274(10) provide that it is a Class 2 misdemeanor for specified officials to fail to perform certain duties related to the administration of elections. As several provisions of the bill would expand the set of duties prescribed for some of these officials, additional Class 2 misdemeanor charges and convictions could result under G.S. 163-274(1) or G.S. 163-274(10) for failure in the performance of those duties as required by law. However, given that the class of eligible offenders is small and the scope of behavior encompassed by these offenses is not expanded significantly, the number of new Class 2 misdemeanor charges and convictions under G.S. 163-274 as a result of this bill is not expected to be substantial.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

Section 5: It is unknown whether altering the specified list of individuals allowed to assist voters at the polls under G.S. 163-226.3 would lead to a decrease, no change, or an increase in the number of offenders sentenced as Class I felons for illegally assisting voters. As such, no estimate of the fiscal impact associated with this provision is available. The Administrative Office of the Courts does not maintain an offense code for violations of present G.S. 163-226.3, which is some indication that the current offense is infrequently charged and rarely results in convictions.

Section 7: Because this section would provide for a new Class 2 misdemeanor, the Sentencing Commission has no historical data from which to estimate the impact on local jail populations. As noted in the "General" section, additional Class 2 misdemeanor convictions could also result under G.S. 163-274 for failure in the performance of certain duties for specified officials. In FY 2003-04, 15 percent of Class 2 misdemeanors resulted in active sentences with a maximum length of 60 days and an average length of 23 days. Offenders with active sentences less than thirty days are housed in county jails at county expense, and the Department of Correction (DOC) reimburses the county for housing offenders sentenced to between thirty and ninety days at a rate of $18 per

offender per day. Because Class 2 misdemeanants serving active time as a result of this offense would be housed in county jails, this provision would not impact prison population.

The remaining 85 percent of Class 2 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Corrections (DCC) would incur costs of $1.87 per offender per day. Offenders sentenced to community service would cost $0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Section 5: It is unknown whether the modification to the list of individuals authorized to assist at the polls provided by Section 5 of the bill would lead to a decrease, no change, or an increase in the number of individuals charged with a Class I felony for illegally assisting voters. As such, no estimate is available with respect to the fiscal impact of this provision. As noted in the DOC section, the lack of an offense code for current violations of G.S. 163-226.3 may be some indication that the offense is presently infrequently charged.

Section 7: As this section provides for a new criminal offense, no data is available with which to estimate the number of additional Class 2 misdemeanor charges the Courts would process as a result of this bill. However, AOC anticipates that the majority of voter registration campaigns would comply with the requirements of this legislation and would thus expect relatively few new charges to result from this bill.

As noted in the "General" section, additional Class 2 misdemeanor charges could also result under G.S. 163-274 for failure in the performance of certain duties for specified officials. The number of additional charges, however, is not expected to be substantial as the bill would only refine current law and not greatly expand the scope of behavior encompassed by this offense.

Based on the costs of time in court, attorney preparation time, and indigent defense, the average estimated cost to process a single Class 2 misdemeanor charge via trial is $2,322. This cost includes an estimated $1,373 in jury fees, costs of time in court, and attorney costs and an additional $949 in indigent defense. However, based on prior-year data, the majority of any new Class 2 misdemeanor charges that are not dismissed are likely to be settled by guilty plea at an estimated cost of $272 per plea.

SOURCES OF DATA: State Board of Elections, Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Aaron Paul and Marilyn Chism

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

Official
Fiscal Research Division
Publication

DATE: May 9, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

HB 1115 A BILL TO BE ENTITLED AN ACT TO ALLOW POLITICAL PARTIES TO USE "RUNNERS" TO PICK UP VOTER LISTS FROM POLLS; TO PROHIBIT A CANDIDATE FROM BEING AN OBSERVER OR RUNNER AT THE POLLS; TO AUTHORIZE THE EXECUTIVE DIRECTOR OF THE STATE BOARD OF ELECTIONS TO PERMIT DIFFERENT VOTING SYSTEMS IN THE SAME PRECINCT; TO ALLOW THE CHANGING OF REGISTERED VOTERS BASED ON ADJUSTED COUNTY LINE; TO CHANGE THE DEADLINE FOR FILING A PROTEST FROM SIX O'CLOCK P.M. TO FIVE O'CLOCK P.M.; TO PERMIT THE SAME KIND OF VOTER ASSISTANCE IN ONE-STOP SITES AS AT VOTING PLACES ON ELECTION DAY; TO CHANGE THE REQUIREMENT FOR A STATEWIDE UNAFFILIATED CANDIDATE TO CONFORM TO A FEDERAL COURT DECISION; TO PROHIBIT PIECE PAYMENT FOR VOTER REGISTRATION DRIVES; TO EXPRESSLY PROVIDE THAT PRECINCT TRANSFER VOTERS AT ONE-STOP SITES NEED NOT VOTE PROVISIONAL BALLOTS; TO DELETE THE REQUIREMENT THAT ONE-STOP VOTERS BE INSTRUCTED IN HOW TO VOTE MAIL ABSENTEE BALLOTS; TO FIX THE SALARY ON WHICH A FILING FEE FOR AN OFFICE IS BASED; TO REMOVE THE OUTDATED REFERENCE IN THE FILING FEE STATUTE TO OFFICES "COMPENSATED ENTIRELY BY FEES"; TO ALLOW FOR THE CANCELLATION OF A VOTER'S REGISTRATION IN A FORMER COUNTY WHEN THE VOTER REGISTERS IN A NEW COUNTY; TO UPDATE AND MAKE MORE TECHNOLOGY-NEUTRAL THE LANGUAGE IN THE STATUTE PROVIDING FOR ACCESS TO VOTER REGISTRATION DATA; TO EXTEND FOR THREE DAYS THE COUNTY CANVASS AFTER A GENERAL ELECTION IN NOVEMBER OF AN EVEN-NUMBERED YEAR AND CHANGE OTHER RELATED DATES; TO CLARIFY HOW WINNERS OF ELECTIONS SHALL BE DETERMINED; AND TO EXPRESSLY ALLOW ELECTRONIC POLLBOOKS, AS RECOMMENDED BY THE HOUSE COMMITTEE ON ELECTION LAWS AND CAMPAIGN FINANCE REFORM.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 1

SENATE BILL 420

Short Title:	Oak Ridge Voluntary Annexations.	(Local)
Sponsors:	Senator Berger of Rockingham.	
Referred to:	State and Local Government.	

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWN OF OAK RIDGE TO MAKE VOLUNTARY ANNEXATIONS WITHIN A CERTAIN DESCRIBED AREA.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1.2 of the Charter of the Town of Oak Ridge, being S.L. 1998-113, reads as rewritten:

"Section 1.2. (a) Except as provided by subsection (c) of this section, Article 4A of Chapter 160A of the General Statutes does not apply to the Town of Oak Ridge until July 1, 2018.

(b) G.S. 160A-58.1(b)(2) does not apply to (i) the City of Greensboro as it relates to the Town of Oak Ridge or (ii) the Town of Kernersville as it relates to the Town of Oak Ridge.

(c) Parts 1 and 4 of Article 4A of Chapter 160A of the General Statutes apply to the Town of Oak Ridge as to the following described territory in Guilford County:

Beginning at a point located at the intersection of Haw River Road and the Forsyth/Guilford County line; thence following the Forsyth/Guilford County line north to the point at which the Forsyth/Guilford County line intersects with the corporate limits of the Town of Stokesdale; thence continuing in an easterly and southeasterly direction following the Town of Stokesdale corporate limits to Haw River Road at which point the Town of Oak Ridge corporate limits begin; thence continuing southwesterly along the southern right-of-way of Haw River Road to the point and place of beginning."

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

SENATE BILL 420:
Oak Ridge Voluntary Annexations.

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Sen. Berger of Rockingham
Date:	May 10, 2005	**Summary by:**	Trina Griffin
Version:	First Edition		Committee Counsel

SUMMARY: ***This bill would authorize the Town of Oak Ridge to annex non-contiguous property by petition. The act is effective when it becomes law. Its companion bill, House Bill 815, sponsored by Rep. Brown, is also in the House Finance Committee.***

CURRENT LAW: G.S. 160A-58.1 governs the voluntary annexation by a municipality of noncontiguous property. All property owners in the satellite area[1] may petition for voluntary annexation of the noncontiguous property if the property meets the following five standards in G.S. 160A-58.1(b):

1. The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.
2. No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city.
3. The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
4. If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.
5. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing city.

However, the town charter of Oak Ridge precludes it from annexing property under North Carolina statutory provisions for annexation until July 1, 2018.

BILL ANALYSIS: The bill would amend the Town Charter to allow Oak Ridge to seek annexation by petition of a described property that is non-contiguous to the current town property limits. The property, measuring approximately 3 square miles, is agricultural and rural residential in nature. The act is effective when it becomes law.

S420-SMSV-001

[1] G.S. 160A-58.4 provides that satellite corporate limits cannot be considered a part of a municipality's corporate limits for purposes of its ETJ. Therefore, satellite annexations have no effect upon a municipality's ETJ.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

SB 420 A BILL TO BE ENTITLED AN ACT TO ALLOW THE TOWN OF OAK RIDGE TO MAKE VOLUNTARY ANNEXATIONS WITHIN A CERTAIN DESCRIBED AREA.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1411

Short Title:	Update Consumer Credit Sales Cap.	(Public)
Sponsors:	Representatives Luebke; and Harrison.	
Referred to:	Finance.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE CAP FOR THE AMOUNT FINANCED THAT FALLS WITHIN THE MEANING OF A CONSUMER CREDIT SALE IN ORDER TO REFLECT THE INCREASE IN THE COST OF CONSUMER GOODS AND SERVICES DUE TO INFLATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 25A-2(a) reads as rewritten:

"**§ 25A-2. 'Consumer credit sale' defined.**

(a) Except as provided in subsection (c) of this section, a "consumer credit sale" is a sale of goods or services in which

(1) The seller is one who in the ordinary course of business regularly extends or arranges for the extension of consumer credit, or offers to extend or arrange for the extension of such credit,

(2) The buyer is a natural person,

(3) The goods or services are purchased primarily for a personal, family, household or agricultural purpose,

(4) Either the debt representing the price of the goods or services is payable in installments or a finance charge is imposed, and

(5) The amount financed does not exceed ~~twenty-five thousand dollars ($25,000)~~ seventy-five thousand dollars ($75,000) or, in the case of a debt secured by real property or a manufactured home as defined in G.S. 143-145(7), regardless of the amount financed."

SECTION 2. This act becomes effective October 1, 2005, and applies to sales that occur on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1411

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

H1411-ALA-4 [v.1]

Date May 10 ,2005

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

Representative Luebke

moves to amend the bill on page 1, lines 6 and 7, by adding the following new section between those lines to read:

"**SECTION 1.** G.S. 25A-1 reads as rewritten:

'**§ 25A-1. Scope of act.**

This Chapter applies only to consumer credit sales as hereinafter defined, except that G.S. 25A-37, referral sales, applies to all sales of goods or services as provided therein. This Chapter does not apply to a bona fide direct loan transaction in which a lender makes a direct loan to a borrower, and such lender is not regularly engaged, directly or indirectly, in the sale of goods or the furnishing of services as defined in this Chapter.

Except for G.S. 25A-37, referral sales, ~~and~~ those sales defined in G.S. 25A 2(b), and those sales with amounts financed in excess of twenty-five thousand dollars ($25,000) under G.S. 25A-2(a)(5), this Chapter does not apply to any party or transaction that is not also subject to the provisions of the Consumer Credit Protection Act (Federal Truth-in-Lending Act).'";

And by renumbering the remaining sections accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

THE GREAT SEAL OF THE STATE OF NORTH CAROLINA
MAY 20, 1775
APRIL 12, 1776
ESSE QUAM VIDERI

HOUSE BILL 1411:
Update Consumer Credit Sales Cap

BILL ANALYSIS

Committee:	House Finance	**Date:**	May 10, 2005
Introduced by:	Rep. Luebke	**Summary by:**	Martha Walston
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1411 increases the maximum amount that may be financed in a consumer credit sale from $25,000 to $75,000 in order to reflect the increase in the cost of consumer goods and services due to inflation. The amount that may be financed has not been increased since 1971.

HB 1411 becomes effective October 1, 2005, and applies to sales that occur on or after that date.

CURRENT LAW: Consumer credit sales agreements are governed by the Retail Installment Sales Act (RISA) in Chapter 25A of the General Statutes. A consumer credit sale is one in which the seller in the ordinary course of its business regularly extends or arranges for the extension of consumer credit. The buyer is a natural person and the goods or services are purchased primarily for a personal, family, household or agricultural purpose. Either the debt representing the price of the goods or services is payable in installments or a finance charge is imposed, and as a general rule, the amount financed does not exceed $25,000. The exception to the general rule is that there is no limit concerning the amount being financed if the transaction involves a debt secured by real property or a manufactured home.

Every consumer credit installment sales contract must be in writing, dated and signed by the buyer. The RISA provides limitations on the term of the loan, interest and finance charges, transfer fees, insurance, the types of property that can be taken as collateral, default charges, deferral charges, and rebates for prepayment. A buyer may not authorize any person to confess judgment on a claim arising out of a consumer credit sale. The agreement may not contain any provision limiting, excluding, modifying or in any manner altering the terms of any express warranty given by any seller to any buyer. If a lawsuit is filed to enforce the contract, the court shall allow a reasonable attorney's fee to the prevailing party.

Further requirements must be met if the solicitation for the consumer credit sale occurs in the buyer's home. The seller must obtain the buyer's signature on a "fully completed written agreement or offer to purchase." This writing must contain the same language as that used in the oral sales presentation, designate the date of the transaction as the date on which the buyer signs the agreement, contain the name and address of the seller, and contain statutory language that notifies the buyer that the contract may be cancelled within three business days. The seller must also provide the buyer with the statutory form that the buyer may use to cancel the contract. If the buyer exercises its right to cancel, any down payment made by the buyer must be returned in full within ten business days. [1]

BILL ANALYSIS: House Bill 1411 increases the amount that may be financed in a consumer credit sale from a maximum amount of $25,000 to a maximum amount of $75,000. The maximum amount of $25,000 was enacted by the General Assembly in 1971 and has never been changed to reflect the increase in the cost of consumer goods and services due to inflation.

BACKGROUND: Retail installment sales acts (RISAs) were first adopted by most states in the 1940s and 1950s. The scope and substance of RISAs vary from state to state, but all RISAs emphasize the disclosure of contract terms and the need to inform purchasers of their legal rights.

H1411e1-SMLA

[1] Hutson and Miskimon, North Carolina Contract Law, § 6-4-2 (2001)

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 1411 A BILL TO BE ENTITLED AN ACT TO UPDATE THE CAP FOR THE AMOUNT FINANCED THAT FALLS WITHIN THE MEANING OF A CONSUMER CREDIT SALE IN ORDER TO REFLECT THE INCREASE IN THE COST OF CONSUMER GOODS AND SERVICES DUE TO INFLATION.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

North Carolina General Assembly

House Committee on Finance

Minutes

~

May 17, 2005

The House Committee on Finance met on Tuesday, May 17, 2005 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, Luebke, McComas and Wainwright; Vice-Chairs Daughtridge, Hill, Weiss, and Womble; and Representatives Blackwood, Blust, Bordsen, Capps, Carney, Dockham, Faison, Folwell, Glazier, Hackney, Harrell, Holliman, Jones, Lewis, McGee, Underhill, Vinson, Walend, and Wiley. Also present were Sergeant-at-Arms Jonathan Calloway, Bill Freeman, Fred Hines, and Dusty Rhodes. Staff persons present included Cindy Avrette, Rodney Bizzell, Erika Churchill, Brenna Erford, Ashley Huffstetler, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Wainwright called the meeting to order at 8:33 am and recognized the two (2) pages present: Charis Craig of Catawba County, sponsored by Representative Hilton; and Kelly Smith of Catawba County, sponsored by Representative Hilton.

The first bill under the Committee's consideration was **HB 85 – ALPHA PHI ALPHA FRATERNITY SPECIAL PLACE** (see **attachment 3**). Chairman Wainwright first recognized Representative Alexander who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Representative Womble was then recognized and explained that this was an omnibus bill incorporating all of the new special license plate bills filed during the session. As there was no discussion on the bill, Chairman Wainwright then recognized Representative Holliman who moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Chairman Wainwright then called the motion to a vote, and it carried by consent.

The next bill considered by the Committee was **HB 629 – OPTION TO FREEZE CREDIT REPORT** (see **attachment 4**). Chairman Wainwright first recognized Representative Hill who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Representative Adams was then recognized to explain the bill. She stated that House Bill 629 requires a credit reporting agency to, upon the written request from a consumer, place a security freeze prohibiting the agency from providing a consumer's credit report to a third party. Following the explanation, Representative Blackwood asked if the credit report freeze would be permanent. To answer the question, Representative Adams was recognized and explained that the freeze would only be temporary, and that the consumer would be provided a PIN number that could be provided to release the freeze for a certain creditor. Chairman Wainwright then recognized Representative Daughtridge who asked if this bill would prohibit the Employment Security Commission from accessing a credit report. Brad Lamb with the NC

Consumers' Council was recognized to answer the question. He again reiterated that consumers would be given a PIN number to provide organizations that the consumer wants to allow access to their credit reports. Chairman Wainwright then recognized Representative Howard who moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. As there was no further debate, Chairman Wainwright called the motion to a vote and it carried without objection.

The following bill considered by the Committee was **HB 613 - UPDATE CERTIFICATION/LICENSURE/REC. THERAPY** (see **attachment 5**). Chairman Wainwright first recognized Representative Howard who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. The bill sponsor, Representative Harrell, was then recognized and explained that this bill simply updates existing laws that regulate the practice of recreational therapy. He also stated that the bill has received no opposition. Following the explanation, Chairman Wainwright recognized Representative Gibson who moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairman Wainwright called the motion to a vote and it carried by consent.

Chairman Wainwright then recognized Representative Alexander to explain **HB 890 – CRIME LAB COST RECOVERY FEE** (see **attachment 6**). Before the explanation, Representative Hill was recognized and moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Representative Alexander then explained that the bill requires a District or Superior Court judge to charge a defendant $300 when a local government crime laboratory performs a DNA analysis, tests bodily fluids, or analyzes a controlled substance in connection with an investigation leading to conviction. Representative Holliman was then recognized and asked what the court would do when handling an indigent person's inability to pay this fee. Representative Glazier was recognized and, answering the question, stated that the fee could be waived by the court or included as part of the judgment by the court. Following other general questions about the bill, Representative Glazier moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. As there was no further debate, Chairman Wainwright called the motion to a vote and it carried without objection.

The next bill under consideration by the Committee was **HB 1025 – WINEMAKING ON PREMISES PERMIT** (see **attachment 7**). Chairman Wainwright recognized Representative Luebke to explain the bill. He explained that the bill creates a new "Winemaking on Premises" permit to businesses where customers may purchase ingredients and rent the equipment, time, and space to make unfortified wine for personal use. He stated that the production of beer for personal use was already allowed under the law and that this bill simply extended that right to wine. He also reported that the bill had received a favorable report in the Alcoholic Beverage Committee. Following his explanation, Representative Luebke then moved that House Bill 1025 be given a favorable report by the Committee. Seeing no further discussion, Chairman Wainwright called the motion to a vote, and it carried by consent.

Chairman Wainwright then recognized Representative Hill who moved for the adoption of the proposed committee substitute for the Committee's consideration of **HB 1277 – CLARIFY HUNTER SAFETY** (see **attachment 8**). The motion was adopted. Chairman Wainwright recognized the bill sponsor, Representative Faison, who explained that this bill amends the licensure and education requirements for young hunters. He also explained specifically that the bill lowers the fee charged to disabled hunters from $10 to $5. Chairman Wainwright then recognized Representative Holliman who moved for a favorable report to the proposed committee substitute

and an unfavorable report to the original bill. As there was no further debate, Chairman Wainwright called the motion to a vote and it carried without objection.

The next bill under consideration by the Committee was **HB 1281 – COUNTY CONTROL/NOXIOUS AQUATIC WEEDS** (see **attachment 9**). Chairman Wainwright recognized Representative Lucy Allen who explained that the bill grants certain counties the authority to define noxious aquatic weed control service districts. She furthered stated that noxious weeds covered in this bill have become a problem in many lake areas and this legislation provides localities with the authority to regulate them. Following the explanation, Representative Jones moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairman Wainwright called the motion to a vote and it carried by consent

Chairman Wainwright then recognized Representative Weiss who moved for the adoption of the proposed committee substitute for the Committee's consideration of **HB 1429 – WINE SHIPPER FEE/WINE PRIMARY SOURCE** (see **attachment 10**). The motion was adopted. Representative Gibson was then recognized and explained that the bill provides for reciprocity among the states by eliminating the application fee for a wine shipper permit and requires the designation of a primary source for the importation of wine into the state. Chairman Wainwright recognized Chris Valauri, President of the Beer and Wine Wholesalers, who answered general questions about the bill. Following the discussion, Representative Hill was recognized and moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. As there was no further debate, Chairman Wainwright called the motion to a vote and it carried without objection.

The next bill under consideration by the Committee was **HB 1507 – AMEND INTERPRETER/TRANSLITERATOR LICENSE ACT** (see **attachment 11**). Chairman Wainwright recognized Representative Alexander who explained that this bill amends the North Carolina Interpreter and Transliterator Licensure Act and allows the North Carolina Transliterator Licensing Board to assess civil penalties not to exceed $1,000. Representative Holliman was recognized and asked why the NC Transliterator Licensing Board would need to charge such high civil penalties. Kathy Beetham, the Secretary of the Board, was recognized and stated that a maximum fine of $1,000 could be charged to someone who repeatedly violated the rules regarding transliterator licensing. She also stated that since licensed transliterators often provided translating services on legal matters for deaf persons, the civil penalties were necessary in order to protect those individuals from any deceptive practice. Representative Faison then was recognized and asked if the bill applies to language translators. Ms. Beetham was recognized and responded saying that the bill only applies to sign language translators who are compensated for their services. Chairman Wainwright then recognized Representative Howard who moved that House Bill 1507 be given a favorable report by the Committee. Seeing no further discussion, Chairman Wainwright called the motion to a vote and it carried by consent.

The final bill considered by the Committee was **HB 768 – 2005 OMNIBUS LABOR LAW CHANGES** (see **attachment 12**). Chairman Wainwright first recognized Representative Glazier who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Chairman Wainwright then recognized Representative Howard who sent forth an amendment (see **attachment 13**), which ensures that an employee will have the right to withhold authorization for employer deductions on paychecks, and moved for its adoption. As there was no debate on the amendment, Chairman Wainwright called the motion to a vote, and the amendment was adopted. Representative Howard then continued and explained that the bill received a favorable report from the House Judiciary II Committee and is a cleanup agency

bill from the Department of Labor. Chairman Wainwright then recognized Representative Hackney who asked if the effective date should be when the bill becomes law. Representative Howard was recognized and stated that she was amenable to delaying the effective date of the bill to October 1, 2005. Thus, Representative Hackney sent forth an amendment changing the effective date to October 1, 2005 and moved for its adoption. Seeing no further discussion, Chairman Wainwright called the motion to a vote and the amendment was adopted. Representative Luebke was then recognized and moved for a favorable report to a new proposed committee substitute, incorporating the adopted amendments, and an unfavorable report as to the original PCS before the Committee. As there was no further debate, Chairman Wainwright called the motion to a vote and it carried without objection.

Having no further business before the Committee, Chairman Wainwright then adjourned the meeting at 9:26 am.

Respectfully submitted,

Representative William Wainwright
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. House Bill 85 (and related materials)
4. House Bill 629 (and related materials)
5. House Bill 613 (and related materials)
6. House Bill 890 (and related materials)
7. House Bill 1025 (and related materials)
8. House Bill 1277 (and related materials)
9. House Bill 1281 (and related materials)
10. House Bill 1429 (and related materials)
11. House Bill 1507 (and related materials)
12. House Bill 768 (and related materials)
13. Howard Amendment on HB 768 - **ADOPTED**
14. Hackney Amendment on HB 768 – **ADOPTED**
15. House Bill 1421 (and related materials) (REMOVED FROM CALENDAR)

ATTACHMENT 1

AGENDA

House Finance Committee

May 17, 2005
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Wainwright

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard
Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order & Introduction of Pages

Bills:

HB 85 **ALPHA PHI ALPHA FRATERNITY SPECIAL PLATE**
Reps. Womble, Bell, & Pierce

HB 613 **UPDATE CERTIFICATION/LICENSURE/REC. THERAPY**
Reps. Harrell & Womble

HB 629 **OPTION TO FREEZE CREDIT REPORT** *Rep. Adams*

HB 768 **2005 OMNIBUS LABOR LAW CHANGES.-AB** *Rep. Howard*

HB 890 **CRIME LAB COST RECOVERY FEE** *Rep. Alexander*

HB 1025 **WINEMAKING ON PREMISES PERMIT** *Rep. Luebke*

HB 1277 **CLARIFY HUNTER SAFETY** *Rep. Faison*

HB 1281 **COUNTY CONTROL/NOXIOUS AQUATIC WEEDS**
Reps. L. Allen, Ed Jones, & Wray

HB 1421 **RANDLEMAN DAM BONDS** *Reps. Jones, Adams, Jeffus, & Wiley*

HB 1429 **ELIMINATE WINE SHIPPER PERMIT FEE** *Reps. Harrell and Gibson*

HB 1507 **AMEND INTERPRETER/TRANSLITERATOR LICENSE ACT**
Rep. Alexander

Adjournment

ATTACHMENT 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — May 17, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Becky Garrett	Therapeutic Recreation Cert. Board
Roger C. Thompson	Charlotte-Mecklenburg Police
Ray West	Therapeutic Recreation Cert. Board
Greg Lundberg	NC Dept of Labor
Jack M. Given Jr	Dept of Labor
Jim Taylor	Dept of Labor
John Hunt	Legislative Research
Boyd Carlisle	City of Charlotte
Art Britt	NCDOL
Bill Lowe	NC Justice Ctr
Doug Lassiter	NCSTA

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — May 17, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Linda Harrington	DHHS/NCITLB.
Matt Latrick	Intern
Dick Hamilton	WILDLIFE
Brad Lamb	NC Consumers Council
Cam Creer	Brooks Pierce
David Barnes	Poyner Spruill.
Minoy Hopper	DHHS/NCITLB
Ken Melton	D.O.R.
Ryland Pond	Rep. Carney
Robin Webb	Intern NCGA
Alissa Dolan	NC Conservation Network

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — May 17, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Erin Kinsey	NC Conservative Network
Chris Valenti	NC Beer & Wine Association
[signature]	NCRA XCWU
Paul Meyer	NCACC
Jamie Fitzgerald	NCFPC
Katherine Joyce	NCASA
Brad Jogal	NC DST

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, May 17, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 85 – ALPHA PHI ALPHA FRATERNITY SPECIAL PLATE – Reps. Womble, Bell, & Pierce

HB 613 – UPDATE CERTIFICATION/LICENSURE/REC. THERAPY – Reps. Harrell & Womble

HB 629 – OPTION TO FREEZE CREDIT REPORT – Rep. Adams

HB 768 – 2005 OMNIBUS LABOR LAW CHANGES.-AB – Rep. Howard

HB 890 – CRIME LAB COST RECOVERY FEE – Rep. Alexander

HB 1025 – WINEMAKING ON PREMISES PERMIT – Rep. Luebke

HB 1277 – CLARIFY HUNTER SAFETY – Rep. Faison

HB 1281 – COUNTY CONTROL/NOXIOUS AQUATIC WEEDS – Reps. L. Allen, Ed Jones, & Wray

HB 1421 – RANDLEMAN DAM BONDS – Reps. Jones, Adams, Jeffus, & Wiley

HB 1429 – ELIMINATE WINE SHIPPER PERMIT FEE – Reps. Harrell and Gibson

HB 1507 – AMEND INTERPRETER/TRANSLITERATOR LICENSE ACT – Rep. Alexander

Respectfully,
Representatives Alexander, Gibson, Howard,
Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **12:19 p.m.** on **May 12, 2005.**

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H **D**

HOUSE BILL 85
PROPOSED COMMITTEE SUBSTITUTE H85-CSRBf-12 [v.3]

5/16/2005 6:31:28 PM

Short Title: Various Special License Plates. (Public)

Sponsors:

Referred to:

February 7, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE THE FOLLOWING SPECIAL REGISTRATION PLATES: AIR MEDAL RECIPIENT, ALPHA PHI ALPHA FRATERNITY, ARC OF NORTH CAROLINA, AUTISM SOCIETY OF NORTH CAROLINA, BUDDY PELLETIER SURFING FOUNDATION, COASTAL CONSERVATION ASSOCIATION, COLD WAR VETERAN, CORVETTE CLUB, GUILFORD BATTLEGROUND COMPANY, NATIONAL MULTIPLE SCLEROSIS SOCIETY, NATIONAL WILD TURKEY FEDERATION, NORTH CAROLINA AQUARIUM, NORTH CAROLINA MUSEUM OF NATURAL SCIENCES, OPERATION ENDURING FREEDOM, OPERATION IRAQI FREEDOM, SCUBA, SHARE THE ROAD, AND TARHEEL CLASSIC THUNDERBIRD CLUB.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-63 (b) reads as rewritten:

"(b) Every license plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued, the name of the State of North Carolina, which may be abbreviated, and the year number for which it is issued or the date of expiration. A plate issued for a commercial vehicle, as defined in G.S. 20-4.2(1), and weighing 26,001 pounds or more, must bear the word "commercial," unless the plate is a special registration plate authorized in G.S. 20-79.4 or the commercial vehicle is a trailer or is licensed for 6,000 pounds or less. The plate issued for vehicles licensed for 7,000 pounds through 26,000 pounds must bear the word "weighted".

Except as otherwise provided in this subsection, a registration plate issued by the Division for a private passenger vehicle or for a private hauler vehicle licensed for 6,000 pounds or less shall be a "First in Flight" plate. A "First in Flight" plate shall have the words "First in Flight" printed at the top of the plate above all other letters and numerals. The background of the plate shall depict the Wright Brothers biplane flying over Kitty Hawk Beach, with the plane flying slightly upward and to the right. The

following special registration plates do not have to be a "First in Flight" plate. The design of the plates that are not "First in Flight" plates must be approved by the Division and the State Highway Patrol for clarity and ease of identification.

(1) Friends of the Great Smoky Mountains National Park.
(2) Rocky Mountain Elk Foundation.
(3) Blue Ridge Parkway Foundation.
(4) Friends of the Appalachian Trail.
(5) NC Coastal Federation.
(6) In God We Trust.
(7) Stock Car Racing Theme.
(8) Buddy Pelletier Surfing Foundation.
(9) Guilford Battleground Company.
(10) National Wild Turkey Federation.
(11) North Carolina Aquarium Society."

SECTION 2. G.S. 20-79.4(a) reads as rewritten:

"(a) General. – Upon application and payment of the required registration fees, a person may obtain from the Division a special registration plate for a motor vehicle registered in that person's name if the person qualifies for the registration plate. A holder of a special registration plate who becomes ineligible for the plate, for whatever reason, must return the special plate within 30 days. A special registration plate may not be issued for a vehicle registered under the International Registration Plan. A special registration plate may be issued for a commercial vehicle that is not registered under the International Registration Plan. A special registration plate may not be developed using a name or logo for which a trademark has been issued unless the holder of the trademark licenses, without charge, the State to use the name or logo on the special registration plate. ~~A holder of a special registration plate who becomes ineligible for the plate, for whatever reason, must return the special plate within 30 days.~~"

SECTION 3. G.S. 20-79.4(b) reads as rewritten:

(b) Types. – The Division shall issue the following types of special registration plates:

...

(1b) Air Medal Recipient. – Issuable to the recipient of the Air Medal. The plate shall bear the emblem of the Air Medal and the words 'Air Medal'.

...

(1d) Alpha Phi Alpha Fraternity. – Issuable to the owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the fraternity's symbol and name.

...

(3b) Arc of North Carolina. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the logo of The Arc of North Carolina, Inc. and the phrase "The Arc".

~~(3b)~~(3c) Audubon North Carolina. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear

the National Audubon Society, Inc., logo and a representation of a bird native to North Carolina.

(3d) Autism Society of North Carolina. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Autism Society of North Carolina", the phrase "Providing Support, Promoting Opportunities", and the logo of the Autism Society.

~~(3e)~~(3e) Aviation Maintenance Technician. – Issuable to a person who is a Federal Aviation Authority certified Aviation Maintenance Technician. The plate shall bear the logo of the F.A.A. Airworthiness Program and the initials "A.M.T." The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

~~(3e)~~(3f) Be Active NC. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Be Active NC" and a representation of the "Be Active NC" logo.

...

(3l) Buddy Pelletier Surfing Foundation. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the words "Buddy Pelletier Surfing Foundation" and bear the logo of the Foundation.

...

(8d) Coastal Conservation Association. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 81.12. The plate shall bear the logo and name of the Coastal Conservation Association.

(8g) Cold War Veteran. – Issuable to a veteran of the armed services of the United States who served during the Cold War era, September 2, 1945, through December 26, 1991, and who was separated from the armed services under honorable conditions. The plate shall bear the words 'Cold War Veteran' and an insignia representing the Cold War era. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

(10e) Corvette Club. – Issuable to the registered owner of a motor vehicle. The plate shall bear the flags logo of the Chevrolet Corvette. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

(16c) Guilford Battleground Company. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Revolutionary" used by the Guilford Battleground Company and an image that depicts General Nathaniel Greene.

~~(16c)~~(16d) Harley Owners' Group. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall be designed in consultation with and approved by the Harley-Davidson Motor Company, Inc., and shall bear the words and trademark of the "Harley Owners' Group". ~~The Division shall not develop this plate unless the Harley-Davidson Motor Company, Inc., licenses, without charge, the State to use the words and trademark of the Harley Owners' Group on the plate.~~

...

(27b) Military Wartime Veteran. – Issuable to either a member or veteran of the armed services of the United States who served during a period of war. If the person is a veteran of the armed services, then the veteran must be separated from the armed services under honorable conditions. The plate shall bear a word or phrase identifying the period of war and a replica of the campaign badge or medal awarded for that war. Except for World War II and Korean Conflict plates, the Division may not issue a plate authorized by this subdivision unless it receives at least 300 applications for that plate. A "period of war" is any of the following:

a. World War I, meaning the period beginning April 16, 1917, and ending November 11, 1918.
b. World War II, meaning the period beginning December 7, 1941, and ending December 31, 1946.
c. The Korean Conflict, meaning the period beginning June 27, 1950, and ending January 31, 1955.
d. The Vietnam Era, meaning the period beginning August 5, 1964, and ending May 7, 1975.
e. Desert Storm, meaning the period beginning August 2, 1990, and ending April 11, 1991.
f. Operation Enduring Freedom, meaning the period beginning October 24, 2001, and ending at a date to be determined.
g. Operation Iraqi Freedom, meaning the period beginning March 19, 2003, and ending at a date to be determined.
~~f.~~h. Any other campaign, expedition, or engagement for which the United States Department of Defense authorizes a campaign badge or medal.

...

(27l) National Multiple Sclerosis Society. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall have the logo of the National Multiple Sclerosis Society and the telephone number "1-800-FIGHT MS" on the plate.

...

(28) National Rifle Association. – Issuable to the registered owner of a motor vehicle. The plate shall bear a phrase or insignia representing

the National Rifle Association of America. ~~The Division shall not use the name and logo of the National Rifle Association of America on the plate unless the National Rifle Association of America licenses, without charge, the State to use the name and logo on the plate.~~ The Division must receive 300 or more applications for the plate before it may be developed.

...

(28c) National Wild Turkey Federation. – Issuable to the registered owner of a motor vehicle. The plate shall bear the design of a strutting wild turkey and dogwood blossoms and the words 'Working For The Wild Turkey.' The Division must receive 300 or more applications for the plate before it may be developed.

~~(28a)~~(28f)Native American. – Issuable to the registered owner of a motor vehicle. The plate may bear a phrase or an insignia representing Native Americans. The Division must receive 300 or more applications for the plate before it may be developed.

~~(28b)~~(28i)NC Agribusiness. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the logo of the North Carolina Agribusiness Council, Inc., and the phrase "NC's #1 Industry".

~~(28d)~~(28m) NC Coastal Federation. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a phrase used by the North Carolina Coastal Federation and an image that depicts the coastal area of the State.

~~(28e)~~(28r)North Carolina 4-H Development Fund. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or insignia representing The North Carolina 4-H Development Fund.

~~(28g)~~(28u) Nurses. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20- 81.12. The plate shall bear the phrase "First in Nursing" and a representation relating to nursing.

...

(34) Professional Sports Fan. – Issuable to the registered owner of a motor vehicle. The plate shall bear the logo of a professional sports team located in North Carolina. The Division shall receive 300 or more applications for a professional sports fan plate before a plate may be issued. ~~The Division shall not develop a professional sports fan plate unless the professional sports team licenses, without charge, the State to use the official team logo on the plate.~~

...

(35d) Red Hat Society. – Issuable to the registered owner of a motor vehicle. The plate shall bear a representation of The Red Hat Society. ~~The Division shall not use the name and logo of The Red Hat Society, Inc., on the plate unless The Red Hat Society, Inc., licenses, without charge,~~

~~the State to use the name and logo on the plate.~~ The Division must receive 300 or more applications for the plate before it may be developed.

...

(38c) Share the Road. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a representation of a bicycle and the phrase 'Share the Road.

(38f) SCUBA. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 81.12. The plate shall bear the phrase "SCUBA" and a logo of the Diver Down Flag.

...

(45h) Tarheel Classic Thunderbird Club. – Issuable to the registered owner of a motor vehicle. The plate shall bear the logo of the Tarheel Classic Thunderbird Club and the phrase "Tarheel Classic Thunderbird Club". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate."

SECTION 34 G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. – Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates, including additional Congressional Medal of Honor, 100% Disabled Veteran, and Ex-Prisoner of War plates, are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Coastal Conservation Association	$30.00
Crystal Coast	$30.00
El Pueblo	$30.00
Historical Attraction	$30.00
HOMES4NC	$30.00
In God We Trust	$30.00
North Carolina 4-H Development Fund	$30.00
Personalized	$30.00
Share the Road	$30.00
State Attraction	$30.00
Buffalo Soldiers	$25.00
Collegiate Insignia	$25.00
Goodness Grows	$25.00
High School Insignia	$25.00
Kids First	$25.00
Olympic Games	$25.00
National Multiple Sclerosis Society	$25.00
National Wild Turkey Federation	$25.00
NC Agribusiness	$25.00
NC Coastal Federation	$25.00

Nurses	$25.00
Rocky Mountain Elk Foundation	$25.00
Special Olympics	$25.00
Surveyor Plate	$25.00
The V Foundation for Cancer Research Division	$25.00
University Health Systems of Eastern Carolina	$25.00
Alpha Phi Alpha Fraternity	$20.00
Animal Lovers	$20.00
Arc of North Carolina	$20.00
Audubon North Carolina	$20.00
Autism Society of North Carolina	$20.00
Be Active NC	$20.00
Buddy Pelletier Surfing Foundation	$20.00
Daughters of the American Revolution	$20.00
Ducks Unlimited	$20.00
First in Forestry	$30.00
Guilford Battleground Company	$20.00
Harley Owners' Group	$20.00
Litter Prevention	$20.00
March of Dimes	$20.00
Omega Psi Phi Fraternity	$20.00
Save the Sea Turtles	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
SCUBA	$20.00
Soil and Water Conservation	$20.00
Special Forces Association	$20.00
Support Public Schools	$20.00
Wildlife Resources	$20.00
Zeta Phi Beta Sorority	$20.00
Active Member of the National Guard	None
100% Disabled Veteran	None
Ex-Prisoner of War	None
Legion of Valor	None
Purple Heart Recipient	None
Silver Star Recipient	None
All Other Special Plates	$10.00."

SECTION 5. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. – The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), the Natural Heritage Trust

Fund (NHTF), which is established under G.S. 113-77.7, and the Parks and Recreation Trust Fund, which is established under G.S. 113-44.15, as follows:

Special Plate	SRPA	CCAPA	NHTF	PRTF
Alpha Phi Alpha Fraternity	$10	$10	0	0
Animal Lovers	$10	$10	0	0
Arc of North Carolina	$10	$10	0	0
Audubon North Carolina	$10	$10	0	0
Autism Society of North Carolina	$10	$10	0	0
Be Active NC	$10	$10	0	0
Buddy Pelletier Surfing Foundation	$10	$10	0	0
Buffalo Soldiers	$10	$15	0	0
Coastal Conservation Association	$10	$20	0	0
Crystal Coast	$10	$20	0	0
Daughters of the American Revolution	$10	$10	0	0
Ducks Unlimited	$10	$10	0	0
El Pueblo	$10	$20	0	0
First in Forestry	$10	$10	$10	0
Goodness Grows	$10	$15	0	0
Guilford Battleground Company	$10	$10	0	0
Harley Owners' Group	$10	$10	0	0
High School Insignia	$10	$15	0	0
Historical Attraction	$10	$20	0	0
HOMES4NC	$10	$20	0	0
In God We Trust	$10	$20	0	0
In-State Collegiate Insignia	$10	$15	0	0
Kids First	$10	$15	0	0
Litter Prevention	$10	$10	0	0
March of Dimes	$10	$10	0	0
National Multiple Sclerosis Society	$10	$15	0	0
National Wild Turkey Federation	$10	$15	0	0
NC Agribusiness	$10	$15	0	0
NC Coastal Federation	$10	$15	0	0
NC 4-H Development Fund	$10	$20	0	0
Nurses	$10	$15	0	0
Olympic Games	$10	$15	0	0
Omega Psi Phi Fraternity	$10	$10	0	0
Out-of-state Collegiate Insignia	10	0	$15	0
Personalized	$10	0	$15	$5
Rocky Mountain Elk Foundation	$10	$15	0	0
Save the Sea Turtles	$10	$10	0	0
Scenic Rivers	$10	$10	0	0
School Technology	$10	$10	0	0

SCUBA	$10	$10	0	0
Share the Road	$10	$20	0	0
Soil and Water Conservation	$10	$10	0	0
Special Forces Association	$10	$10	0	0
Special Olympics	$10	$15	0	0
State Attraction	$10	$20	0	0
Stock Car Racing Theme	$10	$20	0	0
Support Public Schools	$10	$10	0	0
Surveyor Plate	$10	$15	0	0
The V Foundation for Cancer Research	$10	$15	0	0
University Health Systems of Eastern Carolina	$10	$15	0	0
Wildlife Resources	$10	$10	0	0
Zeta Phi Beta Sorority	$10	$10	0	0
All other Special Plates	$10	0	0	0."

SECTION 6. G.S. 220-81.12(b2) reads as rewritten:

"(b2) State Attraction Plates. – The Division must receive 300 or more applications for a State attraction plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of State attraction plates to the organizations named below in proportion to the number of State attraction plates sold representing that organization:

(1) Blue Ridge Parkway Foundation. – The revenue derived from the special plate shall be transferred quarterly to Blue Ridge Parkway Foundation for use in promoting and preserving the Blue Ridge Parkway as a scenic attraction in North Carolina.

(1a) Friends of the Great Smoky Mountains National Park. – The revenue derived from the special plate shall be transferred quarterly to the Friends of the Great Smoky Mountains National Park, Inc., to be used for educational materials, preservation programs, capital improvements for the portion of the Great Smoky Mountains National Park that is located in North Carolina, and operating expenses of the Great Smoky Mountains National Park.

(1b) Friends of the Appalachian Trail. – The revenue derived from the special plate shall be transferred quarterly to The Appalachian Trail Conference to be used for educational materials, preservation programs, trail maintenance, trailway and viewshed acquisitions, trailway and viewshed easement acquisitions, capital improvements for the portions of the Appalachian Trail and connecting trails that are located in North Carolina, and related administrative and operating expenses.

(1c) The North Carolina Aquarium. –The revenue derived from the special plate shall be transferred quarterly to the North Carolina Aquarium

Society, Inc., for its programs in support of the North Carolina aquariums.

(1c) The North Carolina Arboretum. – The revenue derived from the special plate shall be transferred quarterly to The North Carolina Arboretum Society and used to help the Society obtain grants for the North Carolina Arboretum and for capital improvements to the North Carolina Arboretum.

(1d) The North Carolina Maritime Museum. – The revenue derived from the special plate shall be transferred quarterly to Friends of the Museum, North Carolina Maritime Museum, Inc., to be used for educational programs and conservation programs and for operating expenses of the North Carolina Maritime Museum.

(1e) The North Carolina Museum of Natural Sciences. – The revenue derived from the special plate shall be transferred quarterly to the Friends of the North Carolina State Museum of Natural Sciences for its programs in support of the museum.

(2) The North Carolina Zoological Society. – The revenue derived from the special plate shall be transferred quarterly to The North Carolina Zoological Society, Incorporated, to be used for educational programs and conservation programs at the North Carolina Zoo at Asheboro and for operating expenses of the North Carolina Zoo at Asheboro."

SECTION 7. G.S. 20-81.12 is amended by adding the following new subsections to read:

"(b39) Alpha Phi Alpha Fraternity. – The Division must receive 300 or more applications for the Alpha Phi Alpha Fraternity plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the Alpha Phi Alpha Fraternity plates to the Association of North Carolina Alphamen (ANCA) Educational Foundation for scholarships for the benefit of African-American males in ANCA attending accredited North Carolina colleges and universities.

(b40) Arc of North Carolina. – The Division must receive 300 or more applications for the Arc of North Carolina plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the Arc of North Carolina plates to The Arc of North Carolina, Inc., for its programs in support of retarded citizens in North Carolina.

(b41) Autism Society of North Carolina. – The Division must receive 300 or more applications for an Autism Society of North Carolina plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Autism Society of North Carolina plates to the Autism Society of North Carolina, Inc., for support services to individuals with autism and their families.

(b42) Buddy Pelletier Surfing Foundation. – The Division must receive 300 or more applications for the Buddy Pelletier Surfing Foundation plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and

Cultural Attraction Plate Account derived from the sale of the Buddy Pelletier Surfing Foundation to the Foundation to fund the Foundation's scholastic and humanitarian aid programs.

(b43) Coastal Conservation Association. – The Division must receive 300 or more applications for the Coastal Conservation Association plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the Coastal Conservation Association plates to the Division of Marine Fisheries for its conservation programs.

(b44) Guilford Battleground Company. – The Division must receive 300 or more applications for a Guilford Battleground Company plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Guilford Battleground Company plates to the Guilford Battleground Company for its programs.

(b45) National Multiple Sclerosis Society. – The Division must receive 300 or more applications for the National Multiple Sclerosis Society plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the National Multiple Sclerosis Society plates to the National Multiple Sclerosis Society, for its public awareness programs.

(b46) National Wild Turkey Federation. – The Division must receive 300 or more applications for the National Wild Turkey Federation plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the National Wild Turkey Federation plates to The North Carolina State Chapter of the National Wild Turkey Federation for special projects to benefit the public.

(b47) SCUBA. – The Division must receive 300 or more applications for the SCUBA plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Plate Account derived for the sale of the SCUBA plates to the Division of Marine Fisheries for the purpose of developing the State's artificial reefs.

(b48) Share the Road. The Division must receive 300 or more applications for the Share the Road plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the Share the Road plates to the Department of Transportation, Division of Bicycle and Pedestrian Transportation, for its programs."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 85

Short Title:	Alpha Phi Alpha Fraternity Special Plate.	(Public)
Sponsors:	Representatives Womble, Bell, Pierce (Primary Sponsors); and Farmer-Butterfield.	
Referred to:	Finance.	

February 7, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE AN ALPHA PHI ALPHA SPECIAL REGISTRATION PLATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-79.4(b) reads as rewritten:

"(b) Types. – The Division shall issue the following types of special registration plates:

...

(1d) Alpha Phi Alpha Fraternity. – Issuable to the owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the fraternity's symbol and name. The Division shall not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate."

SECTION 2. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. – Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates, including additional Congressional Medal of Honor, 100% Disabled Veteran, and Ex-Prisoner of War plates, are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Crystal Coast	$30.00
El Pueblo	$30.00
Historical Attraction	$30.00
HOMES4NC	$30.00
In God We Trust	$30.00
North Carolina 4-H Development Fund	$30.00
Personalized	$30.00

State Attraction	$30.00
Buffalo Soldiers	$25.00
Collegiate Insignia	$25.00
Goodness Grows	$25.00
High School Insignia	$25.00
Kids First	$25.00
Olympic Games	$25.00
NC Agribusiness	$25.00
NC Coastal Federation	$25.00
Nurses	$25.00
(Effective until June 30, 2006) Rocky Mountain Elk Foundation	$25.00
Special Olympics	$25.00
Surveyor Plate	$25.00
The V Foundation for Cancer Research Division	$25.00
University Health Systems of Eastern Carolina	$25.00
Alpha Phi Alpha Fraternity	$20.00
Animal Lovers	$20.00
Audubon North Carolina	$20.00
Be Active NC	$20.00
Daughters of the American Revolution	$20.00
Ducks Unlimited	$20.00
(Effective until June 30, 2006) First in Forestry	$30.00
Harley Owners' Group	$20.00
Litter Prevention	$20.00
March of Dimes	$20.00
Omega Psi Phi Fraternity	$20.00
Save the Sea Turtles	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
Soil and Water Conservation	$20.00
Special Forces Association	$20.00
Support Public Schools	$20.00
Wildlife Resources	$20.00
Zeta Phi Beta Sorority	$20.00
Active Member of the National Guard	None
100% Disabled Veteran	None
Ex-Prisoner of War	None
Legion of Valor	None
Purple Heart Recipient	None
Silver Star Recipient	None
All Other Special Plates	$10.00."

SECTION 3. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. – The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, and the Parks and Recreation Trust Fund, which is established under G.S. 113-44.15, as follows:

Special Plate	SRPA	CCAPA	NHTF	PRTF
Alpha Phi Alpha Fraternity	$10	$10	0	0
Animal Lovers	$10	$10	0	0
Audubon North Carolina	$10	$10	0	0
Be Active NC	$10	$10	0	0
Buffalo Soldiers	$10	$15	0	0
Crystal Coast	$10	$20	0	0
Daughters of the American Revolution	$10	$10	0	0
Ducks Unlimited	$10	$10	0	0
El Pueblo	$10	$20	0	0
First in Forestry	$10	$10	$10	0
Goodness Grows	$10	$15	0	0
(Effective until June 30, 2006) Harley Owners' Group	$10	$10	0	0
High School Insignia	$10	$15	0	0
Historical Attraction	$10	$20	0	0
HOMES4NC	$10	$20	0	0
In God We Trust	$10	$20	0	0
In-State Collegiate Insignia	$10	$15	0	0
Kids First	$10	$15	0	0
Litter Prevention	$10	$10	0	0
March of Dimes	$10	$10	0	0
NC Agribusiness	$10	$15	0	0
NC Coastal Federation	$10	$15	0	0
NC 4-H Development Fund	$10	$20	0	0
Nurses	$10	$15	0	0
Olympic Games	$10	$15	0	0
Omega Psi Phi Fraternity	$10	$10	0	0
Out-of-state Collegiate Insignia	10	0	$15	0
Personalized	$10	0	$15	$5
(Effective until June 30, 2006) Rocky Mountain Elk Foundation	$10	$15	0	0
Save the Sea Turtles	$10	$10	0	0
Scenic Rivers	$10	$10	0	0
School Technology	$10	$10	0	0

Soil and Water Conservation	$10	$10	0	0
Special Forces Association	$10	$10	0	0
Special Olympics	$10	$15	0	0
State Attraction	$10	$20	0	0
Stock Car Racing Theme	$10	$20	0	0
Support Public Schools	$10	$10	0	0
Surveyor Plate	$10	$15	0	0
The V Foundation for Cancer Research	$10	$15	0	0
University Health Systems of Eastern Carolina	$10	$15	0	0
Wildlife Resources	$10	$10	0	0
Zeta Phi Beta Sorority	$10	$10	0	0
All other Special Plates	$10	0	0	0."

SECTION 4. G.S. 20-81.12 is amended by adding a new subsection to read:

"(b39) Alpha Phi Alpha Fraternity. – The Division must receive 300 or more applications for the Alpha Phi Alpha Fraternity plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the Alpha Phi Alpha Fraternity plates to the Association of North Carolina Alphamen (ANCA) Educational Foundation for scholarships for the benefit of African-American males in ANCA attending accredited North Carolina colleges and universities."

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

HOUSE BILL 85:
Various Special License Plates

BILL ANALYSIS

Committee:	House Finance	**Date:**	May 17, 2005
Introduced by:	Reps. Womble, Bell, Pierce	**Summary by:**	Cindy Avrette
Version:	PCS to First Edition H85-CSRBf-12		Committee Counsel

SUMMARY: The Proposed Committee Substitute for House Bill 85 authorizes the Division of Motor Vehicles to develop 18 new special registration plates. The bill becomes effective when it becomes law.

CURRENT LAW: The Division of Motor Vehicles is authorized to issue more than 100 special license plates. As a general rule, the fee for a special registration plate is the regular vehicle registration fee plus a $10 special registration plate fee.[1] The $10 special registration plate fee is credited to the Special Registration Plate Account. After deducting the cost of the plates from this account, $525,000 is annually appropriated to provide operating assistance for seven Visitor Centers.[2] The Centers are located in Brunswick, Camden, Carteret, Caswell, Macon, Tyrell, and Watauga Counties. The remaining revenue in the account is transferred quarterly to the Department of Commerce for advertising (33%), the Department of Transportation for highway beautification (50%), and the Department of Human Resources to promote travel accessibility for disabled persons (17%).

The cost of some special plates includes a fee in addition to the $10 special registration plate fee. In those instances, the first $10 goes to the special registration plate fund and the remainder is transferred quarterly to designated beneficiaries of the additional fee amount.

BILL ANALYSIS: The PCS for House Bill 85 authorizes the Division of Motor Vehicles to issue 18 new special registration plates. With the exception of the 'Air Medal Recipient', all of the plates authorized by the PCS must meet the 300 minimum plate requirement.[3] All of the plates authorized by the PCS require the $10 special registration plate fee that is credited to the Special Registration Plate Account. The PCS provides that the following new plates would not have to be a 'First in Flight' plate[4]:

- Buddy Pelletier Surfing Foundation
- Guilford Battleground Company
- National Wild Turkey Federation
- North Carolina Aquarium Society

Lastly, the bill provides that the Division may not develop a special registration plate that uses a name or logo for which a trademark has been issued unless the holder of the trademark licenses, without charge, the State to use the name or logo on the special registration plate. This provision codifies the current practice. It also removes the language from the individual special license plate authorizations.

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[1] One registration plate is issued free of charge to a recipient of the Congressional Medal of Honor, a 100% Disabled Veteran, or an ex-prisoner of war. Four special registration plates are exempt from the $10 special plate fee: active member of the National Guard, Legion of Valor, Purple Heart Recipient, and the Silver Star Recipient.

[2] There are 10 Visitors' Centers. Two of the centers that do not receive State funding are located in Dare County and the third one is located in McDowell County.

[3] There are 96 organizations trying to obtain the 300 minimum plate applications. Some of the organizations have been trying to meet this minimum number since 1992.

[4] The design of plates that are not 'First in Flight' plates must be approved by the Division and the State Highway Patrol for clarity and ease of identification. G.S. 20-63(b).

The following chart details the plates authorized by this PCS, the cost of each plate, and how the additional revenues derived from the plates, if any, will be distributed and used.

Purposes	Additional Fees/ Use
Air Medal Recipient. – Issuable to the recipient of the Air Medal. The plate shall bear the emblem of the Air Medal and the words 'Air Medal'. President Roosevelt authorized the Air Medal in 1942 for meritorious achievement while participating in aerial flight or for a single act of heroism against an armed enemy. ***Sponsor:*** *Representative Setzer and Pate, HB 378*	**$10.00** $10 to SRPA
Alpha Phi Alpha Fraternity. – Issuable to the owner of a motor vehicle. The plate shall bear the fraternity's symbol and name. The additional revenue derived from the sale of the plate shall be transferred quarterly to the Association of North Carolina Alphamen Educational Foundation for scholarships for the benefit of African-American males in ANCA attending accredited North Carolina colleges and universities. Alpha Phi Alpha was the first intercollegiate Greek-letter fraternity established for African-Amercians. It was founded at Cornell University in Ithaca, New York in 1906. ***Sponsor:*** *Representative Womble, Bell, and Pierce, HB 85*	**$20.00** $10 to SRPA $10 to CCAPA[5]
ARC of North Carolina. – Issuable to the registered owner of a motor vehicle. The plate shall bear the logo of the ARC of North Carolina and the phrase 'The ARC'. The additional revenue derived from the sale of the plate shall be transferred quarterly to The ARC of North Carolina, Inc., for its programs in support of retarded citizens in North Carolina. The ARC of North Carolina seeks to secure for all people with developmental disabilities the opportunity to choose and realize their goals of where and how they learn, live, work, and play. There are at least 40 local ARC chapters throughout the State. ***Sponsor:*** *Representative Goodwin, HB 1529*	**$10.00** $10 to SRPA
Autism Society of North Carolina. – Issuable to the registered owner of a motor vehicle. The plate shall bear the phrase 'Autism Society of North Carolina' and the logo of the Autism Society. The additional revenue derived from the sale of the plate shall be transferred quarterly to the Autism Society of North Carolina, Inc. for support services to individuals with autism and their families. The Autism Society of North Carolina was founded in 1970 by a dedicated group of parents seeking services and support for their families. The organization connects people who live with autism with resources, support, advocacy and information tailored to their unique needs. ***Sponsor:*** *Representative Gibson, HB 1668*	**$20** $10 to SRPA $10 to CCAPA
Buddy Pelletier Surfing Foundation. – Issuable to the registered owner of a motor vehicle. The plate shall bear the words 'Buddy Pelletier Surfing Foundation' and the logo of the Foundation. The additional revenue derived from the sale of the plate shall be transferred quarterly to the Buddy Pelletier Surfing Foundation to fund the Foundation's scholastic and humanitarian aid programs. Buddy Pelletier founded the organization to render humanitarian aid to those with catastrophic needs and to provide scholarships to students who are involved in the sport of surfing. ***Sponsor:*** *Representative Preston, HB 870*	**$20** $10 to SRPA $10 to CCAPA
Coastal Conservation Association. – Issuable to the registered owner of a motor vehicle. The plate shall bear the logo and name of the Coastal Conservation Association. The additional revenue derived from the sale of the plate shall be transferred quarterly to the Division of Marine Fisheries for its conservation programs. The Coastal Conservation Association is a non-profit organization comprised of 15 coastal state chapters, including a North Carolina chapter. The stated purpose of CCA is	**$30** $10 to SRPA $20 to CCAPA

[5] Collegiate and Cultural Attraction Plate Account.

to advise and education the public on conservation of marine resources. The objective of CCA is to conserve, promote, and enhance the present and future availability of coastal resources for the benefit and enjoyment of the general public. The Division of Marine Fisheries, part of the Department of Environment and Natural Resources, is responsible for the stewardship of the state's marine and estuarine resources. The DMF's mission is to maintain, preserve, and develop all of North Carolina's marine and estuarine resources. A 9-member Marine Fisheries Commission and the Secretary of the Department establish agency policies. The General Assembly authorized a similar plate in 2003 for the North Carolina Coastal Federation. The Division has not developed this plate because it has not yet received the 300 minimum plate applications. ***Sponsor:*** *Representative McMahan and Gibson, HB 1355*	
Cold War Veteran. -- Issuable to a veteran of the armed services of the United States who served during the Cold War era, September 2, 1945, through December 26, 1991, and who was separated from the armed services under honorable conditions. The plate shall bear the words 'Cold War Veteran' and an insignia representing the Cold War era. In the 1998 National Defense Authorization Act, the Secretary of Defense approved awarding Cold War Recognition Certificates to all members of the armed forces and qualified federal government civilian personnel who faithfully and honorably served the country any time during the Cold War era. Currently, there is no badge or medal authorized for this era. ***Sponsor:*** *Representative Setzer and Pate, HB 379.*	**$10** $10 to SRPA
Corvette Club. – Issuable to the registered owner of a motor vehicle. The plate shall bear the flags logo of the Chevrolet Corvette. The Corvette Club is based in Bowling Green, Kentucky and its mission is to keep its members informed and aware of al the latest breaking news in the Corvette industry. ***Sponsor:*** *Representative Underhill, HB 1228*	**$10** $10 to SRPA
Guilford Battleground Company. – Issuable to the registered owner of a motor vehicle. The plate shall bear the phrase 'Revolutionary' and an image that depicts General Nathaniel Greene. The additional revenue derived from the sale of the plate shall be transferred quarterly to the Guilford Battleground Company for its programs. The Guilford Battleground Company was organized in the 1980s to provide support to the unique partnership of Guilford Courthouse National Military Park, a Revolutionary War battle site, and Tannenbaum Historic Park, an 18th century farmstead and colonial heritage center. ***Sponsor:*** *Representative Jeffus, HB 692*	**$20** $10 to SRPA $10 to CCAPA
National Multiple Sclerosis Society. – Issuable to the registered owner of a motor vehicle. The plate shall bear the logo of the Society and the phrase '1-800-FIGHT MS'. The additional revenue derived from the sale of the plate shall be transferred quarterly to the National Multiple Sclerosis Society for its public awareness programs. The National Multiple Sclerosis Society and its network of chapters promote research, educate, advocate on critical issues, and organize a wide range of programs, including support for the newly diagnosed and those living with MS over time. There are three chapters in and near North Carolina: the Central North Carolina Chapter in Greensboro, the Eastern North Carolina Chapter in Raleigh, and the Mid-Atlantic Chapter in Charlotte.. ***Sponsor:*** *Holliman, HB 1197*	**$25** $10 to SRPA $15 to CCAPA
National Wild Turkey Federation. – Issuable to the registered owner of a motor vehicle. The plate shall bear the design of a strutting wild turkey and dogwood blossoms and the words 'Working For The Wild Turkey'. The additional revenue derived from the sale of the plate shall be transferred quarterly to the North Carolina State Chapter of the National Wild Turkey Federation. The NWTF is a non-profit organization with	**$25** $10 to SRPA $15 to CCAPA

members in 50 states, Canada, and 11 other foreign countries. The NWTF was founded in 1973 to support scientific wildlife management on public, private, and corporate lands as well as wild turkey hunting as a traditional North American sport. Since 1985 over $2,119,609 has been raised and spent by North Carolina chapters on projects within North Carolina. The monies have been spent on habitat improvement projects, educational programs and literature, land purchases, and research. ***Sponsor:*** *Representative Coates, HB 745*	
North Carolina Aquariums. – Issuable to the registered owner of a motor vehicle. The plate is created as a 'State Attraction' plate, which may bear a phrase or insignia representing the aquatic environments of the State. The additional revenue derived from the sale of the plate shall be transferred quarterly to the North Carolina Aquarium Society, Inc. for its programs in support of the North Carolina aquariums. The North Carolina Aquariums operate three facilities located at Roanoke Island, Pine Knoll Shores, and Fort Fisher. The Aquariums were established in 1976 to promote an awareness, understanding, appreciation, and conservation of the diverse natural and cultural resources associated with North Carolina's ocean, estuaries, rivers, streams, and other aquatic environments. The North Carolina Aquarium Society, established in 1986, is the support organization for the three Aquariums. It is a membership-based, non-profit organization that raises funds for the Aquariums through private donations, corporate gifts, and foundation grants. The Aquariums have completed expansion of the Roanoke Island and Fort Fisher facilities and expansion plans are being explored for the facility at Pine Knoll Shores. Over one million people visited the Aquariums last year. ***Sponsor:*** *Representative McComas, HB 1036*	**$30** $10 to SRPA $20 to CCAPA
North Carolina Museum of Natural Sciences. – Issuable to the registered owner of a motor vehicle. The plate is created as a 'State Attraction' plate, which may bear a phrase or insignia representing the Museum of Natural Sciences. The additional revenue derived from the sale of the plate shall be transferred quarterly to the Friends of the North Carolina State Museum of Natural Sciences for its programs in support of the museum. The North Carolina State Museum of Natural Sciences is the only science museum in the State with a full-time research staff. The museum's staff maintain the State's zoological collections, conduct primary research in the natural sciences, collaborate on research projects, play a supporting role in natural sciences study at the university level, and interpret natural history to the public. The Friends of the North Carolina Museum of Natural Sciences, established in 1979, is a private, non-profit group that supports the Museum's educational programs, exhibits, and research through membership, fund-raising, and advocacy. ***Sponsor:*** *Representative Martin, HB 1083*	**$30** $10 to the SRPA $20 to the CCAPA
Operation Enduring Freedom and Operation Iraqi Freedom. – The PCS amends the **Military Wartime Veteran** plate category to specifically name the last two campaigns of the US Military. The plate would be issuable to either a member or veteran of the armed services of the United States who served during Operation Enduring Freedom or Operation Iraqi Freedom. If the person is a veteran of the armed services, then the veteran must be separated from the armed services under honorable conditions. The plate shall bear a word or phrase identifying the period of war and a replica of the campaign badge or medal awarded for that war. The campaign medals for these two military operations were announced in April 2005. The statute provides that the Division may develop a plate for any campaign, expedition, or engagement for which the United States Department of Defense authorizes a campaign badge or medal. Therefore, as of April of 2005, the Division may develop this plate without this authorization. ***Sponsors:***	**$10.00** $10 to SRPA

Operation Iraqi Freedom, *Representative Capps, HB 682* ***Operation Enduring Freedom,*** *requested by Representative Martin*	
SCUBA. – Issuable to the registered owner of a motor vehicle. The plate shall bear the phrase 'SCUBA' and a logo of the Diver Down Flag. The additional revenue derived from the sale of this plate shall be transferred quarterly to the Division of Marine Fisheries for the purpose of development the State's artificial reefs. The Division of Marine Fisheries, part of the Department of Environment and Natural Resources, is responsible for the stewardship of the state's marine and estuarine resources. The DMF's mission is to maintain, preserve, and develop all of North Carolina's marine and estuarine resources. A 9-member Marine Fisheries Commission and the Secretary of the Department establish agency policies. The General Assembly authorized a similar plate in 1993: Crystal Coast special registration plate. The Division has not yet received the necessary 300 applications to develop the Crystal Coast plate. If issued, the additional revenue derived from it would be used by the Crystal Coast Artificial Reef Association to promote scuba diving off the Crystal Coast. ***Sponsor:*** *Representative Preston, HB 812*	**$20** $10 to the SRPA $10 to the CCAPA
Share the Road. – Issuable to the registered owner of a motor vehicle. The plate shall bear a representation of a bicycle and the phrase 'Share the Road'. The additional revenue derived from the sale of the plate shall be transferred quarterly to the Division of Bicycle and Pedestrian Transportation for its programs. The Division of Bicycle and Pedestrian Transportation is part of the Department of Transportation. It was created in 1974 and expanded to encompass pedestrian activities in 1992. It is the oldest comprehensive state program of its kind in the United States. The DBPT mission is to improve highways ad other public rights-of-ways for safe bicyclist and pedestrian use. It undertakes many different types of projects: off-road projects such as greenways; on-road projects such as paved shoulders and bike lanes; bicycle route signing and mapping; pedestrian and bicycle safety projects and education. ***Sponsor:*** *Representative Stiller, HB 1731*	**$30** $10 to the SRPA $20 to the CCAPA
Tarheel Classic Thunderbird Club. – Issuable to the registered owner of a motor vehicle. The plate shall bear the logo of the Tarheel Classic Thunderbird Club and the phrase 'Tarheel Classic Thunderbird Club'. The Tarheel Classic Thunderbird Club was formed in 1972 and chartered in 1974. ***Sponsor:*** *Requested by Representative Starnes*	**$10** $10 to the SRPA

EFFECTIVE DATE: The PCS for House Bill 85 is effective when it becomes law.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 85 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE AN ALPHA PHI ALPHA SPECIAL REGISTRATION PLATE.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 629
PROPOSED COMMITTEE SUBSTITUTE H629-CSMB-17 [v.1]

5/16/2005 11:40:54 AM

Short Title: Option to Freeze Credit Report. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE ANY CONSUMER CREDIT REPORTING AGENCY TO, UPON THE WRITTEN REQUEST OF A CONSUMER, PLACE A SECURITY FREEZE THAT PROHIBITS THE AGENCY FROM PROVIDING A CONSUMER'S CREDIT REPORT TO A THIRD PARTY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 75 of the General Statutes is amended by adding a new Article to read:

"Article 2A.

"Credit Report Protection Act.

"**§ 75-60. Title.**

This Article may be cited as the "Credit Report Protection Act".

"**§ 75-61. Definitions.**

The following definitions apply in this Article:

(1) Business. – A sole proprietorship, partnership, corporation, association, or other group, however organized and whether or not organized to operate at a profit. Business includes a financial institution organized, chartered, or holding a license or authorization certificate under the laws of this State, any other state, the United States, or any other country, or the parent or the subsidiary of any such financial institution. Business shall not include any government or governmental subdivision or agency.

(2) Consumer. – An individual.

(3) Consumer or credit reporting agency. – Any person that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(4) Consumer report or credit report. – Any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for any one or more of the following:
a. Credit to be used primarily for personal, family, or household purposes.
b. Employment purposes.
c. Any other purpose authorized under 15 U.S.C. § 1681b.

(5) Credit card. – Defined in section 103 of the Truth in Lending Act (15 U.S.C. § 160, et seq.).

(6) Person. – Any individual, partnership, corporation, trust, estate, cooperative, association, government, or governmental subdivision or agency, or other entity.

(7) Personal information. – An individual's first name or first initial and last name in combination with identifying information as defined in G.S. 14-113.20(b) or any identifying information, when not in connection with the individual's first name or first initial and last name, that if compromised would be sufficient to perform or attempt to perform identity theft against the person whose information was compromised.

(8) Records. – Any material on which written, drawn, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form or characteristics. Records do not include publicly available directories containing information an individual has voluntarily consented to have publicly disseminated or listed, such as name, address, or telephone number.

(9) Security breach. – Unauthorized acquisition of records or data that compromises the security or confidentiality of personal information. Security breach does not include a good faith acquisition of personal information by an employee or agent of the business for a legitimate purpose, provided that the personal information is not used for a purpose unrelated to the business or subject to further unauthorized disclosure.

(10) Security freeze. – Notice, at the request of the consumer and subject to certain exceptions under G.S. 75-63(p) that prohibits the consumer reporting agency from releasing all or any part of the consumer's credit report or any information derived from it without the express authorization of the consumer.

"**§ 75-63. Security freeze.**

(a) If a consumer elects to place a security freeze on his or her credit report, a credit reporting agency shall not release the consumer's credit report or information to a

third party without prior express authorization from the consumer. This subsection does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report.

(b) A consumer may elect to place a security freeze on his or her credit report by making a request directly to a consumer reporting agency by any of the following methods:

(1) By certified mail.

(2) By telephone by providing certain personal identification.

(3) Through a secure electronic mail connection if such connection is made available by the agency.

(c) A consumer reporting agency shall place a security freeze on a consumer's credit report no later than five business days after receiving a written or telephone request from the consumer or three business days after receiving a secure electronic mail request.

(d) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within five business days of placing the freeze and at the same time shall provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of his or her credit for a specific party or period of time.

(e) If the consumer wishes to allow his or her credit report to be accessed for a specific party or period of time while a freeze is in place, he or she shall contact the consumer reporting agency via telephone, certified mail, or secure electronic mail, request that the freeze be temporarily lifted, and provide all of the following:

(1) Proper identification.

(2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (d) of this section.

(3) The proper information regarding the third party who is to receive the credit report or the time period for which the report shall be available to users of the credit report.

(f) A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report pursuant to subsection (e) of this section shall comply with the request no later than three business days after receiving the request.

(g) A consumer reporting agency may develop procedures involving the use of telephone, fax, or, upon the consent of the consumer in the manner required by the Electronic Signatures in Global and National Commerce Act (e-Sign) for legally required notices, by the Internet, e-mail, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report pursuant to subsection (e) of this section in an expedited manner.

(h) A consumer reporting agency shall remove or temporarily lift a freeze placed on a consumer's credit report only in the following cases:

(1) Upon the consumer's request, pursuant to subsection (e) of this section.

(2) If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting

agency intends to remove a freeze upon a consumer's credit report pursuant to this subdivision, the consumer reporting agency shall notify the consumer in writing five business days prior to removing the freeze on the consumer's credit report.

(i) If a third party requests access to a consumer credit report on which a security freeze is in effect, and this request is in connection with an application for credit or any other use, and the consumer does not allow his or her credit report to be accessed for that specific party or period of time, the third party may treat the application as incomplete.

(j) If a third party requests access to a consumer credit report on which a security freeze is in effect for the purpose of receiving, extending, or otherwise utilizing the credit therein, and not for the sole purpose of account review, the consumer credit reporting agency shall notify the consumer that an attempt has been made to access the credit report and by whom.

(k) A security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer who provides both of the following:

(1) Proper identification.

(2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (d) of this section.

(l) A consumer reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

(m) A consumer reporting agency shall not suggest or otherwise state or imply to a third party that the consumer's security freeze reflects a negative credit score, history, report, or rating.

(n) A consumer shall not be charged for any security freeze services, including, but not limited to, the placement or lifting of a security freeze; however, a consumer may be charged no more than five dollars ($5.00) only in the following discrete circumstances:

(1) If the consumer fails to retain the original personal identification number provided by the agency, the consumer shall not be charged for a one-time reissue of the personal identification number and no more than five dollars ($5.00) for subsequent instances of loss of the personal identification number.

(2) The consumer may be charged no more than five dollars ($5.00) for the third and each subsequent time within a calendar year the consumer requests a security freeze on his or her credit report be temporarily lifted pursuant to subsection (e) of this section.

(3) For consumers that remove a security freeze pursuant to subsection (k) of this section, the consumer may be charged no more than five dollars ($5.00) for the third and each subsequent time within a calendar year

the consumer requests a security freeze be placed on his or her credit report pursuant to subsection (b) of this section.

(o) At anytime that a consumer is required to receive a summary of rights required under section 609 of the federal Fair Credit Reporting Act, the following notice shall be included:

"North Carolina Consumers Have the Right to Obtain a Security Freeze on a Credit Report.

You may obtain a security freeze on your credit report at no charge to protect your privacy and ensure that credit is not granted in your name without your knowledge. You have a right to place a security freeze on your credit report pursuant to North Carolina law. The security freeze will prohibit a consumer reporting agency from releasing any information in your credit report without your express authorization or approval.

The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. When you place a security freeze on your credit report, within five business days you will be provided a personal identification number or password to use if you choose to remove the freeze on your credit report or to temporarily authorize the release of your credit report to a specific party, parties, or period of time after the freeze is in place. To provide that authorization, you must contact the consumer reporting agency and provide all of the following:

(1) The unique personal identification number or password provided by the consumer reporting agency.

(2) Proper identification to verify your identity.

(3) Proper information regarding the third party or parties who are to receive the credit report or the period of time for which the report shall be available to users of the credit report.

A consumer reporting agency that receives a request from a consumer to lift temporarily a freeze on a credit report shall comply with the request no later than three business days after receiving the request. A security freeze does not apply to circumstances where you have an existing account relationship and a copy of your report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control, or similar activities.

If you are actively seeking credit, you should understand that the procedures involved in lifting a security freeze may slow your own applications for credit. You should plan ahead and lift a freeze – either for a period of time if you are shopping around or specifically for a certain creditor – a few days before actually applying for new credit.

If you lift your freeze more than two times in a calendar year, you may be charged no more than five dollars ($5.00) for each subsequent time you wish to impose a security freeze on your credit report. You have a right to bring a civil action against someone who violates your rights under the credit reporting laws. The action may be brought against a consumer reporting agency or a user of your credit report."

(p) The provisions of this section do not apply to the use of a consumer credit report by any of the following:

(1) A person, or the person's subsidiary, affiliate, agent, or assignee with which the consumer has or, prior to assignment, had an account, contract, or debtor-creditor relationship for the purposes of reviewing the account or collecting the financial obligation owing for the account contract or debt.

(2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subsection (e) of this section for purposes of facilitating the extension of credit or other permissible use.

(3) Any person acting pursuant to a court order, warrant, or subpoena.

(4) A State or local agency that administers a program for establishing and enforcing child support obligations.

(5) The State or its agents or assigns acting to investigate fraud or acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities.

(6) A person for the purposes of prescreening, as defined by the federal Fair Credit Reporting Act.

(7) Any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed.

(8) Any person or entity for the purpose of providing a consumer with a copy of his or her credit report upon the consumer's request.

(q) If a consumer reporting agency erroneously, whether by accident or design, violates the security freezes by releasing credit information that has been placed under a security freeze or violates any other provision in this section, the affected consumer is entitled to:

(1) Notification within five business days of the release of the information, including specificity as to the information released and the third-party recipient of the information.

(2) File a civil action pursuant to G.S. 75-16. In addition to the remedies therein, a consumer may recover statutory damages of one thousand dollars ($1,000) per violation and seek injunctive relief to prevent or restrain further violations."

SECTION 2. This act becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 629

Short Title:	Option to Freeze Credit Report.	(Public)
Sponsors:	Representatives Adams; Jeffus, Parmon, Pierce, Ray, Starnes, Wainwright, and Wiley.	
Referred to:	Finance.	

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE ANY CONSUMER CREDIT REPORTING AGENCY TO, UPON THE WRITTEN REQUEST OF A CONSUMER, PLACE A SECURITY FREEZE THAT PROHIBITS THE AGENCY FROM PROVIDING A CONSUMER'S CREDIT REPORT TO A THIRD PARTY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 25B of the General Statutes is amended by adding a new Article to read:

"Article 2.

"Security Freeze on Consumers' Credit Reports.

"**§ 25B-10. Definitions.**

As used in this Article, the following definitions apply:

(1) 'Consumer credit file' means all of the information about a consumer that is recorded and retained by a consumer credit reporting agency regardless of how the information is stored.

(2) 'Consumer credit report' means a communication or other information by a consumer credit reporting agency relating to the creditworthiness, credit standing, credit capacity, debts, character, general reputation, personal characteristics, or mode of living of a consumer that is used or expected to be used or collected, wholly or partly, as a factor in establishing the consumer's eligibility for credit or insurance for personal, family, or household purposes, employment purposes, or other purpose authorized under section 603 and section 604 of the Fair Credit Reporting Act, 15 U.S.C. § 1681a and § 1681b, as amended. The term does not include any of the following:

a. A report containing information solely on a transaction between the consumer and the person making the report.

b. An authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device.

c. A report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer makes a decision with respect to the request, if the third party advises the consumer of the name and address of the person to whom the request was made and the person makes the disclosures that must be made under section 615 of the Fair Credit Reporting Act, 15 U.S.C. § 1681m, as amended, to the consumer in the event of adverse action against the consumer.

d. Any communication of information described in this subdivision among persons related by common ownership or affiliated by corporate control.

(3) 'Consumer credit reporting agency' means a person that regularly engages wholly or partly in the practice of assembling or evaluating consumer credit information or other information on consumers in order to provide consumer credit reports to third parties for monetary fees, for dues, or on a cooperative nonprofit basis. Consumer credit reporting agency does not include a business entity that provides only check verification or check guarantee services.

(4) 'Proper identification' means information generally sufficient to identify a person.

"**§ 25B-20. Request and placement of security freeze.**

(a) A consumer may elect to place a security freeze on his or her consumer credit file by submitting to a consumer credit reporting agency a request in writing that is sent by certified mail and that includes proper identification of the consumer. Subject to G.S. 25B-50, upon receiving the consumer's request for a security freeze under this section, a consumer credit reporting agency shall place a notice in a consumer's credit file that indicates the file is subject to a security freeze. When a consumer credit file is subject to a security freeze, a consumer credit reporting agency shall not release information from that consumer's credit file and shall not provide a consumer credit report for that consumer to a third party, unless the agency receives prior express authorization under G.S. 25B-40 from the consumer. This section does not prevent a consumer credit reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit file.

(b) A consumer credit reporting agency shall place a security freeze for a consumer no later than five business days after receiving the written request from the consumer. The consumer credit reporting agency shall, no later than 10 business days after receiving the written request from the consumer, also do all of the following:

(1) Send a written confirmation of the security freeze to the consumer.

(2) Disclose in writing to the consumer the process of placing and removing the security freeze and the process for allowing access to information from the consumer's credit file or for providing a

consumer credit report for a specific requester or a specific period of time while the security freeze is in effect by temporarily lifting the security freeze under G.S. 25B-40(b).

(3) Provide the consumer with a unique personal identification number or password to be used by the consumer to authorize a removal or temporary lifting of the security freeze under G.S. 25B-40.

(c) Any consumer credit reporting agency shall honor a security freeze placed by any other consumer credit reporting agency.

(d) A consumer may request in writing a replacement personal identification number or password. The request must comply with the requirements for requesting a security freeze under subsection (a) of this section. The consumer reporting agency shall no later than the third business day after the date the agency receives the request for a replacement personal identification number or password provide the consumer with a new unique personal identification number or password to be used by the consumer instead of the number or password that was provided under subsection (b) of this section.

"**§ 25B-30. Notification of change.**

If a security freeze is in place, a consumer credit reporting agency shall notify the consumer in writing of a change in the consumer credit file to the consumer's name, date of birth, social security number, or address no later than 30 calendar days after the date the change is made. The agency shall send notification of a change of address to the new address and former address. This section does not require notice of an immaterial change, including a street abbreviation change or correction of a transposition of letters or misspelling of a word.

"**§ 25B-40. Removal or temporary lifting of security freeze.**

(a) On a request in writing and with proper identification provided by a consumer, including the consumer's personal identification number or password provided under G.S. 25B-20, a consumer credit reporting agency shall remove a security freeze no later than the third business day after the date the agency receives the request.

(b) On a request in writing and with proper identification provided by a consumer, including the consumer's personal identification number or password provided under G.S. 25B-20, a consumer credit reporting agency, shall, no later than the third business day after the date the agency receives the request, temporarily lift the security freeze for either or both of the following:

(1) A certain properly designated period of time.

(2) A certain properly identified third party.

(c) A consumer credit reporting agency may develop procedures involving the use of a telephone, a facsimile machine, the Internet, or another electronic medium to receive and process a request from a consumer under this section.

(d) A consumer credit reporting agency shall remove a security freeze when the security freeze was placed due to a material misrepresentation of fact by the consumer. The consumer credit reporting agency shall notify the consumer in writing before removing the security freeze under this subsection.

(e) A consumer credit reporting agency shall not charge a fee for a request under subsection (a) or (b) of this section.

"**§ 25B-50. Exemptions from security freeze.**

A consumer credit reporting agency may provide a consumer credit report to all of the following for any consumer credit file that is currently subject to a freeze under G.S. 25B-20:

(1) A State or local governmental entity, including a law enforcement agency or court or private collection agency, if the entity, agency, or court is acting under a court order, warrant, subpoena, or administrative subpoena.

(2) A child support agency acting to investigate or collect child support payments or acting under title IV-D of the Social Security Act, 42 U.S.C. § 651, et seq., as amended.

(3) The Department of Health and Human Services acting to investigate fraud.

(4) The Department of Revenue acting to investigate or collect delinquent sales or franchise taxes.

(5) A tax assessor-collector acting to investigate or collect delinquent ad valorem taxes.

(6) A person for the purposes of prescreening as provided by the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq., as amended.

(7) A person with whom the consumer has an account or contract or to whom the consumer has issued a negotiable instrument, or the person's subsidiary, affiliate, agent, assignee, prospective assignee, or private collection agency, for purposes related to that account, contract, or instrument.

(8) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under G.S. 25B-40(b).

(9) A person who administers a credit file monitoring subscription service to which the consumer has subscribed.

(10) A check service or fraud prevention service company that issues consumer credit reports:

a. To prevent or investigate fraud; or

b. For purposes of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment.

(11) A deposit account information service company that issues consumer reports related to account closures caused by fraud, substantial overdrafts, automated teller machine abuses, or similar negative information regarding a consumer to an inquiring financial institution for use by the financial institution only in reviewing a consumer request for a deposit account with that institution.

(12) A consumer credit reporting agency that:

a. Acts only to resell credit information by assembling and merging information contained in a database of another consumer credit reporting agency or multiple consumer credit reporting agencies; and

b. Does not maintain a permanent database of credit information from which new consumer credit reports are produced.

"**§ 25B-60. Charges for placing security freeze.**

A consumer credit reporting agency may impose a reasonable charge on a consumer for each placement of a security freeze. The amount of the charge shall not exceed ten dollars ($10.00). A consumer credit reporting agency shall charge no such fee to any victim of identity fraud under Article 20 of Chapter 14 of the General Statutes who submits a valid police report.

"**§ 25B-70. Injunctive relief; civil penalty.**

(a) The Attorney General may file a suit against a person for either or both of the following:

(1) Injunctive relief to prevent or restrain a violation of this Article.

(2) A civil penalty in an amount not to exceed two thousand five hundred dollars ($2,500) for each violation of this Article.

(b) If the Attorney General brings an action against a person under subsection (a) of this section, and an injunction is granted against the person or the person is found liable for a civil penalty, the Attorney General may recover reasonable expenses, court costs, investigative costs, and attorneys' fees.

(c) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty under this section.

"**§ 25B-80. Exemptions from Article.**

The provisions of this Article do not apply to any of the following entities:

(1) A check service or fraud prevention service company that issues consumer credit reports:

a. To prevent or investigate fraud, or

b. For purposes of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment.

(2) A deposit account information service company that issues consumer credit reports related to account closures caused by fraud, substantial overdrafts, automated teller machine abuses, or similar negative information regarding a consumer to an inquiring financial institution for use by only the financial institution in reviewing a consumer request for a deposit account with that institution."

SECTION 2. This act becomes effective October 1, 2005.

House Bill 629:
Credit Report Protection Act.

BILL ANALYSIS

Committee:	**House Finance**	**Sponsor:**	**Representative Adams**
Date:	May 17, 2005	**Analysis by:**	Ashley Huffstetler
Version:	**H629-CSMB-17**		Staff Attorney

SUMMARY: House Bill 629 requires a consumer credit reporting agency to place a freeze on a consumer's credit report at the request of the consumer. The freeze prohibits the reporting agency from releasing the consumer's credit report to any third party. The PCS makes grammatical and technical corrections to the original bill.

ANALYSIS: House Bill 629 adds a new Article to the consumer protection statutes and allows an individual consumer to request, in writing, that a consumer reporting agency place a security freeze on his or her credit report. The security freeze prohibits the consumer reporting agency from releasing the consumer's credit report, or any information derived from it, without the express authorization of the consumer. The consumer reporting agency may advise a party requesting a report that there is a security freeze in place prohibiting the release of the information, but the agency may not suggest or imply that the consumer's freeze reflects a negative credit score, history, report, or rating.

The consumer must make the request to place a security freeze on the account in one of the following three ways: (1) by certified mail, (2) by telephone, or (3) by email. The freeze must be effective within five business days if the request is made by phone or mail and within three business days if the request is made by email. The reporting agency must confirm the freeze to the consumer and send a personal identification number (PIN) or password to be used by the consumer to access the account when providing authorization of the release of credit information to a specific party or for a period of time. When authorization is properly given, the reporting agency must lift the freeze within three business days of the request.

The reporting agency may lift the freeze only in the following limited circumstances: (1) upon the consumer's request, and (2) if the credit report was frozen due to a material misrepresentation of fact by the consumer. If a third party requests the report for any purpose other than routine account review, the consumer reporting agency must notify the consumer that an attempt was made to access the report and by whom.

The consumer is not to be charged for any security freeze services, *except* in the following circumstances:

1. Up to $5 may be charged for the third and all subsequent replacement requests of the consumer's PIN number.
2. Up to $5 may be charged for the third and all subsequent requests in a calendar year that the consumer's credit report be made available on a *temporary* basis under subsection (e).
3. Up to $5 may be charged for the third and all subsequent requests in a calendar year to *remove* the freeze under subsection (k).

When the credit reporting agency sends a summary of rights to the consumer, it must also send a notice of rights for obtaining a security freeze on the consumer's credit report. Additionally, the consumer is

entitled to specific notice if any information is erroneously released when a freeze is in place, and he or she may file a civil action to recover up to $1,000 per violation and injunctive relief.

Section (p) of the bill sets out the parties *exempted* from the credit freeze requirements. These include businesses with whom the consumer has an existing relationship, persons acting pursuant to court order, child support enforcement agencies, and others.

BACKGROUND: The movement to allow consumers to freeze their credits reports stems from the pervasive problem of identity theft in the instant credit economy. California is currently the only state that allows consumers to completely freeze their accounts, but legislation passed in Louisiana and Vermont becomes effective this July. Texas offers the protection to former victims of identity theft. Similar legislation has been filed in 18 other states.

The purpose of the legislation is to thwart identity thieves in their efforts to get new loans and credit in the name of existing consumers. Proponents of the legislation argue that identity theft protection is increasingly necessary in our fluid economy. They point to the recent security breach at Bank of America where thousands of consumer's financial records were reported stolen by identity thieves. Opponents of freeze legislation say that it hinders companies for offering pre-approved credit and is inconvenient for the consumer.

Several bills have been filed in the 2005-2006 session dealing with identity theft issues. Senate Bill 783 requires companies to protect the personal information of consumers and to inform consumers when a security breach has occurred. Senate Bill 921 (with companions) requires the reporting agency to place a security freeze on a consumer's account at the request of the consumer. It provides exemptions from the freeze, allowing government entities, child support agencies, HHS, DOR, and others to access the records. The penalties and fees are both higher than those in House Bill 629. Senate Bill 1048 (with companion) allows consumers to request the freeze and has a provision for social security number protection. It has other provisions on identity theft protection and security breaches. House Bill 546 proposes a study of identity theft.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 629 A BILL TO BE ENTITLED AN ACT TO REQUIRE ANY CONSUMER CREDIT REPORTING AGENCY TO, UPON THE WRITTEN REQUEST OF A CONSUMER, PLACE A SECURITY FREEZE THAT PROHIBITS THE AGENCY FROM PROVIDING A CONSUMER'S CREDIT REPORT TO A THIRD PARTY.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 613
PROPOSED COMMITTEE SUBSTITUTE H613-CSLAf-3 [v.8]

5/16/2005 4:18:54 PM

Short Title: Update Certification/Licensure/Rec. Therapy. (Public)

Sponsors:

Referred to:

March 14, 2005

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE LAWS REGULATING THE PRACTICE OF RECREATIONAL THERAPY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90C-1 through G.S. 90C-19 are repealed.

SECTION 1.1. The title of Chapter 90C reads as rewritten:

"**Chapter 90C.**

~~**Therapeutic Recreation Personnel Certification Act.**~~ **North Carolina Recreational Therapy Licensure Act.**"

SECTION 2. Chapter 90C of the General Statutes is amended by adding the following new sections to read:

"**§ 90C-20. Short title.**

This Chapter shall be known as the 'North Carolina Recreational Therapy Licensure Act'.

"**§ 90C-21. Purpose.**

It is the purpose and intent of the Recreational Therapy Licensure Act to safeguard the health and safety of the public and to protect the public from harm by qualified persons by establishing a minimum level of education, experience and competence to assure the highest degree of professional care and conduct on the part of licensed recreational therapists and licensed recreational therapy assistants.

"**§ 90C-22. Definitions.**

In this Chapter, unless the context otherwise requires, the following definitions shall apply:

(1) Board. – The North Carolina Board of Recreational Therapy Licensure.

(2) Licensed recreational therapist. – A person who holds a license pursuant to this Chapter as a recreational therapist. A person licensed as a 'Recreational Therapist' under this Chapter may practice in clinical, residential, educational, and community settings and may:

a. Conduct an individualized patient or client assessment for the purpose of collecting systematic, comprehensive and accurate data necessary to determine a course of action and subsequent individualized treatment plan.

b. Plan and develop the individualized treatment plan that identifies a patient or client's goals, objectives, and treatment intervention strategies.

c. Implement the individualized treatment plan that is consistent with the overall patient or client treatment program.

d. Systematically evaluate and compare the patient or client's response to the individualized treatment plan and suggest modifications as appropriate.

e. Develop a discharge plan in collaboration with the patient or client, his or her family, and other treatment team members.

f. Serve as a resource for patient or client recreation opportunities to promote or improve their general health and well-being..

g. Deliver services in accordance with the professional standards of practice and Codes of Ethics promulgated by national or State professional organizations.

h. Manage delivery of services in accordance with a written plan of operation based upon standards advanced by appropriate membership, regulatory, and credentialing agencies.

i. Provide professional and pre-professional education and training of recreational therapists or recreational therapy assistants.

j. Conduct research in the field of recreational therapy or therapeutic recreation.

(3) Licensed recreational therapy assistant. – A person who holds a license pursuant to this Chapter as a recreational therapy assistant to act under the supervision of a licensed recreational therapist as defined by rule. A person licensed as a 'Recreational Therapy Assistant' under this Chapter may assist in the practice of recreational therapy in clinical, residential, and community settings under the supervision of a licensed recreational therapist and in accordance with a recreational therapy assistant's training, education, and scope of practice, as defined by rule.

(4) Person. – Any individual, corporation, partnership, association, unit of government, or other legal entity.

(5) Recreational therapy aide. – Any non-licensed person who aids in the provision of recreational therapy services under the provisions of this Chapter, and who, acts under the direction and on-site supervision of a licensed recreational therapist or licensed recreational therapy assistant. A recreational therapy aide may perform recreational therapy related duties and functions which are assigned and are commensurate with an aide's training and competency. An aide's work shall not include responding to a physician's orders; designing, conducting or interpreting individualized recreational therapy patient assessment; determining or modifying recreational therapy

treatment plans or interventions; or any independent practice or performance of recreational therapy services.

(6) Scope of recreational therapy. – The practice of recreational therapy includes all direct patient or client services of assessment, planning, design, implementation, evaluation, and documentation of specific interventions, management, consultation, research, and education for either individuals or groups that require specific therapeutic recreation or recreational therapy intervention representing the process and knowledge base delineated in the most recent National Council for Therapeutic Recreation Certification (NCTRC) Job Analysis Study and professional standards of practice. Scope is inclusive of professional and pre-professional education and training in recreational therapy, therapeutic recreation, and related research.

(7) Recreational therapy. – A treatment service designed to restore, remediate, or rehabilitate a patient or client's level of functioning and independence in life activities, as well as reduce or eliminate the activity limitations and restrictions to participation in life situations caused by an illness or disabling condition.

(8) Therapeutic recreation. – The provision of treatment services and the provision of recreation services to persons with illnesses or disabling conditions. The primary purposes of treatment services, which are often referred to as recreational therapy, are to restore, remediate, or rehabilitate in order to improve functioning and independence as well as reduce or eliminate the effects of illness or disability. The primary purposes of recreation services are to provide recreation resources and opportunities in order to improve health and well-being. Therapeutic recreation is provided by professionals who are trained and certified, registered, or licensed to provided therapeutic recreation.

"**§ 90C-23. North Carolina Recreational Therapy Licensure Board is created.**

(a) The North Carolina Recreational Therapy Licensure Board is created.

(b) Composition. – The Board shall consist of eight members appointed as follows:

(1) Three practicing recreational therapists, one of whom shall be appointed by the Governor, one of whom shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore, and one of whom shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.

(2) One licensed practicing recreational therapy assistant appointed by the Governor.

(3) One licensed practicing recreational therapist who is engaged primarily in providing education or training for recreational therapists or recreational therapy assistants appointed by the Governor.

(4) One physician licensed pursuant to Article 1 of Chapter 90 of the General Statutes appointed by the Governor.

(5) Two public members, one of whom shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore and

one of whom shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.

The Governor shall make appointments after consultation with the North Carolina Recreational Therapy Licensure Board and other interested persons.

(c) Qualifications. – The nonpublic recreational therapist or recreational therapy assistant members of the Board shall hold a current license. Each nonpublic recreational therapist or recreational therapy assistant member of the Board, at the time of his or her appointment and for at least two years before, shall have been actively engaged in North Carolina in the practice of recreational therapy or therapeutic recreation, in the education and training of graduate or undergraduate students of recreational therapy or therapeutic recreation, or in recreational therapy or therapeutic recreation research.

One public member shall not be a licensed health care professional or an agent or employee of any health care institution, health care insurer, health care professional school, or a member of any allied health profession. One public member shall have received recreational therapy or therapeutic recreation services. For purposes of this subsection, a person enrolled in a program to prepare him or her to be a licensed health care professional or an allied health professional shall not be eligible to serve as a public member of the Board. The spouse of any person who would be prohibited by this subsection from serving on the Board as a public member shall not serve as a public member of the Board. Public members shall reasonably reflect the population of this State.

(d) Term. – Members of the Board shall serve three-year staggered terms and shall serve until a successor is appointed and qualified. No member shall serve more than two consecutive full terms.

(e) Vacancies. – The Governor shall fill vacancies to the Board positions for which he is the appointing authority within 30 days after a position is vacated. The General Assembly shall fill vacancies for which it is the appointing authority in accordance with G.S. 120-122. Appointees shall serve the remainder of the unexpired term and until their successors have been appointed and qualified.

(f) Removal. – The Board may remove any of its members for gross neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings shall be disqualified from Board business until the charges are resolved. The Governor may also remove any member for gross neglect of duty, incompetence, or unprofessional conduct.

(g) Compensation. – Each member of the Board shall receive such per diem compensation and reimbursement for travel and subsistence as shall be set for licensing Board members generally, as provided in G.S. 93B-5.

(h) Officers. – The officers of the Board shall be a chairman, a vice-chairman and other officers deemed necessary by the Board to carry out the purposes of this Chapter. All officers shall be elected annually by the Board for one-year terms and shall serve until their successors are elected and qualified.

(i) Meetings. – The Board shall hold at least two meetings each year to conduct business, and shall adopt rules governing the calling, holding, and conducting of regular and special meetings. A majority of the Board members shall constitute a quorum.

(j) Employees. – The Board may employ necessary personnel for the performance of its functions, and fix their compensation, within the limits of the funds available to the Board.

(k) The total expense of the administration of this Chapter shall not exceed the total income from fees collected pursuant to this Chapter. None of the expenses of the Board, or the compensation or expenses of any officer or any employee of the Board shall be paid or payable out of the General Fund. Neither the Board nor any of its officers or employees may incur any expense, debt, or other financial obligation binding upon the State.

"**§ 90C-24. Powers of the Board.**

(a) The Board shall have the following general powers and duties:

(1) To administer this Chapter.

(2) To issue interpretations of this Chapter.

(3) To adopt, amend, or repeal rules and regulations in the manner prescribed by Chapter 150B of the General Statutes, as may be necessary to carry out the provisions of this Chapter.

(4) To establish qualifications of, employ, and set the compensation of the Executive Director who shall not be a member of the Board.

(5) To employ and fix the compensation of the personnel that the Board determines are necessary to carry out the provisions of this Chapter and to incur other expenses necessary to effectuate this Chapter.

(6) To determine the qualifications of persons who are licensed pursuant to this Chapter.

(7) To issue, renew, deny, suspend, or revoke licenses and carry out any of the other actions authorized by this Chapter.

(8) To conduct investigations for the purpose of determining whether violations of this Chapter are grounds for revoking, denying, suspending, or refusing to renew the licenses of persons licensed pursuant to this Chapter.

(9) To maintain a record of all proceedings and make available to persons who hold a license and other concerned parties an annual report of all Board action.

(10) To set fees for licensure, license renewal, and other services deemed necessary to carry out the purpose of this Chapter.

(11) To adopt a seal containing the name of the Board to be used on licenses and official reports it issues.

(12) To issue annually a list stating the names of persons currently licensed under the privilege of this Chapter.

(13) To establish or approve, as defined by rule, reasonable competency requirements for licensure, including the power to adopt or use examination materials, study or training courses, and standards of recognized accrediting and credentialing agencies and professional associations and the power to establish or approve, as defined by rule,

reasonable standards for renewal of licensure, including requirements for continuing recreational therapy or therapeutic recreation education.

(b) The powers and duties enumerated above are granted for the purpose of enabling the Board to protect the public from misrepresentation of licensure status as provided in this Chapter and shall be liberally construed to accomplish this objective.

"**§ 90C-25. Executive Director.**

The Executive Director shall deposit all fees payable to the Board in financial institutions designated by the Board as official depositories. The funds shall be deposited in the name of the Board and shall be used to pay all expenses incurred by the Board in carrying out the purposes of this Chapter. The State Auditor shall audit the Board annually.

"**§ 90C-26. The Board may accept contributions, etc.**

The Board may accept grants, contributions, devises, bequests, and gifts that shall be kept in a separate fund and shall be used by it to publicize the licensure program and its protective benefits to the public.

"**§ 90C-27. Requirements for licensure.**

(a) The Board shall license any person as a 'Licensed Recreational Therapist' who meets the following education, credential, and experience requirements:

(1) Passage of an appropriate examination as a therapeutic recreation specialist or a recreational therapist by the North Carolina Recreational Therapy Licensure Board or current certification as a 'Certified Therapeutic Recreation Specialist' by the National Council for Therapeutic Recreation Certification.

(2) A minimum level of education or experience, as defined by rules of the Board, inclusive of practice competency standards or guidelines promulgated by professional associations and credentialing and accrediting organizations.

(3) For purposes of this subsection, an academic major or specialization shall be defined by rules of the Board and shall be inclusive of information gathered through surveys of educational institutions in the State having a bachelors or masters degree with a specialization in recreational therapy or therapeutic recreation.

(b) The Board shall license any person as a 'Licensed Recreational Therapy Assistant' who meets the following education and experience requirements:

(1) A minimum level of education or experience, as defined by rules of the Board, inclusive of practice competency standards or guidelines promulgated by professional associations and credentialing and accrediting organizations as deemed appropriate by the Board.

(2) For purposes of this section, an academic major or specialization shall be defined by rules of the Board, and shall be inclusive of information gathered through surveys of educational institutions in the State having associate's degree curricula in recreational therapy or therapeutic recreation.

"**§ 90C-28. Licensure fees.**

Applications for licensure shall be made on forms prescribed and furnished by the Board. The Board may establish fees for the actual cost of duplication services, materials, and returned bank items. All fees derived from services provided by the Board under the provisions of this Chapter shall be nonrefundable. The Board shall establish the amount of fees as defined by rule not to exceed the following amounts:

(1)	Initial application for licensure fee	$200.00
(2)	Licensure renewal fee	$200.00
(3)	Record maintenance fee	$100.00
(4)	Inactive fee	$ 50.00.

"**§ 90C-29. License renewal.**

Every license issued pursuant to this Chapter shall be renewable every two years. Within 30 days before the expiration date, a person who desires to continue to be licensed in the field of therapeutic recreation or recreational therapy shall apply for license renewal on forms furnished by the Board. The applicant shall meet criteria for renewal, including continuing education, established by the Board as defined by rule and shall pay the required fee established by the Board pursuant to this Chapter. Failure to renew the license before the expiration date shall result in automatic forfeiture of any license issued pursuant to this Chapter.

The Executive Director shall notify, in writing, every person at his or her last known address of the expiration of his or her license and the amount that is required for its two-year renewal.

"**§ 90C-30. Reinstatement.**

A person who has allowed his or her license to lapse by failure to renew it pursuant to this Chapter must apply for licensure on a reinstatement form provided by the Board. The Board shall require the applicant to return the completed reinstatement licensure form including renewal requirements established by the Board as defined by rule. If the license has lapsed for more than two years, the Board shall require the applicant to successfully demonstrate competency as defined by rules established by the Board. If the Board determines that the license should be reinstated, it shall issue a license renewal to the applicant.

"**§ 90C-31. Inactive list.**

When a person licensed by the Board submits a request for inactive status and pays the inactive fee, the Board shall issue to the person a statement of inactive status and shall place the person's name on the 'Inactive Status' list. While on that list, the person shall not hold himself or herself out as licensed pursuant to this Chapter. When that person desires to be removed from the inactive list and returned to an active list, an application shall be submitted to the Board on a form furnished by the Board, and the fee shall be paid for license renewal. The Board shall require evidence of competency as defined by rule to resume practice before returning the applicant to the active status.

"**§ 90C-32. Revocation, suspension, or denial of licensure.**

The Board may require remedial education, issue of a letter of reprimand, restrict, revoke, or suspend any license issued pursuant to this Chapter or deny any application for licensure if the Board determines that the licensee or applicant has done any of the following:

(1) Given false information or has withheld material information from the Board in procuring or attempting to procure a license pursuant to this Chapter.
(2) Been convicted of, or pleaded guilty or nolo contendere to, any crime that indicates that the person is unfit or incompetent to be licensed pursuant to this Chapter.
(3) Is unable to perform the functions for which a license has been issued due to impairment of mental or physical faculties.
(4) Engaged in conduct that endangers the public health.
(5) Is unfit or incompetent to be licensed pursuant to this Chapter by reason of deliberate or negligent acts or omissions regardless of whether active injury to the patient or client is established.
(6) Engages in conduct that deceives, defrauds, or harms the public in the course of claiming licensed status or practicing recreational therapy.
(7) Willfully violated any provision of this Chapter, rules, or Code of Ethics enacted by the Board.
(8) Aided, abetted, or assisted any person in violating the provisions of this Chapter.

The Board may reinstate a revoked license or remove licensure restrictions when it finds that the reasons for revocation or restriction no longer exist and that the person can reasonably be expected to safely and properly practice recreational therapy.

"**§ 90C-33. Reciprocity.**

The Board may grant a license, without examination or by special examination, to any person who, at the time of application, is licensed as a recreational therapist or therapeutic recreation specialist by a similar Board of another country, state, or territory whose licensing standards are substantially equivalent to or higher than those required by this Chapter. The Board shall determine the substantial equivalence upon which reciprocity is based.

"**§ 90C-34. Persons and practices not affected.**

Nothing in this Chapter shall be construed to prevent or restrict:

(1) Any person qualified, registered, certified, or licensed to engage in another profession or occupation or any person working under the supervision of a person registered, certified, or licensed to engage in another profession or occupation in this State from performing work incidental to the practice of that profession or occupation as long as that person does not represent himself or herself as a recreational therapy assistant or recreational therapist or the work to be recreational therapy or therapeutic recreation as defined by this Chapter.
(2) Any person employed as a therapeutic recreation specialist, therapeutic recreation assistant, or recreational therapist or a recreational therapy assistant by the government of the United States, if he or she provides therapeutic recreation or recreational therapy solely under the direction and control of the organization by which he or she is employed.

(3) Any person pursuing a course of study leading to a degree in recreational therapy or therapeutic recreation at an accredited college or university that meets the minimum academic requirements for a major or specialization in recreational therapy as defined by the rules and regulations of the Board.

(4) Any person fulfilling the supervised fieldwork experience required for a degree and for licensure, as defined by the rules of the Board, if the person is designated by a title that clearly indicates his or her status as a student.

"**§ 90C-35. Reports; immunity from suit.**

Any person who has reasonable cause to suspect malpractice, misconduct, or incapacity of a person who is licensed pursuant to this Chapter or who has reasonable cause to suspect that any person is in violation of this Chapter should report the relevant facts to the Board. Upon receipt of a charge or upon its own initiative, the Board may give notice of an administrative hearing pursuant to Chapter 150B of the General Statutes or may, after diligent investigation, dismiss unfounded charges. Any person making a report pursuant to this section shall be immune from criminal prosecution or civil liability based on that report unless the person knew the report was false or acted in reckless disregard of whether or not the report was false.

"**§ 90C-36. Violations and penalties.**

Any person not licensed under this Chapter who holds himself or herself out to be licensed under this Chapter or who practices recreational therapy or therapeutic recreation shall be guilty of a Class 1 misdemeanor. Any fine imposed as a result of conviction shall not exceed five hundred dollars ($500.00).

"**§ 90C-37. Enjoining illegal practices.**

(a) If the Board finds that a person is violating any of the provisions of this Chapter, it may apply in its own name to the superior court for temporary or permanent restraining order or injunction to prevent that person from continuing the illegal practices. The court is empowered to grant an injunction regardless of whether criminal prosecution or other action has been or may be instituted as a result of the violation. All actions by the Board shall be governed by the Rules of Civil Procedure.

(b) The venue for actions brought under this Chapter shall be in the county where the defendant resides or the county where violation occurs."

SECTION 3. Members serving on the North Carolina State Board of Therapeutic Recreation Certification on the effective date of this act shall continue to serve and complete their current terms on the North Carolina Recreational Therapy Licensure Board established in G.S. 90C-23, as enacted in Section 2 of this act. The Governor shall appoint the physician member to serve a three-year term pursuant to G.S. 90C-23(b)(4), as enacted in Section 2 of this act. Members appointed thereafter shall serve three-year staggered terms.

SECTION 4. Any current State-certified person working within the scope of recreational therapy, as defined in G.S. 90C-22(7), as enacted in Section 2 of this act, as a recreational therapist or a recreational therapy assistant before January 30, 2006, may be exempt from all educational, examination, and experience requirements for initial

licensure pursuant to this Chapter, as enacted in Section 2 of this act. In order to qualify for this exemption, an applicant must apply to the Board for licensure before January 15, 2008, and the applicant must be working within the scope of recreational therapy and previously certified by the Board at the time of application. The Board shall attempt in good faith to notify all current State-certified persons of the availability of this exemption and the deadlines for qualifying and applying for licensure under this act.

SECTION 5. This act becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 613

Short Title:	Update Certification/Licensure/Rec. Therapy.	(Public)
Sponsors:	Representatives Harrell, Womble (Primary Sponsors); Bordsen, Cole, Farmer-Butterfield, Glazier, Goforth, Haire, Harrison, Howard, Insko, Lucas, McComas, McLawhorn, Nye, Parmon, Sutton, Tolson, Wainwright, Warren, Wilkins, Williams, Wray, and Wright.	
Referred to:	Finance.	

March 14, 2005

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE LAWS REGULATING THE PRACTICE OF RECREATIONAL THERAPY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90C-1 through G.S. 90C-19 are repealed.

SECTION 2. Chapter 90C of the General Statutes is amended by adding the following new sections to read:

"**§ 90C-20. Short title.**

This Chapter shall be known as the 'North Carolina Recreational Therapy Licensure Act'.

"**§ 90C-21. Purpose.**

The North Carolina Recreational Therapy Licensure Act is enacted to safeguard the public health, safety and welfare, to protect the public from being harmed by unqualified persons, to ensure the highest degree of professional care and conduct on the part of recreational therapists and recreational therapy assistants, to provide for the establishment of standards of education, and to ensure the availability of recreational therapy services of high quality to persons in need of such services. It is the purpose of this Chapter to provide for the regulation of persons offering recreational therapy services to the public.

"**§ 90C-22. Definitions.**

The following definitions shall apply in this Chapter:

(1) Board. – The North Carolina Recreational Therapy Licensure Board.

(2) Licensed recreational therapist. – A person who holds a license pursuant to this Chapter as a recreational therapist. A person licensed as a 'Recreational Therapist' under this Chapter may practice in medical, residential, educational, or community settings and may:

a. Conduct an individualized patient or client assessment for the purpose of collecting systematic, comprehensive, and accurate data necessary to determine a course of action and subsequent individualized treatment plan.
b. Plan and develop the individualized treatment plan that identifies a patient or client's goals, objectives, and treatment intervention strategies.
c. Implement the individualized treatment plan that is consistent with the overall patient or client treatment program.
d. Systematically evaluate and compare the patient or client's response to the individualized treatment plan and suggest modifications as appropriate.
e. Develop a discharge plan in collaboration with the patient or client, his or her family, and other treatment team members.
f. Serve as a resource for patient or client recreation opportunities to promote or improve his or her general health and well-being.
g. Deliver services in accordance with the professional standards of practice and Codes of Ethics promulgated by national or State professional organizations.
h. Manage delivery of services in accordance with a written plan of operation based upon standards advanced by appropriate membership, regulatory, and credentialing agencies.
i. Provide professional and pre-professional educational training of recreational therapists or recreational therapy assistants.
j. Conduct research in the field of recreational therapy or therapeutic recreation.

(3) Licensed recreational therapy assistant. – A person who holds a license pursuant to this Chapter as a recreational therapy assistant to act under the supervision of a licensed recreational therapist. A person licensed as a 'Recreational Therapy Assistant' under this Chapter may assist in the practice of recreational therapy in clinical, residential, or community settings under the supervision of a licensed recreational therapist and in accordance with a recreational therapy assistant's training, education, and scope of practice, as determined by the Board.

(4) Person. – Any individual, corporation, partnership, association, unit of government, or other legal entity.

(5) Recreational therapy. – A treatment service designed to restore, remediate, or rehabilitate a patient or client's level of functioning and independence in life activities, as well as reduce or eliminate the activity limitations and restrictions to participation in life situations caused by an illness or disabling condition.

(6) Recreational therapy technician. – Any nonlicensed person who aids in the provision of recreational therapy services in accordance with the provisions of this Chapter and who acts under the direction and on-site

supervision of a licensed recreational therapist or licensed recreational therapy assistant. A recreational therapy technician may perform recreational therapy related duties or functions, which are assigned and are commensurate with a technician's training and competency. However, a technician's work shall not include response to physician's orders, designing, conducting, or interpreting individualized recreational therapy patient assessments, determining or modifying recreational therapy treatment plans or interventions, or any independent practice or performance of recreational therapy services.

(7) Scope of recreational therapy. – The practice of recreational therapy includes all direct patient or client services of assessment, planning, design, implementation, evaluation, and documentation of specific interventions, management, consultation, research, and education for either individuals or groups that require specific therapeutic recreation or recreational therapy intervention representing the process and knowledge base delineated in the most recent National Council for Therapeutic Recreation Certification (NCTRC) Job Analysis Study and professional standards of practice. Scope is inclusive of professional and pre-professional education and training in recreational therapy or therapeutic recreation and related research.

(8) Therapeutic recreation. – The provision of treatment services and the provision of recreation services to persons with illnesses or disabling conditions. The primary purposes of treatment services, which are often referred to as recreational therapy, are to restore, remediate, or rehabilitate in order to improve functioning and independence as well as reduce or eliminate the effects of illness or disability. The primary purposes of recreation services are to provide recreation resources and opportunities in order to improve health and well-being. Therapeutic recreation is provided by professionals who are trained and certified, registered, or licensed to provide therapeutic recreation.

"**§ 90C-23. North Carolina Recreational Therapy Licensure Board is created.**

(a) The North Carolina Recreational Therapy Licensure Board is created.

(b) Composition. – The Board shall consist of eight members appointed as follows:

(1) Three practicing recreational therapists, one of whom shall be appointed by the Governor, one of whom shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore, and one of whom shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.

(2) One licensed practicing recreational therapy assistant appointed by the Governor.

(3) One licensed practicing recreational therapist who is engaged primarily in providing education or training for recreational therapists or recreational therapy assistants appointed by the Governor.

(4) One physician licensed pursuant to Article 1 of Chapter 90 of the General Statutes appointed by the Governor.

(5) Two public members, one of whom shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore and one of whom shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.

The Governor shall make appointments after consultation with the North Carolina Recreational Therapy Licensure Board and other interested persons.

(c) Qualifications. – The nonpublic recreational therapist or recreational therapy assistant members of the Board shall hold a current license. Each nonpublic recreational therapist or recreational therapy assistant member of the Board, at the time of his or her appointment and for at least two years before, shall have been actively engaged in North Carolina in the practice of recreational therapy or therapeutic recreation, in the education and training of graduate or undergraduate students of recreational therapy or therapeutic recreation, or in recreational therapy or therapeutic recreation research.

One public member shall not be a licensed health care professional or an agent or employee of any health care institution, health care insurer, health care professional school, or a member of any allied health profession. One public member shall have received recreational therapy or therapeutic recreation services. For purposes of this subsection, a person enrolled in a program to prepare him or her to be a licensed health care professional or an allied health professional shall not be eligible to serve as a public member of the Board. The spouse of any person who would be prohibited by this subsection from serving on the Board as a public member shall not serve as a public member of the Board. Public members shall reasonably reflect the population of this State.

(d) Term. – Members of the Board shall serve three-year staggered terms and shall serve until a successor is appointed and qualified. No member shall serve more than two consecutive full terms.

(e) Vacancies. – The Governor shall fill vacancies to the Board positions for which he is the appointing authority within 30 days after a position is vacated. The General Assembly shall fill vacancies for which it is the appointing authority in accordance with G.S. 120-122. Appointees shall serve the remainder of the unexpired term and until their successors have been appointed and qualified.

(f) Removal. – The Board may remove any of its members for gross neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings shall be disqualified from Board business until the charges are resolved. The Governor may also remove any member for gross neglect of duty, incompetence, or unprofessional conduct.

(g) Compensation. – Each member of the Board shall receive such per diem compensation and reimbursement for travel and subsistence as shall be set for licensing Board members generally, as provided in G.S. 93B-5.

(h) Officers. – The officers of the Board shall be a chairman, a vice-chairman and other officers deemed necessary by the Board to carry out the purposes of this Chapter. All officers shall be elected annually by the Board for one-year terms and shall serve until their successors are elected and qualified.

(i) Meetings. – The Board shall hold at least two meetings each year to conduct business, and shall adopt rules governing the calling, holding, and conducting of regular and special meetings. A majority of the Board members shall constitute a quorum.

(j) Employees. – The Board may employ necessary personnel for the performance of its functions, and fix their compensation, within the limits of the funds available to the Board.

(k) The total expense of the administration of this Chapter shall not exceed the total income from fees collected pursuant to this Chapter. None of the expenses of the Board, or the compensation or expenses of any officer or any employee of the Board shall be paid or payable out of the General Fund. Neither the Board nor any of its officers or employees may incur any expense, debt, or other financial obligation binding upon the State.

"**§ 90C-24. Powers of the Board.**

(a) The Board shall have the following general powers and duties:

(1) To administer this Chapter.

(2) To issue interpretations of this Chapter.

(3) To adopt, amend, or repeal rules and regulations in the manner prescribed by Chapter 150B of the General Statutes, as may be necessary to carry out the provisions of this Chapter.

(4) To establish qualifications of, employ, and set the compensation of the Executive Director who shall not be a member of the Board.

(5) To employ and fix the compensation of the personnel that the Board determines are necessary to carry out the provisions of this Chapter and to incur other expenses necessary to effectuate this Chapter.

(6) To determine the qualifications of persons who are licensed pursuant to this Chapter.

(7) To issue, renew, deny, suspend, or revoke licenses and carry out any of the other actions authorized by this Chapter.

(8) To conduct investigations for the purpose of determining whether violations of this Chapter are grounds for revoking, denying, suspending, or refusing to renew the licenses of persons licensed pursuant to this Chapter.

(9) To maintain a record of all proceedings and make available to persons who hold a license and other concerned parties an annual report of all Board action.

(10) To set fees for licensure, license renewal, and other services deemed necessary to carry out the purpose of this Chapter.

(11) To adopt a seal containing the name of the Board to be used on licenses and official reports it issues.

(12) To issue annually a list stating the names of persons currently licensed under the privilege of this Chapter.

(13) To establish or approve, as defined by rule, reasonable competency requirements for licensure, including the power to adopt or use examination materials, study or training courses, and standards of recognized accrediting and credentialing agencies and professional associations and the power to establish or approve, as defined by rule, reasonable standards for renewal of licensure, including requirements for continuing recreational therapy or therapeutic recreation education.

(b) The powers and duties enumerated above are granted for the purpose of enabling the Board to protect the public from misrepresentation of licensure status as provided in this Chapter and shall be liberally construed to accomplish this objective.

"**§ 90C-25. Executive Director.**

The Executive Director shall deposit all fees payable to the Board in financial institutions designated by the Board as official depositories. The funds shall be deposited in the name of the Board and shall be used to pay all expenses incurred by the Board in carrying out the purposes of this Chapter. The State Auditor shall audit the Board annually.

"**§ 90C-26. The Board may accept contributions, etc.**

The Board may accept grants, contributions, devises, bequests, and gifts that shall be kept in a separate fund and shall be used by it to publicize the licensure program and its protective benefits to the public.

"**§ 90C-27. Requirements for licensure.**

(a) Effective January 30, 2006, until January 30, 2008, persons currently practicing as recreational therapists and recreational therapy assistants shall meet the following requirements for licensure:

(1) The Board shall license any person as a recreational therapist who meets the following education, credential, and experience requirements:

a. Current certification, including having successfully passed the appropriate examination as a therapeutic recreation specialist by the North Carolina Therapeutic Recreation Certification Board or current certification as a certified therapeutic recreation specialist by the National Council for Therapeutic Recreation Certification.

b. A minimum level of education or experience, as defined by rules and regulations of the Board, inclusive of practice competency standards or guidelines promulgated by professional associations and credentialing and accrediting organizations.

(2) The Board shall license any person as a recreational therapy assistant who meets the following education and experience requirements:

a. Current certification as a therapeutic recreation assistant by the North Carolina Therapeutic Recreation Certification Board.

b. A minimum level of education or experience, as defined by rules and regulations of the Board, inclusive of practice competency standards or guidelines promulgated by professional associations and credentialing and accrediting organizations as deemed appropriate by the Board. For purposes of this section, an academic major or specialization shall be defined by rules and regulations of the Board, and shall be inclusive of information gathered through surveys of educational institutions in North Carolina having associate's degree curricula in recreational therapy or therapeutic recreation.

(b) Effective January 30, 2006, all new applicants for licensure shall meet the following requirements:

(1) An applicant shall be licensed upon satisfactorily showing to the Board that he or she is competent and knowledgeable about the practice of recreational therapy or therapeutic recreation as provided by rules and regulations of the Board.

(2) The Board shall license a person as a recreational therapist who passes the Board examination for licensure in this classification and meets one of the following education and experience requirements:

a. A baccalaureate degree or higher from an accredited college or university with a major in recreational therapy or therapeutic recreation or a major in recreation and an option in therapeutic recreation, which includes a field placement requirement. For purposes of this sub-subdivision, 'an option in therapeutic recreation' shall include: (i) a minimum of three courses dealing exclusively with therapeutic recreation content; (ii) a minimum of three courses dealing exclusively with recreation content; (iii) completion of a 360-hour field placement experience in a clinical, residential, or community-based therapeutic recreation program under an agency supervisor who is licensed by the Board; and (iv) completion of supportive coursework to include a minimum of 18 semester hours or 27 quarter hours from four of these six areas: psychology, sociology, physical/biological science, special education, human services, or adapted physical education.

b. A baccalaureate degree or higher from an accredited college or university with a major in recreation and two years of full-time experience in a clinical, residential, or community-based therapeutic recreation program.

c. A baccalaureate degree or higher from an accredited college or university in one of the recreation-related or allied health fields and five years of full-time experience in a clinical, residential, or community-based therapeutic recreation program.

Transcripts must show evidence of 18 semester hours or 27 quarter hours of upper division credits in recreational therapy or therapeutic recreation coursework and evidence of appropriate support courses.

(3) The Board shall license a person as a recreational therapy assistant who passes an examination for licensure in this classification and meets one of the following education and experience requirements:

a. An associate of arts degree from an accredited educational institution with a major in recreational therapy or therapeutic recreation or a major in recreation and an option in therapeutic recreation, which includes a field placement requirement. For purposes of this sub-subdivision, 'an option in therapeutic recreation' shall include: (i) a minimum of two courses dealing exclusively with recreational therapy or therapeutic recreation content; (ii) a minimum of two courses dealing exclusively with recreation content; (iii) completion of a 360-hour field placement experience in a clinical, residential, or community-based therapeutic recreation program under an agency supervisor who is licensed by the Board; and (iv) completion of supportive coursework to include a minimum of 12 semester or 18 quarter hours selected from psychology, sociology, physical or biological sciences, human services, and physical education activity classes.

b. An associate or arts degree from an accredited educational institution with a major in recreation and one year of full-time experience in a clinical, residential, or community-based therapeutic recreation program.

c. An associate of arts degree or higher from an accredited educational institution with a major in one of the skill areas (arts, dance, drama, music, physical education) and one year of full-time experience in a clinical, residential, or community-based therapeutic recreation program.

d. Completion of the National Therapeutic Recreation 750-Hour Training Program for therapeutic recreation personnel, with verification by an official certificate of completion.

e. Four years of full-time experience in a clinical, residential, or community-based therapeutic recreation program.

(4) The Board may issue a recreational therapist provisional license to any person who meets the educational requirements of subsection (b) of this section while acquiring the experience required for licensure. This provisional license may be issued for a period of two years and shall not be renewed, except in extraordinary circumstances upon unanimous vote of the Board.

"**§ 90C-28. Licensure fees.**

Applications for licensure shall be made on forms prescribed and furnished by the Board. The Board may establish fees for the actual cost of duplication services, materials, and returned bank items. All fees derived from services provided by the Board under the provisions of this Chapter shall be nonrefundable. The Board shall establish the amount of fees as defined by rule not to exceed the following amounts:

(1)	Initial application for licensure fee	$200.00
(2)	Licensure renewal fee	$200.00
(3)	Record maintenance fee	$100.00
(4)	Inactive fee	$ 50.00.

"**§ 90C-29. License renewal.**

Every license issued pursuant to this Chapter shall be renewable every two years. Within 30 days before the expiration date, a person who desires to continue to be licensed in the field of therapeutic recreation or recreational therapy shall apply for license renewal on forms furnished by the Board. They shall meet criteria for renewal established by the Board as defined by rule and shall pay the required fee established by the Board in accordance to this Chapter. Failure to renew the license before the expiration date shall result in automatic forfeiture of any license issued pursuant to this Chapter.

The Executive Director shall notify, in writing, every person at his or her last known address of the expiration of his or her license and the amount that is required for its two-year renewal.

"**§ 90C-30. Reinstatement.**

A person who has allowed his or her license to lapse by failure to renew it pursuant to this Chapter must apply for licensure on a reinstatement form provided by the Board. The Board shall require the applicant to return the completed reinstatement licensure form including renewal requirements established by the Board as defined by rule. If the license has lapsed for more than two years, the Board shall require the applicant to successfully demonstrate competency as defined by rules established by the Board. If the Board determines that the license should be reinstated, it shall issue a license renewal to the applicant.

"**§ 90C-31. Inactive list.**

When a person licensed by the Board submits a request for inactive status, the Board shall issue to the person a statement of inactive status and shall place the person's name on the 'Inactive Status' list. While on that list, the person shall not hold himself or herself out as licensed pursuant to this Chapter. When that person desires to be removed from the inactive list and returned to an active list, an application shall be submitted to the Board on a form furnished by the Board, and the fee shall be paid for license renewal. The Board shall require evidence of competency as defined by rule to resume practice before returning the applicant to the active status.

"**§ 90C-32. Revocation, suspension, or denial of licensure.**

The Board may require remedial education, issue of a letter of reprimand, restrict, revoke, or suspend any license issued pursuant to this Chapter or deny any application for licensure if the Board determines that the licensee or applicant has done any of the following:

(1) Given false information or has withheld material information from the Board in procuring or attempting to procure a license pursuant to this Chapter.
(2) Been convicted of, or pleaded guilty or nolo contendere to, any crime that indicates that the person is unfit or incompetent to be licensed pursuant to this Chapter.
(3) Is unable to perform the functions for which a license has been issued due to impairment of mental or physical faculties.
(4) Engaged in conduct that endangers the public health.
(5) Is unfit or incompetent to be licensed pursuant to this Chapter by reason of deliberate or negligent acts or omissions regardless of whether active injury to the patient or client is established.
(6) Engages in conduct that deceives, defrauds, or harms the public in the course of claiming licensed status or practicing recreational therapy.
(7) Willfully violated any provision of this Chapter or of rules, regulations, or Code of Ethics enacted by the Board.
(8) Aided, abetted, or assisted any person in violating the provisions of this Chapter.

The Board may reinstate a revoked license or remove licensure restrictions when it finds that the reasons for revocation or restriction no longer exist and that the person can reasonably be expected to safely and properly practice recreational therapy.

"**§ 90C-33. Reciprocity.**

The Board may grant a license, without examination or by special examination, to any person who, at the time of application, is licensed as a recreational therapist or therapeutic recreation specialist by a similar Board of another country, state, or territory whose licensing standards are substantially equivalent to or higher than those required by this Chapter. The Board shall determine the substantial equivalence upon which reciprocity is based.

"**§ 90C-34. Persons and practices not affected.**

Nothing in this Chapter shall be construed to prevent or restrict:

(1) Any person qualified, registered, certified, or licensed to engage in another profession or occupation or any person working under the supervision of a person registered, certified, or licensed to engage in another profession or occupation in this State from performing work incidental to the practice of that profession or occupation as long as that person does not represent himself or herself as a recreational therapy assistant or recreational therapist or the work to be recreational therapy or therapeutic recreation as defined by this Chapter.
(2) Any person employed as a therapeutic recreation specialist, therapeutic recreation assistant, or recreational therapist or a recreational therapy assistant by the government of the United States, if he or she provides therapeutic recreation or recreational therapy solely under the direction and control of the organization by which he or she is employed.

(3) Any person pursuing a course of study leading to a degree in recreational therapy or therapeutic recreation at an accredited college or university that meets the minimum academic requirements for a major or specialization in recreational therapy as defined by the rules and regulations of the Board.

(4) Any person fulfilling the supervised fieldwork experience required for a degree and for licensure, as defined by the rules and regulations of the Board, if the person is designated by a title that clearly indicates his or her status as a student.

"**§ 90C-35. Reports; immunity from suit.**

Any person who has reasonable cause to suspect malpractice, misconduct, or incapacity of a person who is licensed pursuant to this Chapter or who has reasonable cause to suspect that any person is in violation of this Chapter should report the relevant facts to the Board. Upon receipt of a charge or upon its own initiative, the Board may give notice of an administrative hearing pursuant to Chapter 150B of the General Statutes or may, after diligent investigation, dismiss unfounded charges. Any person making a report pursuant to this section shall be immune from criminal prosecution or civil liability based on that report unless the person knew the report was false or acted in reckless disregard of whether or not the report was false.

"**§ 90C-36. Violations and penalties.**

Any person who willfully violates the provisions of this Chapter shall be guilty of a misdemeanor and shall be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) or be imprisoned for a period not exceeding six months, or both, in the discretion of the court.

"**§ 90C-37. Enjoining illegal practices.**

(a) If the Board finds that a person is violating any of the provisions of this Chapter, it may apply in its own name to the superior court for temporary or permanent restraining order or injunction to prevent that person from continuing the illegal practices. The court is empowered to grant an injunction regardless of whether criminal prosecution or other action has been or may be instituted as a result of the violation. All actions by the Board shall be governed by the Rules of Civil Procedure.

(b) The venue for actions brought under this Chapter shall be in the county where the defendant resides or the county where violation occurs."

SECTION 3. Members serving on the North Carolina State Board of Therapeutic Recreation Certification on the effective date of this act shall continue to serve and complete their current terms on the North Carolina Recreational Therapy Licensure Board established in G.S. 90C-23, as enacted in Section 2 of this act. The Governor shall appoint the physician member to serve a three-year term pursuant to G.S. 90C-23(b)(4), as enacted in Section 2 of this act. Members appointed thereafter shall serve three-year staggered terms.

SECTION 4. Any current State-certified person working within the scope of recreational therapy, as defined in G.S. 90C-22(7), as enacted in Section 2 of this act, as a recreational therapist or a recreational therapy assistant before January 30, 2006, may be exempt from all educational, examination, and experience requirements for licensure

pursuant to this Chapter, as enacted in Section 2 of this act. In order to qualify for this exemption, an applicant must apply to the Board for licensure before January 30, 2008, and he or she must be working within the scope of recreational therapy and previously certified by the Board at the time of application.

SECTION 5. This act becomes effective October 1, 2005.

HOUSE BILL 613:
Update Certification/Licensure/Rec. Therapy

BILL ANALYSIS

Committee:	House Finance	**Date:**	May 17, 2005
Introduced by:	Reps. Harrell, Womble	**Summary by:**	Martha Walston
Version:	PCS to First Edition H613-CSLAf-3		Committee Counsel

SUMMARY: ***House Bill 613 updates the laws regulating the practice of recreational therapy. The bill is in House Finance because it increases the maximum licensure application from $50 to $200 and the maximum renewal fee from $25 to $200. The bill deletes a $25 reinstatement fee and a $10 certificate replacement fee and adds a new maximum record maintenance fee of $100 and an inactive fee of $50.***

BILL ANALYSIS: House Bill 613 rewrites Chapter 90C of the General Statutes as follows:

- Changes the name of the Chapter from "Therapeutic Recreation Personnel Certification Act" to "North Carolina Recreational Therapy Licensure Act.
- Changes certification to licensure and changes the titles of licensees. The current law authorizes certification as a therapeutic recreation specialist or a therapeutic recreation assistant. HB 613 authorizes the licensure of a recreational therapist and licensed recreational therapy assistant and defines a recreational therapy aide as a non-licensed person who aids in providing recreational therapy services under the direct supervision of a licensed recreational therapist or licensed recreational therapy assistant.
- Adds an additional member to the current seven-member Board. The new member shall be appointed by the Governor and must be a physician licensed in North Carolina.
- Gives the Board a power to:
  - Issue annually a list of persons currently licensed under the Chapter.
  - Establish or approve competency requirements for licensure, including examinations and continuing education.
- Sets out the requirements for licensure as a recreational therapist or recreational therapy assistant. Any current State-certified person working in the scope of recreational therapy before January 30, 2006, is exempt from all educational, examination, and experience requirements for initial licensure under the Chapter if the person applies to the Board for licensure before January 15, 2008. The applicant must also be working within the scope of recreational therapy and previously certified by the Board at the time of application.
- Amends the maximum fees of the Board as follows:

Current Maximum Fees		Proposed Maximum Fees	
Certification as a therapeutic recreation specialist or as a therapeutic recreation assistant	$50	Initial licensure	$200
		Licensure renewal fee	$200
Certificate renewal	$25	Record maintenance fee	$100
Reinstatement of lapsed or expired certificate	$25	Inactive fee	$ 50
Replacement certificate	$10		

- Provides that the Chapter does not apply to incidental work by person licensed in another profession, federal employees, or students pursuing a degree in recreational therapy and fulfilling supervised fieldwork requirements.
- Makes it a Class 1 misdemeanor with a maximum fine of $500 for a person not licensed under the Chapter to represent himself or herself as licensed or to practice recreational therapy or therapeutic recreation. Current law provides for a maximum fine of $500 and/or imprisonment not to exceed 60 days.

EFFECTIVE DATE: October 1, 2005

H0613e1-SMLA-CSLA

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 613 (First Edition)

SHORT TITLE: Update Certification/Licensure/Rec. Therapy.

SPONSOR(S): Representatives Womble and Harrell

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund			*No General Fund Impact*		
Licensing board	$62,400	$53,450	$54,000	$44,750	$55,000
EXPENDITURES:					
General Fund					
Dept. of Correction	Exact amount cannot be determined; no substantial impact anticipated.				
Judicial Branch	Exact amount cannot be determined; no substantial impact anticipated.				
POSITIONS (cumulative):	Exact amount cannot be determined; no additional positions anticipated.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Recreational Therapy Licensure Board; Department of Correction; Judicial Branch

EFFECTIVE DATE: October 1, 2005

BILL SUMMARY: Creates the North Carolina Recreational Therapy Licensure Board and sets a maximum fee schedule for licensure and license renewal of recreational therapists. Elevates the penalty for violations of Chapter 90C from a Class 2 to Class 1 misdemeanor.

ASSUMPTIONS AND METHODOLOGY: There are currently 734 national board-certified recreational therapists in North Carolina, 500 of which are also state-certified. Under this bill, all practicing recreational therapists in the state will be required to obtain state licensure. The 500 recreational therapists who already hold state certification will be grandfathered in and will not have to pay an initial licensure fee; however, the licensure board expects most will elect to pay their renewal fee soon after this legislation is enacted. The following table details the number of recreational therapists in North Carolina either required or expected to pay fees over the next five years.

Number of Recreational Therapists Subject to Selected Fees (by FY)					
	2005-06	2006-07	2007-08	2008-09	2009-10
Total initial licenses	269	35	40	40	40
Total renewals	350	185	385	190	390
Record maintenance	0	619	220	425	230
Inactive	10	10	10	10	10

The projection assumes 35 new recreational therapists will seek licensure in North Carolina each year through 2008, after which the projection assumes a slight increase to 40 new recreational therapists per year. Licenses are renewed on a biannual basis. The record maintenance fee is also biannual and is staggered to fall between license renewal years.

The board does not intend to assess fees at the maximum statutory limitation set forth in this bill. Their proposed fee schedule is as follows:

Proposed Fee Schedule		
	Statutory limit	Actual fee
Initial application for licensure	$200	$100
Licensure renewal	$200	$100
Record maintenance	$100	$50
Inactive fee	$50	$50

Using the actual fees set forth in the far-right column, the table below shows the board's projected annual revenues. The board will operate entirely on fee revenue and its activities will not have any effect on the General Fund.

Total Projected Fee Revenues 2005-2010					
	2005-06	2006-07	2007-08	2008-09	2009-10
Total initial licenses	$ 26,900	$ 3,500	$ 4,000	$ 4,000	$ 4,000
Total renewals	35,000	18,500	38,500	19,000	39,000
Record maintenance	-	30,950	11,000	21,250	11,500
Inactive	500	500	500	500	500
Total fee revenue	**$ 62,400**	**$ 53,450**	**$ 54,000**	**$ 44,750**	**$ 55,000**

Expenditures

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population

sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

Violations under this bill are expected to be substantially similar to violations under existing Chapter 90C and, as such, no additional convictions would be expected. Presently, the Administrative Office of the Courts does not maintain an offense code for violations of Chapter 90C, which is some indication that these offenses are infrequently charged and rarely result in convictions. However, convictions would be elevated from Class 2 to Class 1 misdemeanors due to this bill.

- In FY 2003-04, 19 percent of Class 1 as opposed to 15 percent of Class 2 misdemeanors resulted in active sentences and the average estimated time served was 31 days as opposed to 13 days for Class 2.
- Offenders with active sentences of less than ninety days are housed in county jails, and DOC reimburses counties for housing offenders between thirty and ninety days at a rate of $18 per offender per day. As such, sentences elevated from Class 2 to Class 1 misdemeanors would be expected to increase payments to counties by DOC.
- The remaining 81 percent of Class 1 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Corrections (DCC) would incur costs of $1.87 per offender per day. Offenders sentenced to community service would cost $0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

Because most Class 1 misdemeanants serving active time as a result of this bill would be housed in county jails, this legislation is not expected to significantly impact prison population.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Because AOC does not maintain an offense code for present violations of Chapter 90C, there is no historical data regarding Class 1 misdemeanor charges for these offenses. However, the lack of an offense code may be some indication that there are few charges for these offenses. As such, the number of charges elevated from Class 2 to Class 1 misdemeanors due to this bill is not expected to be substantial.

Based on the costs of time in court, attorney preparation time, and indigent defense, the average estimated increase in cost to dispose of a single charge via trial that is elevated from a Class 2 to Class 1 misdemeanor is $891. This cost includes an estimated increase of $507 for costs of time in court and attorney preparation and an additional $384 in indigent defense. *However, based on prior-year data, the majority of charges under this bill that are not dismissed are likely to be settled by guilty plea at an estimated increase in cost of $8 per plea.*

SOURCES OF DATA: North Carolina Therapeutic Recreation Certification Board; Department of Correction; Administrative Office of the Courts

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brenna Erford and Aaron Paul

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: May 16, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 613 A BILL TO BE ENTITLED AN ACT TO UPDATE THE LAWS REGULATING THE PRACTICE OF RECREATIONAL THERAPY.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 890*
PROPOSED COMMITTEE SUBSTITUTE H890-CSMB-18 [v.1]

5/16/2005 5:17:41 PM

Short Title: Crime Lab Cost Recovery Fee. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE COURT TO ASSESS A FEE FOR THE COSTS OF THE SERVICES OF A CRIME LABORATORY OPERATED BY A LOCAL GOVERNMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-304(a) is amended by adding a new subdivision to read:

"(8) For the services of any crime laboratory facility operated by a local government or group of local governments, the district or superior court judge shall, upon conviction, order payment of the sum of three hundred dollars ($300.00) to be remitted to the general fund of the local governmental unit that operates the laboratory to be used for law enforcement purposes. The cost shall be assessed only in cases in which, as part of the investigation leading to the defendant's conviction, the laboratory has performed DNA analysis of the crime, test of bodily fluids of the defendant for the presence of alcohol or controlled substances, or analysis of any controlled substance possessed by the defendant or the defendant's agent. The costs shall be assessed only if the court finds that the work performed at the local government's laboratory is the equivalent of the same kind of work performed by the State Bureau of Investigation under subdivision (7) of this subsection. The court may waive or reduce the amount of the payment required by this subdivision upon a finding of just cause to grant such a waiver or reduction. The costs assessed in one case against one individual under both this subdivision and subdivision (7) of this subsection shall not exceed three hundred dollars ($300.00). If more than one laboratory has performed work under either or both of the two subdivisions in the same case, or if multiple local

governmental units jointly operate the same laboratory performing work, the court shall apportion the proceeds from the fee between or among the governmental units on the basis of the relative contribution of each governmental unit to the work performed."

SECTION 2. This act becomes effective July 1, 2005, and applies to court costs assessed or collected on or after that date for offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 890*

Short Title:	Crime Lab Cost Recovery Fee.	(Public)
Sponsors:	Representative Alexander.	
Referred to:	Finance.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE COURT TO ASSESS A FEE FOR THE COSTS OF THE SERVICES OF A MUNICIPAL CRIME LABORATORY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-304(a) is amended by adding a new subdivision to read:

"(8) For the services of any municipal police laboratory facility, the district or superior court judge shall, upon conviction, order payment of the sum of three hundred dollars ($300.00) to be remitted to the general fund of the laboratory's municipality to be used for law enforcement purposes. The cost shall be assessed only in cases in which, as part of the investigation leading to the defendant's conviction, the municipal laboratory has performed DNA analysis of the crime, test of bodily fluids of the defendant for the presence of alcohol or controlled substances, or analysis of any controlled substance possessed by the defendant or the defendant's agent. The court may waive or reduce the amount of the payment required by this subdivision upon a finding of just cause to grant such a waiver or reduction."

SECTION 2. This act becomes effective July 1, 2005, and applies to court costs assessed or collected on or after that date.

House Bill 890:
Crime Lab Cost Recovery Fee

BILL ANALYSIS

Committee:	**House Finance**	**Sponsor:**	**Representative Alexander**
Date:	May 17, 2005	**Analysis by:**	Ashley Huffstetler
Version:	**PCS H890-CSMB-18**		Staff Attorney

SUMMARY: ***House Bill 890 requires a District or Superior Court judge to charge a defendant $300 when a local government crime laboratory performed DNA analysis, tested bodily fluids, or analyzed a controlled substance in connection with the investigation leading to conviction. The PCS changes the bill to cover all local government units.***

CURRENT LAW: Current law requires trial judges to charge criminal defendants (or in some cases prosecuting witnesses) $300 for use of the State Bureau of Investigation (SBI) investigation crime unit. It is charged only if, in that particular case, the SBI lab has performed DNA analysis, done body-fluid analysis for the presence of alcohol or drugs, or done analysis of drugs in the defendant's possession. The court may waive or reduce the amount if it finds just cause to do so.

BILL ANALYSIS: House Bill 890 amends G.S. 7A-304(a) to add a parallel provisions to the $300 fee for use of the SBI crime lab. This bill requires judges to order payment of $300 to a local government unit when the local government crime lab performed DNA analysis, tested the defendant's bodily fluids for the presence of alcohol or drugs, or analyzed any controlled substance possessed by the defendant or his or her agent. It provides that the money will be remitted to the general fund of the lab's local government unit.

Like the SBI provision, the new local government lab provision gives the court discretion to waive or reduce the court costs in any case where it finds just cause. The new local government provisions would also rely on the court's judgment to decide these other questions:

- Whether the work done in the case by the local government lab is equivalent to what would be done in the SBI lab. Only if it is, would the $300 fee be assessed.
- How the $300 should be distributed where more than one lab did work on the same case. The court would apportion the $300 according to the relative contributions of each lab.
- How the $300 should be distributed where more than one unit of government jointly operated the same lab. Again, the court would apportion the $300 according to the contributions of each unit of local government.

BACKGROUND: The Charlotte –Mecklenburg Police Department has a crime lab, but court costs are not authorized for its use. Raleigh and Wake County also jointly sponsor a crime lab, which is also unassisted by the courts.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: May 17, 2005

TO: Representative Alexander

FROM: Chloe Gossage
Fiscal Research Division

RE: House Bill 890 (PCS H890-CSMB-18 [v.1])

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
Dept. of Justice	**Potential decrease in revenue – See Assumptions & Methodology**				
Local Governments	**Increase in revenue – estimated at $85,000 or less per year**				
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Justice – State Bureau of Investigation; Local Governments

EFFECTIVE DATE: July 1, 2005

BILL SUMMARY: In cases in which the State Bureau of Investigation (SBI) performs certain lab analyses, current G.S. 7A-304(a)(7) directs judges to order that a defendant, upon conviction, pay a fee of $300 to be remitted to the SBI. This bill would direct the court to also order the $300 fee when these services are performed by a municipal lab if the work is equivalent to that performed by the SBI; receipts would be remitted to the general fund of the laboratory's municipality to be used for law enforcement purposes. As in current law, the fee could be reduced or waived by the court. If both the SBI and a municipal laboratory, or multiple municipal laboratories, performed lab analyses in a case, the $300 fee would be divided among them.

ASSUMPTIONS AND METHODOLOGY:

The SBI provides laboratory services for most jurisdictions in the state. The following jurisdictions have their own crime laboratories, which process some or all of the same types of evidence as the SBI that are covered under G.S. 7A-304(a)(7):

- Charlotte-Mecklenburg: DNA, controlled substances, and blood alcohol
- City-County Bureau of Identification (Raleigh/Wake County): Controlled substances

In FY 2003-04, there were approximately 21,000 trials and guilty pleas in Criminal Superior Court for offenses likely to require lab analyses (murder, manslaughter, rape and other sex offenses, controlled substances, and impaired driving appeals). Approximately 10 percent of these cases were in judicial districts in which the municipality had the capability to process relevant lab analyses. While these figures do not take into account analyses that might be required for cases heard in District Court, we assume that the percentages would remain the same.

FY 2003-04 Criminal Superior Court Cases	Trial/plea	% of Total	Estimated Revenue
Statewide	**20,979**	**100.0%**	
Potential DNA Analyses	3,165		
Potential Drug Analyses	16,896		
Potential Blood Alcohol Analyses	918		
Mecklenburg	**1,463**	**7.0%**	**$56,970**
Potential DNA Analyses	127		
Potential Drug Analyses	1,302		
Potential Blood Alcohol Analyses	34		
Wake	**720**	**3.4%**	**$28,037**
Potential Drug Analyses	720		
Remaining Total (Potential SBI)*	**18,796**	**89.6%**	**$731,926**

Potential DNA Analyses = murder, manslaughter, rape, other sex offenses.
Potential Drug Analyses = controlled substances offenses.
Potential Blood Alcohol Analyses = impaired driving appeals.

*SBI revenue is actual 2003-04 receipts.

We cannot determine which cases actually involved DNA, drug, or blood alcohol evidence analyzed by a crime lab, nor can we determine in which cases the SBI received a $300 or lesser fee. Overall, however, during FY 2003-04, the SBI collected approximately $732,000 in receipts from its lab fee. As shown in the chart above, we assume that the SBI was responsible for approximately 90 percent of the lab analyses, Mecklenburg was responsible for 7 percent and Wake for 3 percent. Under this scenario, if municipal crime labs had received the same fees as the SBI in 2003-04, they would have collected approximately $85,000. **These figures do not take into account any cases in which multiple laboratories were involved in the analysis.**

Impact of Cost-Sharing Among Labs: There is the potential for the SBI to see a decrease in revenue as a result of this PCS. This PCS requires that no more than $300 be assessed. If more than one laboratory is involved, the fee must be divided among the laboratories providing the analyses. In some court cases in both Mecklenburg and Wake counties, it is possible that the SBI will perform one type of lab analysis and the municipal laboratory will perform another type of

analysis on the same case. For example, Wake County may analyze controlled substances, but send blood alcohol or DNA evidence to the SBI for analysis. **In these cases, if the court ordered a laboratory fee, the effect of this PCS would be to reduce the funds allocated to the SBI.** Rather than the SBI receiving the entire fee, a portion would be allotted to Mecklenburg or Wake.

We are unable to determine the percentage of cases that would involved multiple laboratories. If, for example, five percent of the cases in Mecklenburg and Wake counties in which fees were collected required analyses by both the municipal lab and the SBI lab, and the fees were divided equally between the labs, the SBI would see a decrease of approximately $2,000 in revenue. If 50 percent of the cases in Mecklenburg and Wake counties in which fees were collected required analyses by both the municipal lab and the SBI lab, and the fees were divided equally between the labs, the SBI would see a decrease of approximately $20,000 in revenue. The revenue received by the SBI is used, in part, to fund receipt-supported positions in the SBI lab.

The $300 fee currently in statute is based on estimated costs of laboratory analyses in the SBI lab in 2002. These costs vary significantly by type of analysis – DNA testing is the most costly. We do not have information on the costs incurred by municipal labs in conducting lab analyses, and therefore cannot project how the $300 fee would be shared among multiple labs.

SOURCES OF DATA: Administrative Office of the Courts; Department of Justice.

TECHNICAL CONSIDERATIONS: The City-County Bureau of Identification (CCBI) is a law enforcement agency that provides services to every other law enforcement agency in Wake County. It is funded by Wake County and the City of Raleigh. For the purposes of this fiscal note, we have assumed that it would be considered a municipal police laboratory.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 890 A BILL TO BE ENTITLED AN ACT AUTHORIZING THE COURT TO ASSESS A FEE FOR THE COSTS OF THE SERVICES OF A MUNICIPAL CRIME LABORATORY.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1025

Short Title:	Winemaking on Premises Permit.	(Public)
Sponsors:	Representatives Luebke; LaRoque and Ross.	
Referred to:	Alcoholic Beverage Control.	

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE PERMITS FOR 'WINEMAKING ON PREMISES' BUSINESSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1001 is amended by adding a new subdivision to read:

"(16) Winemaking on Premises Permit. – A permit may be issued to a business, located in a jurisdiction where the sale of unfortified wine is allowed, where individual customers who are 21 years old or older may purchase ingredients and rent the equipment, time, and space to make unfortified wine for personal use in amounts set forth in 27 C.F.R. § 24.75. Except for wine produced for testing equipment or recipes and samples pursuant to this subdivision, the permit holder shall not engage in the actual production or manufacture of wine. Samples may be consumed on the premises only by a person who has a nonrefundable contract to ferment at the premises, and the samples may not exceed one ounce per sample. All wine produced at a winemaking on premises facility shall be removed from the premises by the customer, and may only be used for home consumption and the personal use of the customer."

SECTION 2. G.S. 18B-307 reads as rewritten:

"**§ 18B-307. Manufacturing offenses.**

(a) Offenses. – It shall be unlawful for any person, except as authorized by this Chapter, to:

(1) Sell or possess equipment or ingredients intended for use in the manufacture of any alcoholic beverage, except equipment and ingredients provided under a Brew on Premises permit or a Winemaking on Premises permit; or

(2) Knowingly allow real or personal property owned or possessed by him to be used by another person for the manufacture of any alcoholic beverage, except pursuant to a Brew on Premises permit or a Winemaking on Premises permit.

(b) Unlawful Manufacturing. – Except as provided in G.S. 18B-306, it shall be unlawful for any person to manufacture any alcoholic beverage, except at an establishment with a Brew on Premises permit or a Winemaking on Premises permit, without first obtaining the applicable ABC permit and revenue licenses.

(c) Second Offense of Manufacturing. – A second offense of unlawful manufacturing of alcoholic beverage shall be a Class I felony."

SECTION 3. G.S. 18B-902(d) is amended by adding a new subdivision to read:

"(37) Winemaking on premises permit. – $400.00."

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

HOUSE BILL 1025:
Winemaking on Premises Permit

BILL ANALYSIS

Committee:	House Finance	**Date:**	May 17, 2005
Introduced by:	Rep. Luebke	**Summary by:**	Cindy Avrette
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1025 creates a new "Winemaking on Premises" permit to businesses where customers may purchase ingredients and rent the equipment, time, and space to make unfortified wine for personal use. There is a $400 application fee for the permit.

CURRENT LAW: Under G.S. 18B-307 it is generally unlawful for any person without the appropriate ABC permit to:

- Sell or possess equipment or ingredients intended for use in the manufacture of any alcoholic beverage
- Knowingly allow real or personal property owned or possessed by him to be used by another person for the manufacture of any alcoholic beverage.
- Manufacture any alcoholic beverage, without first obtaining the applicable ABC permit and revenue licenses.

There are two notable exceptions to the general prohibition against the unlicensed manufacture of alcoholic beverages. G.S. 18B-306 allows an individual to make, possess, and transport native wines and malt beverages for his own use and for the use of his family and guests; and G.S. 18B-1001(14) provides for the manufacture of malt beverages pursuant to a "Brew on Premises" permit. A brew on premises permit authorizes the holder to rent the equipment and space necessary to produce malt beverages only; it does not apply to the manufacture of wine.

A Brew on Premises permit may be issued to a business, located in a jurisdiction where the sale of malt beverages is allowed, where individual customers who are 21 years old or older may purchase ingredients and rent the equipment, time, and space to brew malt beverages for personal use in amounts set forth in federal law. The statute requires that the customer do all of the following:

a. Select a recipe and kettle.
b. Weigh out the proper ingredients and add them to the kettle.
c. Transfer the wort to the fermenter.
d. Add the yeast.
e. Place the ingredients in a fermentation room.
f. Filter, carbonate, and bottle the malt beverage.

BILL ANALYSIS: House Bill 1025 would provide for the licensing of commercial establishments in which individuals could purchase ingredients and rent equipment, time, and space to make unfortified wine on the premises for their personal and family use, similar to the current brew on premises permit for making malt beverages. The permit holder will not engage in the actual production of the wine, and all wine must be removed from the premises by the customer and used only for home consumption and the customer's personal use. The fee for the permit is $400. That is same amount as a 'Brew on Premises' permit.

EFFECTIVE DATE: The bill would be effective when it becomes law.

Brenda Carter, counsel to the House Committee on Alcoholic Beverage Control, prepared this summary for that Committee.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: May 16, 2005

TO: Representative Luebke

FROM: Rodney Bizzell
Fiscal Research Division

RE: House Bill 1025 (First Edition)

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund	**See Assumptions and Methodology**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Alcoholic Beverage Control Commission

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY: This bill allows the Alcoholic Beverage Control Commission to issue permits for winemaking on premises businesses. The permit would authorize such businesses to sell or rent equipment and provide space for the production of unfortified wine by individual consumers who are at least 21 years old, but only in jurisdictions where unfortified wine sales are permitted. The bill prohibits the manufacture of wine by the permit holder and requires that any wine produced must be for the personal use of the customer only. The bill establishes a permit fee of $400.

ASSUMPTIONS AND METHODOLOGY: The bill would charge a fee of $400 for each winemaking on premises permit. While it is unknown how many businesses would apply for the permit, a similar permit for brewing beer on the premises currently has no permit holders. Therefore, it is assumed that any revenue generated from the winemaking on premises permit fee will be an insignificant amount.

SOURCES OF DATA: NC Alcoholic Beverage Control Commission

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 1025 A BILL TO BE ENTITLED AN ACT TO ALLOW THE ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE PERMITS FOR 'WINEMAKING ON PREMISES' BUSINESSES.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1277
PROPOSED COMMITTEE SUBSTITUTE H1277-CSMB-16 [v.1]

5/13/2005 10:32:03 AM

Short Title: Clarify Hunter Safety. (Public)

Sponsors:

Referred to:

April 19, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LICENSURE AND EDUCATION REQUIREMENTS FOR PERSONS UNDER SIXTEEN YEARS OF AGE AND TO CHANGE THE FEE CHARGED TO PARTICIPANTS IN THE DISABLED SPORTSMAN PROGRAM AND ALLOW MORE FLEXIBILITY IN THE SCHEDULING OF ACTIVITIES REQUIRED UNDER THAT PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-270.1A reads as rewritten:

"**§ 113-270.1A. Hunter safety course required.**

(a) Except as provided in ~~subsection~~ subsections (a1) and (d) of this section, on or after July 1, 1991, a person, regardless of age, may not procure a hunting license ~~or hunt~~ in this State without producing a certificate of competency or a hunting license issued prior to July 1, 1991, or signing a statement on a form provided by the Wildlife Resources Commission that he had such a license.

(a1) A person who qualifies for a totally disabled resident combination hunting-fishing license under ~~G.S. 113-270.1C(b)(3)~~G.S. 113-270.1C(b)(4) need not comply with the requirements of subsection (a) of this section in order to receive that license, so long as the person does not make use of the license unless:

(1) The ~~person~~ disabled hunter is accompanied by an adult of at least 21 years of age who is licensed to hunt; and

(2) The licensed adult ~~hunter~~ maintains a proximity to the disabled hunter which enables the adult to take immediate control of the hunting device at all times.

(b) The Wildlife Resources Commission shall institute and coordinate a statewide course of instruction in hunter ethics, wildlife laws and regulations, and competency and safety in the handling of firearms, and in so doing, may cooperate with any political subdivision, or with any reputable organization having as one of its

objectives the promotion of competency and safety in the handling of firearms, including local rod and gun clubs.

(1) The Wildlife Resources Commission shall designate those persons or agencies authorized to give the course of instruction, and this designation shall be valid until revoked by the Commission. Those designated persons shall submit to the Wildlife Resources Commission validated listings naming all persons who have successfully completed the course of instruction.

(2) The Wildlife Resources Commission may conduct the course in hunter safety, using Commission personnel or other persons at times and in areas where other competent agencies are unable or unwilling to meet the demand for instruction.

(3) The Wildlife Resources Commission shall issue a certificate of competency and safety to each person who successfully completes the course of instruction, and the certificate shall be valid until revoked by the Commission.

(4) Any similar certificate issued outside the State by a governmental agency, shall be accepted as complying with the requirements of subsection (a) above, if the privileges are reciprocal for North Carolina residents.

(5) The Wildlife Resources Commission shall adopt rules and regulations to provide for the course of instruction and the issuance of the certificates consistent with the purpose of this section.

(c) On or after July 1, 1991, any person who obtains a hunting license by presenting a fictitious certificate of competency or who attempts to obtain a certificate of competency or hunting license through fraud shall have his hunting privileges revoked by the Wildlife Resources Commission for a period not to exceed one year.

(d) ~~Nothing in this section shall be construed to prohibit the sale of~~ Notwithstanding the provisions of subsection (a) of this section, the lifetime licenses ~~as~~ provided for in ~~G.S. 113-270.1D(b) or G.S. 113-270.2(c)(2).~~ G.S. 113-270.1D(b)(1), (2), and (3) and G.S. 113-270.2(c)(2) may be purchased by or in the name of persons under 14 years of age who have not obtained a hunter safety certificate of competency, subject to the requirements of this subsection. ~~Pending satisfactory completion of the hunter safety course, persons~~ Persons who possess ~~such licenses~~ one of the lifetime licenses specified in this subsection but who have not reached the age of 14 may exercise the privileges ~~thereof~~ of the lifetime license only when accompanied by an adult at least 21 years of age who is licensed to hunt in this State. For the purpose of this section, "accompanied" ~~is defined as being able to take immediate control of the hunting device.~~ means that the adult maintains a proximity to the young hunter at all times that enables the adult to take immediate control of the hunting device. Upon reaching the age of 14, the holder of one of the lifetime licenses specified in this subsection may exercise the privileges of the lifetime license without adult accompaniment, but only after obtaining a hunter safety certificate of competency as provided in G.S. 113-270.1A(a)."

SECTION 2. G.S. 113-276(d) reads as rewritten:

"(d) Except as otherwise provided in this Subchapter, individuals under 16 years of age are exempt from the hunting and trapping license requirements of G.S. 113-270.1B(a) and G.S. 113-270.3(a), except the falconry license described in ~~G.S. 113-270.3(b)(4), and the fishing license requirement of G.S. 113-272, if:~~

~~(1) He is accompanied by a responsible adult who is in compliance with applicable license requirements; or~~

~~(2) He is carrying a current and valid license appropriate to the activity which has been issued to one of his parents or to his guardian.~~

G.S. 113-270.3(b)(4). Individuals under 16 may hunt under this exemption, provided that the young hunter is accompanied by an adult at least 21 years of age who is licensed to hunt in this State. For purposes of this section, "accompanied" means that the licensed adult maintains a proximity to the young hunter that enables the licensed adult to take immediate control of the hunting device. Upon reaching the age of 14 and successfully obtaining the hunter safety certificate of competency required by G.S. 113-270.1A(a), a young hunter may hunt under the license exemption until age 16 without adult accompaniment or may purchase and use a hunting license without adult accompaniment. Individuals under 16 years of age are exempt from the fishing license requirements of ~~G.S. 113-270.1B~~ G.S. 113-270.1B(a), 113-272, and ~~G.S.~~ 113-271."

SECTION 3. G.S. 113-296 reads as rewritten:

"**§ 113-296. Disabled Sportsman Program.**

(a) The Disabled Sportsman Program is established, to be developed and administered by the Wildlife Resources Commission. The Disabled Sportsman Program shall consist of special hunting and fishing activities adapted to the needs of persons with the disabilities described in subsection (b) of this section.

(b) In order to be eligible for participation in the Disabled Sportsman Program established by this section, a person must be able to certify through competent medical evidence one of the following disabilities:

(1) Amputation of one or more limbs;

(2) Paralysis of one or more limbs;

(3) Dysfunction of one or more limbs rendering the person unable to perform the tasks of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a cane;

(4) Disease, injury, or defect confining the person to a wheelchair, walker, or crutches;

(5) Legal deafness; or

(6) Legal blindness, for purposes of participation in disabled fishing only.

The disability must be permanent, and a person loses eligibility to participate in the Disabled Sportsman Program when the specified disability ceases to exist.

(c) A person who qualifies under subsection (b) of this section may apply for participation in the Disabled Sportsman Program by completing an application supplied by the Wildlife Resources Commission and by supplying the medical evidence necessary to confirm the person's disability. In order to participate in activities under the Program, each disabled participant may be accompanied by an able-bodied companion,

who may also participate in the hunting, fishing, or other activity. The Commission shall charge each disabled participant an ~~annual~~ application fee of ~~ten dollars ($10.00)~~ five dollars ($5.00) for each special hunt for disabled persons for which the disabled hunter applies to defray the cost of processing the application and administering the special activities provided under the Program. The participant and the participant's companion shall also obtain any applicable hunting, fishing, or other special license required for the activities.

(d) In developing the Disabled Sportsman Program, the Wildlife Resources Commission shall:

(1) Establish special seasons and bag limits for hunting all or selected species of wildlife;

(2) Authorize the manner for taking wildlife, consistent with State law;

(3) Permit the use of vehicles and other means of conveyance in areas normally closed to such use;

(4) Set special fishing seasons and size and creel limits for inland fish; and

(5) Permit the use of crossbows or other specially equipped bows by persons incapable of arm movement sufficient to operate a longbow, recurve bow, or compound bow, but only during a season for hunting with bow and arrow and only during a special hunt organized and supervised by the Wildlife Resources Commission for the Disabled Sportsman Program; and

(6) Alter any other established rules of the Wildlife Resources Commission pertaining to hunting, fishing, or special activities, as generally applicable or as applicable to game lands, for the purpose of providing access to disabled persons participating in the Disabled Sportsman Program.

The Wildlife Resources Commission may use its game lands for purposes of conducting special activities for the Disabled Sportsman Program, and may enter into agreements with other landholders for purposes of conducting special activities on private lands.

(e) The Wildlife Resources Commission may establish special activities under the Disabled Sportsman Program for any class or classes of disability described in subsection (b) of this section. The Commission shall publicize these activities through the public media and in the Commission's publications to ensure that disabled persons are notified of the activities and informed about the application process.

(f) The Wildlife Resources Commission shall hold at least four special hunting activities under the Disabled Sportsman Program per calendar ~~year, at least two during the season for taking deer with bow and arrow, and at least two during the season for taking deer with guns.~~ year. The Commission shall alternate the location of these special activities so as to provide equal access to disabled persons in all regions of the State."

SECTION 4. This act becomes effective July 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1277

Short Title:	Clarify Hunter Safety.	(Public)
Sponsors:	Representative Faison.	
Referred to:	Wildlife Resources, if favorable, Finance.	

April 19, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LICENSURE AND EDUCATION REQUIREMENTS FOR PERSONS UNDER SIXTEEN YEARS OF AGE AND TO CHANGE THE FEE CHARGED TO PARTICIPANTS IN THE DISABLED SPORTSMAN PROGRAM AND ALLOW MORE FLEXIBILITY IN THE SCHEDULING OF ACTIVITIES REQUIRED UNDER THAT PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-270.1A reads as rewritten:

"**§ 113-270.1A. Hunter safety course required.**

(a) Except as provided in ~~subsection~~ subsections (a1) and (d) of this section, on or after July 1, 1991, a person, regardless of age, may not procure a hunting license ~~or hunt~~ in this State without producing a certificate of competency or a hunting license issued prior to July 1, 1991, or signing a statement on a form provided by the Wildlife Resources Commission that he had such a license.

(a1) A person who qualifies for a totally disabled resident combination hunting-fishing license under G.S. 113-270.1C(b)(3) need not comply with the requirements of subsection (a) of this section in order to receive that license, so long as the person does not make use of the license unless:

(1) The ~~person~~ disabled hunter is accompanied by an adult of at least 21 years of age who is licensed to hunt; and

(2) The licensed adult ~~hunter~~ maintains a proximity to the disabled hunter which enables the adult to take immediate control of the hunting device at all times.

(b) The Wildlife Resources Commission shall institute and coordinate a statewide course of instruction in hunter ethics, wildlife laws and regulations, and competency and safety in the handling of firearms, and in so doing, may cooperate with any political subdivision, or with any reputable organization having as one of its objectives the promotion of competency and safety in the handling of firearms, including local rod and gun clubs.

(1) The Wildlife Resources Commission shall designate those persons or agencies authorized to give the course of instruction, and this designation shall be valid until revoked by the Commission. Those designated persons shall submit to the Wildlife Resources Commission validated listings naming all persons who have successfully completed the course of instruction.

(2) The Wildlife Resources Commission may conduct the course in hunter safety, using Commission personnel or other persons at times and in areas where other competent agencies are unable or unwilling to meet the demand for instruction.

(3) The Wildlife Resources Commission shall issue a certificate of competency and safety to each person who successfully completes the course of instruction, and the certificate shall be valid until revoked by the Commission.

(4) Any similar certificate issued outside the State by a governmental agency, shall be accepted as complying with the requirements of subsection (a) above, if the privileges are reciprocal for North Carolina residents.

(5) The Wildlife Resources Commission shall adopt rules and regulations to provide for the course of instruction and the issuance of the certificates consistent with the purpose of this section.

(c) On or after July 1, 1991, any person who obtains a hunting license by presenting a fictitious certificate of competency or who attempts to obtain a certificate of competency or hunting license through fraud shall have his hunting privileges revoked by the Wildlife Resources Commission for a period not to exceed one year.

(d) ~~Nothing in this section shall be construed to prohibit the sale of~~ Notwithstanding the provisions of subsection (a) of this section, the lifetime licenses ~~as~~ provided for in ~~G.S. 113-270.1D(b) or G.S. 113-270.2(c)(2).~~ G.S. 113-270.1D(b)(1), (2), and (3) and G.S. 113-270.2(c)(2) may be purchased by or in the name of persons under 14 years of age who have not obtained a hunter safety certificate of competency, subject to the requirements of this subsection. ~~Pending satisfactory completion of the hunter safety course, persons~~ Persons who possess ~~such licenses~~ one of the lifetime licenses specified in this subsection but who have not reached the age of 14 may exercise the privileges ~~thereof~~ of the lifetime license only when accompanied by an adult at least 21 years of age who is licensed to hunt in this State. For the purpose of this section, "accompanied" ~~is defined as being able to take immediate control of the hunting device.~~ means that the adult maintains a proximity to the young hunter at all times that enables the adult to take immediate control of the hunting device. Upon reaching the age of 14, the holder of one of the lifetime licenses specified in this subsection may exercise the privileges of the lifetime license without adult accompaniment, but only after obtaining a hunter safety certificate of competency as provided in G.S. 113-270.1A(a)."

SECTION 2. G.S. 113-276(d) reads as rewritten:

"(d) Except as otherwise provided in this Subchapter, individuals under 16 years of age are exempt from the hunting and trapping license requirements of G.S. 113-270.1B(a) and G.S. 113-270.3(a), except the falconry license described in ~~G.S. 113-270.3(b)(4), and the fishing license requirement of G.S. 113-272, if:~~

~~(1) He is accompanied by a responsible adult who is in compliance with applicable license requirements; or~~

~~(2) He is carrying a current and valid license appropriate to the activity which has been issued to one of his parents or to his guardian.~~

G.S. 113-270.3(b)(4). Individuals under 16 may hunt under this exemption, provided that the young hunter is accompanied by an adult at least 21 years of age who is licensed to hunt in this State. For purposes of this section, "accompanied" means that the licensed adult maintains a proximity to the young hunter that enables the licensed adult to take immediate control of the hunting device. Upon reaching the age of 14 and successfully obtaining the hunter safety certificate of competency required by G.S. 113-270.1A(a), a young hunter may hunt under the license exemption until age 16 without adult accompaniment or may purchase and use a hunting license without adult accompaniment. Individuals under 16 years of age are exempt from the fishing license requirements of ~~G.S. 113-270.1B~~ G.S. 113-270.1B(a), 113-272, and ~~G.S.~~ 113-271."

SECTION 3. G.S. 113-296 reads as rewritten:

"**§ 113-296. Disabled Sportsman Program.**

(a) The Disabled Sportsman Program is established, to be developed and administered by the Wildlife Resources Commission. The Disabled Sportsman Program shall consist of special hunting and fishing activities adapted to the needs of persons with the disabilities described in subsection (b) of this section.

(b) In order to be eligible for participation in the Disabled Sportsman Program established by this section, a person must be able to certify through competent medical evidence one of the following disabilities:

(1) Amputation of one or more limbs;

(2) Paralysis of one or more limbs;

(3) Dysfunction of one or more limbs rendering the person unable to perform the tasks of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a cane;

(4) Disease, injury, or defect confining the person to a wheelchair, walker, or crutches;

(5) Legal deafness; or

(6) Legal blindness, for purposes of participation in disabled fishing only.

The disability must be permanent, and a person loses eligibility to participate in the Disabled Sportsman Program when the specified disability ceases to exist.

(c) A person who qualifies under subsection (b) of this section may apply for participation in the Disabled Sportsman Program by completing an application supplied by the Wildlife Resources Commission and by supplying the medical evidence necessary to confirm the person's disability. In order to participate in activities under the Program, each disabled participant may be accompanied by an able-bodied companion, who may also participate in the hunting, fishing, or other activity. The Commission

shall charge each disabled participant an ~~annual~~ application fee of ~~ten dollars ($10.00)~~ five dollars ($5.00) for each special hunt for disabled persons for which the disabled hunter applies to defray the cost of processing the application and administering the special activities provided under the Program. The participant and the participant's companion shall also obtain any applicable hunting, fishing, or other special license required for the activities.

(d) In developing the Disabled Sportsman Program, the Wildlife Resources Commission shall:

(1) Establish special seasons and bag limits for hunting all or selected species of wildlife;

(2) Authorize the manner for taking wildlife, consistent with State law;

(3) Permit the use of vehicles and other means of conveyance in areas normally closed to such use;

(4) Set special fishing seasons and size and creel limits for inland fish; and

(5) Permit the use of crossbows or other specially equipped bows by persons incapable of arm movement sufficient to operate a longbow, recurve bow, or compound bow, but only during a season for hunting with bow and arrow and only during a special hunt organized and supervised by the Wildlife Resources Commission for the Disabled Sportsman Program; and

(6) Alter any other established rules of the Wildlife Resources Commission pertaining to hunting, fishing, or special activities, as generally applicable or as applicable to game lands, for the purpose of providing access to disabled persons participating in the Disabled Sportsman Program.

The Wildlife Resources Commission may use its game lands for purposes of conducting special activities for the Disabled Sportsman Program, and may enter into agreements with other landholders for purposes of conducting special activities on private lands.

(e) The Wildlife Resources Commission may establish special activities under the Disabled Sportsman Program for any class or classes of disability described in subsection (b) of this section. The Commission shall publicize these activities through the public media and in the Commission's publications to ensure that disabled persons are notified of the activities and informed about the application process.

(f) The Wildlife Resources Commission shall hold at least four special hunting activities under the Disabled Sportsman Program per calendar ~~year, at least two during the season for taking deer with bow and arrow, and at least two during the season for taking deer with guns.~~ year. The Commission shall alternate the location of these special activities so as to provide equal access to disabled persons in all regions of the State."

SECTION 4. This act becomes effective July 1, 2005.

House Bill 1277:
Clarify Hunter Safety

BILL ANALYSIS

Committee:	**House Finance**	**Sponsor:**	**Representative Faison**
Date:	May 17, 2005	**Analysis by:**	Ashley Huffstetler
Version:	**H1277-CSMB-16**		Staff Attorney

SUMMARY: House Bill 1277 amends licensure and educational requirements for young hunters and lowers the special hunt fee charged to disabled hunters from $10 to $5. The PCS makes a technical correction to the existing statute.

ANALYSIS: House Bill 1277 amends the hunter safety course requirements to allow young hunters who hold special licenses to hunt with licensed hunters 21 years of age or older without having to complete a hunter safety course. Once a lifetime licensee reaches age 14, he or she may hunt without an adult if he or she completes a hunter safety course and receives a certificate of competency. Additionally, the bill creates a hunting license exemption for people under age 16 to allow a person to hunt without a license if accompanied by a licensed adult at least 21 years old. With both these changes, a person who is 14 or 15 may hunt with or without a license without adult accompaniment if he or she has obtained the certificate of competency.

The bill also lowers the fee charged to disabled participants in special hunts from $10 to $5 and removes language requiring the Wildlife Commission to sponsor four deer hunts per year.

BACKGROUND: Under current law, lifetime sportsman licenses are valid and available to infants, youths, adults, the elderly, and the disabled. It is unclear, however, whether a properly licensed youth can hunt pending completion of a hunter safety course. The Wildlife Resources Commission requested a clarification of this law to allow young people with lifetime licenses, who have not obtained a certificate of competency, to attend hunts with licensed adults. The Commission also recommended lowering the fee for disabled hunts and allowing the Commission more discretion planning hunts for disabled hunters. Under current law, the only hunts required for disabled hunts are deer hunts.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 1277 (First Edition)

SHORT TITLE: Clarify Hunter Safety.

SPONSOR(S): Representative Faison

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund	**No General Fund Impact**				
Wildlife Resources Commission	**($500)**	**($525)**	**($551)**	**($578)**	**($607)**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Wildlife Resources Commission

EFFECTIVE DATE: July 1, 2005

BILL SUMMARY:
This bill amends the licensure and education requirements for persons under sixteen years of age and lowers the fee from $10 to $5 for each special hunt for participants in the Disabled Sportsman Program.

ASSUMPTIONS AND METHODOLOGY:
The Wildlife Resources Commission provides a special hunting program that allows eligible disabled individuals to participate in hunting and fishing activities adapted to the needs of persons with physical disabilities. Each participant is charged a $10 fee for each special hunt. This bill would lower the application fee to $5. The chart below indicates the fiscal impact of lowering this fee based on the last four years of applications for special hunts.

Year	Number of Applications	Revenue at $10	Revenue at $5	Fiscal Impact from Fee Change
2002	87	$870	$435	($435)
2003	102	$1,020	$510	($510)
2004	111	$1,110	$555	($555)
2005	99	$990	$495	($495)

Assuming an average of 100 applications per year, the anticipated revenue loss from this bill is $500 per year. Revenue losses for future years are based on a 5% annual increase in applications. The projected revenue loss is shown in the chart below:

Year	Fiscal Impact from Fee Change
2006	($500)
2007	($525)
2008	($551)
2009	($578)
2010	($607)

Revenues from the sale of licenses and applications are deposited into a special fund within the Wildlife Resources Commission. This bill will not have a General Fund impact.

SOURCES OF DATA: North Carolina Wildlife Resources Commission

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

Official
Fiscal Research Division
Publication

DATE: May 16, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 1277 A BILL TO BE ENTITLED AN ACT TO AMEND THE LICENSURE AND EDUCATION REQUIREMENTS FOR PERSONS UNDER SIXTEEN YEARS OF AGE AND TO CHANGE THE FEE CHARGED TO PARTICIPANTS IN THE DISABLED SPORTSMAN PROGRAM AND ALLOW MORE FLEXIBILITY IN THE SCHEDULING OF ACTIVITIES REQUIRED UNDER THAT PROGRAM.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1281

Committee Substitute Favorable 5/5/05

Short Title: County Control/Noxious Aquatic Weeds. (Public)

Sponsors:

Referred to:

April 19, 2005

A BILL TO BE ENTITLED

AN ACT TO GRANT CERTAIN COUNTIES THE AUTHORITY TO DEFINE NOXIOUS AQUATIC WEED CONTROL SERVICE DISTRICTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-301 is amended by adding a new subsection to read:

"(e) The board of commissioners of a county that adjoins or contains a lake, river, or tributary of a river or lake that has an identified noxious aquatic weed problem may define any number of noxious aquatic weed control service districts composed of property that are contiguous to the water or provides direct access to the water through a shared, certified access site to the water. As used in this subsection, the term "noxious aquatic weed" is any plant organism identified by the Secretary of Environment and Natural Resources under G.S. 113A-222 or regulated as a pest plant by the Commissioner of Agriculture under Article 36 of Chapter 106 of the General Statutes."

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

HOUSE BILL 1281:
County Control/Noxious Aquatic Weeds

BILL ANALYSIS

Committee:	House Finance	**Date:**	May 13, 2005
Introduced by:	Reps. L. Allen, Ed Jones, Wray	**Summary by:**	Erika Churchill
Version:	Second Edition		Committee Counsel

SUMMARY: The bill would allow certain counties to create noxious aquatic weed control service districts; effective when it becomes law.

CURRENT LAW:

Plant Pests. A plant pest is any insect, mite, nematode other invertebrate animal, disease, noxious weed, plant or animal parasite in any stage of development which is injurious to plants and plant products. G.S. 106-419. Any plant that has been infected with a plant pest may be treated as a plant pest. G.S. 106-419.1. No person may knowingly and willfully keep any plant or plant product infested or infected by any dangerous plant pest, except under regulations prescribed by the Board of Agriculture. G.S. 106-421. The Board of Agriculture has the ability to adopt reasonable regulations to eradicate, repress, and prevent the spread of plant pests in North Carolina. Those regulations can include inspections, quarantine of areas, and governance of transporting items liable to harbor plant pests. G.S. 106-420.

Service Districts. Article 16 of Chapter 153A grants to boards of county commissioners the authority to define service districts in order to finance, provide or maintain the districts for certain listed services. The types of services that are authorized include beach erosion, fire protection, recreation, sewage collection and disposal, solid waste collection, water supply and distribution, ambulance and rescue service, law enforcement and cemeteries. The Article authorizes the county to charge for the services provided. It also sets-out a procedure for adopting the service district.

BILL ANALYSIS:

The bill would allow the board of county commissioners in a county that adjoins or contains a lake, river, or tributary of a river or lake that has an identified noxious aquatic weed problem to define any number of noxious aquatic weed control service districts. The districts would have to be composed of property that are contiguous to the water or property that provides direct access to the water through a shared, certified access site to the water.

The term "noxious aquatic weed" would be any plant organism identified by the Secretary of Environment and Natural Resources under G.S. 113A-222 or regulated as a pest plant by the Commissioner of Agriculture under Article 36 of Chapter 106 of the General Statutes.

EFFECTIVE DATE: The act would become effective when it becomes law.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

HB 1281 A BILL TO BE ENTITLED AN ACT TO GRANT CERTAIN COUNTIES THE AUTHORITY TO DEFINE NOXIOUS AQUATIC WEED CONTROL SERVICE DISTRICTS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H **D**

HOUSE BILL 1429
PROPOSED COMMITTEE SUBSTITUTE H1429-CSRB-14 [v.1]

5/16/2005 10:16:25 PM

Short Title: Wine Shipper Fee/Wine Primary Source. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR RECIPROCITY BY ELIMINATING THE APPLICATION FEE FOR A WINE SHIPPER PERMIT AND TO REQUIRE THE DESIGNATION OF A PRIMARY SOURCE FOR THE IMPORTATION OF WINE INTO THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-902(d) reads as rewritten:

"(d) Fees. – An application for an ABC permit shall be accompanied by payment of the following application fee:

(1) On-premises malt beverage permit – $400.00.
(2) Off-premises malt beverage permit – $400.00.
(3) On-premises unfortified wine permit – $400.00.
(4) Off-premises unfortified wine permit – $400.00.
(5) On-premises fortified wine permit – $400.00.
(6) Off-premises fortified wine permit – $400.00.
(7) Brown-bagging permit – $400.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be $200.00.
(8) Special occasion permit – $400.00.
(9) Limited special occasion permit – $50.00.
(10) Mixed beverages permit – $1,000.
(11) Culinary permit – $200.00.
(12) Unfortified winery permit – $300.00.
(13) Fortified winery permit – $300.00.
(14) Limited winery permit – $300.00.
(15) Brewery permit – $300.00.
(16) Distillery permit – $300.00.
(17) Fuel alcohol permit – $100.00.
(18) Wine importer permit – $300.00.

(19) Wine wholesaler permit – $300.00.
(20) Malt beverage importer permit – $300.00.
(21) Malt beverage wholesaler permit – $300.00.
(22) Bottler permit – $300.00.
(23) Salesman permit – $100.00.
(24) Vendor representative permit – $50.00.
(25) Nonresident malt beverage vendor permit – $100.00.
(26) Nonresident wine vendor permit – $100.00.
(27) Any special one-time permit under G.S. 18B-1002 – $50.00.
(28) Winery special event permit – $200.00.
(29) Mixed beverages catering permit – $200.00.
(30) Guest room cabinet permit – $1,000.
(31) Liquor importer/bottler permit – $500.00.
(32) Cider and vinegar manufacturer permit – $200.00.
(33) Brew on premises permit – $400.00.
(34) Wine producer permit – $300.00.
(35) Wine tasting permit – $100.00.
~~(36) Wine shipper permit – $100.00.~~"

SECTION 2. G.S. 18B-1001.1(a) reads as rewritten:

"(a) A winery holding a federal basic wine manufacturing permit located within or outside of the State may apply to the Commission for issuance of a wine shipper permit that shall authorize the shipment of brands of fortified and unfortified wines identified in the application. The applicant shall not be required to pay an application fee for the wine shipper permit. A wine shipper permittee may amend the brands of wines identified in the permit application but shall file any amendment with the Commission. Any winery that applies for a wine shipper permit shall notify in writing any wholesalers that have been authorized to distribute the winery's brands within the State that an application has been filed for a wine shipper permit. A wine shipper permittee may sell and ship not more than two cases of wine per month to any person in North Carolina to whom alcoholic beverages may be lawfully sold. All sales and shipments shall be for personal use only and not for resale. A case of wine shall mean any combination of packages containing not more than nine liters of wine."

SECTION 3. G.S. 18B-203(a) reads as rewritten:

"(a) Powers. – The Commission shall have authority to:

...

(19) Recognize the wine importer permittee that is the primary American source of supply for the wine of a winery. The primary American source of supply is the source closest to the manufacturer in the channel of commerce from whom the product can be secured by American wholesalers."

SECTION 4. G.S. 18B-1106 reads as rewritten:

"**§ 18B-1106. Authorization of wine importer permit.**

(a) Authorization. – The holder of a wine importer permit may:

(1) Import fortified and unfortified wines from outside the United States in closed containers;
(2) Store those wines;
(3) Sell those wines to wine wholesalers for purposes of resale.

(b) Distribution Agreements. – Wine distribution agreements are governed by Article 12 of this Chapter.

(c) Primary Source of Supply. – The holder of a wine importer permit may import and sell to wholesalers only wine for which it is the primary American source of supply as recognized by the Commission."

SECTION 5. G.S. 18B-1107 reads as rewritten:

"§ 18B-1107. Authorization of wine wholesaler permit.

(a) Authorization. – The holder of a wine wholesaler permit may:

(1) Receive, possess and transport shipments of fortified and unfortified ~~wine;~~.wine. The wine must be received from one of the following:
a. The primary American source of supply for that wine as recognized by the Commission.
b. A licensed North Carolina wholesaler who received the wine from the primary American source of supply and with whom the wholesaler has a subcontracting agreement for the distribution of the wine.

(2) Sell, deliver and ship wine in closed containers for purposes of resale to wholesalers or retailers licensed under this Chapter as authorized by the ABC ~~laws;~~laws.

(3) Furnish and sell wine to its employees, subject to the rules of the Commission and the Department of ~~Revenue;~~Revenue.

(4) In locations where the sale is legal, furnish wine to guests and any other person who does not hold an ABC permit, for promotional purposes, subject to rules of the ~~Commission;~~Commission.

(5) Sell out-of-date unfortified and fortified wines to holders of cider and vinegar manufacturer permits, provided that each bottle is marked "out-of-date" by the wholesaler.

(b) Distribution Agreements. – Wine distribution agreements are governed by Article 12 of this Chapter."

SECTION 5. G.S. 18B-1114 reads as rewritten:

"§ 18B-1114. Authorization of nonresident wine vendor permit.

The holder of a nonresident wine vendor permit may sell, deliver, and ship unfortified and fortified wine in this State only to wholesalers, importers, and bottlers licensed under this Chapter, as authorized by the ABC laws. The unfortified and fortified wine must come to rest at the licensed premises of a wine wholesaler in this State before being resold to a retailer. A nonresident wine vendor permit may be issued to a winery, a wholesaler, an importer, or a bottler outside North Carolina who desires to sell, deliver, and ship unfortified and fortified wine into this State. The holder of a nonresident wine vendor permit may sell, deliver, and ship into this State only wine for which it is the primary American source of supply as recognized by the Commission."

SECTION 6. G.S. 18B-1201(4) reads as rewritten:

§ 18B-1201. Definitions.

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

...

(4) "Winery" means any holder of an unfortified winery permit, fortified winery permit, limited winery permit, wine importer permit, or nonresident wine vendor permit issued under the authority of this Chapter who sells at least 1,000 cases of wine in North Carolina per year."

SECTION 7. This act is effective when it becomes law and applies to wine shipper permit applications submitted on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1429

Short Title:	Eliminate Wine Shipper Permit Fee.	(Public)
Sponsors:	Representatives Harrell and Gibson (Primary Sponsors).	
Referred to:	Finance.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR RECIPROCITY BY ELIMINATING THE APPLICATION FEE FOR A WINE SHIPPER PERMIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-902(d) reads as rewritten:

"(d) Fees. – An application for an ABC permit shall be accompanied by payment of the following application fee:

(1) On-premises malt beverage permit – $400.00.
(2) Off-premises malt beverage permit – $400.00.
(3) On-premises unfortified wine permit – $400.00.
(4) Off-premises unfortified wine permit – $400.00.
(5) On-premises fortified wine permit – $400.00.
(6) Off-premises fortified wine permit – $400.00.
(7) Brown-bagging permit – $400.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be $200.00.
(8) Special occasion permit – $400.00.
(9) Limited special occasion permit – $50.00.
(10) Mixed beverages permit – $1,000.
(11) Culinary permit – $200.00.
(12) Unfortified winery permit – $300.00.
(13) Fortified winery permit – $300.00.
(14) Limited winery permit – $300.00.
(15) Brewery permit – $300.00.
(16) Distillery permit – $300.00.
(17) Fuel alcohol permit – $100.00.
(18) Wine importer permit – $300.00.
(19) Wine wholesaler permit – $300.00.
(20) Malt beverage importer permit – $300.00.
(21) Malt beverage wholesaler permit – $300.00.

(22) Bottler permit – $300.00.
(23) Salesman permit – $100.00.
(24) Vendor representative permit – $50.00.
(25) Nonresident malt beverage vendor permit – $100.00.
(26) Nonresident wine vendor permit – $100.00.
(27) Any special one-time permit under G.S. 18B-1002 – $50.00.
(28) Winery special event permit – $200.00.
(29) Mixed beverages catering permit – $200.00.
(30) Guest room cabinet permit – $1,000.
(31) Liquor importer/bottler permit – $500.00.
(32) Cider and vinegar manufacturer permit – $200.00.
(33) Brew on premises permit – $400.00.
(34) Wine producer permit – $300.00.
(35) Wine tasting permit – $100.00.
~~(36) Wine shipper permit – $100.00.~~"

SECTION 2. G.S. 18B-1001.1(a) reads as rewritten:

"(a) A winery holding a federal basic wine manufacturing permit located within or outside of the State may apply to the Commission for issuance of a wine shipper permit that shall authorize the shipment of brands of fortified and unfortified wines identified in the application. The applicant shall not be required to pay an application fee for the wine shipper permit. A wine shipper permittee may amend the brands of wines identified in the permit application but shall file any amendment with the Commission. Any winery that applies for a wine shipper permit shall notify in writing any wholesalers that have been authorized to distribute the winery's brands within the State that an application has been filed for a wine shipper permit. A wine shipper permittee may sell and ship not more than two cases of wine per month to any person in North Carolina to whom alcoholic beverages may be lawfully sold. All sales and shipments shall be for personal use only and not for resale. A case of wine shall mean any combination of packages containing not more than nine liters of wine."

SECTION 3. This act is effective when it becomes law and applies to wine shipper permit applications submitted on or after that date.

HOUSE BILL 1429:
Wine Shipper Fee/Wine Primary Source

BILL ANALYSIS

Committee:	House Finance	**Date:**	May 17, 2005
Introduced by:	Reps. Harrell, Gibson	**Summary by:**	Cindy Avrette
Version:	PCS to First Edition H1429-CSRB-14		Committee Counsel

SUMMARY: ***House Bill 1429 eliminates the application fee for a wine shipper permit. The proposed committee substitute adds sections 3 through 6 of the bill to require the Alcoholic Beverage Control Commission to recognize a wine importer as the primary source of supply for the wine of a winery and to prohibit wine wholesalers from receiving, possessing, or transporting wine from any source other than the recognized primary source. The bill becomes effective when it becomes law.***

CURRENT LAW: After the end of Prohibition in the 1930s, North Carolina adopted laws to prohibit the importation of wine and other alcoholic beverages except through a highly regulated system. The structure of the ABC system is a three-tiered system. Under this system, an out-of-state producer of wine may sell its products in North Carolina to licensed wholesalers only. Wholesalers may in turn sell the products to other wholesalers or to licensed retailers. Only licensed retailers may sell the products to consumers.

In 1981, the General Assembly enacted an exception to this three-tiered structure. Under that exception, North Carolina wineries were allowed to sell and ship wine directly to North Carolina consumers. This exception did not extend to out-of-state wineries. In 2002, a federal district court held in *Beskind v. Easley*,[1] that this exemption violated the Commerce Clause of the United States Constitution because it clearly favored in-state economic interests over out-of-state interests. . North Carolina appealed this decision to the federal Court of Appeals. That court upheld the holding.[2]

To remedy the unconstitutional exception in the State's ABC law, the General Assembly was left with the option of repealing the exemption for in-state wineries or allowing shipments from out-of-state wineries on the same basis as for in-state wineries. S.L. 2003-402 created a new permit under the ABC laws that would allow any winery to ship wine directly to individuals in North Carolina and it provides a mechanism for the collection of excise and sales and use taxes on direct shipments of wine.[3] Under that act, any winery that holds a federal basic wine manufacturer permit may apply for a North Carolina wine shipper permit for a fee of $100. The annual renewal fee is $25.[4]

BILL ANALYSIS: Sections 1 and 2 of House Bill 1429 would eliminate the $100 fee, and subsequently the annual renewal fee, for the wine shipper permit.

The PCS for House Bill 1429 adds sections 3 through 6 of the bill. Those sections would require the ABC Commission to recognize only one wine importer permittee as the source for wines from a winery. It would prohibit wine importers from importing or selling to wholesalers wine for which it is not the

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[1] 197 F.Supp.2d 464 (W.D. NC, 2002). The United States Supreme Court upheld a similar case in *Granholm v. Heald*, decided May 16, 2005, No. 03-1116.

[2] 325 F.3d 506 (4th Cir., 2003)

[3] The State is able to establish sufficient nexus with an out-of-state winery to require its collection of the State's taxes by requiring the acquisition of a wine shipper permit.

[4] G.S. 18B-903 provides that ABC permits are valid for one year, May 1 to April 30, and that the renewal fee is 25% of the original application fee.

recognized source of supply and it would prohibit wine wholesalers from receiving, possessing, or transporting shipments of wine from an importer that is not the recognized source of supply. It also expands the protection of wine distribution agreements to these sales by amending the definition of 'winery' to include the holder of a 'wine importer permit'.

EFFECTIVE DATE: The bill is effective when it becomes law and applies to wine shipper permit applications submitted on or after that date.

H1429e1-SMRB-CSRB

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: May 16, 2005

TO: Representatives Gibson and Harrell

FROM: Rodney Bizzell
Fiscal Research Division

RE: House Bill 1429 (First Edition)

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund	**($2,500)**	**($2,500)**	**($2,500)**	**($2,500)**	**($2,500)**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Alcoholic Beverage Control Commission

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:
This bill eliminates the fee, which is currently $100, for the permit authorizing a winery to ship brands of fortified and unfortified wines.

ASSUMPTIONS AND METHODOLOGY: According to the Alcoholic Beverage Control Commission, there are currently 273 wine shipping permits. It is estimated that approximately 25 permit applications are received annually. Multiplying this number by the $100 permit fee results in a revenue loss to the General Fund of $2,500 per year.

SOURCES OF DATA: NC Alcoholic Beverage Control Commission

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 1429 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR RECIPROCITY BY ELIMINATING THE APPLICATION FEE FOR A WINE SHIPPER PERMIT.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1507

Short Title:	Amend Interpreter/Transliterator License Act.	(Public)
Sponsors:	Representative Alexander.	
Referred to:	Finance.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN LAWS UNDER THE NORTH CAROLINA INTERPRETER AND TRANSLITERATOR LICENSURE ACT, TO EXPAND THE GROUP OF PERSONS WHO MAY OBTAIN A PROVISIONAL LICENSE UNDER THE ACT, AND TO AUTHORIZE THE NORTH CAROLINA INTERPRETER AND TRANSLITERATOR LICENSING BOARD TO ASSESS CIVIL PENALTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90D-4(b) is amended by adding the following new subdivision to read:

"(b) The provisions of this Chapter do not apply to:

...

(6) Nonresident persons who are nationally certified providing interpreting or transliterating services in this State no more than 20 days per year in accordance with rules adopted by the Board."

SECTION 2. G.S. 90D-8 reads as rewritten:

"**§ 90D-8. Provisional license.**

(a) Upon application to the Board and the payment of the required fees, an applicant may be issued a one-time provisional license as an interpreter or transliterator if the applicant meets all of the following qualifications:

(1) Is at least 18 years of age.

(2) Is of good moral character as determined by the Board.

(3) Completes two continuing education units approved by the Board. These units must be completed for each renewable year.

(4) Satisfies one of the following:

a. Holds a quality assurance North Carolina Interpreter Classification System (NCICS) level C classification.

b. Holds a valid National Association of the Deaf (NAD) level 2 or 3 certification.

c. Holds a current Educational Interpreter Performance Assessment (EIPA) level 3 or above classification.

~~d. Holds the following certificates for cued language transliterating coursework: Educational Interpreting Defined, Cued Language Transliterator (CLT) Skill Development I, II, and III, and Ethical Decision Making I.~~

d. Holds at least a two-year interpreting degree from a regionally accredited institution.

(a1) Upon application to the Board, payment of the required fees, and meeting the requirements for a provisional license under subdivisions (1) and (2) of subsection (a) of this section, the Board may also issue a provisional license to any of the following categories of persons seeking a provisional license:

(1) A certified deaf interpreter (CDI) who completes 30 hours of training, including 'Role and Function', 'Code of Ethics', and interpreting professional studies coursework.

(2) An oral interpreter who completes a total of 40 hours of training in interpreting coursework or workshops related to oral interpreting.

(3) A person providing cued speech interpreting or transliterating services who completes a total of 40 hours of training in interpreting coursework or workshops related to cued speech.

(4) A person providing interpreting or transliterating services who has a recognized credential from another state in the field of interpreting or transliterating.

(5) An interpreter or transliterator who has accumulated 200 hours per year in the provision of interpreting or transliterating services, in this State or another state, totaling 400 hours for the two years immediately preceding the date of application.

(b) A provisional license issued under this section shall be valid for one year. Upon expiration, a provisional license may be renewed for an additional one-year period in the discretion of the Board. However, a provisional license shall not be renewed more than three times. The Board may, in its discretion, grant an extension after the third time the provisional license has been renewed under circumstances to be established in rules adopted by the Board.

(c) Effective July 1, 2008, any person who applies for initial licensure on a provisional basis as an interpreter or transliterator shall hold at least a two-year degree from a regionally accredited institution."

SECTION 3. G.S. 90D-6 is amended by adding the following new subdivision to read:

"**§ 90D-6. Powers of the Board.**

The Board shall have the power and duty to:

...

(12) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes."

SECTION 4. Chapter 90D of the General Statutes is amended by adding the following new section to read:

"**§ 90D-14. Civil penalties.**

(a) Authority to Assess Civil Penalties. – The Board may assess a civil penalty not to exceed one thousand dollars ($1,000) for the violation of any section of this Chapter or any rules adopted by the Board. The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Consideration Factors. – Before imposing and assessing a civil penalty, the Board shall consider the following factors:

(1) The nature, gravity, and persistence of the particular violation.

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.

(3) Whether the violation was willful and malicious.

(4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

(c) Schedule of Civil Penalties. – The Board shall establish a schedule of civil penalties for violations of this Chapter or rules adopted by the Board.

(d) Costs. – The Board may assess the costs of disciplinary actions against a person found to be in violation of this Chapter or rules adopted by the Board."

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

HOUSE BILL 1507:
Amend Interpreter/Transliterator License Act

BILL ANALYSIS

Committee:	House Finance	**Date:**	May 17, 2005
Introduced by:	Rep. Alexander	**Summary by:**	Martha Walston
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1507 amends the Interpreters and Transliterators Licensure Act as follows:

- Exempts from licensing requirements nationally certified interpreters or transliterators who provide services in North Carolina for no more than 20 days a year.
- Authorizes additional persons to obtain a provisional license.
- Authorizes Board to conduct administrative hearing in accordance with Chapter 150B
- Authorizes the Board to assess civil penalties not to exceed $1,000 for violations of Chapter 90D.

CURRENT LAW: In 2003, the General Assembly enacted the Interpreter and Transliterator Licensure Act. The purpose of Chapter 90D is to provide for the regulation of persons offering manual or oral interpreting or transliterating services to individuals who are deaf, hard-of-hearing, or dependent on the use of manual modes of communication in this State.

Interpreting is defined as the process of providing accessible communication, between and among persons who are deaf or hard-of-hearing and those who are hearing. This process includes, but is not limited to, communication between American Sign Language and English. It may also involve various other modalities that involve visual, gestural, and tactile methods.

Transliterating is the process of providing accessible communication between one or more hearing persons and one or more deaf or hard-of-hearing persons using a form of manually coded English.

BILL ANALYSIS: Section 1 of the bill adds the following to the list of persons exempt from licensure: "Nonresident persons who are nationally certified providing interpreting or transliterating services in this State no more than 20 days per year in accordance with rules adopted by the Board."

Section 2 of the bill makes the following changes to the statute authorizing a one-year provisional license:

- Deletes a provision authorizing the issuance of a provisional license to persons holding certain course certificates.
- Authorizes the Board to issue a provisional license to a person who is at least 18, of good moral character, and who satisfies one of five listed interpreting or transliterating categories.

Section 3 of the bill authorizes the Board to conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes. Article 3A applies to occupational licensing agencies.

Section 4 of the bill authorizes the Board to assess a civil penalty not to exceed $1,000 for any violation of Chapter 90D or any rules of the Board. Before assessing a civil penalty, the Board must consider four factors. The Board shall also establish a schedule of civil penalties. The Board may assess the costs of disciplinary actions against the person violating the Chapter and rules of the Board.

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

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 1507 A BILL TO BE ENTITLED AN ACT TO AMEND CERTAIN LAWS UNDER THE NORTH CAROLINA INTERPRETER AND TRANSLITERATOR LICENSURE ACT, TO EXPAND THE GROUP OF PERSONS WHO MAY OBTAIN A PROVISIONAL LICENSE UNDER THE ACT, AND TO AUTHORIZE THE NORTH CAROLINA INTERPRETER AND TRANSLITERATOR LICENSING BOARD TO ASSESS CIVIL PENALTIES.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 768

Committee Substitute Favorable 5/9/05

PROPOSED COMMITTEE SUBSTITUTE H768-CSLA-10 [v.1]

5/16/2005 4:59:01 PM

Short Title: 2005 Omnibus Labor Law Changes.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND OTHER CHANGES TO THE UNIFORM BOILER AND PRESSURE VESSEL ACT OF NORTH CAROLINA AND THE WAGE AND HOUR ACT OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-69.9 reads as rewritten:

"**§ 95-69.9. Definitions.**

(a) The term "board" shall mean the North Carolina Board of Boiler and Pressure Vessel ~~Rules;~~Rules.

(b) The term "boiler" shall mean a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum ~~for use externally to itself~~ by the direct or indirect application of ~~heat from the combustion of fuels, or from electricity or nuclear energy. This~~ heat. The term "boiler" shall also include fired units for heating or vaporizing liquids other than water where these units ~~are separate from processing systems and~~ are complete within ~~themselves;~~themselves.

(c) The term "Commissioner" shall mean the North Carolina Commissioner of ~~Labor;~~Labor.

~~(d) The term "Director" shall mean the individual appointed by the Commissioner to hold the office of Director of the Boiler and Pressure Vessel Division within the Department of Labor;~~

(e) The term "inspection certificate" or "certificate of inspection" shall mean certification by the ~~Director~~ Chief Inspector that a boiler or pressure vessel is in compliance with the rules and regulations adopted under this ~~Article;~~Article.

(f) The term "inspector's commission" shall mean a written authorization by the Commissioner for a person who has met the qualifications set out in this Article to conduct inspections of boilers and pressure ~~vessels;~~vessels.

(g) The term "pressure vessel" shall mean a vessel in which the pressure is obtained from an indirect source or by the application of heat from an indirect source or a direct source, other than those included within the term "boiler".

(h) The term "Chief Inspector" shall mean the individual appointed by the Commissioner to hold the office of Chief of the Boiler Safety Bureau within the Department of Labor. The Chief Inspector serves as the North Carolina member on the National Board of Boiler and Pressure Vessel Inspectors.

(i) The term "Deputy Inspector" shall mean any Boiler and Pressure Vessel Inspector who is employed by the Department of Labor and is subordinate to the Chief Inspector.

(j) The term "National Board" shall mean the National Board of Boiler and Pressure Vessel Inspectors.

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

SECTION 2. G.S. 95-69.10 reads as rewritten:

"**§ 95-69.10. Application of Article; exemptions.**

(a) This Article shall apply to all boilers and pressure vessels constructed, used, or designed for operation in this State including all new and existing installations which are operated in connection with business buildings, institutional buildings, industrial buildings, assembly buildings, educational buildings, public residential buildings, recreation buildings, other public buildings, and water supplies. This Article shall also apply to boilers and hot water supply tanks, and heaters located in hotels, motels, tourist courts, camps, cottages, resort lodges, and similar places whenever the owner or operator advertises in any manner for transit patronage, or solicits such business for temporary abode by transit patrons.

(b) This Article shall not apply to:

(1) Boilers and pressure vessels owned ~~and/or~~ or operated by the federal ~~government.~~government, unless the agency in question has asked for coverage by this Article.

(2) Pressure vessels used for transportation or storage of compressed gases when constructed in compliance with the specifications of the United States Department of Transportation and when charged with gas marked, maintained, and periodically requalified for use, as required by appropriate regulations of the United States Department of Transportation.

(3) Portable pressure vessels used for agricultural purposes only or for pumping or drilling in an open field for water, gas or coal, gold, talc, or other minerals and metals.

(4) Boilers and pressure vessels which are located in private residences or in apartment houses of less than six families.

(5) Pressure vessels used for transportation or storage of liquified petroleum gas.

(6) Air tanks located on vehicles licensed under the rules and regulations of other state authorities operating under rules and regulations substantially similar to those of this State and used for carrying passengers or freight within interstate commerce.

(7) Air tanks installed on right-of-way of railroads and used directly in the operation of trains.

(8) ~~Pressure vessels that do not exceed five cubic feet in volume and 250 PSIG pressure; or one and one-half cubic feet in volume and 600 PSIG pressure; or an inside diameter of six inches with no limitations on pressure.~~Any of the following pressure vessels that do not exceed the listed limitations if the vessel is not equipped with a quick actuating closure:

a. Five cubic feet in volume and 250 psig.

b. Three cubic feet in volume and 350 psig.

c. One and one-half cubic feet in volume and 600 psig.

d. An inside diameter of six inches with no limitation on pressure.

(9) Pressure vessels operating at a working pressure not exceeding 15 ~~PSIG pressure.~~psig.

(10) Pressure vessels with a nominal water capacity ~~of~~ not exceeding 120 gallons ~~or less~~ and containing water under pressure at ~~ambient temperature,~~ temperatures not exceeding 120°F, including those containing air, the compression of which serves as a cushion.

(11) Boilers and pressure vessels on railroad steam locomotives that are subject to federal safety regulations.

(12) Repealed by Session Laws 1985, c. 620, s. 2.

(13) Coil-type hot water supply boilers, generally referred to as steam jennies, where the water can flash into steam when released directly to the atmosphere through a manually operated nozzle and where adequate safety relief valves and controls are installed on them, provided none of the following limitations are exceeded:

a. There is no drum, header, or other steam space.

b. No steam is generated within the coil.

c. Maximum 1 inch tube size.

d. Maximum 3/4 inch nominal pipe size.

e. Maximum 6 gallon nominal water storage capacity.

f. Water temperature of ~~350 degrees fahrenheit.~~350°F.

(14) Pressure vessels containing water at a temperature not exceeding 110 degrees fahrenheit except that this provision shall not exclude hydropneumatic pressure vessels from regulation.

(15) An air tank that does not exceed eight cubic feet in volume that is installed on a service vehicle.

(16) Autoclaves in medical offices and hospitals that are less than five cubic feet in volume, even if they are equipped with a quick actuating closure.

(17) Coil-type hot water supply boilers of the instantaneous type where adequate safety relief valves and controls are installed if none of the following limitations are exceeded:
a. There is no drum, header, or other steam space.
b. No steam is generated within the coil.
c. Maximum one-inch tube size.
d. Maximum three-quarter-inch nominal pipe size.
e. Maximum six-gallon nominal water storage capacity.
f. Water temperature not to exceed 250°F.
g. Maximum heat input does not exceed 400,000 Btu/hr or 110 kW.
h. Maximum pressure of 260 psig.

(18) Toy boilers, if all of the following apply:
a. The water containing volume of the boiler is less than one quart.
b. The operating pressure does not exceed 15 psig.
c. The maximum outside diameter of the shell is no greater than six inches.
d. The boiler is manually fired by solid fuels.

(19) Pressure vessels associated with electrical apparatus in electrical switchyards if the pressure vessels have proper pressure relief devices.

(20) Carbon dioxide tanks used in beverage dispensing service.

(c) The construction and inspection requirements established by the Department of Labor shall not apply to hot water supply boilers which are directly fired with oil, gas or electricity, or hot water supply tanks heated by steam or any other indirect means, which do not exceed any of the following limitations:

(1) Heat input of 200,000 ~~BTU HR;~~Btu/hr or 58.6 kW.

~~(2) Water temperature of 200 degrees F;~~

(3) Nominal water capacity of 120 ~~gallons;~~gallons.

provided that they are equipped with ASME Code and National Board certified safety relief valves.

(d) The construction requirements established by the Department of Labor shall not apply to pressure vessels installed in this State prior to December 31, 1981, that:

(1) Are of one-piece, ~~forged construction and have no weldments;~~unwelded, forged construction;

(2) Are constructed before January 1, 1981, and operating or could be operated, under the laws of any state or Canadian Province that has adopted one or more sections of the ASME Code;

(3) Are transferred into this State without a change of ownership; and

(4) Are determined by the ~~Director~~ Chief Inspector to be constructed under standards substantially equivalent to those established by the department at the time of transfer;

provided that they are equipped with ASME Code and National Board certified safety relief valves.

(e) The construction requirements established by the Department of Labor shall not apply to pressure vessels installed in this State prior to December 31, 1984, that:

(1) Are manufactured from gray iron casting material, as specified by the American Society for Testing and Materials, (ASTM) 48-60T/30;

(2) Are constructed before December 31, 1967, and operating or could be operated, under the laws of any state or Canadian Province that has adopted one or more sections of the ASME Boiler and Pressure Vessel Code;

(3) Are transferred into this State without a change of ownership; and

(4) Are determined by the ~~Director~~ Chief Inspector to be constructed under standards substantially equivalent to those established by the department at the time of transfer;

provided that they are equipped with ASME Code and National Board certified safety relief valves.

(f) The construction requirements established by the Department of Labor shall not apply to hydropneumatic tanks installed or operated by a community water system prior to January 1, 1986."

SECTION 3. G.S. 95-69.11 reads as rewritten:

"**§ 95-69.11. Powers and duties of Commissioner.**

The Commissioner of Labor is hereby charged, directed, and empowered:

(1) To adopt, modify, or revoke rules governing the construction, operation, and use of boilers and pressure vessels, including, where necessary, requirements for fencing to prevent unauthorized persons from coming in contact with boilers and pressure vessels or the systems they are connected to.

(2) ~~To supervise the office of the Director of Boiler and Pressure Vessel Division.~~To delegate to the Chief Inspector any powers, duties, and responsibilities that the Commissioner determines will best serve the public interest in the safe operation of boilers and pressure vessels, and to supervise the Chief Inspector in the performance of those duties.

(3) To enforce rules adopted under authority of this Article.

(4) To inspect boilers and pressure vessels covered under this Article.

(5) To issue inspection certificates to those boilers and pressure vessels found in compliance with this Article.

(6) To enjoin violations of this Article in the civil and criminal courts of this State.

(7) To keep adequate records of the type, dimensions, age, conditions, pressure allowed upon, location, and date of the last inspection of all boilers and pressure vessels to which this Article applies.

(8) To require such periodic reports from inspectors, owners, and operators of boilers and pressure vessels as he deems appropriate in carrying out the purposes of this Article.

(9) To have free access, without notice, to any location in this State, during reasonable hours, where a boiler or pressure vessel is being

built, installed, or operated for the purpose of ascertaining whether such boiler or pressure vessel is built, installed, or operated in accordance with the provisions of this Article.

(10) To investigate serious accidents involving boilers and pressure vessels to determine the causes of the accidents, and to have full subpoena powers in conducting the investigation.

(11) To establish reasonable fees for the inspection and issuance of inspection certificates for boilers and pressure vessels that are in use.

(12) To establish reasonable fees for the examination and certification of inspectors.

(13) To appoint qualified individuals to the Board of Boiler and Pressure Vessel Rules.

(14) To perform inspections and audits relating to the construction and repair of boilers and pressure vessels and to establish and collect fees for these activities.

(15) To order the payment of civil penalties provided by this section.

(16) To require that before any boiler or pressure vessel that is subject to this Article is transferred into the State, or is moved from one location to another within the State, the owner or the owner's authorized agent shall file with the Commissioner a written notice of intent to do so and the type of device involved and provide a copy of the specifications, previous inspection documents, or other information that the Commissioner deems necessary to determine whether the boiler or pressure vessel is in compliance with the provisions of this Article and the rules adopted under this Article."

SECTION 4. G.S. 95-69.12 reads as rewritten:

"**§ 95-69.12. ~~Office of Director of Boilers and Pressure Vessels Division created; powers and duties.~~Boiler Safety Bureau established.**

~~There is hereby created the office of Director of the Boiler and Pressure Vessel Division within the North Carolina Department of Labor. The person holding this office shall assist the Commissioner in carrying out the provisions of this Article in accordance with the provisions of Chapter 126 of the General Statutes. The Director is charged with the responsibility for the administration of this Article on a day-to-day basis.~~

~~The Director shall be primarily responsible for the inspection of boilers and pressure vessels subject to this Article and for the issuance of inspection certificates for those boilers and pressure vessels found suitable. He shall also be responsible for the collection of fees for the inspection of boilers and pressure vessels and transmitting the same to the State Treasurer, where they shall be held in a special account to cover the operating expenses of the Division.~~

There is established a Boiler Safety Bureau within the Department of Labor. The Commissioner shall appoint a Chief Inspector of the Boiler Safety Bureau and any other employees that the Commissioner deems necessary to assist the Chief Inspector in administering the provisions of this Article and the rules adopted under this Article."

SECTION 5. G.S. 95-69.13 reads as rewritten:

"**§ 95-69.13. Board of Boiler and Pressure Vessels Rules created; appointment, terms, compensation and duties.**

(a) There is hereby created the North Carolina Board of Boiler and Pressure Vessels Rules consisting of nine members appointed by the ~~Commissioner, of which three shall be appointed for a term of one year, three for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years. At the expiration of their respective terms of office, their successors shall be appointed for terms of five years each.~~ Commissioner for a term of five years each. Of these nine appointed members, one shall be a representative of the owners and users of steam boilers within this State, one a representative of boiler manufacturers within this State, one a representative of boilermakers within this State who has had not less than five years' practical experience as a boilermaker, one shall be a representative of the owners or users of pressure vessels within the State, one shall be a representative of the pressure vessel manufacturers within the State, one a representative of ~~a~~ boiler inspection and insurance ~~company~~ companies authorized to insure boilers and pressure vessels within the State, one a representative of the ~~operating steam engineers~~ antique boiler owners and operators in this State, one a contractor holding a Group I North Carolina Heating License, and one a mechanical engineer on the faculty of a recognized engineering college or a licensed professional engineer having boiler and pressure vessel experience. The Commissioner of Labor shall serve as ~~chairman.~~chair. The Chief Inspector shall serve on the Board and in the absence of the Commissioner shall serve as chair.

(b) The Board shall meet at least twice annually and shall be responsible for:

(1) Studying and proposing rules and regulations, for adoption, modification or revocation by the Commissioner, governing the construction, installation, inspection, repair, alteration, use and operation of boilers and pressure vessels in this State. The rules and regulations so formulated shall conform as nearly as possible to the standards of the American Society of Mechanical ~~Engineers and amendments and interpretations thereto made and approved by the council of the Society.~~Engineers.

(2) Devise and ~~administer~~ proctor examinations covering this Article and the rules adopted under this Article to applicants seeking a ~~certificate of competency as~~ commission as inspectors of boilers and pressure vessels in this State.

(2a) Act as proctors during the administration of the National Board commissioning examination.

(3) Issue, suspend, or revoke inspector's ~~commission to~~ commissions as inspectors of boilers and pressure vessels within this State. Whenever action is taken under this section to suspend or revoke a commission, the affected party shall be given notice of the availability of an administrative hearing and of judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act.

(c) The members of the Board shall serve without salary but shall be paid a subsistence and travel allowance as established in accordance with Chapter 138 of the General Statutes."

SECTION 6. G.S. 95-69.14 reads as rewritten:

"**§ 95-69.14. Rules and regulations governing the construction, operation and use of boilers and pressure vessels.**

The Commissioner, after consultation with the Board, may adopt, ~~modify~~ modify, or revoke ~~such~~ any rules and regulations governing the construction, installation, repair, alteration, inspection, ~~use~~ use, and operation of boilers and pressure vessels as ~~he~~ the Commissioner deems appropriate to insure the safe operation and avoidance of injury to person or property from boilers and pressure vessels. The rules and regulations will conform as nearly as possible to the standards of the American Society of Mechanical Engineers and the amendments and interpretations ~~thereto, but to avoid unnecessary hardships that would result from requiring replacement of existing non-code tanks that meet minimum safety requirements where there is no danger to persons, such rules and regulations shall vary for hydropneumatic pressure vessels installed or operated by a community water system prior to January 1, 1986.~~of those engineering standards.

The procedure for the adoption, ~~modification~~ modification, or revocation of ~~such~~ the rules and regulations shall be ~~the same as that contained within~~ in accordance with ~~the Administrative Procedure Act of North Carolina as the same appears in~~ Chapter 150B of the General ~~Statutes.~~Statutes, the Administrative Procedure Act."

SECTION 7. G.S. 95-69.15 reads as rewritten:

"**§ 95-69.15. Classification of inspectors; qualifications; examinations; certificates of competency; inspector's commission.**

(a) There shall be three types of inspectors authorized to conduct inspections and report their findings to the ~~Director~~ Chief Inspector under this Article:

(1) Boiler and Pressure Vessel ~~Inspector.~~ Inspector or Deputy Inspector. – Shall be a qualified ~~individual~~ individual, employed by the Department of Labor and appointed by the Commissioner, to assist in conducting inspections under this Article and report on the suitability of boilers and pressure vessels so ~~inspected;~~inspected.

(2) Special ~~Inspector.~~ Inspector or Insurance Inspector. – Shall be a qualified individual regularly employed by an insurance company authorized to insure in this State against injury to person ~~and/or~~ or property or both from explosions and accidents involving boilers and pressure ~~vessels;~~vessels. Special Inspectors shall not include employees of private contract inspection agencies.

(3) Owner-User Inspectors. – Shall be a qualified individual employed on a full-time basis by a company operating ~~boilers or~~ pressure vessels for its own use and not for resale, and maintains an established inspection program for periodic inspection of ~~boilers and~~ pressure vessels owned or used by that company and where such inspection program is under the supervision of one or more engineers having qualifications satisfactory to the Commissioner.

(b) Inspector's Commission. – Any company authorized to insure in this State against loss to person or property as a result of an explosion or accident involving boilers and pressure vessels or operating boilers ~~and/or~~ or pressure vessels or both for its own use and not for resale, may apply for the issuance of an inspector's commission for an individual within its employ who has a ~~certificate of competency.~~commission from the National Board.

A North Carolina commission authorizes an inspector to make inspections on boilers and pressure vessels and report on the suitability of said boilers and pressure vessels to the ~~Director.~~ Chief Inspector. Those inspectors holding commissions as special inspectors shall be limited to making inspections on boilers and pressure vessels insured by their employer. Owner-user inspectors shall be limited to conducting inspections on boilers and pressure vessels operated by their respective employers.

A person seeking a commission from this State to conduct in-service inspections of boilers and pressure vessels must take and pass an examination on this Article and the rules adopted pursuant to this Article prior to receiving the commission. Any person who has had a commission in this State but who has been inactive for more than one year must take or retake and pass the State examination before conducting further in-service inspections of boilers and pressure vessels.

(c) ~~Qualifications for~~ Certificates of Competency. – Certificates of competency may be issued by the Chief Inspector to those persons who take and pass a National Board commissioning examination administered by the Board. ~~To be entitled to a certificate of competency, as one of the above type inspectors, an individual must:~~

~~(1) Have passed an examination provided and administered by the Board; or~~

~~(2) Have passed an examination and been certified in a state having rules and regulations substantially similar to those effective within North Carolina; or~~

~~(3) Hold a certificate of competency of the National Board of Boiler and Pressure Vessel Inspectors; and~~

~~(4) Continue in the employ of the company requesting the certificate of competency from the Board.~~"

SECTION 8. G.S. 95-69.16 reads as rewritten:

"**§ 95-69.16. Inspection certificate required.**

All boilers and pressure vessels subject to the provisions of this Article shall be inspected by ~~an authorized~~ a commissioned inspector. The Commissioner may determine both the frequency and the method of inspection. In determining the frequency of inspection, the Commissioner shall give due consideration to the hazard involved and the need for the protection of the public. The method of inspection must provide an adequate procedure to insure the safety of individuals likely to be injured by an explosion or accident involving a boiler or pressure vessel.

No boiler or pressure vessel may be operated without an inspection certificate, except pressure vessels being operated under an owner-user provision where administrative procedures of equal safety and competency have been approved by the

Board and Commissioner. No more than ~~60~~ 90 days grace period may be granted beyond the certificate expiration date."

SECTION 9. G.S. 95-69.17 reads as rewritten:

"**§ 95-69.17. ~~Administrative and judicial review of decisions.~~Noncomplying devices; appeal.**

~~(a) A final decision to suspend or revoke an inspector's commission or inspection certificate shall be made in accordance with Chapter 150B of the General Statutes.~~

~~(b) A final decision to deny an application for a certificate of competency or to refuse to issue or renew an inspection certificate shall be made in accordance with Chapter 150B of the General Statutes. In a contested case under this subsection, the decision of the Director shall not be stayed pending administrative review.~~

~~(c) Article 4 of Chapter 150B of the General Statutes governs judicial review of a final decision in a contested case.~~

(a) If the Commissioner determines that a boiler or pressure vessel is subject to the provisions of this Article and that the operation of the boiler or pressure vessel is exposing the public to an unsafe condition likely to result in serious personal injury or property damage, the Commissioner may immediately order in writing that the use of the boiler or pressure vessel be stopped or limited until the Commissioner determines that the boiler or pressure vessel has been made safe for operation.

(b) If the Commissioner determines that the provisions of this Article or the rules adopted pursuant to this Article have not been complied with, the Commissioner may refuse to issue or renew or may revoke, suspend, or amend an inspection certificate.

(c) Whenever action is taken under this section, the affected party shall be given notice of the availability of an administrative hearing and of judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act."

SECTION 10. G.S. 95-69.18 reads as rewritten:

"**§ 95-69.18. ~~Inspection certificates required; misrepresentation as inspector.~~Operation without inspection certificate; operation not in compliance with this Article; operation after nonissuance or revocation of certificate.**

~~It shall be unlawful for any person, firm, partnership, association or corporation to operate or use any boiler or pressure vessel in this State, and to which this Article applies, without a valid inspection certificate issued by the North Carolina Department of Labor. Any person, firm, partnership, association or corporation found to be operating or using a boiler or pressure vessel without a valid inspection certificate shall be guilty of a Class 3 misdemeanor which may include a fine of one thousand dollars ($1,000).~~

~~Any person who knowingly and willfully misrepresents himself as an authorized inspector in North Carolina, shall be guilty of a Class 2 misdemeanor.~~

(a) No person may operate or permit to be operated any boiler or pressure vessel subject to the provisions of this Article without a valid inspection certificate unless the absence of a valid inspection certificate is the result of the Commissioner's failure to inspect the device.

(b) No person may operate or permit to be operated any boiler or pressure vessel subject to the provisions of this Article other than in accordance with this Article and the rules adopted pursuant to this Article.

(c) No person may operate or permit to be operated any boiler or pressure vessel subject to the provisions of this Article after the Commissioner has refused to issue or has revoked the inspection certificate for the boiler or pressure vessel."

SECTION 11. Article 7A of Chapter 95 of the General Statutes is amended by adding a new section to read:

"**§ 95-69.19. Violations; civil penalties; appeals.**

(a) Any person who violates G.S. 95-69-18(a) or (b) (Operation without inspection certificate; operation not in accordance with Article or rules and regulations) shall be subject to a civil penalty not to exceed two hundred fifty dollars ($250.00) for each day each boiler or pressure vessel is so operated or used.

(b) Any person who violates G.S. 95-69-18(c) (Operation after refusal to issue or after revocation of inspection certificate) shall be subject to a civil penalty not to exceed five hundred dollars ($500.00) for each day any such boiler or pressure vessel is so operated or used.

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

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

(e) The Commissioner may file in the office of the clerk of the superior court of the county where the violation occurred or where the person against whom a civil penalty has been ordered resides, or if a corporation is involved in the county where the corporation maintains its principal place of business, a certified copy of a final order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed upon appeal. Upon filing of the final order, the clerk of superior court shall enter judgment in accordance with the order and notify the parties. The judgment shall have the same force and effect as a judgment by the superior court of the General Court of Justice."

SECTION 12. Article 7A of Chapter 95 of the General Statutes is amended by adding a new section to read:

"**§ 95-69.20. Violations; criminal penalties.**

(a) Any person who knowingly and willfully misrepresents himself as an authorized inspector administering or enforcing the provisions of this Article or the rules adopted pursuant to this Article shall be guilty of a Class 2 misdemeanor.

(b) Any person knowingly making a material and false statement, representation or certification in any application, record, report, plan, or any other document filed or

required to be maintained pursuant to this Article or the rules adopted pursuant to this Article shall be guilty of a Class 2 misdemeanor."

SECTION 13. G.S. 95-107 reads as rewritten:

"**§ 95-107. Assessment and collection of fees; certificates of safe operation.**

The assessment of the fees adopted by the Commissioner pursuant to ~~G.S. 95-110.5 and G.S. 95-111.4~~ G.S. 95-69.11, 95-110.5, and 95-111.4 shall be made against the owner or operator of the equipment and may be collected at the time of inspection. If the fees are not collected at the time of inspection, the Department must bill the owner or operator of the equipment for the amount of the fee assessed for the inspection of the equipment and the amount assessed is payable by the owner or operator of the equipment upon receipt of the bill. Certificates of safe operation may be withheld by the Department of Labor until such time as the assessed fees are collected."

SECTION 14. G.S. 95-108 reads as rewritten:

"**§ 95-108. Disposition of fees.**

All fees collected by the Department of Labor pursuant to ~~G.S. 95-110.5 and G.S. 95-111.4~~ G.S. 95-69.11, 95-110.5, and 95-111.4 shall be deposited with the State Treasurer and shall be used exclusively for inspection and certification purposes."

SECTION 15. G.S. 95-25.5(i) reads as rewritten:

"(i) ~~Youths~~ Youth under 18 years of age employed by their ~~parents~~ parent, guardian, or other person standing in loco parentis are exempt from all provisions of this section, except for all of the following:

(1) The certificate requirements of subsection (a) of this section.

(2) The prohibition from hazardous or detrimental occupations of subsection (b) of this section.

(3) The prohibitions of subsection (j)(2) of this section if the youths only work at the establishment when another employee at least 21 years of age is in charge of and present at the licensed premises."

SECTION 16. G.S. 95-25.8 reads as rewritten:

"**§ 95-25.8. Withholding of wages.**

~~An employer may withhold or divert any portion of an employee's wages when:~~

~~(1) The employer is required or empowered to do so by State or federal law, or~~

~~(2) The employer has a written authorization from the employee which is signed on or before the payday for the pay period from which the deduction is to be made indicating the reason for the deduction. Two types of authorization are permitted:~~

~~a. When the amount or rate of the proposed deduction is known and agreed upon in advance, the authorization shall specify the dollar amount or percentage of wages which shall be deducted from one or more paychecks, provided that if the deduction is for the convenience of the employee, the employee shall be given a reasonable opportunity to withdraw the authorization;~~

~~b. When the amount of the proposed deduction is not known and agreed upon in advance, the authorization need not specify a~~

~~dollar amount which can be deducted from one or more paychecks, provided that the employee receives advance notice of the specific amount of any proposed deduction and is given a reasonable opportunity to withdraw the authorization before the deduction is made.~~

(a) An employer may withhold or divert a portion of an employee's wages when:

(1) The employer is required or empowered by State or federal law; or

(2) The employer has a written authorization from the employee which is signed on or before the payday(s) for the pay period(s) from which the deduction is to be made indicating the reason for the deduction, and the actual dollar amount or percentage of wages which shall be deducted from one or more paychecks. Provided, such authorization cannot be granted prior to the occurrence of the event for which the deduction is to be made. If the withholding or diversion of wages owed is made for the convenience of the employee, the employee shall be given a reasonable opportunity to withdraw the authorization before the deduction is made.

(b) In addition to complying with the requirements in subsection (a), of this section, an employer may withhold or divert a portion of an employee's wages for cash shortages, inventory shortages, or loss or damage to an employer's property only after giving the employee written notice of the amount to the deducted seven days prior to the payday on which the deduction is to be made, except that when a separation occurs the seven-day notice is not required. Any withholdings or diversions of an employee's wages pursuant to this subsection are considered to be for the employer's benefit, and thus are subject to the limitations provided in subsection (c) of this section.

(c) In addition to the requirements of subsections (a) and (b) of this section, the withholding or diversion of wages owed for the employer's benefit must comply with the following requirements:

(1) In non-overtime workweeks, an employer may reduce wages to the minimum wage level.

(2) In overtime workweeks, employers may reduce wages to the minimum wage level for non-overtime hours.

(3) No reductions may be made during overtime work hours.

(d) Withholding or diversion of wages owed, for the convenience of employees, must be made pursuant to this section, but are not limited in the amounts to be withheld."

SECTION 17. G.S. 95-25.9 is repealed.

SECTION 18. G.S. 95-25.10 is repealed.

SECTION 19. G.S. 95-25.11 reads as rewritten:

"**§ 95-25.11. Employers' remedies preserved.**

~~(a) The provisions of G.S. 95-25.8, G.S. 95-25.9, and G.S. 95-25.10 do not apply if criminal process has issued against the employee, if the employee has been indicted, or if the employee has been arrested pursuant to Articles 17, 20, and 32 of Chapter 15A~~

~~of the General Statutes for a charge incident to a cash shortage, inventory shortage, or damage to an employer's property.~~

~~If the employee is not found guilty, then the amount deducted shall be reimbursed to the employee by the employer.~~

~~(b)~~ Nothing in this Article shall preclude an employer from bringing a civil action in the General Court of Justice to collect any amounts due the employer from the employee."

SECTION 20. G.S. 95-25.12 reads as rewritten:

"**§ 95-25.12. Vacation ~~pay.~~pay plans.**

No employer is required to provide vacation pay plans for employees. However, if an employer provides ~~vacation~~ these promised benefits for employees, the employer shall give all vacation time off or payment in lieu of time off in accordance with the company policy or practice. Employees shall be notified in accordance with G.S. 95-25.13 of any policy or practice which requires or results in loss or forfeiture of vacation time or pay. Employees not so notified are not subject to such loss or forfeiture."

SECTION 21. G.S. 95-25.13(3) reads as rewritten:

"(3) Notify ~~its~~ employees, in writing or through a posted notice maintained in a place accessible to its employees, ~~of~~ at least 24 hours prior to any changes in promised ~~wages prior to the time of such changes except that wages~~ wages. Wages may be retroactively increased without the prior notice required by this subsection; and".

SECTION 22. G.S. 95-25.15(a) reads as rewritten:

"(a) The Commissioner or his designated representative shall have the power and authority to enter any place of employment and gather such facts as are essential to determine whether or not the employer is covered by any provision of this Article.

With respect to any provision of this Article under which the employer is covered, the Commissioner or ~~his~~ the Commissioner's designated representative may inspect such places and such records, make transcriptions of any and all such records, question employees and investigate such facts, conditions, practices, or matters as are necessary to determine whether the employer has violated said provision of this Article.

With respect to the provisions of G.S. 95-25.6 through 95-25.12 (Wage Payment) as those provisions apply to persons covered by the Fair Labor Standards Act, the Commissioner or his designated representative shall have no authority under this subsection unless the Commissioner or his designated representative has received a complaint from an employee of the covered establishment.~~establishment, and then shall investigate that specific complaint only.~~"

SECTION 23. G.S. 95-25.17 reads as rewritten:

"**§ 95-25.17. Wage and Hour Division established.**

~~The State Employment Standards Division within the North Carolina Department of Labor is renamed the Wage and Hour Division. The Commissioner shall reappoint the Director of the State Employment Standards Division as the Director of the Wage and Hour Division and shall reappoint such other employees as he deems necessary to assist him in administering the provisions of this Article.~~ The Commissioner of Labor is

charged with enforcement of this Article. The Commissioner shall appoint a Wage and Hour Director and any other employees the Commissioner deems necessary for enforcement of this Article. The Commissioner shall continue to prescribe the powers, duties, and responsibilities of the Director and employees engaged in the administration of this Article."

SECTION 24. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 768

Committee Substitute Favorable 5/9/05

Short Title: 2005 Omnibus Labor Law Changes.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND OTHER CHANGES TO THE UNIFORM BOILER AND PRESSURE VESSEL ACT OF NORTH CAROLINA AND THE WAGE AND HOUR ACT OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-69.9 reads as rewritten:

"**§ 95-69.9. Definitions.**

(a) The term "board" shall mean the North Carolina Board of Boiler and Pressure Vessel ~~Rules;~~Rules.

(b) The term "boiler" shall mean a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum ~~for use externally to itself~~ by the direct or indirect application of ~~heat from the combustion of fuels, or from electricity or nuclear energy. This~~ heat. The term "boiler" shall also include fired units for heating or vaporizing liquids other than water where these units ~~are separate from processing systems and~~ are complete within ~~themselves;~~themselves.

(c) The term "Commissioner" shall mean the North Carolina Commissioner of ~~Labor;~~Labor.

~~(d) The term "Director" shall mean the individual appointed by the Commissioner to hold the office of Director of the Boiler and Pressure Vessel Division within the Department of Labor;~~

(e) The term "inspection certificate" or "certificate of inspection" shall mean certification by the ~~Director~~ Chief Inspector that a boiler or pressure vessel is in compliance with the rules and regulations adopted under this ~~Article;~~Article.

(f) The term "inspector's commission" shall mean a written authorization by the Commissioner for a person who has met the qualifications set out in this Article to conduct inspections of boilers and pressure ~~vessels;~~vessels.

(g) The term "pressure vessel" shall mean a vessel in which the pressure is obtained from an indirect source or by the application of heat from an indirect source or a direct source, other than those included within the term "boiler".

(h) The term "Chief Inspector" shall mean the individual appointed by the Commissioner to hold the office of Chief of the Boiler Safety Bureau within the Department of Labor. The Chief Inspector serves as the North Carolina member on the National Board of Boiler and Pressure Vessel Inspectors.

(i) The term "Deputy Inspector" shall mean any Boiler and Pressure Vessel Inspector who is employed by the Department of Labor and is subordinate to the Chief Inspector.

(j) The term "National Board" shall mean the National Board of Boiler and Pressure Vessel Inspectors.

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

SECTION 2. G.S. 95-69.10 reads as rewritten:

"**§ 95-69.10. Application of Article; exemptions.**

(a) This Article shall apply to all boilers and pressure vessels constructed, used, or designed for operation in this State including all new and existing installations which are operated in connection with business buildings, institutional buildings, industrial buildings, assembly buildings, educational buildings, public residential buildings, recreation buildings, other public buildings, and water supplies. This Article shall also apply to boilers and hot water supply tanks, and heaters located in hotels, motels, tourist courts, camps, cottages, resort lodges, and similar places whenever the owner or operator advertises in any manner for transit patronage, or solicits such business for temporary abode by transit patrons.

(b) This Article shall not apply to:

(1) Boilers and pressure vessels owned ~~and/or~~ or operated by the federal ~~government.~~government, unless the agency in question has asked for coverage by this Article.

(2) Pressure vessels used for transportation or storage of compressed gases when constructed in compliance with the specifications of the United States Department of Transportation and when charged with gas marked, maintained, and periodically requalified for use, as required by appropriate regulations of the United States Department of Transportation.

(3) Portable pressure vessels used for agricultural purposes only or for pumping or drilling in an open field for water, gas or coal, gold, talc, or other minerals and metals.

(4) Boilers and pressure vessels which are located in private residences or in apartment houses of less than six families.

(5) Pressure vessels used for transportation or storage of liquified petroleum gas.

(6) Air tanks located on vehicles licensed under the rules and regulations of other state authorities operating under rules and regulations substantially similar to those of this State and used for carrying passengers or freight within interstate commerce.

(7) Air tanks installed on right-of-way of railroads and used directly in the operation of trains.

(8) ~~Pressure vessels that do not exceed five cubic feet in volume and 250 PSIG pressure; or one and one-half cubic feet in volume and 600 PSIG pressure; or an inside diameter of six inches with no limitations on pressure.~~Any of the following pressure vessels that do not exceed the listed limitations if the vessel is not equipped with a quick actuating closure:

a. Five cubic feet in volume and 250 psig.

b. Three cubic feet in volume and 350 psig.

c. One and one-half cubic feet in volume and 600 psig.

d. An inside diameter of six inches with no limitation on pressure.

(9) Pressure vessels operating at a working pressure not exceeding 15 ~~PSIG pressure.~~psig.

(10) Pressure vessels with a nominal water capacity ~~of~~ not exceeding 120 gallons ~~or less~~ and containing water under pressure at ~~ambient temperature,~~ temperatures not exceeding 120°F, including those containing air, the compression of which serves as a cushion.

(11) Boilers and pressure vessels on railroad steam locomotives that are subject to federal safety regulations.

(12) Repealed by Session Laws 1985, c. 620, s. 2.

(13) Coil-type hot water supply boilers, generally referred to as steam jennies, where the water can flash into steam when released directly to the atmosphere through a manually operated nozzle and where adequate safety relief valves and controls are installed on them, provided none of the following limitations are exceeded:

a. There is no drum, header, or other steam space.

b. No steam is generated within the coil.

c. Maximum 1 inch tube size.

d. Maximum 3/4 inch nominal pipe size.

e. Maximum 6 gallon nominal water storage capacity.

f. Water temperature of ~~350 degrees fahrenheit.~~350°F.

(14) Pressure vessels containing water at a temperature not exceeding 110 degrees fahrenheit except that this provision shall not exclude hydropneumatic pressure vessels from regulation.

(15) An air tank that does not exceed eight cubic feet in volume that is installed on a service vehicle.

(16) Autoclaves in medical offices and hospitals that are less than five cubic feet in volume, even if they are equipped with a quick actuating closure.

(17) Coil-type hot water supply boilers of the instantaneous type where adequate safety relief valves and controls are installed if none of the following limitations are exceeded:
a. There is no drum, header, or other steam space.
b. No steam is generated within the coil.
c. Maximum one-inch tube size.
d. Maximum three-quarter-inch nominal pipe size.
e. Maximum six-gallon nominal water storage capacity.
f. Water temperature not to exceed 250°F.
g. Maximum heat input does not exceed 400,000 Btu/hr or 110 kW.
h. Maximum pressure of 260 psig.

(18) Toy boilers, if all of the following apply:
a. The water containing volume of the boiler is less than one quart.
b. The operating pressure does not exceed 15 psig.
c. The maximum outside diameter of the shell is no greater than six inches.
d. The boiler is manually fired by solid fuels.

(19) Pressure vessels associated with electrical apparatus in electrical switchyards if the pressure vessels have proper pressure relief devices.

(20) Carbon dioxide tanks used in beverage dispensing service.

(c) The construction and inspection requirements established by the Department of Labor shall not apply to hot water supply boilers which are directly fired with oil, gas or electricity, or hot water supply tanks heated by steam or any other indirect means, which do not exceed any of the following limitations:

(1) Heat input of 200,000 ~~BTU HR;~~Btu/hr or 58.6 kW.

~~(2) Water temperature of 200 degrees F;~~

(3) Nominal water capacity of 120 ~~gallons;~~gallons.

provided that they are equipped with ASME Code and National Board certified safety relief valves.

(d) The construction requirements established by the Department of Labor shall not apply to pressure vessels installed in this State prior to December 31, 1981, that:

(1) Are of one-piece, ~~forged construction and have no weldments;~~unwelded, forged construction;

(2) Are constructed before January 1, 1981, and operating or could be operated, under the laws of any state or Canadian Province that has adopted one or more sections of the ASME Code;

(3) Are transferred into this State without a change of ownership; and

(4) Are determined by the ~~Director~~ Chief Inspector to be constructed under standards substantially equivalent to those established by the department at the time of transfer;

provided that they are equipped with ASME Code and National Board certified safety relief valves.

(e) The construction requirements established by the Department of Labor shall not apply to pressure vessels installed in this State prior to December 31, 1984, that:

(1) Are manufactured from gray iron casting material, as specified by the American Society for Testing and Materials, (ASTM) 48-60T/30;

(2) Are constructed before December 31, 1967, and operating or could be operated, under the laws of any state or Canadian Province that has adopted one or more sections of the ASME Boiler and Pressure Vessel Code;

(3) Are transferred into this State without a change of ownership; and

(4) Are determined by the ~~Director~~ Chief Inspector to be constructed under standards substantially equivalent to those established by the department at the time of transfer;

provided that they are equipped with ASME Code and National Board certified safety relief valves.

(f) The construction requirements established by the Department of Labor shall not apply to hydropneumatic tanks installed or operated by a community water system prior to January 1, 1986."

SECTION 3. G.S. 95-69.11 reads as rewritten:

"**§ 95-69.11. Powers and duties of Commissioner.**

The Commissioner of Labor is hereby charged, directed, and empowered:

(1) To adopt, modify, or revoke rules governing the construction, operation, and use of boilers and pressure vessels, including, where necessary, requirements for fencing to prevent unauthorized persons from coming in contact with boilers and pressure vessels or the systems they are connected to.

(2) ~~To supervise the office of the Director of Boiler and Pressure Vessel Division.~~To delegate to the Chief Inspector any powers, duties, and responsibilities that the Commissioner determines will best serve the public interest in the safe operation of boilers and pressure vessels, and to supervise the Chief Inspector in the performance of those duties.

(3) To enforce rules adopted under authority of this Article.

(4) To inspect boilers and pressure vessels covered under this Article.

(5) To issue inspection certificates to those boilers and pressure vessels found in compliance with this Article.

(6) To enjoin violations of this Article in the civil and criminal courts of this State.

(7) To keep adequate records of the type, dimensions, age, conditions, pressure allowed upon, location, and date of the last inspection of all boilers and pressure vessels to which this Article applies.

(8) To require such periodic reports from inspectors, owners, and operators of boilers and pressure vessels as he deems appropriate in carrying out the purposes of this Article.

(9) To have free access, without notice, to any location in this State, during reasonable hours, where a boiler or pressure vessel is being

built, installed, or operated for the purpose of ascertaining whether such boiler or pressure vessel is built, installed, or operated in accordance with the provisions of this Article.

(10) To investigate serious accidents involving boilers and pressure vessels to determine the causes of the accidents, and to have full subpoena powers in conducting the investigation.

(11) To establish reasonable fees for the inspection and issuance of inspection certificates for boilers and pressure vessels that are in use.

(12) To establish reasonable fees for the examination and certification of inspectors.

(13) To appoint qualified individuals to the Board of Boiler and Pressure Vessel Rules.

(14) To perform inspections and audits relating to the construction and repair of boilers and pressure vessels and to establish and collect fees for these activities.

(15) To order the payment of civil penalties provided by this section.

(16) To require that before any boiler or pressure vessel that is subject to this Article is transferred into the State, or is moved from one location to another within the State, the owner or the owner's authorized agent shall file with the Commissioner a written notice of intent to do so and the type of device involved and provide a copy of the specifications, previous inspection documents, or other information that the Commissioner deems necessary to determine whether the boiler or pressure vessel is in compliance with the provisions of this Article and the rules adopted under this Article."

SECTION 4. G.S. 95-69.12 reads as rewritten:

"**§ 95-69.12. ~~Office of Director of Boilers and Pressure Vessels Division created; powers and duties.~~Boiler Safety Bureau established.**

~~There is hereby created the office of Director of the Boiler and Pressure Vessel Division within the North Carolina Department of Labor. The person holding this office shall assist the Commissioner in carrying out the provisions of this Article in accordance with the provisions of Chapter 126 of the General Statutes. The Director is charged with the responsibility for the administration of this Article on a day-to-day basis.~~

~~The Director shall be primarily responsible for the inspection of boilers and pressure vessels subject to this Article and for the issuance of inspection certificates for those boilers and pressure vessels found suitable. He shall also be responsible for the collection of fees for the inspection of boilers and pressure vessels and transmitting the same to the State Treasurer, where they shall be held in a special account to cover the operating expenses of the Division.~~

There is established a Boiler Safety Bureau within the Department of Labor. The Commissioner shall appoint a Chief Inspector of the Boiler Safety Bureau and any other employees that the Commissioner deems necessary to assist the Chief Inspector in administering the provisions of this Article and the rules adopted under this Article."

SECTION 5. G.S. 95-69.13 reads as rewritten:

"**§ 95-69.13. Board of Boiler and Pressure Vessels Rules created; appointment, terms, compensation and duties.**

(a) There is hereby created the North Carolina Board of Boiler and Pressure Vessels Rules consisting of nine members appointed by the ~~Commissioner, of which three shall be appointed for a term of one year, three for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years. At the expiration of their respective terms of office, their successors shall be appointed for terms of five years each.~~ Commissioner for a term of five years each. Of these nine appointed members, one shall be a representative of the owners and users of steam boilers within this State, one a representative of boiler manufacturers within this State, one a representative of boilermakers within this State who has had not less than five years' practical experience as a boilermaker, one shall be a representative of the owners or users of pressure vessels within the State, one shall be a representative of the pressure vessel manufacturers within the State, one a representative of ~~a~~ boiler inspection and insurance ~~company~~ companies authorized to insure boilers and pressure vessels within the State, one a representative of the ~~operating steam engineers~~ antique boiler owners and operators in this State, one a contractor holding a Group I North Carolina Heating License, and one a mechanical engineer on the faculty of a recognized engineering college or a licensed professional engineer having boiler and pressure vessel experience. The Commissioner of Labor shall serve as ~~chairman.~~chair. The Chief Inspector shall serve on the Board and in the absence of the Commissioner shall serve as chair.

(b) The Board shall meet at least twice annually and shall be responsible for:

(1) Studying and proposing rules and regulations, for adoption, modification or revocation by the Commissioner, governing the construction, installation, inspection, repair, alteration, use and operation of boilers and pressure vessels in this State. The rules and regulations so formulated shall conform as nearly as possible to the standards of the American Society of Mechanical ~~Engineers and amendments and interpretations thereto made and approved by the council of the Society.~~Engineers.

(2) Devise and ~~administer~~ proctor examinations covering this Article and the rules adopted under this Article to applicants seeking a ~~certificate of competency as~~ commission as inspectors of boilers and pressure vessels in this State.

(2a) Act as proctors during the administration of the National Board commissioning examination.

(3) Issue, suspend, or revoke inspector's ~~commission to~~ commissions as inspectors of boilers and pressure vessels within this State. Whenever action is taken under this section to suspend or revoke a commission, the affected party shall be given notice of the availability of an administrative hearing and of judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act.

(c) The members of the Board shall serve without salary but shall be paid a subsistence and travel allowance as established in accordance with Chapter 138 of the General Statutes."

SECTION 6. G.S. 95-69.14 reads as rewritten:

"**§ 95-69.14. Rules and regulations governing the construction, operation and use of boilers and pressure vessels.**

The Commissioner, after consultation with the Board, may adopt, ~~modify~~ modify, or revoke ~~such~~ any rules and regulations governing the construction, installation, repair, alteration, inspection, ~~use~~ use, and operation of boilers and pressure vessels as ~~he~~ the Commissioner deems appropriate to insure the safe operation and avoidance of injury to person or property from boilers and pressure vessels. The rules and regulations will conform as nearly as possible to the standards of the American Society of Mechanical Engineers and the amendments and interpretations ~~thereto, but to avoid unnecessary hardships that would result from requiring replacement of existing non-code tanks that meet minimum safety requirements where there is no danger to persons, such rules and regulations shall vary for hydropneumatic pressure vessels installed or operated by a community water system prior to January 1, 1986.~~ of those engineering standards.

The procedure for the adoption, ~~modification~~ modification, or revocation of ~~such~~ the rules and regulations shall be ~~the same as that contained within~~ in accordance with ~~the Administrative Procedure Act of North Carolina as the same appears in~~ Chapter 150B of the General ~~Statutes.~~ Statutes, the Administrative Procedure Act."

SECTION 7. G.S. 95-69.15 reads as rewritten:

"**§ 95-69.15. Classification of inspectors; qualifications; examinations; certificates of competency; inspector's commission.**

(a) There shall be three types of inspectors authorized to conduct inspections and report their findings to the ~~Director~~ Chief Inspector under this Article:

(1) Boiler and Pressure Vessel ~~Inspector.~~ Inspector or Deputy Inspector. – Shall be a qualified ~~individual~~ individual, employed by the Department of Labor and appointed by the Commissioner, to assist in conducting inspections under this Article and report on the suitability of boilers and pressure vessels so ~~inspected;~~ inspected.

(2) Special ~~Inspector.~~ Inspector or Insurance Inspector. – Shall be a qualified individual regularly employed by an insurance company authorized to insure in this State against injury to person ~~and/or~~ or property or both from explosions and accidents involving boilers and pressure ~~vessels;~~ vessels. Special Inspectors shall not include employees of private contract inspection agencies.

(3) Owner-User Inspectors. – Shall be a qualified individual employed on a full-time basis by a company operating ~~boilers or~~ pressure vessels for its own use and not for resale, and maintains an established inspection program for periodic inspection of ~~boilers and~~ pressure vessels owned or used by that company and where such inspection program is under the supervision of one or more engineers having qualifications satisfactory to the Commissioner.

(b) Inspector's Commission. – Any company authorized to insure in this State against loss to person or property as a result of an explosion or accident involving boilers and pressure vessels or operating boilers ~~and/or~~ or pressure vessels or both for its own use and not for resale, may apply for the issuance of an inspector's commission for an individual within its employ who has a ~~certificate of competency.~~commission from the National Board.

A North Carolina commission authorizes an inspector to make inspections on boilers and pressure vessels and report on the suitability of said boilers and pressure vessels to the ~~Director.~~ Chief Inspector. Those inspectors holding commissions as special inspectors shall be limited to making inspections on boilers and pressure vessels insured by their employer. Owner-user inspectors shall be limited to conducting inspections on boilers and pressure vessels operated by their respective employers.

A person seeking a commission from this State to conduct in-service inspections of boilers and pressure vessels must take and pass an examination on this Article and the rules adopted pursuant to this Article prior to receiving the commission. Any person who has had a commission in this State but who has been inactive for more than one year must take or retake and pass the State examination before conducting further in-service inspections of boilers and pressure vessels.

(c) ~~Qualifications for~~ Certificates of Competency. – Certificates of competency may be issued by the Chief Inspector to those persons who take and pass a National Board commissioning examination administered by the Board. ~~To be entitled to a certificate of competency, as one of the above type inspectors, an individual must:~~

~~(1) Have passed an examination provided and administered by the Board; or~~

~~(2) Have passed an examination and been certified in a state having rules and regulations substantially similar to those effective within North Carolina; or~~

~~(3) Hold a certificate of competency of the National Board of Boiler and Pressure Vessel Inspectors; and~~

~~(4) Continue in the employ of the company requesting the certificate of competency from the Board.~~"

SECTION 8. G.S. 95-69.16 reads as rewritten:

"**§ 95-69.16. Inspection certificate required.**

All boilers and pressure vessels subject to the provisions of this Article shall be inspected by ~~an authorized~~ a commissioned inspector. The Commissioner may determine both the frequency and the method of inspection. In determining the frequency of inspection, the Commissioner shall give due consideration to the hazard involved and the need for the protection of the public. The method of inspection must provide an adequate procedure to insure the safety of individuals likely to be injured by an explosion or accident involving a boiler or pressure vessel.

No boiler or pressure vessel may be operated without an inspection certificate, except pressure vessels being operated under an owner-user provision where administrative procedures of equal safety and competency have been approved by the

Board and Commissioner. No more than ~~60~~ 90 days grace period may be granted beyond the certificate expiration date."

SECTION 9. G.S. 95-69.17 reads as rewritten:

"**§ 95-69.17. ~~Administrative and judicial review of decisions.~~Noncomplying devices; appeal.**

~~(a) A final decision to suspend or revoke an inspector's commission or inspection certificate shall be made in accordance with Chapter 150B of the General Statutes.~~

~~(b) A final decision to deny an application for a certificate of competency or to refuse to issue or renew an inspection certificate shall be made in accordance with Chapter 150B of the General Statutes. In a contested case under this subsection, the decision of the Director shall not be stayed pending administrative review.~~

~~(c) Article 4 of Chapter 150B of the General Statutes governs judicial review of a final decision in a contested case.~~

(a) If the Commissioner determines that a boiler or pressure vessel is subject to the provisions of this Article and that the operation of the boiler or pressure vessel is exposing the public to an unsafe condition likely to result in serious personal injury or property damage, the Commissioner may immediately order in writing that the use of the boiler or pressure vessel be stopped or limited until the Commissioner determines that the boiler or pressure vessel has been made safe for operation.

(b) If the Commissioner determines that the provisions of this Article or the rules adopted pursuant to this Article have not been complied with, the Commissioner may refuse to issue or renew or may revoke, suspend, or amend an inspection certificate.

(c) Whenever action is taken under this section, the affected party shall be given notice of the availability of an administrative hearing and of judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act."

SECTION 10. G.S. 95-69.18 reads as rewritten:

"**§ 95-69.18. ~~Inspection certificates required; misrepresentation as inspector.~~Operation without inspection certificate; operation not in compliance with this Article; operation after nonissuance or revocation of certificate.**

~~It shall be unlawful for any person, firm, partnership, association or corporation to operate or use any boiler or pressure vessel in this State, and to which this Article applies, without a valid inspection certificate issued by the North Carolina Department of Labor. Any person, firm, partnership, association or corporation found to be operating or using a boiler or pressure vessel without a valid inspection certificate shall be guilty of a Class 3 misdemeanor which may include a fine of one thousand dollars ($1,000).~~

~~Any person who knowingly and willfully misrepresents himself as an authorized inspector in North Carolina, shall be guilty of a Class 2 misdemeanor.~~

(a) No person may operate or permit to be operated any boiler or pressure vessel subject to the provisions of this Article without a valid inspection certificate unless the absence of a valid inspection certificate is the result of the Commissioner's failure to inspect the device.

(b) No person may operate or permit to be operated any boiler or pressure vessel subject to the provisions of this Article other than in accordance with this Article and the rules adopted pursuant to this Article.

(c) No person may operate or permit to be operated any boiler or pressure vessel subject to the provisions of this Article after the Commissioner has refused to issue or has revoked the inspection certificate for the boiler or pressure vessel."

SECTION 11. Article 7A of Chapter 95 of the General Statutes is amended by adding a new section to read:

"**§ 95-69.19. Violations; civil penalties; appeals.**

(a) Any person who violates G.S. 95-69-18(a) or (b) (Operation without inspection certificate; operation not in accordance with Article or rules and regulations) shall be subject to a civil penalty not to exceed two hundred fifty dollars ($250.00) for each day each boiler or pressure vessel is so operated or used.

(b) Any person who violates G.S. 95-69-18(c) (Operation after refusal to issue or after revocation of inspection certificate) shall be subject to a civil penalty not to exceed five hundred dollars ($500.00) for each day any such boiler or pressure vessel is so operated or used.

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

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

(e) The Commissioner may file in the office of the clerk of the superior court of the county where the violation occurred or where the person against whom a civil penalty has been ordered resides, or if a corporation is involved in the county where the corporation maintains its principal place of business, a certified copy of a final order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed upon appeal. Upon filing of the final order, the clerk of superior court shall enter judgment in accordance with the order and notify the parties. The judgment shall have the same force and effect as a judgment by the superior court of the General Court of Justice."

SECTION 12. Article 7A of Chapter 95 of the General Statutes is amended by adding a new section to read:

"**§ 95-69.20. Violations; criminal penalties.**

(a) Any person who knowingly and willfully misrepresents himself as an authorized inspector administering or enforcing the provisions of this Article or the rules adopted pursuant to this Article shall be guilty of a Class 2 misdemeanor.

(b) Any person knowingly making a material and false statement, representation or certification in any application, record, report, plan, or any other document filed or

required to be maintained pursuant to this Article or the rules adopted pursuant to this Article shall be guilty of a Class 2 misdemeanor."

SECTION 13. G.S. 95-107 reads as rewritten:

"**§ 95-107. Assessment and collection of fees; certificates of safe operation.**

The assessment of the fees adopted by the Commissioner pursuant to ~~G.S. 95-110.5 and G.S. 95-111.4~~ G.S. 95-69.11, 95-110.5, and 95-111.4 shall be made against the owner or operator of the equipment and may be collected at the time of inspection. If the fees are not collected at the time of inspection, the Department must bill the owner or operator of the equipment for the amount of the fee assessed for the inspection of the equipment and the amount assessed is payable by the owner or operator of the equipment upon receipt of the bill. Certificates of safe operation may be withheld by the Department of Labor until such time as the assessed fees are collected."

SECTION 14. G.S. 95-108 reads as rewritten:

"**§ 95-108. Disposition of fees.**

All fees collected by the Department of Labor pursuant to ~~G.S. 95-110.5 and G.S. 95-111.4~~ G.S. 95-69.11, 95-110.5, and 95-111.4 shall be deposited with the State Treasurer and shall be used exclusively for inspection and certification purposes."

SECTION 15. G.S. 95-25.5(i) reads as rewritten:

"(i) ~~Youths~~ Youth under 18 years of age employed by their ~~parents~~ parent, guardian, or other person standing in loco parentis are exempt from all provisions of this section, except for all of the following:

(1) The certificate requirements of subsection (a) of this section.

(2) The prohibition from hazardous or detrimental occupations of subsection (b) of this section.

(3) The prohibitions of subsection (j)(2) of this section if the youths only work at the establishment when another employee at least 21 years of age is in charge of and present at the licensed premises."

SECTION 16. G.S. 95-25.8 reads as rewritten:

"**§ 95-25.8. Withholding of wages.**

~~An employer may withhold or divert any portion of an employee's wages when:~~

~~(1) The employer is required or empowered to do so by State or federal law, or~~

~~(2) The employer has a written authorization from the employee which is signed on or before the payday for the pay period from which the deduction is to be made indicating the reason for the deduction. Two types of authorization are permitted:~~

~~a. When the amount or rate of the proposed deduction is known and agreed upon in advance, the authorization shall specify the dollar amount or percentage of wages which shall be deducted from one or more paychecks, provided that if the deduction is for the convenience of the employee, the employee shall be given a reasonable opportunity to withdraw the authorization;~~

~~b. When the amount of the proposed deduction is not known and agreed upon in advance, the authorization need not specify a~~

~~dollar amount which can be deducted from one or more paychecks, provided that the employee receives advance notice of the specific amount of any proposed deduction and is given a reasonable opportunity to withdraw the authorization before the deduction is made.~~

(a) An employer may withhold or divert any portion of an employee's wages when required or empowered by State or federal law.

(b) Withholding or diversion of wages owed, for the employer's benefit, must be made in accordance with the employer's written policies, and the employer must comply with the following requirements:

(1) In nonovertime workweeks, an employer may reduce wages to the minimum wage level.

(2) In overtime workweeks, employers may reduce wages to the minimum wage level for nonovertime hours.

(3) No reductions may be made during overtime work hours.

(c) Withholding or diversion of wages owed, for the convenience of employees, must be made in accordance with the employer's written policy and are not limited in the amounts to be withheld."

SECTION 17. G.S. 95-25.9 is repealed.

SECTION 18. G.S. 95-25.10 is repealed.

SECTION 19. G.S. 95-25.11 reads as rewritten:

"**§ 95-25.11. Employers' remedies preserved.**

~~(a) The provisions of G.S. 95-25.8, G.S. 95-25.9, and G.S. 95-25.10 do not apply if criminal process has issued against the employee, if the employee has been indicted, or if the employee has been arrested pursuant to Articles 17, 20, and 32 of Chapter 15A of the General Statutes for a charge incident to a cash shortage, inventory shortage, or damage to an employer's property.~~

~~If the employee is not found guilty, then the amount deducted shall be reimbursed to the employee by the employer.~~

~~(b)~~ Nothing in this Article shall preclude an employer from bringing a civil action in the General Court of Justice to collect any amounts due the employer from the employee."

SECTION 20. G.S. 95-25.12 reads as rewritten:

"**§ 95-25.12. Vacation ~~pay.~~pay plans.**

No employer is required to provide ~~vacation~~ time off with pay, vacation, or paid time off plans for employees. However, if an employer provides ~~vacation~~ these promised benefits for employees, the employer shall give all ~~vacation~~paid time off or payment in lieu of time off in accordance with the company policy or practice. Employees shall be notified in accordance with G.S. 95-25.13 of any policy or practice which requires or results in loss or forfeiture of ~~vacation time or pay.~~ paid time off. Employees not so notified are not subject to such loss or forfeiture."

SECTION 21. G.S. 95-25.13(3) reads as rewritten:

"(3) Notify ~~its~~ employees, in writing or through a posted notice maintained in a place accessible to its employees, ~~of~~ at least 24 hours prior to any

changes in promised ~~wages prior to the time of such changes except that wages~~ wages. Wages may be retroactively increased without the prior notice required by this subsection; and".

SECTION 22. G.S. 95-25.15(a) reads as rewritten:

"(a) The Commissioner or his designated representative shall have the power and authority to enter any place of employment and gather such facts as are essential to determine whether or not the employer is covered by any provision of this Article.

With respect to any provision of this Article under which the employer is covered, the Commissioner or ~~his~~ the Commissioner's designated representative may inspect such places and such records, make transcriptions of any and all such records, question employees and investigate such facts, conditions, practices, or matters as are necessary to determine whether the employer has violated said provision of this Article.

With respect to the provisions of G.S. 95-25.6 through 95-25.12 (Wage Payment) as those provisions apply to persons covered by the Fair Labor Standards Act, the Commissioner or his designated representative shall have no authority under this subsection unless the Commissioner or his designated representative has received a complaint from an employee of the covered establishment.~~establishment, and then shall investigate that specific complaint only.~~"

SECTION 23. G.S. 95-25.17 reads as rewritten:

"**§ 95-25.17. Wage and Hour Division established.**

~~The State Employment Standards Division within the North Carolina Department of Labor is renamed the Wage and Hour Division. The Commissioner shall reappoint the Director of the State Employment Standards Division as the Director of the Wage and Hour Division and shall reappoint such other employees as he deems necessary to assist him in administering the provisions of this Article.~~ The Commissioner of Labor is charged with enforcement of this Article. The Commissioner shall appoint a Wage and Hour Director and any other employees the Commissioner deems necessary for enforcement of this Article. The Commissioner shall continue to prescribe the powers, duties, and responsibilities of the Director and employees engaged in the administration of this Article."

SECTION 24. This act is effective when it becomes law.

HOUSE BILL 768:
2005 Omnibus Labor Law Changes.-AB

BILL ANALYSIS

Committee:	House Finance	**Date:**	May 17, 2005
Introduced by:	Rep. Howard	**Summary by:**	Drupti Chauhan Staff Attorney, revised by Martha Walston, Committee Counsel
Version:	Second Edition H768-CSLA-10		

SUMMARY: House Bill 768 makes changes to the Uniform Boiler and Pressure Vessel Act and the Wage and Hour Act. The bill was given a favorable report in House Judiciary II. The proposed committee substitute makes changes to sections 16 and 20 of the bill.

CURRENT LAW: The Uniform Boiler and Pressure Vessel Act of North Carolina (Boiler Act) regulates all boilers and pressure vessels constructed, used, or designed for operation in NC. The Wage and Hour Act of North Carolina addresses issues such as minimum wages, overtime, wage payment, youth employment, and wage disputes.

BILL ANALYSIS: Sections 1-14 of the bill make changes to the Boiler Act and other conforming changes. Sections 15-24 make changes to the Wage and Hour Act.

Boiler Act Changes

Section 1: This section amends definitions in the Boiler Act including defining Chief Inspector and Deputy Inspector. The Chief Inspector is the individual appointed by the Commissioner of Labor to hold the office of the Chief of the Boiler Safety Bureau at the NC Department of Labor (NC DOL). The term "Deputy Inspector" means any Boiler or Pressure Vessel Inspector employed by the NC DOL.

Section 2: This section makes technical and other changes to the applications and exemptions section of the Boiler Act.

- Include coverage for boilers and pressure vessels owned or operated by the federal government if the agency in question asks for coverage under the Boiler Act
- Exempt pressure vessels that do not exceed certain listed limitations if the vessel is not equipped with a quick actuating closure
- Add exemptions from the Boiler Act for the following:
    - Air tanks that do not exceed eight cubic feet in volume and installed on a service vehicle;
    - Autoclaves in medical offices and hospitals that are less than five cubic feet in volume;
    - Coil-type hot water supply boilers of the instantaneous type with adequate safety relief valves and controls if specified limitations are not exceeded;
    - Toy boilers if specified requirements are met;
    - Pressure vessels associated with electrical apparatus;
    - Carbon dioxide tanks used in beverage dispensing service.

- Amends the applicability of the construction and inspection requirements established by the NC DOL for hot water supply boilers and for pressure vessels that were installed in the State prior to December 31, 1981
- Adds an exemption from the construction requirements established by the NC DOL for hydropneumatic tanks installed or operated by a community water system prior to January 1, 1986

Section 3: This section modifies the powers and duties of the Commissioner of Labor (Commissioner) by allowing the Commissioner to determine and delegate to the Chief Inspector any powers, duties, and responsibilities concerning the operation of boilers and pressure vessels. The Commissioner would be required to supervise the Chief Inspector.

The Commissioner would also be given the power to:

- Order the payment of civil penalties for violations; and
- Require that before any boiler or pressure vessel subject to the Boiler is brought into the State or moved within the State, the owner of the device files an intent of such a move and provides a copy of the specifications, previous inspection documents or other information the Commissioner deems necessary to determine compliance with the Boiler Act and the rules adopted under the Boiler Act.

Section 4: This section eliminates the office of the Director of the Boiler and Pressure Vessel Division at the NC DOL and creates the Boiler Safety Bureau (Bureau) within the NC DOL. The Commissioner would appoint the Chief Inspector of the Bureau and any other employees that the Commissioner deems necessary to administer the statutes and rules of the Boiler Act.

The section would eliminate the current requirement that the fees collected from the inspection of boilers and pressure vessels be transmitted to the State Treasurer where they are held in a special account to cover the operating expenses of the Boiler and Pressure Vessel Division.

Section 5: This section makes changes to the North Carolina Board of Boiler and Pressure Vessel Rules (Board). It replaces the requirement that one member be a representative of the operating steam engineers and replaces it with a representative of antique boiler owners and operators. It further provides that the Chief Inspector of the Bureau shall serve on the Board and in the absence of the Commissioner, the Chief Inspector shall serve as the chair of the Board.

The section adds that the Board members are to serve as proctors during the administration of the National Board commissioning examination. Moreover, language is added that whenever action is taken by the Board to suspend or revoke a commission of an inspector of boilers and pressure vessels, the affected party is to be given notice of the availability of an administrative hearing and judicial review under Chapter 150B of the General Statute (the Administrative Procedure Act).

Section 6: This section eliminates discretionary language in the requirement that the rules and regulation conform as closely as possible to the standards of the American Society of Mechanical Engineers and make other technical changes in the statute.

Section 7: This section specifies that a boiler pressure inspector or deputy inspector must be a person employed by the NC DOL. Moreover, the section provides although a special inspector or insurance inspector must be a qualified individual regularly employed by an insurance company, a special inspector may not be an employee of private contract inspection agencies.

This section would add the requirement that a person seeking a NC commission to conduct in-service inspections of boilers and pressure vessels must pass an examination on the Boiler Act and rules adopted under it before receiving a commission. Any person who has had a NC commission but has been inactive for more than one year must take or retake the State examination before conducting further in-service inspections of boiler and pressure vessels.

Section 8: No boiler or pressure vessel may be operated without a valid inspection certificate except for certain pressure vessels being operated under an owner-user provision that have been approved by the Board and Commissioner. This section would extend the grace period for operating a boiler or pressure vessel beyond the certificate expiration date from 60 to 90 days.

Section 9: This section rewrites the provisions governing administrative and judicial review of decisions. The current law allows for decisions to be made in accordance with the APA and decisions of the Director of the Boiler and Pressure Vessel Division are not stayed during the pending administrative review. Under the proposed modification, if the Commissioner determines that a boiler or pressure vessel subject to regulation is exposing the public to unsafe condition that is likely to result in serious personal injury or property damage, the Commissioner may order that its use be stopped or limited until the Commissioner determines that it has been made safe for operation. The Commissioner would have the authority to refuse to issue or to renew or may revoke, suspend, or amend inspection certificates. Judicial review would be available in accordance with the APA.

Section 10: This section rewrites the violations provisions of the Boiler Act. No person can operate a boiler or pressure vessel subject to the Boiler Act without a valid inspection certificate unless the absence of such a valid certificate is because the Commissioner has not inspected the device. In addition, no person can operate or permit to be operated any boiler or pressure vessel subject to the Boiler Act if the Commissioner has refused to issue or has revoked the inspection certificate for the boiler or pressure vehicle.

Section 11: This section adds a new civil penalties section to the Boiler Act with the following penalties:

- No more than $250.00 per day fine for each boiler or pressure vessel operated without an inspection certificate or not in accordance with the rules of the Boiler Act;
- No more than $500.00 per day fine for operating a boiler or pressure vessel after the refusal to issue or revocation of a an inspection certificate;

In determining the amount of the penalty, the Commissioner is to consider the appropriateness of the penalty with respect to the size of business, the gravity of the violation, good faith and record of previous violations.

The decision of the Commissioner is final unless the person charged with the violation files an appeal in accordance with the APA within 15 days of the Commissioner's decision.

The Commissioner may file the copy of the final order in the office of the clerk of superior court in the county where the violation occurred, the person lives, or the corporation maintains its principal place of office. The clerk of superior court is to enter judgment in accordance with the order and notify the parties.

Section 12: This section changes the criminal penalties for violation of the Boiler Act. Any person who knowingly and willfully misrepresents himself as an authorized inspector administering or enforcing the provisions of the Act is guilty of a Class 2 misdemeanor. Any person that knowingly makes a material

and false statement, representation or certification in application, record, report, plan, or any other document filed or required to be maintained is guilty of a Class 2 misdemeanor.

Sections 13-14: These sections amend the statutes related to the assessment, collections and disposition of fees to include the new civil fees provided for above.

Wage and Hour Act Changes

Section 15: This section expands the exemption from the Wage and Hour Act for youth under the age of 18 that are employed by their parents to include guardians or other persons standing in loco parentis.

Sections 16-19: Withholding of Wages

Current Law: An employer has the ability to withhold or divert any portion of a employee's wages when the employer is required to do so by State or federal law or the employer has written authorization from the employee. Two types of authorization from the employee are permitted:

- A specified dollar amount when the amount or rate of the proposed deduction is known
- Blanket authorization when the amount of the proposed deduction is not known

An employer cannot deduct cash shortages, inventory shortages, or loss or damage to an employer's property from an employee's wages unless the employee is given notice of the amount to be deducted.

Cash shortages, inventory shortages, loss or damage to an employer's property and deposits by the employee for the user of the employer can be deducted from the employee's paycheck or recouped by other methods, however, the deductions or recoupments may not reduce wages below the following amounts:

- 85% of the minimum and overtime wages if wages determined under the Wage and Hour Act;
- The minimum and overtime wages required under the Fair Labor Standards Act when wages are determined under that Act; or
- An amount equivalent to the amount of minimum and overtime wages which would be required under the Wage and Hour Act when the wages are not determined either by the Wage and Hour Act nor the Fair Labor Standards Act

These wage withholding provisions do not apply if criminal charges have been brought against the employee for cash shortages, inventory shortages, or damages to the employer's property. Civil actions may also be brought against the employee.

Analysis of Sections 16-19: These sections rewrite the withholding provisions in the following manner. An employer may withhold or divert any portion of an employee's wages when required or empowered by State or federal law, or when the employer has written authorization from the employee stating the reason for the deduction and the amount which shall be deducted. An employer may also withhold or divert a portion of an employee's wages for cash shortages, inventory shortages, or loss or damage to an employer's property only after giving the employee written notice of the amount to be deducted seven days prior to the payday on which the deduction is made.

If wages are withheld for the employer's benefit, the withholding must be made in accordance with the above requirements and the employer must comply with the following:

- Wages may be reduced to minimum wage level during non-overtime workweeks;

- Wages may be reduced to the minimum wage level for non-overtime hours during overtime workweeks;
- No reductions may be made during overtime work hours.

If wages are withheld for the employee's benefit, then the withholding must be in accordance with the employer's written policies and are not limited in the amounts to be withheld.

An employer may bring a civil action to collect amount due to the employer.

Section 20: This section makes technical changes to the vacation pay statute by including the term "pay plans".

Section 21: This section modifies the notice requirement that employers must give employees before changing promised wages. The section requires that employees be given at least 24 hours prior notice.

Section 22: This section broadens the Commissioner's authority to investigating wage complaints from employees. Currently the statute limits the Commissioner to investigating only the specific complaint filed by an employee. The bill would delete that limitation.

Section 23: This section clarifies that the Commissioner of Labor is charged with the enforcement of the Wage and Hour Act.

EFFECTIVE DATE: The bill would become effective when it becomes law.

H0768e2-SMRQ

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 13

EDITION No. _____

H. B. No. 768 - PCSLA-10 DATE 5/17/2005

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

COMMITTEE SUBSTITUTE _____

(Rep.) Howard
Sen.)

1 moves to amend the bill on page 13, line 12

2 ( ) WHICH CHANGES THE TITLE

3 by Rewriting the line to read:

4

5 "deducted from one or more paychecks. The

6 employee shall have the right to withhold

7 such ~~this~~ authorization. Provided, such authorization

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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 14

EDITION No. _____

H. B. No. 768 - CSLA - 10 DATE 5/17/2005

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

COMMITTEE SUBSTITUTE _____

(Rep.) Hackney
Sen.)

1 moves to amend the bill on page 15, line 6

2 ( ) WHICH CHANGES THE TITLE

3 by Rewriting the line to read

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5 "Section 24. This act becomes effective

6 October 1, 2005."

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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

HB 768 A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL AND OTHER CHANGES TO THE UNIFORM BOILER AND PRESSURE VESSEL ACT OF NORTH CAROLINA AND THE WAGE AND HOUR ACT OF NORTH CAROLINA.

☒ With a favorable report as to the committee substitute bill 2, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1421*

Short Title:	Randleman Dam Bonds.	(Public)
Sponsors:	Representatives Jones, Adams, Jeffus, Wiley (Primary Sponsors); Culp and Harrison.	
Referred to:	Finance.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE MUNICIPALITIES TO ISSUE REVENUE BONDS FOR THE CONSTRUCTION OF WATER TREATMENT AND RELATED FACILITIES TO BE OWNED BY A WATER AND SEWER AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 159-83 is amended by adding a new subsection to read:

"(f) In addition to the powers they may now or hereafter have, each municipality has the power to finance and refinance the cost of water treatment facilities and related transmission mains, and their expansion and improvement, all or some portion of which may be located on land leased from an authority created under the provisions of G.S. 162A-3.1, for a term not less than the term of the obligations issued or otherwise incurred for the purpose. The authority may own or operate (or both) such facilities and mains and may contract with one or more of the political subdivisions that are members of the authority for operation of all or portions thereof. For this purpose, each municipality has, in addition to the powers it has under applicable law, all the powers under G.S. 162A-6(b) of an authority created under G.S. 162A-3.1, and the political subdivisions that are members of the authority and that contract with such municipality for a supply of water and a portion of the capacity of the water treatment facilities and mains shall have all the powers of political subdivisions under G.S. 162A-6(b) and G.S. 162A-16 contracting with an authority created under G.S. 162A-3.1. This provision is supplemental to the other provisions of this Article."

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

North Carolina General Assembly

House Committee on Finance

Minutes

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May 24, 2005

The House Committee on Finance met on Tuesday, May 24, 2005 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, Luebke, McComas and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives Blackwood, Bordsen, Capps, Carney, Dockham, Faison, Folwell, Glazier, Hackney, Jones, McGee, Rayfield, Underhill, Vinson, Walend, and Wiley. Also present were Sergeant-at-Arms Bill Freeman, Fred Hines, Dusty Rhodes, and Walter Spell. Staff persons present included Cindy Avrette, Rodney Bizzell, Brenna Erford, Ashley Huffstetler, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairwoman Alexander called the meeting to order at 8:33 am and recognized the three (3) pages present: Ellen Carter of Davie County, sponsored by Representative Howard; Chris Evans of Durham County, sponsored by Representative Miller; and Mark Hamblin of Beaufort County, sponsored by Representative Brubaker.

The first bill under the Committee's consideration was **SB 525 – NASCAR HALL OF FAME FINANCING** (see **attachment 3**). Chairwoman Alexander first recognized Senator Clodfelter who explained that the bill authorizes the City of Charlotte and Mecklenburg County to increase the occupancy tax from 6% to 8%. The amount raised by the tax increase would be allocated toward the construction of the $137.5 million NASCAR Hall-of-Fame if the City of Charlotte is chosen as the host for the project. The bill includes a provision that only allows Mecklenburg County to authorize the tax increase if NASCAR chooses Charlotte to host the Hall-of-Fame facility. Following the explanation, Representative Howard inquired about whether or not additional administrative fees would be required in order to administer the increased tax. Senator Clodfelter was recognized and responded by stating that no additional administrative fees would be required by the occupancy tax increase, and he also pointed out that the bill has received strong support from the Charlotte Hotel Association. Chairwoman Alexander then recognized John Tate, the Finance Chair of the Steering Committee for the NASCAR Hall-of-Fame, who stated that this bill is an attempt to seize "a once in a lifetime opportunity for North Carolina". He stated that a Hall-of-Fame would be highly beneficial to the economy of the Charlotte region. Mr. Tate also spoke briefly about the fierce competition that exists to host the Hall-of-Fame (from both Atlanta, Georgia and Kansas City, Missouri) and the need for North Carolina to show its strong support for the project. Chairwoman Alexander then recognized Jim Hobbs from the NC Hospitality Association to speak in opposition to the bill. Mr. Hobbs provided a handout to the committee members (see materials in attachment 3) and stated that with an occupancy tax increase, Charlotte will have the highest travel taxes on the East Coast and North Carolina will share this reputation.

Mohammed Jenatian, the President of the Greater Charlotte Hospitality and Tourism Alliance, was recognized next to speak in support of the bill. He stated that Senate Bill 525 has one hundred percent support from the hotel industry in the Charlotte region. Jerry Hancock from the NC Travel and Tourism Coalition was recognized last and stated that the project is important to Charlotte and North Carolina. However, he said that he held serous concerns about the financing of the project and hoped that the authorization of an occupancy tax exceeding six percent (6%) would only occur for this one special project. Chairwoman Alexander then recognized Representative Rayfield who asked how many people would likely visit the Hall-of-Fame. Senator Clodfelter was recognized and reported that between four and five hundred thousand people would likely visit each year. Ron Kimble, the Assistant City Manager of Charlotte was also recognized and pointed out that the State would receive an additional $3.1 million in additional revenues annually coming from additional income, sales, and gasoline taxes. Representative Daughtridge was recognized and suggested that the $3.1 million figure was an underestimate since NASCAR fans would likely spend at least three to four days visiting in the Charlotte and surrounding area. Chairwoman Alexander then recognized Representative Luebke who spoke of his support for the bill saying that this was a one-time opportunity for North Carolina. Representative Gibson was recognized and said that this is an exceptional project and deserves an exception to the normal occupancy tax standard, especially since the group being taxed is supporting the bill. Chairwoman Alexander then recognized Representative Carney who moved that Senate Bill 525 be given a favorable report by the Committee. Seeing no further discussion, Chairwoman Alexander called the motion to a vote and it carried by consent.

The next bill considered by the Committee was **HB 470 – TRANSYLVANIA OCCUPANCY TAX** (see **attachment 4**). Chairwoman Alexander first recognized Representative Howard who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Chairwoman Alexander then recognized Representative Walend who explained that House Bill 470 authorizes Transylvania County to increase the occupancy tax rate to a level not to exceed six percent (6%). (The current rate of the tax was 3%.) Representative Walend also reported that the bill brings the Transylvania Occupancy Tax into compliance with the uniform provisions established by the House Finance Committee. She further stated that the bill had received a favorable recommendation from the House Finance Subcommittee on Occupancy Tax. Chairwoman Alexander then recognized Representative Womble who, as Chair of the Occupancy Tax Subcommittee, moved that House Bill 470 be given a favorable report by the Committee. As there was no further debate, Chairwoman Alexander called the motion to a vote, and it carried without objection.

The final bill considered by the Committee was **HB 1261 - WIRELESS TELEPHONE SERVICE** (see **attachment 5**). Chairwoman Alexander recognized Representative Underhill who explained that the bill reduced the monthly wireless Enhanced 911 charge from eighty to seventy cents. She stated that the bill also changed the allocation of funds coming from the wireless 911 charges and established staggered terms for the members of the Wireless 911 Board. Representative Wainwright was then recognized and inquired about the acronyms, CMRS and PSAP, used in the bill summary. Chairwoman Alexander recognized Richard Taylor, the Executive Director of the Wireless Communication Board, who defined CMRS as "Command Mobile Radio Service" and PSAP as "Public Safety Answering Point". Representative Howard was then recognized and asked about the limited use of 911 funds by municipalities. Mr. Taylor was recognized and responded that the 911 service funds are to be used for developing and maintaining technology in the receipt of 911 calls. Cindy Avrette from Research was recognized and added that Representative Howard's inquiry is more related to another bill and not House Bill 1261. Richard Taylor also noted that much of Representative Howard's concerns were more pertinent to the "land-line" 911 fees collected by the State. Chairwoman Alexander then recognized Representative Glazier who moved that House Bill

1261 be given a favorable report by the Committee. Seeing no further discussion, Chairwoman Alexander called the motion to a vote, and it carried by consent.

As there was no further business before the Committee, Chairwoman Alexander then adjourned the meeting at 9:39 am.

Respectfully submitted,

Representative Martha Alexander
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. Senate Bill 525 (and related materials)
4. House Bill 470 (and related materials)
5. House Bill 1261 (and related materials)
6. House Bill 945 (and related materials) (REMOVED FROM CALENDAR)
7. House Bill 1051 (and related materials) (REMOVED FROM CALENDAR)
8. House Bill 1084 (and related materials) (REMOVED FROM CALENDAR)
9. House Bill 1340 (and related materials) (REMOVED FROM CALENDAR)

AGENDA

ATTACHMENT 1

House Finance Committee

May 24, 2005
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Alexander

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard

Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order

Introduction of Pages

Bills:

HB 470 TRANSYLVANIA OCCUPANCY TAX *Rep. Walend*

HB 1051 MACON-JACKSON REGIONAL AIRPORT AUTHORITY
Reps. Haire & West

HB 1084 EXPUNGE NONVIOLENT FELONIES/YOUNG OFFENDERS
Reps. Bordsen & Crawford

HB 1261 WIRELESS TELEPHONE SERVICE *Rep. Underhill*

HB 1340 REESTABLISH BOXING COMMISSION *Rep. Faison*

SB 525 NASCAR HALL OF FAME FINANCING *Sen. Clodfelter*

Adjournment

ATTACHMENT 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — May 24, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
M. JENATIAN	HOSPITALITY & TOURISM ALLIANCE
Ron Kimble	City of Charlotte
Betty Jurnas	Bank of America
John Tate	Wachovia Bank
Jim Blackburn	NC Association of County Commissioners
Alice Garland	NC DOC
W. Burton	Capitol Group
Carolyn Payne	Edwards & Webb
John Bowdish	ADA
Jim Bone	Bone & Assoc.

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Richard Taylor	NC Wireless 911 Board
	NCRA
Jerry Olson	Bell Pro Drug
Roz Savitt	NCCA
Jessica Sage	NCFPC
Luis Lluberas	Intern, NCLeg
PE Powell	AOC
Rich Webb	NCA Intern
Michelle Bank	SGR.com
Susan Vadaani	NallCrutch
John Webb	

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — May 24, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Casandra Skinner	NCCCPS
Mike Robertson	NCACLE
Roger Hutchings	NCACLE
Leslie R Tripp	Wireless 911 Board
Ronald G Adams	NC Wireless 911 Bd.
Doris Weaver	NC CWA Political Council
Stephanie Dorko	Charlotte Chamber
Ryland Pond	Intern - Rep. Carney
Holly Howington	intern, Rep. Eddins
Chad Essick	Poyner & Spruill, LLP
Boyd Cauble	City of Charlotte

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — May 24, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lan Wescott	Sprint
Andy Romant	NCLM
Steve Metcalf	Energy United
[signature]	SA
JE Hobbs	HANC / NCHLA
Jeff Walston	YAIO

CORRECTED NOTICE:
HB 945 – REMOVED

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, May 24, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 470 – TRANSYLVANIA OCCUPANCY TAX – Rep. Walend

~~**HB 945 – DURHAM OCCUPANCY TAX – Reps. Luebke, Michaux, Miller, & Wilkins**~~

HB 1051 – MACON-JACKSON REGIONAL AIRPORT AUTHORITY – Reps. Haire & West

HB 1084 – EXPUNGE NONVIOLENT FELONIES/YOUNG OFFENDERS – Reps. Bordsen & Crawford

HB 1261 – WIRELESS TELEPHONE SERVICE – Rep. Underhill

HB 1340 – REESTABLISH BOXING COMMISSION – Rep. Faison

Respectfully,
Representatives Alexander, Gibson, Howard,
Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **5:25 pm** on **May 23, 2005.**

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, May 24, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 470 – TRANSYLVANIA OCCUPANCY TAX – Rep. Walend

HB 945 – DURHAM OCCUPANCY TAX – Reps. Luebke, Michaux, Miller, & Wilkins

HB 1051 – MACON-JACKSON REGIONAL AIRPORT AUTHORITY – Reps. Haire & West

H[illegible]084 – EXPUNGE NONVIOLENT FELONIES/YOUNG OFFENDERS – Reps. Bordsen & Crawford

HB 1261 – WIRELESS TELEPHONE SERVICE – Rep. Underhill

HB 1340 – REESTABLISH BOXING COMMISSION – Rep. Faison

Respectfully,
Representatives Alexander, Gibson, Howard,
Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **10:40 am** on **May 19, 2005.**

_X_ Principal Clerk
_X_ Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 3

SENATE BILL 525
Finance Committee Substitute Adopted 5/18/05
Third Edition Engrossed 5/19/05

Short Title: NASCAR Hall of Fame Financing. (Local)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT RELATING TO NASCAR HALL OF FAME FINANCING.

Whereas, the General Assembly has, pursuant to Section 6(a) of Chapter 908 of the 1983 Session Laws, as amended by Chapters 821 and 922 of the 1989 Session Laws and S.L. 2001-402, previously authorized Mecklenburg County to levy an occupancy tax at a rate not to exceed 6%; and

Whereas, the General Assembly has not previously authorized any local government to levy an occupancy tax in excess of 6%; and

Whereas, the State of North Carolina and the City of Charlotte now have a "once-in-a-lifetime" opportunity to potentially locate a unique national tourism facility (i.e., the NASCAR Hall of Fame Museum) in Charlotte, North Carolina – a facility that will have a significant positive impact on the economy of the Charlotte region and the State of North Carolina; and

Whereas, in order to facilitate the financing of the capital costs of the NASCAR Hall of Fame Museum, the General Assembly is, for this unique situation and opportunity, willing to authorize a 2% occupancy tax that is in addition to the previously authorized 6% occupancy tax; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Occupancy tax. (a) Authorization and Scope. – Upon receiving written confirmation from the National Association of Stock Car Auto Racing, Inc., (NASCAR) that it will license or otherwise legally authorize the location of the NASCAR Hall of Fame Museum facility in Charlotte, North Carolina, the Mecklenburg County Board of Commissioners may levy a room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of any accommodation subject to the tax under Section 6 of Chapter 908 of the 1983 Session Laws, as amended by Chapter 821 of the 1989 Session Laws. The tax authorized by this section is in addition to any other State or local sales and use tax and any other State or local occupancy tax authorized by law.

SECTION 1.(b) Administration. – Except as otherwise provided in this act, a tax levied under this section shall be levied, administered, and collected as provided in Part IV of Chapter 908 of the 1983 Session Laws, as amended by Chapters 821 and 922 of the 1989 Session Laws and S.L. 2001-402. The penalties provided in Part IV of Chapter 908 of the 1983 Session Laws, as amended by Chapters 821 and 922 of the 1989 Session Laws and S.L. 2001-402, apply to a tax levied under this section.

SECTION 1.(c) Definitions. – The definitions in G.S. 105-164.3 and in Part IV of Chapter 908 of the 1983 Session Laws, as amended by Chapters 821 and 922 of the 1989 Session Laws and S.L. 2001-402, apply to this act insofar as they are not inconsistent with this act.

SECTION 1.(d) Relationship to the Sales and Use Tax Statutes. – The definitions in G.S. 105-164.3 shall apply to this act insofar as they are not inconsistent with the provisions of this act. All other provisions of Article 5 and Article 9 of Subchapter I, Chapter 105 of the General Statutes, as the same relate to the North Carolina Sales and Use Tax Act, shall be applicable to this act and administered by the local administrative authority unless the provisions are inconsistent with the provisions of this act. It is the intention of this act that the provisions of this act and the provisions of the North Carolina Sales and Use Tax Act, insofar as practicable, shall be harmonized. The provisions with respect to remedies and penalties applicable to the North Carolina Sales and Use Tax Act, as contained in Article 5 and Article 9, Subchapter I, Chapter 105 of the General Statutes, shall be applicable in like manner to the taxes authorized to be levied and collected under this act, to the extent that the same are not inconsistent with any provision of this act.

SECTION 1.(e) Repeal. – A tax levied under this act shall only be repealed in accordance with this subsection. The Mecklenburg County Board of Commissioners shall repeal the tax effective the earlier of July 1, 2038, or July 1 after the date of final satisfaction, by payment or other irrevocable defeasance, of any debt instruments or obligations that were issued by the City of Charlotte or a related special purpose entity in connection with the financing or refinancing of the NASCAR Hall of Fame Museum facility. Effective upon the repeal of the tax in accordance with this subsection, subsection (a) of this section is repealed, and any tax levied under that subsection shall be rescinded. Repeal of a tax levied under this act does not affect a liability for a tax that has attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

SECTION 1.(f) Distribution and Use of Proceeds. – The local administrative authority, acting on its own behalf or as agent for each taxing entity shall distribute the proceeds of the tax levied pursuant to this act to the City of Charlotte. The City of Charlotte shall use the proceeds only for the acquisition, construction, repair, maintenance, and financing of a NASCAR Hall of Fame Museum facility and an ancillary and adjacent NASCAR/convention center ballroom facility. The Charlotte Regional Visitors Authority shall have all the powers and duties enumerated in Section 5.23 of the Charter of the City of Charlotte (S.L. 2000-26 as amended by S.L. 2001-402 and S.L. 2004-14) with respect to facilities constructed pursuant to this act.

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

SENATE BILL 525:
NASCAR Hall of Fame Financing

BILL ANALYSIS

Committee:	House Finance	**Date:**	May 24, 2005
Introduced by:	Sen. Clodfelter	**Summary by:**	Cindy Avrette
Version:	Third Edition		Committee Counsel

SUMMARY: Senate Bill 525 does the following:

- ***It would authorize the Mecklenburg County Board of Commissioners to levy an additional 2% occupancy tax upon receiving written confirmation from NASCAR that it will locate the NASCAR Hall of Fame Museum facility in Charlotte. This would bring the occupancy tax rate to 8% in Mecklenburg. No other county or city in North Carolina currently has an occupancy tax rate in excess of 6%.***
- ***It would require the net proceeds of the additional 2% occupancy tax to be used only for the acquisition, construction, repair, maintenance, and financing of the NASCAR Hall of Fame Museum facility and an adjacent NASCAR convention center ballroom facility.***

CURRENT LAW: Mecklenburg County has the authority to levy a 6% occupancy tax. The net proceeds of the first 3% are distributed to the City of Charlotte to provide for convention center facilities. The net proceeds of the remainder are divided between the City of Charlotte and the following six towns in the county: Cornelius, Davidson, Huntersville, Matthews, Mint Hill, and Pineville. Generally, the remainder is required to be used for acquiring, constructing, financing, maintaining, operating, marketing, and promoting convention centers, civic centers performing arts centers, coliseums, auditoriums, and museums, for off-street parking for use in conjunction with these facilities, and for tourism and tourism-related programs and activities including art and cultural programs, events, and festivals.

Of the 74 counties and 65 cities authorized to levy a room occupancy tax, no locality currently has the authority to levy an occupancy tax in excess of 6%.

BILL ANALYSIS: Senate Bill 525 does the following:

Levy. – The bill authorizes Mecklenburg County to levy an additional 2% room occupancy tax upon receiving written confirmation from NASCAR that it will locate the NASCAR Hall of Fame Museum facility in Charlotte. The additional tax would be levied, administered, and collected in accordance with the procedures currently place for the existing 6% occupancy tax. With this authority, the total occupancy tax rate in Mecklenburg would be 8%.

Use. – The net proceeds of the additional 2% occupancy tax must be distributed to the City of Charlotte and used only for the acquisition, construction, repair, maintenance, and financing of a NASCAR Hall of Fame Museum facility and an ancillary and adjacent NASCAR convention center ballroom facility.

Repeal. – The bill provides that the Mecklenburg County Board of Commissioners must repeal the tax effective the earlier of July 1, 2038, or July 1 following the date of final satisfaction of all debt instruments or obligations issued by the City of Charlotte (or a related special purpose entity) in connection with the financing or refinancing of the NASCAR Hall of Fame Museum facility.

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

BACKGROUND: The North Carolina Travel and Tourism Coalition has a policy statement for legislation authorizing local occupancy taxes. Many of the principles contained in its statement are similar to the ones established by the House Finance subcommittee in 1993. Based upon this work, the House Finance Committee generally looks for the inclusion of several uniform provisions in the occupancy tax bills it considers:

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least ¾ of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: May 18, 2005

TO: Senator Clodfelter

FROM: Rodney Bizzell
Fiscal Research Division

RE: Senate Bill 525 (First Edition)

FISCAL IMPACT ($ in millions)

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund			No General Fund Impact		
Mecklenburg County	$5.8	$6.1	$6.4	$6.7	$7.0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Mecklenburg County

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:

The bill authorizes Mecklenburg County to levy an additional 2% room occupancy tax upon receiving written confirmation from NASCAR that it will locate the NASCAR Hall of Fame Museum facility in Charlotte. The additional tax would be levied, administered, and collected in accordance with the procedures currently in place for the existing 6% occupancy tax. With this authority, the total occupancy tax rate in Mecklenburg would be 8%.

The net proceeds of the additional 2% occupancy tax must be distributed to the City of Charlotte and used only for the acquisition, construction, repair, maintenance, and financing of a NASCAR Hall of Fame Museum facility and an ancillary and adjacent NASCAR convention center ballroom facility.

The bill provides that the additional 2% occupancy tax may be repealed, by resolution of the county board of commissioners, upon final satisfaction of all debt instruments or obligations issued by the City of Charlotte (or a related special purpose entity) in connection with the financing or refinancing of the NASCAR Hall of Fame Museum facility. The repeal would not become effective until July 1 following the date of final satisfaction.

ASSUMPTIONS AND METHODOLOGY:

Historically, Mecklenburg County's collections have been as follows:

Year	Amount	Each 1%
2001-02	$15,248,147	$2,541,357
2002-03	$15,774,948	$2,629,158
2003-04	$16,707,195	$2,784,532

Extending this trend suggests the following increase in total occupancy tax revenue as a result of a 2% increase in the rate:

Year	Amount	Each 1%
2005-06	$5,829,823	$2,914,911
2006-07	$6,103,307	$3,051,653
2007-08	$6,389,892	$3,194,946
2008-09	$6,689,792	$3,344,896
2009-10	$7,004,212	$3,502,106

SOURCES OF DATA: NC Department of Revenue; Mecklenburg County Finance Department

TECHNICAL CONSIDERATIONS: None

Tuesday, May 24, 2005

To: Members of the House Finance Committee
From: Hospitality Alliance of North Carolina
NC Hotel & Lodging Association

RE: Senate Bill 525 NASCAR Hall of Fame Financing

● **The City of Charlotte has demonstrated a reckless disregard** for managing its revenues from the occupancy tax and prepared food taxes authorized by the General Assembly. Charlotte's annual debt service for tourism capital projects and other required distributions will exceed available hospitality tax revenues by at least $12.9 million in FY 2005. Charlotte officials have confirmed these amounts are correct.

Revenues from Tourism Taxes FY 2005	**$33.6 Million**
Debt Service Obligations & Required Distributions	**$46.5 million**
Funds Deficit FY 2005	**($12.9 million)**

Each of the debt instruments for the $374.2 million outstanding bonds or installment contracts requires that one or more of the hospitality taxes authorized by the General Assembly be the sole source of annual revenues to fund the debt service. A report detailing these commitments is available to each member of this Finance Committee.

8% OCCUPANCY TAX + 7.5% SALES TAX = 15.5%

● The legislation before this committee today would authorize an additional 2% occupancy tax to be levied in Mecklenburg County raising the total tax on a hotel room to 15.5%, the **highest for any major city on the East Coast**.

EAST COAST CITIES:					
•Atlanta	15.0%	•Miami	13.0%	•Philadelphia	14.0%
•Washington	14.5%	•Baltimore	12.5%	•Charleston	12.9%
•New York	13.62%	•Richmond	13.0%	•Alexandria	10.25%
•Myrtle Beach	10.0%	•Columbia	10.0%	•Savannah	12.0%
•Orlando	10.0%	•Tampa	12.0%	•Boston	12.45%

● Supporters of the NASCAR Hall of Fame Museum should question how aggressively Charlotte will pursue the new museum given the current $12.9 million deficit and their need for additional revenues. It is important to understand that the City of Charlotte initially sought the tax increase whether or not they were chosen as the site for this national museum.

NCHLA and the Hospitality Alliance of North Carolina wishes to thank the House Finance Committee and all of the Members who have worked to maintain the 6% cap on this tax. We will continue to oppose any local effort to raise the occupancy tax above a rate of 6%.

Hospitality Alliance of North Carolina
603 Holden Street • Raleigh, NC 27604-1948 (919)-821-7125
Contact: Jim Hobbs

NASCAR Hall of Fame Project
Financial Plan
May 24, 2005

New 2% Hotel/Motel Tax and Existing Charlotte Convention Center Fund	$102.5 M
Private Sector Commitment	$ 15.0 M
Request from State of North Carolina	$ 20.0 M
Grand Total:	$ 137.5 M

- State of North Carolina stands to receive $3.1 M in new annual revenues from Hall of Fame economic impact
- Covers construction of a NASCAR Complex including the Hall of Fame and a companion NASCAR/Convention Center Ballroom
- City-owned facility on City-owned land paid for with City debt restricted for this purpose
- Complex to be operated by the General Assembly established Charlotte Regional Visitors' Authority
- Competition is fierce with Atlanta, Kansas City, Daytona Beach, and Richmond

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

SB 525 A BILL TO BE ENTITLED AN ACT RELATING TO NASCAR HALL OF FAME FINANCING.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H D

HOUSE BILL 470*
PROPOSED COMMITTEE SUBSTITUTE H470-CSSVx-14 [v.1]

4/26/2005 3:37:38 PM

Short Title: Transylvania Occupancy Tax. (Local)

Sponsors:

Referred to:

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW TRANSYLVANIA COUNTY TO INCREASE THE OCCUPANCY TAX RATE IN THAT COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Levy of Additional Occupancy Tax. – In addition to the tax authorized by Chapter 969 of the 1985 Session Laws, as amended by S.L. 1999-205, the Transylvania County Board of Commissioners may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under that Chapter. The levy, collection, administration, and repeal of the tax authorized by this act shall be in accordance with the provisions of Section 1 of Chapter 969 of the 1985 Session Laws, as amended by S.L. 1999-205. Transylvania County may not levy a tax under this act unless it also levies the tax authorized under Chapter 969 of the 1985 Session Laws.

SECTION 2. Use of Proceeds of Additional Tax. – Transylvania County shall use funds collected under this act only in accordance with Section 1(e) of Chapter 969 of the 1985 Session Laws, as amended by S.L. 1999-205 and this act.

SECTION 3. Section 1(e) of Chapter 969 of the 1985 Session Laws, as amended by S.L. 1999-205, reads as rewritten:

"(e) Use of Tax Revenue. Transylvania County ~~shall place revenue collected from a tax levied under this act in a special Travel and Tourism Fund. Revenue in this Fund may be used only to promote travel and tourism and for tourism-related expenditures in Transylvania County.~~ shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied under Chapter 969 of the 1985 Session Laws, as amended by S.L. 1999-205 and this act, and under Section 1 of this act to the Transylvania Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Transylvania County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

~~(1)~~(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in these activities.

~~(2)~~(3) Tourism-related expenditures. – Expenditures that, in the judgment of the governing authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a county by attracting tourists or business travelers to the county. The term includes tourism-related capital expenditures."

SECTION 4. Tourism Development Authority. – (a) Appointment and Membership. – The board of commissioners shall adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the occupancy tax in the county and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Transylvania County shall be the ex officio finance officer of the Authority.

SECTION 4.(b) Duties. – The Authority shall expend the net proceeds of the taxes levied under this act and under Chapter 969 of the 1985 Session Laws, as amended by S.L. 1999-205, for the purposes provided in Section 1(e) of Chapter 969 of the 1985 Session Laws, as amended. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

SECTION 4.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

SECTION 5. This act applies only to Transylvania County.

SECTION 6. This act is effective when it become law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 470*

Short Title:	Transylvania Occupancy Tax.	(Local)
Sponsors:	Representative Walend.	
Referred to:	Finance.	

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW TRANSYLVANIA COUNTY TO INCREASE THE OCCUPANCY TAX RATE IN THAT COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Levy of Additional Occupancy Tax. – In addition to the tax authorized by Chapter 969 of the 1985 Session Laws, as amended by S.L. 1999-205, the Transylvania County Board of Commissioners may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under that Chapter. The levy, collection, administration, and repeal of the tax authorized by this act shall be in accordance with the provisions of Section 1 of Chapter 969 of the 1985 Session Laws, as amended by S.L. 1999-205. Transylvania County may not levy a tax under this act unless it also levies the tax authorized under Chapter 969 of the 1985 Session Laws.

SECTION 2. Use of Proceeds of Additional Tax. – Transylvania County shall use funds collected under this act only in accordance with Section 1(e) of Chapter 969 of the 1985 Session Laws, as amended by S.L. 1999-205.

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

House Bill 470:
Transylvania Occupancy Tax

BILL ANALYSIS

Committee:	**Occupancy Tax Subcommittee**	**Sponsor:**	**Representative Walend**
Date:	April 19, 2004	**Analysis:**	Ashley Huffstetler
Version:	**PCS H470-CSSVx-14 v.1**		Staff Attorney

SUMMARY: ***The PCS for House Bill 470 authorizes Transylvania County to levy an additional 3% room occupancy tax. It also amends the Transylvania County occupancy tax legislation and brings it into full conformity with the occupancy tax guidelines.***

CURRENT LAW: Currently, Transylvania County levies a 3% room occupancy tax. The money is to be used to promote travel and tourism and for tourism related expenditures, but there is no fractional allocation. There also is no Tourism and Development Authority. The legislation does have some uniform definitions.

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. In several instances, the General Assembly has authorized both a county and a city within that county to impose an occupancy tax. The rate of tax, the use of the tax proceeds, the administration of the tax, and the body with the authority to determine how the tax proceeds will be spent vary considerably. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – G.S. 153A-155 and G.S. 160A-215. These provisions provide uniformity in the areas of levy, administration, collection, repeal, and penalties.

BILL ANALYSIS: The PCS to House Bill 470 authorizes Transylvania County to levy an additional room occupancy tax up to 3%. The proceeds must be remitted to a Tourism Development Authority (TDA), which must use two-thirds of the proceeds to promote travel and tourism and one-third for tourism-related expenditures. These administrative and use provisions conform to the uniform guidelines referenced above and detailed in the chart below:

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6%, and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism, and the remainder must be used for tourism-related expenditures.
Definitions – The terms "net proceeds," "promote travel and tourism," and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority, which has the authority to determine how the tax proceeds will be used and is created by a local ordinance. At least ½ of the members must be currently active in the promotion of travel and tourism in the city or county, and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 470 (First Edition)

SHORT TITLE: Transylvania Occupancy Tax.

SPONSOR(S): Representative Walend

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund		***No General Fund Impact***			
Transylvania Co.	**$206,865**	**$208,934**	**$211,023**	**$213,133**	**$215,264**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Transylvania County

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:
This bill allows Transylvania County to increase its occupancy tax rate from 3% to 6%.

ASSUMPTIONS AND METHODOLOGY: In 2003-2004, the 3% room tax in Transylvania County raised $202,793.

This bill doubles the rate to 6%. Historically, Transylvania County's collections have been as follows:

Year	Amount	Each 1%
1998-99	194,342	64,781
1999-00	215,542	71,847
2000-01	206,849	68,950
2001-02	198,554	66,185
2002-03	201,162	67,054
2003-04	202,793	67,598

Extending this trend suggests the following increase in total occupancy tax revenue as a result of the bill:

Year	Amount	Each 1%
2005-06	206,865	68,955
2006-07	208,934	69,645
2007-08	211,023	70,341
2008-09	213,133	71,044
2009-10	215,264	71,755

SOURCES OF DATA: North Carolina Department of Revenue, North Carolina Department of State Treasurer

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell

APPROVED BY: James D. Johnson, Director
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Official
Fiscal Research Division
Publication

DATE: May 18, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 470 A BILL TO BE ENTITLED AN ACT TO ALLOW TRANSYLVANIA COUNTY TO INCREASE THE OCCUPANCY TAX RATE IN THAT COUNTY.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1261

Committee Substitute Favorable 5/9/05

Short Title: Wireless Telephone Service. (Public)

Sponsors:

Referred to:

April 18, 2005

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS REGULATING WIRELESS TELEPHONE SERVICE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62A-21 reads as rewritten:

"**§ 62A-21. Definitions.**

As used in this Article:

...

(5) "CMRS provider" means a person or ~~entity~~ entity, facilities-based and nonfacilities-based, who is licensed by the FCC to provide CMRS service or is reselling CMRS service.

...

(7a) "GIS mapping" means the development of a computerized geographical display system of roads and structures where emergency response may be required.

...

(9) "Mobile set telephone number" means the number assigned to a CMRS ~~connection.~~connection, including the 10-digit number assigned to a CMRS mobile phone.

...

(11a) "Primary PSAP" means the first point of reception of a 911 call by a public safety answering point.

(12) "Pseudoautomatic number identification" or "Pseudo-ANI" means a wireless Enhanced 911 service capability that enables the automatic display of the number of the cell site or cell ~~face.~~ face and is used to identify the approximate location of a wireless caller.

...

(13a) "Shared resources" means any element that is used for both receiving wire line 911 calls and wireless 911 calls and is an eligible expense under G.S. 62A-8 and G.S. 62A-25.

(13b) "Subscriber" means a person who subscribes to a CMRS service or prepaid wireless service.

(14) "Wireless 911 system" means an emergency telephone system that provides the user of a CMRS connection the ability to reach a PSAP by dialing the digits ~~911.~~911 and complements a wireless Enhanced 911 system.

...

(15a) "Wireless Enhanced 911 State plan" means a document prepared, maintained, and updated by the Wireless 911 Board that provides for all aspects of the State's integrated wireless Enhanced 911 system, including the Board's determination of permitted uses of moneys from the Wireless Fund and the amounts disbursed from the Fund to CMRS providers and PSAPs.

...."

SECTION 2. G.S. 62A-22 reads as rewritten:

"**§ 62A-22. Wireless 911 Board.**

(a) There is created a Wireless 911 Board ("Board"), consisting of 13 members as follows:

(1) Two members appointed by the Governor, one upon the recommendation of the North Carolina League of Municipalities and one upon the recommendation of the North Carolina Association of County Commissioners;

(2) Five members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one of whom shall be a sheriff, three representing CMRS providers licensed to do business in North Carolina and one representing the North Carolina Chapter of the Association of Public Safety Communications Officials (APCO);

(3) Five members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one of whom shall be a chief of police, two representing CMRS providers licensed to do business in North Carolina, one representing local exchange carriers licensed to do business in North Carolina, and one representing the North Carolina Chapter of the National Emergency Number Association (NENA); and

(4) The State Chief Information Officer or the Chief Information Officer's designee, who shall serve as the chair.

A quorum of the Board shall consist of seven members. The Board shall meet upon the call of the chair.

(b) Each member shall serve a term of four years and may be appointed to no more than two successive terms. Members shall remain in office until their successors

are appointed and qualified. Vacancies ~~may~~ shall be filled in the same manner as the original appointment.

(b1) G.S. 14-234 shall apply to members, officers, and employees of the Board. Members, officers, and employees of the Board shall disclose any interest, direct or indirect, they have in any firm or corporation interested in contracting with the Board, and the nature of that interest shall be included in the Board's minutes. A member, officer, or employee of the Board shall not participate in decisions involving parties with whom they have a conflict of interest.

(b2) The Governor may remove any member for misfeasance, malfeasance, or nonfeasance in accordance with G.S. 143B-13(d).

...."

SECTION 3. Article 2 of Chapter 62A is amended by adding the following new section to read:

"**§ 62A-22.1. Powers and duties of the Board.**

The Wireless 911 Board shall have the following powers and duties:

(1) To levy a monthly wireless Enhanced 911 service charge on each CMRS connection. The service charge is not a tax.

(2) To make and enter into contracts and agreements necessary or incidental to the performance of its duties and powers under this Article, including purchase agreements that are paid with funds from the administrative fee allowed under G.S. 62A-26 and other moneys appropriated to or received by the Board for the wireless Enhanced 911 system.

(3) To accept gifts, grants, or other moneys for purposes of furthering the intent of this Article.

(4) To develop a comprehensive wireless Enhanced 911 telecommunications plan for communicating Enhanced 911 call information across networks and among PSAPs. In constructing and periodically updating the plan, the Board shall monitor trends and advances in wireless Enhanced 911 telecommunications technology, investigate and utilize development of other resources within the State as part of the wireless Enhanced 911 State plan, including GIS mapping and Voice over Internet Protocol (VoIP), and formulate strategies for the efficient and effective delivery of wireless Enhanced 911 telecommunications services.

(5) To provide or fund advisory services and training for PSAPs in accordance with policies and procedures established by the Board.

(6) To advocate for issues related to wireless Enhanced 911 system functions, features, and operations to improve the delivery of wireless Enhanced 911 services to residents of and visitors to the State.

(7) To take other necessary and proper action to implement the provisions of this Article."

SECTION 4. G.S. 62A-23 reads as rewritten:

"**§ 62A-23. Amount of service charge.**

(a) ~~The Board shall levy a monthly wireless Enhanced 911 service charge on each CMRS connection.~~ The rate of ~~such~~ the monthly wireless Enhanced 911 service charge shall ~~initially~~ be set at ~~eighty cents (80¢)~~seventy cents (70¢) per month per each CMRS connection beginning ~~October 1, 1998.~~October 1, 2005. The service charge shall have uniform application and shall be imposed throughout the State.

(b) The ~~service charge may be adjusted by the~~ Board may adjust the service charge ~~beginning July 1, 2000 and every two years thereafter.~~on July 1st of every even-numbered year. The Board is to set the service charge at such a rate as to ensure full recovery for CMRS providers and for primary PSAPs, over a reasonable period of time, of the costs allowed in G.S. 62A-25(b) and associated with developing and maintaining a wireless Enhanced 911 system. If necessary to ensure full recovery of costs for both CMRS providers and eligible primary PSAPs over a reasonable period of time, the Board may annually adjust the allocation percentages set forth in G.S. 62A-25(a) and G.S. 62A-25(b), or reallocate funds comprising the Wireless Fund, provided, however, that any adjustment or reallocation shall be consistent with the requirements of the FCC Order.

...."

SECTION 5. G.S. 62A-24 reads as rewritten:

"**§ 62A-24. Management of funds.**

(a) Each CMRS provider, as a part of its monthly billing process, shall collect from its subscribers the wireless Enhanced 911 service charge described in G.S. 62A-23. The CMRS provider may list the service charge as a separate entry on each bill. If a CMRS provider receives a partial payment for a monthly bill from a subscriber, the provider shall apply the payment first against the amount the subscriber owes the provider.

...."

SECTION 6. G.S. 62A-25 reads as rewritten:

"**§ 62A-25. Use of funds.**

(a) ~~Sixty percent (60%)~~Fifty-three percent (53%) of the funds in the Wireless Fund established in G.S. 62A-22(c) shall be used to reimburse CMRS providers, in response to sworn invoices submitted to the Board, for the actual costs incurred by the CMRS providers in complying with the wireless 911 requirements established by the FCC Order and any rules and regulations which are or may be adopted by the FCC pursuant to the FCC Order, including costs and expenses incurred for designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining all necessary data, hardware, and software required in order to provide such service as well as the recurring and nonrecurring costs of operating such service. All costs and expenses must be commercially reasonable.

(b) ~~Forty percent (40%)~~Forty-seven percent (47%) of the funds in the Wireless Fund established in G.S. 62A-22(c) shall be used to make monthly distributions to eligible primary PSAPs (the ~~"40%~~ "PSAP Fund"). Money from the ~~40%~~PSAP Fund shall be used only to pay for the lease, purchase, or maintenance of emergency telephone equipment for the wireless Enhanced 911 system, including necessary computer hardware, software and database provisioning, ~~and~~ nonrecurring costs of

establishing a wireless Enhanced 911 ~~system.~~system, and expenses related to shared resources. For purposes of this section, shared resources expenses are limited to those expenses identified in this section and G.S. 62A-8 and shall not exceed an amount determined reasonable by the Board. Money from the ~~40%~~PSAP Fund shall also be used to pay the rates associated with the local telephone companies' charges related to the operation of the wireless Enhanced 911 system. The ~~40%~~PSAP Fund shall be distributed as follows:

(1) Fifty percent (50%) of it shall be divided equally among the total number of eligible primary PSAPs in North Carolina. However, monthly distribution shall be made only to those eligible primary PSAPs that have complied with the provisions of this Article. Distribution to each eligible primary PSAP will begin the month following its compliance with the provisions of this Article. All monies remaining in this portion of the ~~40%~~ PSAP Fund on ~~January 31~~June 30 of each year will then be evenly distributed to each of the eligible primary PSAPs.

(2) The other fifty percent (50%) shall be divided pro rata among the eligible primary PSAPs based on the population served by the PSAP. However, monthly distribution shall be made only to those primary PSAPs that have complied with the provisions of this Article. Distribution to each eligible primary PSAP will begin the month following its compliance with the provisions of this Article. The population data to be used shall be the latest certified county and official municipal estimates of population published by the Office of State Budget and Management. All monies remaining in this portion of the ~~40%~~PSAP Fund on ~~January 31~~ June 30 of each year will then be distributed to each of the eligible primary PSAPs based on the population served by the primary PSAP.

...

(d) In no event shall any invoice for reimbursement be approved for payment of costs of any CMRS provider exceeding the lesser of one hundred percent (100%) of the eligible costs allowed under G.S. 62A-25(b) or one hundred twenty-five percent (125%) of the service charges remitted by such CMRS provider unless prior approval for such expenditures is received from the Board. If the total amount of invoices submitted to the Board and approved for payment exceeds the amount in the Wireless Fund in any month, CMRS providers that have invoices approved for payment shall receive a pro rata share of the Wireless Fund, based on the relative amount of their approved invoices available that month, and the balance of the payments will be carried over to the following month or months and shall include interest at a rate equal to the rate earned by the Wireless Fund until all of the approved payments are made.

(e) In January of each year every participating PSAP will submit to the Board a copy of its governing agency's approved budget detailing the PSAP's revenues and expenditures associated with the operation of its wireless Enhanced 911 system. PSAPs must comply with all requests by the Board for financial information related to the

operation of the wireless Enhanced 911 system. The PSAP budget shall identify revenues and expenditures for eligible expense reimbursements as provided in G.S. 62A-25(b).

...

(g) To receive funds under this section, a PSAP must comply with the wireless Enhanced 911 service requirements established by the FCC Order and any rules and regulations that are or may be adopted by the FCC pursuant to the FCC Order. A county or municipality that has one or more PSAPs shall submit in writing to the Board information that identifies the PSAPs in the manner required by the FCC Order."

SECTION 7. Article 2 of Chapter 62A of the General Statutes is amended by adding the following new section to read:

"**§ 62A-25.1. Unauthorized use of funds.**

The Board shall give written notice of violation to any CMRS provider or PSAP found by the Board to be using moneys from the Wireless Fund for purposes not authorized by this Article. Upon receipt of notice, the CMRS provider or PSAP shall cease making any unauthorized expenditures. The CMRS provider or PSAP may petition the Board for a hearing on the question of whether the expenditures were unauthorized, and the Board shall grant the request within a reasonable period of time. If, after the hearing, the Board concludes the expenditures were in fact unauthorized, the Board may require the CMRS provider or PSAP to refund the moneys improperly spent within 90 days, and the moneys shall be deposited into the Wireless Fund. If a CMRS provider or PSAP does not cease making unauthorized expenditures or refuses to refund improperly spent moneys, the Board may suspend funding to the provider or PSAP until corrective action is taken."

SECTION 8. Notwithstanding the provisions of G.S. 62A-22(b), to establish staggered terms of the members of the Wireless 911 Board, the terms of Joseph K. Durham, appointed by the Governor upon the recommendation of the North Carolina Association of County Commissioners; W. Allen Whitaker (a sheriff) and Don Van Liew (representing a CMRS provider), appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and Robert Cherry (a chief of police), Philip L. Penny (representing the North Carolina Chapter of the National Emergency Number Association (NENA)), and James R. Montgomery (representing a CMRS provider), appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, shall expire on June 30, 2005. The vacancies shall be filled in the same manner as the original appointments, and the persons appointed shall serve four-year terms, ending June 30, 2009. The terms of the remaining members of the Board shall expire on June 30, 2006. After the staggered terms have been established, members appointed to the Board thereafter shall serve four-year terms in accordance with G.S. 62A-22(b).

SECTION 9. This act is effective when it becomes law.

HOUSE BILL 1261:
Wireless Telephone Service

BILL ANALYSIS

Committee:	House Finance	**Date:**	May 24, 2005
Introduced by:	Rep. Underhill	**Summary by:**	Cindy Avrette
Version:	Second Edition		Committee Counsel

SUMMARY: House Bill 1261 reduces monthly wireless Enhanced 911 service charge, changes the allocation of the funds from the Wireless Fund to CMRS providers and PSAPs, grants to the Wireless 911 Board the authority to order a CMRS provider or a PSAP to cease using Wireless Fund moneys for unauthorized purposes, and establishes staggered terms for the Wireless 911 Board. It also establishes a number of new definitions. The act would become effective when it becomes law.

CURRENT LAW: Article 2 of Chapter 62A of the General Statutes creates the funding and governance mechanism by which North Carolina is complying with the Federal Communications Commission's requirement (FCC Order) that 911 calls made from wireless telephone carriers provide the precise location of the 911 calls (wireless enhanced 911 system).

The Article creates the Wireless 911 Board which has 13 members: 2 appointed by the Governor, 5 appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, 5 appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and the State Chief Information Officer. The members serve for 4-year terms. The Article also establishes the Wireless Fund. The Board is charged with depositing the revenues collected from the wireless Enhanced 911 surcharge into the Fund and making disbursements from the Fund. The Board may deduct a 1% administrative fee for its expenses.

Each wireless telephone service provider (CMRS provider) must collect the surcharge on each mobile handset telephone number assigned to CMRS customer (CMRS connection). The fee is currently ¢80 per month. The Board has the authority to adjust the surcharge beginning July 1, 2000 and every 2 years thereafter. The purpose of the surcharge is to reimburse CMRS providers and the public service agencies that receive and dispatch 911 calls (PSAPs) for the cost of developing, implementing, and maintaining wireless Enhanced 911 service. The service charge is statutorily capped at ¢80 per month.

The statutes provide that 60% of the funds will go to CMRS providers for the actual costs incurred by the CMRS providers for designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining all necessary data, hardware, and software to provide the service. 40% will go to eligible PSAPs to a Fund known as the 40% Fund. Those moneys may be used to pay for the lease, purchase, or maintenance of emergency telephone equipment for the wireless database provisioning, and nonrecurring costs of establishing a wireless enhanced 911 systems. It can also be used to pay the rates associated with the local telephone companies' charges related to the operation of the wireless Enhanced 911 systems. 50% of the moneys in the 40% Fund is divided equally among the total number of PSAPs in North Carolina and the other 50% is divided prorate among the eligible PSAPs based on the population served by the PSAP.

BILL ANALYSIS: **Section 1** modifies a number of existing definitions and enacts some new definitions.

Section 2 allows members to stay on the Board until their successors are appointed and qualified. It also articulates that members, officers, and employees of the Board as subject to G.S. 14-234, the criminal statutes that prohibit public officers and employees from benefiting from public contracts in which they

have an interest. These provisions already applied to the Board, but this clarifies any ambiguity on this matter. The section also adds language that the Governor has the authority to remove any member of the Board for misfeasance, malfeasance, or nonfeasance under G.S. 143-13(d). Again, the Governor probably has this authority, but this clarifies any ambiguity.

Section 3 creates a new section in Article 2 that specifies the powers and duties of the Board. These powers include the development of a comprehensive wireless Enhanced 911 telecommunications plan for communicating Enhanced 911 call information across networks and among PSAPs.

Section 4 reduces the monthly surcharge from ¢80 to ¢70 per each CMRS connection beginning October 1, 2005.

Section 5 clarifies that each CMRS provider must collect the monthly surcharge from the person who subscribes to a CMRS service or prepaid wireless service.

Section 6 modifies the allocation of the Fund. CMRS providers would receive 53% of the funds, down from the current 60%, and 47% of the Fund (up from 40%) would be divided among the eligible primary PSAPs. It also clarifies that a PSAP must comply with the wireless Enhanced 911 service requirements established by the FCC Order and any rules or regulations adopted by the FCC to implement the Order.

Section 7 creates G.S. 62A-25.1 which outlines the procedure the Board must use if it finds that a CMRS provider or PSAP is using moneys from the Fund for unauthorized purposes. The Board must notify the CMRS provider or the PSAP in writing. The CMRS provided or the PSAP must then cease making the expenditures, but may request a hearing before the Board. If the Board concludes the funds were spent for an unauthorized purpose, the provider or the PSAP must refund the moneys. The Board also has the authority to suspend funding until the provider or the PSAP take corrective action.

Section 8 establishes staggered Board terms by providing that six of the current Board members' terms expire June 30, 2005, and the remaining seven members' terms will expire June 30, 2006.

BACKGROUND: 911 is the official national emergency number in the United States and Canada. Dialing 911 connects the caller with a Public Safety Answering Point (PSAP) dispatcher trained to route the call to local emergency medical, fire, and law enforcement agencies. The FCC has also established a program requiring wireless telephone carriers to provide E911 capability. When fully implemented, wireless E911 will provide the precise location of 911 calls from wireless phones.

Kory Goldsmith, counsel to the House Public Utilities Committee, contributed substantially to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 1261 (First Edition)

SHORT TITLE: Wireless Telephone Service.

SPONSOR(S): Representative Underhill

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund			**No Impact**		
Wireless Fund			**[See Assumptions and Methodology]**		
Local Government			**[See Assumptions and Methodology]**		
EXPENDITURES:					
General Fund			**No Impact**		
POSITIONS (cumulative):	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Wireless Fund, Wireless 911 Board, and Local Government (eligible primary Public Safety Answering Points(PSAPs))

EFFECTIVE DATE: When the bill becomes law.

BILL SUMMARY: The bill amends the laws pertaining to the state Wireless 911 Board and the state Wireless Fund. In Section 2, the bill requires Board members to disclose interests in firms or corporations seeking to contract with the Board and makes members subject to the conflict of interest provisions in G.S. 14-234. Section 3 enacts a new G.S. 62A-22.1, setting forth additional powers and duties for the Board. In Section 4, the bill reduces the wireless enhanced 911 (E-911) service charge (a charge levied on users of commercial mobile radio services (CMRS)) from 80 cents to 70 cents per month. Section 5 requires CMRS providers to collect the charge from their subscribers. Section 6 reallocates a portion of the Wireless Fund that presently goes to CMRS providers to primary public safety answering points (PSAPs, or also referred to as 911 Centers). Also Section 6 provides that to receive funds, a PSAP must comply with the wireless enhanced 911 service requirements established by the Federal Communications Commission (FCC), and it

requires counties and municipalities with more than one PSAP to submit written information to the Board identifying the PSAPs. Section 7 enacts a new G.S. 62A-25.1, setting forth the procedures by which the Board may require a CMRS provider or a PSAP that misuses funds from the Wireless Fund to reimburse the Fund. Section 8 creates staggered terms by providing that the terms of certain named members of the Wireless Board will expire on June 30, 2005, and the terms of the remaining members will expire on June 30, 2006.
Source: Adopted from Bill Digest H.B. 1261 (04/18/2005)

ASSUMPTIONS AND METHODOLOGY: Sections 4, 5, and 6 of the bill are projected to fiscally impact the Wireless Fund. Details of how each Section contributes to the bill's overall fiscal impact are as follows:

Section 4 reduces the monthly wireless enhanced 911 (E-911) service charge (surcharge), collected for each wireless connection, from $0.80 to $0.70 beginning October 1, 2005. Under G.S. 62A-24, each CMRS provider collects the surcharges from its subscribers as a part of its routine billing process and remits them, less a statutorily allowed one-percent (1%) administrative fee, to the Wireless Fund. Additionally by statute, the Board is entitled to deduct a one-percent (1%) administrative fee from the surcharges for its expenses. Of the remaining monthly remittances, the Board allocates sixty-percent (60%) of the funds in the Wireless Fund to reimburse CMRS providers for costs they incur to comply with the wireless E-911 requirements; forty-percent (40%) is to be distributed monthly to eligible PSAPs. Fifty percent (50%) of the money for the PSAPs is divided equally among the total number of PSAPs in North Carolina and 50% is divided prorate among the eligible PSAPs based on the population serviced by the PSAP. The Board reports that the fiscal impact of Section 4 would be to reduce revenue to the Wireless Fund from an estimated $40,179,600 to $35,157,150 in FY 2005-06 (13% decrease). The effect would be less revenue for the Wireless 911 Board, CMRS providers, and for eligible primary PSAPs. This Board reports that Section 6 would prevent a revenue loss for PSAPs because it modifies the percentage of the Wireless Fund allocated for PSAPs from 40% to 47% and CMRS providers from 60% to 53%. The Board estimates that reducing the surcharge to $0.70 per wireless connection would not prevent the Board from covering its costs for its duties and responsibilities, including those added by Section 3, within its projected revenues from the 1% administrative fee. Also, the Board reported that the surcharge reduction would not prevent it from meeting its statutory responsibility of ensuring full recovery for CMRS providers as required by G.S. 62A-23(b). The Board's projected total revenues to the Wireless Fund at both the current $0.80 rate and at the proposed $0.70 rate are shown below in Table 1. The Board's revenue estimate includes a 2.5% conservative industry projection growth rate.

Table 1
Comparison of Projected Wireless Fund Revenues from $0.80 and $0.70 Surcharge Rates

	Fiscal Years				
Wireless (CMRS) Surcharge per Connection	**2005-06**	**2006-07**	**2007-08**	**2008-09**	**2009-10**
$0.80 (current)	$40,179,600	$41,184,090	$42,213,692	$43,269,035	$44,350,760
$0.70 (proposed)	$35,157,150	$36,036,079	$36,936,981	$37,860,405	$38,806,915
Net Revenue Decrease:	**($5,022,450)**	**($5,148,011)**	**($5,276,711)**	**($5,408,630)**	**($5,543,845)**

Section 5 clarifies that CMRS providers are to collect the wireless E-911 surcharge from their subscribers, including persons with a subscription to a prepaid wireless service. Currently, CMRS providers are not required to report to the Board on whether they collect and remit the surcharge from their prepaid service subscribers. Although the Board projects that the surcharges collected on prepaid wireless service connections would minimally increase the Wireless Fund's revenue, it does not have an estimate of how much prepaid service surcharge revenue would be remitted as a result of this bill.

Section 6 modifies the allocation of the funds in the Wireless Fund between the funds reserved to reimburse the CMRS providers from 60% to 53% and the funds to be distributed monthly to eligible PSAPs from 40% to 47%. As mentioned previously in the discussion of Section 4's fiscal impact, the Board estimates that if the rate is decreased to $0.70, but the funds are not reallocated, then the PSAPs would receive less money. The Board reports that PSAPs budgets do not indicate a need for less Wireless Fund revenue. Table 2 below shows the Board's estimates of what the different revenue streams would be for the PSAPs, with the surcharge set at $0.80 and $0.70, at the 40% and 47% funding allocation levels.

Table 2

Wireless Fund's Allocation to the PSAP Fund* - Comparison of 40% to 47% Funding Allocation Levels

	Fiscal Years				
	2005-06	**2006-07**	**2007-08**	**2008-09**	**2009-10**
*Estimated PSAP Revenue from Wireless Fund **$0.80** Surcharge Per CMRS Connection*					
40% of funds (current)	**$15,911,122**	**$16,308,900**	**$16,716,622**	**$17,134,538**	**$17,562,901**
*Estimated PSAP Revenue from Wireless Fund **$0.70** Surcharge Per CMRS Connection*					
40% of funds	$13,922,231	$14,270,287	$14,627,044	$14,992,720	$15,367,538
47% of funds (proposed)	**$16,358,622**	**$16,767,587**	**$17,186,777**	**$17,616,447**	**$18,056,858**

*Estimated annual Wireless Fund revenue from surcharge distributed to PSAPs

SOURCES OF DATA: Wireless 911 Board

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Kathie Austin

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Fiscal Research Division

Official
Fiscal Research Division
Publication

DATE: May 5, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

HB 1261 A BILL TO BE ENTITLED AN ACT AMENDING THE LAWS REGULATING WIRELESS TELEPHONE SERVICE.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 945
PROPOSED COMMITTEE SUBSTITUTE H945-CSMBx-11 [v.6]

5/18/2005 4:25:27 PM

Short Title: Omnibus Occupancy Taxes. (Local)

Sponsors:

Referred to:

March 29, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DURHAM COUNTY OCCUPANCY TAX AND TO IMPOSE OCCUPANCY TAXES IN THE CITIES OF REIDSVILLE AND EDEN AND THE TOWN OF BOILING SPRINGS.

The General Assembly of North Carolina enacts:

PART I. DURHAM OCCUPANCY TAX.

SECTION 1.1. Section 7(a) of S.L. 2001-480, as amended by Section 1 of S.L. 2002-36, reads as rewritten:

"**SECTION 7.(a)** If a plan for financing a Performing Arts Theater has not been approved by the Durham City Council and has been disapproved by the Durham County Commissioners within ~~42~~54 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, the county's authority to levy the one percent (1%) tax described under Section 6(c) of this act and the levy of the one percent (1%) tax described in this subsection are repealed on the first day of the second month following the ~~42-month~~54-month period.

If construction on the Performing Arts Theater has not begun within ~~42~~54 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, the county's authority to levy the one percent (1%) tax described in Section 6(c) of this act and the levy of the one percent (1%) tax described in Section 6(c) of this act are repealed on the first day of the second month following the ~~42-month~~54-month period.

It is the goal of the General Assembly that a plan for financing the Performing Arts Theater shall be adopted within ~~12~~54 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, and construction of the Performing Arts Theater shall begin within ~~24~~54 months of the levy of the one percent (1%) tax described in Section 6(c) of this act.

Any funds collected but not spent before the repeal date shall be redistributed to the Durham Convention and Visitors Bureau to promote travel and tourism."

SECTION 1.2. Section 9(e) of S.L. 2001-480, as amended by Section 4 of S.L. 2002-36, reads as rewritten:

"**SECTION 9.(e)** Use of Proceeds From Additional One Percent (1%) Tax After First 24 Months. – The net proceeds of the tax collected under Section 6(c) of this act after the first 24 months that the tax is levied shall be remitted monthly to the Durham Convention and Visitors Bureau as set out in Section 10 of this act. The Bureau shall use and distribute these net proceeds in the following priority order:

(1) To the City of Durham, the first one million four hundred thousand dollars ($1,400,000) collected annually to finance the debt service associated with the construction of the Performing Arts ~~Theater.~~Theater and for the design and engineering costs associated with the construction of the Theater. But no more than two million seven hundred fifty-two thousand dollars ($2,752,000) of those proceeds may be used for design and engineering costs associated with the construction of the Theater. Until those funds are distributed to the City of Durham for that purpose, they shall be held by the Durham Convention and Visitors Bureau in a capital reserve fund as provided by Part 2 of Article 3 of Chapter 159 of the General Statutes except they may be expended as provided by the last sentence of Section 7(a) of this act if the tax is repealed as provided by Section 7(a) of this act. Any interest earned by that fund shall be credited to the fund.

(2) Thirty-two years after the levy of the tax authorized under Section 6(c) of this act, instead of the allocation under subdivision (1) of this subsection, the first one million four hundred thousand dollars ($1,400,000) collected annually shall be used by the Bureau to promote travel and tourism or for tourism related expenditures.

(3) To Durham County, the next five hundred thousand dollars ($500,000) collected annually to be used for improvements to the Museum of Life and Science. This may include the financing of debt service. Any of these funds that are not needed for this purpose shall be returned to the Bureau and used to promote travel and tourism.

(4) The Bureau shall use any net proceeds in excess of that provided by subdivisions (1), (2), and (3) of this subsection to promote travel, tourism, and conventions in Durham County.

As used in this subsection, "annually" means the 12-month period beginning after the first 24 months that the tax authorized under Section 6(c) of this act is levied."

PART II. REIDSVILLE OCCUPANCY TAX.

SECTION 2.1. Occupancy Tax. – (a) Authorization and Scope. – The Reidsville City Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations

furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 2.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 2.1.(c) Distribution and Use of Tax Revenue. – The City of Reidsville shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Reidsville Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Reidsville and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a city or to attract tourists or business travelers to the city. The term includes tourism-related capital expenditures.

SECTION 2.2. Reidsville Tourism Development Authority. – (a) Appointment and Membership. – When the Reidsville City Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a city Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the city, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the city. The city council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Reidsville shall be the ex officio finance officer of the Authority.

SECTION 2.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall

promote travel, tourism, and conventions in the city, sponsor tourist-related events and activities in the city, and finance tourist-related capital projects in the city.

SECTION 2.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Reidsville City Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the city council may require.

PART III. EDEN OCCUPANCY TAX.

SECTION 3.1. Occupancy Tax. – (a) Authorization and Scope. – The Eden City Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 3.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 3.1.(c) Distribution and Use of Tax Revenue. – The City of Eden shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Eden Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Eden and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a city or to attract tourists or business travelers to the city. The term includes tourism-related capital expenditures.

SECTION 3.2. Eden Tourism Development Authority. – (a) Appointment and Membership. – When the Eden City Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a city Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the

Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the city, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the city. The city council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Eden shall be the ex officio finance officer of the Authority.

SECTION 3.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the city, sponsor tourist-related events and activities in the city, and finance tourist-related capital projects in the city.

SECTION 3.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Eden City Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the city council may require.

PART IV. BOILING SPRINGS OCCUPANCY TAX.

SECTION 4.1. Occupancy tax. – (a) Authorization and Scope. – The Boiling Springs Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 4.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 4.1.(c) Distribution and Use of Tax Revenue. – The Town of Boiling Springs shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Boiling Springs Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Boiling Springs and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract

tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 4.2. Boiling Springs Tourism Development Authority. – (a) Appointment and Membership. – When the Boiling Springs Town Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Boiling Springs shall be the ex officio finance officer of the Authority.

SECTION 4.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 4.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Boiling Springs Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the town council may require.

PART V. UNIFORM PROVISIONS.

SECTION 5. G.S. 160A-215 reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Eden, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Reidsville, Shelby, Statesville, Washington, and Wilmington, to the Towns of Beech Mountain, Blowing Rock, Boiling Springs, Carolina Beach, Carrboro, Franklin, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

PART VI. EFFECTIVE DATES.

SECTION 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 945

Short Title:	Durham Occupancy Tax.	(Local)
Sponsors:	Representatives Luebke, Michaux, Miller, and Wilkins (Primary Sponsors).	
Referred to:	Finance.	

March 29, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DURHAM COUNTY OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7.(a) of S.L. 2001-480, as amended by Section 1 of S.L. 2002-36, reads as rewritten:

"**SECTION 7.(a)** If a plan for financing a Performing Arts Theater has not been approved by the Durham City Council and has been disapproved by the Durham County Commissioners within ~~42~~54 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, the county's authority to levy the one percent (1%) tax described under Section 6(c) of this act and the levy of the one percent (1%) tax described in this subsection are repealed on the first day of the second month following the ~~42-month~~54-month period.

If construction on the Performing Arts Theater has not begun within ~~42~~54 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, the county's authority to levy the one percent (1%) tax described in Section 6(c) of this act and the levy of the one percent (1%) tax described in Section 6(c) of this act are repealed on the first day of the second month following the ~~42-month~~54-month period.

It is the goal of the General Assembly that a plan for financing the Performing Arts Theater shall be adopted within ~~12~~54 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, and construction of the Performing Arts Theater shall begin within ~~24~~54 months of the levy of the one percent (1%) tax described in Section 6(c) of this act.

Any funds collected but not spent before the repeal date shall be redistributed to the Durham Convention and Visitors Bureau to promote travel and tourism."

SECTION 2. Section 9(e) of S.L. 2001-480, as amended by Section 4 of S.L. 2002-36, reads as rewritten:

"**SECTION 9.(e)** Use of Proceeds From Additional One Percent (1%) Tax After First 24 Months. – The net proceeds of the tax collected under Section 6(c) of this act

after the first 24 months that the tax is levied shall be remitted monthly to the Durham Convention and Visitors Bureau as set out in Section 10 of this act. The Bureau shall use and distribute these net proceeds in the following priority order:

(1) To the City of Durham, the first one million four hundred thousand dollars ($1,400,000) collected annually to finance the debt service associated with the construction of the Performing Arts ~~Theater.~~Theater and for the design and engineering costs associated with the construction of the Theater. But no more than two million seven hundred fifty-two thousand dollars ($2,752,000) of those proceeds may be used for design and engineering costs associated with the construction of the Theater. Until those funds are distributed to the City of Durham for that purpose, they shall be held by the Durham Convention and Visitors Bureau in a capital reserve fund as provided by Part 2 of Article 3 of Chapter 159 of the General Statutes except they may be expended as provided by the last sentence of Section 7(a) of this act if the tax is repealed as provided by Section 7(a) of this act. Any interest earned by that fund shall be credited to the fund.

(2) Thirty-two years after the levy of the tax authorized under Section 6(c) of this act, instead of the allocation under subdivision (1) of this subsection, the first one million four hundred thousand dollars ($1,400,000) collected annually shall be used by the Bureau to promote travel and tourism or for tourism related expenditures.

(3) To Durham County, the next five hundred thousand dollars ($500,000) collected annually to be used for improvements to the Museum of Life and Science. This may include the financing of debt service. Any of these funds that are not needed for this purpose shall be returned to the Bureau and used to promote travel and tourism.

(4) The Bureau shall use any net proceeds in excess of that provided by subdivisions (1), (2), and (3) of this subsection to promote travel, tourism, and conventions in Durham County.

As used in this subsection, "annually" means the 12-month period beginning after the first 24 months that the tax authorized under Section 6(c) of this act is levied."

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

House Bill 945:
Omnibus Occupancy Taxes.

BILL ANALYSIS

Committee: Occupancy Tax Subcommittee
Date: May 19, 2005
Version: PCS H945-CSMB-11 v.6

Sponsors: Representatives Luebke, Miller, Michaux, and Wilkins
Analysis by: Ashley Huffstetler

SUMMARY: The PCS to House Bill 945 amends the Durham Occupancy Tax to extend the period of time allowed for the City to plan, approve and begin construction on a performing arts theater using proceeds from the final 1% occupancy tax. It also modifies the distribution of the proceeds of the Durham tax. In addition, the bill levies new occupancy taxes in the cities of Eden and Reidsville and the Town of Boiling Springs at a rate of 3%. All three taxes fully conform to the House finance committee's occupancy tax guidelines.

CURRENT LAW: Durham is the only jurisdiction of these four that currently levies an occupancy tax. Durham County has the authority to levy a three percent (3%), two percent (2%), and one percent (1%) occupancy tax, for a total of six percent (6%). Durham County and the City of Durham share the proceeds of part of the tax. The continued authorization of the final one percent (1%) occupancy tax is conditioned upon the development of a plan for paying for and constructing a performing arts theater. The legislation requires that the Durham City Council develop a plan for financing the theater within 42 months of Durham County voting to levy the one percent (1%) tax. Additionally, construction of the theater must have begun within 42 months of the levy of the one percent (1%) tax. Once the tax has been levied for 24 months, the first one million four hundred thousand dollars ($1,400,000) of the net proceeds must be used to finance the debt associated with the construction of the performing arts theater. If the financing is not established and construction has not begun within 42 months of the levy of the tax, the authority to levy the one percent (1%) tax is repealed.

BACKGROUND: In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – G.S. 153A-155 and G.S. 160A-215. These provisions provide uniformity in the areas of levy, administration, collection, repeal, and penalties. Also, the North Carolina Travel and Tourism Coalition has a policy statement for legislation authorizing local occupancy taxes. Many of the principles contained in its statement are similar to the ones established by a House Finance Subcommittee on Occupancy Taxes in 1993.

The current version of the Durham County occupancy tax legislation was created in 2001 and revised in 2002. The city and county split the proceeds of the first three percent (3%) of the tax and may use the money for any purpose authorized by law. The second two percent (2%) of the tax is distributed to the Convention and Visitors Bureau, which acts as a Tourism Development Authority. The composition of this board complies with House guidelines. The final one percent (1%) tax is distributed in several different ways during the initial 24 months of the levy of the tax. After the initial 24 months, the proceeds from the one percent (1%) tax may be used to finance the debt associated with building a performing arts center, to improve the Museum of Life and Science, and to promote travel and tourism. This allocation does not comply with House guidelines, but was reached by consensus during the 2001 session.

The cities of Eden and Reidsville are located in Rockingham County. Neither city currently levies an occupancy tax, but Rockingham County does levy a 3% tax.

The Town of Boiling Springs is located in Cleveland County. It does not currently levy an occupancy tax, but Cleveland County does levy a 3% tax.

BILL ANALYSIS: The PCS for House Bill 945 amends the Durham Occupancy Tax by allowing Durham more time to plan for and construct the performing arts theater. It gives the City 54 months (4 ½ years) to plan and begin construction upon the performing arts theater, and the one percent (1%) tax will not automatically be repealed until that time. Also, the bill modifies how the proceeds of the tax are to be used after the tax has been levied for 24 months. The Visitor's Bureau must continue to distribute the money to the City of Durham to finance the debt associated with the performing arts theater, and must also distribute money to pay for the design and engineering costs associated with building the theater. The bill caps the amount at two million seven hundred fifty–two thousand dollars ($2,752,000) that may be used for design and engineering costs.

The PCS also authorizes the enactment of local occupancy taxes in the cities of Eden and Reidsville and the Town of Boiling Springs at a rate of 3%. The proceeds must be remitted to a Tourism Development Authority (TDA), which must use two-thirds of the proceeds to promote travel and tourism and one-third for tourism-related expenditures. These administrative and use provisions conform to the uniform guidelines referenced above and detailed in the chart below:

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6%, and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism, and the remainder must be used for tourism-related expenditures.
Definitions – The terms "net proceeds," "promote travel and tourism," and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority (TDA), which determines how the tax proceeds will be used and is created by a local ordinance. At least ½ of the members must be currently active in the promotion of travel and tourism in the city or county, and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: May 18, 2005

TO: Representatives Luebke, Michaux, Miller, and Wilkins

FROM: Rodney Bizzell
Fiscal Research Division

RE: House Bill 945 (Unknown Edition)

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund	No General Fund Impact				
City of Durham	No Fiscal Impact				
City of Eden	$44,348	$45,368	$46,366	$47,293	$48,239
City of Reidsville	$53,217	$54,441	$55,639	$56,751	$57,886
Town of Boiling Springs	$14,783	$15,123	$15,456	$15,765	$16,080

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: City of Durham, City of Eden, City of Reidsville, Town of Boiling Springs

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:

The PCS to House Bill 945 amends the Durham Occupancy Tax to extend the period of time allowed for the City to plan, approve and begin construction on a performing arts theater using proceeds from the final 1% occupancy tax. It also modifies the distribution of the proceeds of the Durham tax. In addition, the bill levies new occupancy taxes in the cities of Eden and Reidsville and the Town of Boiling Springs at a rate of 3%. All three taxes fully conform to the House Finance Committee's occupancy tax guidelines.

ASSUMPTIONS AND METHODOLOGY:

Durham

Because the bill does not affect the occupancy tax rate and only makes changes related to the time allowed for planning and construction of the performing arts center and the use of the proceeds, this portion of the bill does not have a fiscal impact.

Reidsville

According to the City of Reidsville, there are 6 motels in the city limits. Assuming an average of 30 rooms in each, an average room rate of $45 per night and a 60% rate of room occupancy, FRD estimates the 3% occupancy tax would generate $53,217 per year. Because no historic data is available, the General Consumer Price Index estimated rate of increase is used to estimate future growth in occupancy tax receipts. No development of additional motels or other accommodations is assumed in the estimates of subsequent year revenues.

Eden

According to the City of Eden, there are 5 motels in the city limits. Assuming an average of 30 rooms in each, an average room rate of $45 per night and a 60% rate of room occupancy, FRD estimates the 3% occupancy tax would generate $44,348 per year. Because no historic data is available, the General Consumer Price Index estimated rate of increase is used to estimate future growth in occupancy tax receipts. No development of additional motels or other accommodations is assumed in the estimates of subsequent year revenues.

Town of Boiling Springs

According to the Town of Boiling Springs, there is 1 motel in the city limits with approximately 50 rooms. Assuming an average room rate of $45 per night and a 60% rate of room occupancy, FRD estimates the 3% occupancy tax would generate $14,783 per year. Because no historic data is available, the General Consumer Price Index estimated rate of increase is used to estimate future growth in occupancy tax receipts. No development of additional motels or other accommodations is assumed in the estimates of subsequent year revenues.

SOURCES OF DATA: NC Department of Revenue, City of Reidsville, City of Eden, Town of Boiling Springs

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1051
PROPOSED COMMITTEE SUBSTITUTE H1051-CSLK-18 [v.4]

5/23/2005 12:05:32 PM

Short Title: Macon-Jackson Regional Airport Authority. (Local)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO ENABLE THE CREATION OF A MACON-JACKSON REGIONAL AIRPORT AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. There is hereby created the "Macon-Jackson Regional Airport Authority" (for brevity hereinafter referred to as the "Airport Authority"), which shall be a body both corporate and politic, having the powers and jurisdiction hereinafter enumerated and such other and additional powers as shall be conferred upon it by general law and future acts of the General Assembly.

SECTION 2. The Airport Authority shall consist of not less than five and not more than nine members. The exact provisions relating to the appointment, terms, succession, removal, and vacancies of members, and other similar matters shall be jointly determined and adopted by a resolution of the board of county commissioners of each county.

Each member shall take and subscribe before the Clerk of Court of Macon County or the Clerk of Court of Jackson County, depending on the member's residence, an oath of office and file that oath with the board of county commissioners of both counties. Membership on the Airport Authority and the Macon County Board of Commissioners or the Jackson County Board of Commissioners shall not constitute dual office holding within the meaning of Section 9 of Article VI of the North Carolina Constitution.

SECTION 3. The Airport Authority may adopt suitable bylaws for its management. The members of the Airport Authority may receive compensation, per diem, or otherwise as the Macon County Board of Commissioners and the Jackson County Board of Commissioners from time to time jointly determine. Members shall be allowed and paid their actual expenses incurred in transacting the business and at the instance of the Airport Authority. Members of the Airport Authority shall not be personally liable for their acts as members of the Airport Authority, except for acts resulting from misfeasance or malfeasance.

SECTION 4(a). The Airport Authority shall constitute a body, both corporate and politic, and shall have the following powers and authority:

(1) To purchase, acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports and landing fields for the use of airplanes and other aircraft within the limits of the counties and for this purpose to purchase, improve, own, hold, lease, or operate real or personal property. The Airport Authority may exercise these powers alone or in conjunction with the counties of Macon and Jackson.

(2) To sue and be sued in the name of the Airport Authority, to make contracts and hold any personal property necessary for the exercise of the powers of the Airport Authority, and acquire by purchase, lease, or otherwise any existing lease, leasehold right, or other interest in any existing airport located in the county.

(3) To charge and collect reasonable and adequate fees and rents for the use of airport property or for services rendered in the operation of the airport.

(4) To make all reasonable rules and regulations it deems necessary for the proper maintenance, use, operation, and control of the airport, including public safety, and provide penalties for the violation of these rules and regulations; provided, the rules and regulations and schedules of fees not be in conflict with the laws of North Carolina and the regulations of the Federal Aviation Administration. The Airport Authority may administer and enforce any airport zoning regulations adopted by the counties of Macon or Jackson depending on the location of the airport.

(5) To issue bonds pursuant to Article 5 of Chapter 159 of the General Statutes.

(6) To sell, lease, or otherwise dispose of any property, real or personal, belonging to the Airport Authority, according to the procedures described in Article 12 of Chapter 160A of the General Statutes, but no sale of real property shall be made without the approval of the board of commissioners of the county in which the real property is located.

(7) To purchase any insurance that the Federal Aviation Administration or the Airport Authority shall deem necessary. The Airport Authority shall be responsible for any and all insurance claims or liabilities.

(8) To deposit or invest and reinvest any of its funds as provided by the Local Government Finance Act, as it may be amended from time to time, for the deposit or investment of unit funds.

(9) To purchase any of its outstanding bonds or notes.

(10) To operate, own, lease, control, regulate, or grant to others, for a period not to exceed 20 years, the right to operate on any airport premises restaurants, snack bars, vending machines, food and beverage dispensing outlets, rental car services, catering services, novelty shops,

insurance sales, advertising media, merchandising outlets, motels, hotels, barbershops, automobile parking and storage facilities, automobile service establishments, and all other types of facilities as may be directly or indirectly related to the maintenance and furnishing to the general public of a complete air terminal installation.

(11) To contract with persons, firms, or corporations for terms not to exceed 20 years, for the operation of airline-scheduled passenger and freight flights, nonscheduled flights, and any other airplane activities not inconsistent with the grant agreements under which the airport property is held.

(12) To erect and construct buildings, hangars, shops, and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; to lease these improvements and facilities for a term or terms not to exceed 20 years; to borrow money for use in making and paying for these improvements and facilities, secured by and on the credit only of the lease agreements in respect to these improvements and facilities, and to pledge and assign the leases and lease agreements as security for the authorized loans.

(13) Subject to the limitations set out in this act, to have all the same power and authority granted to cities and counties pursuant to Chapter 63 of the General Statutes, Aeronautics.

(14) To have a corporate seal, which may be altered at will.

SECTION 4(b). The Airport Authority shall possess the same exemptions in respect to payment of taxes and license fees and be eligible for sales and use tax refunds to the same extent as provided for municipal corporations by the laws of the State of North Carolina.

SECTION 5. The Airport Authority may acquire from the counties by agreement with the counties, and the counties may grant and convey, either by gift or for such consideration as the county may deem wise, any real or personal property which it now owns or may hereafter acquire, including nontax monies, and which may be necessary for the construction, operation, and maintenance of any airport located in the counties.

SECTION 6. Any lands acquired, owned, controlled, or occupied by the Airport Authority shall be, and are declared to be, acquired, owned, controlled, and occupied for a public purpose.

SECTION 7. Private property needed by the Airport Authority for any airport, landing field, or as facilities of an airport or landing field, may be acquired by gift or devise, or may be acquired by private purchase or by the exercise of eminent domain pursuant to Chapter 40A of the General Statutes, as a local public condemnor, including the provisions of G.S. 40A-42. If property acquired by gift, devise, purchase, or condemnation has a burial ground or graveyard, then it shall be lawful for the Airport Authority, after 30 days' notice to the surviving spouse or next of kin of the deceased buried there or the person in control of the graves, if they are known, to remove the

interred body and reinter the body in another cemetery in Macon County or Jackson County. If no surviving spouse or next of kin or person in control can be found, then the Airport Authority may advertise for four consecutive weeks in a newspaper published in Macon County and Jackson County of the intended removal of the graves. The removal shall then be conducted under the supervision of the Clerk of the Superior Court of Macon County or the Clerk of the Superior Court of Jackson County or his or her representative. The expense of the removal shall be borne by the Airport Authority.

SECTION 8. The Airport Authority shall make an annual report to the Macon County Board of Commissioners and the Jackson County Board of Commissioners setting forth in detail the operations and transactions conducted by it pursuant to this act. The Airport Authority shall not have the power to pledge the credit of Macon County or Jackson County, or any subdivision thereof, or to impose any obligation on Macon County or Jackson County, or any of its subdivisions, except when that power is expressly granted by statute.

SECTION 9. Subject to the limitations as set out in this act, all rights and powers given and granted to counties or municipalities by general law, which may now be in effect, or enacted in the future, relating to the development, regulation, and control of municipal airports and the regulation of aircraft are now concurrently vested in the Airport Authority. The Macon County Board of Commissioners and the Jackson County Board of Commissioners may delegate its powers under these acts to the Airport Authority, and the Airport Authority shall have concurrent rights with Macon County and Jackson County to control, regulate, and provide for the development of aviation in Macon County or Jackson County.

SECTION 10. The Airport Authority may contract with and accept grants from the Federal Aviation Administration, the State of North Carolina, or any of the agencies or representatives of either of said governmental bodies relating to the purchase of land and air easements and to the grading, constructing, equipping, improving, maintaining, or operating of an airport or its facilities or both.

SECTION 11. The Airport Authority may employ or contract with any agents, engineers, attorneys, and other persons whose services may be deemed by the Airport Authority to be necessary and useful in carrying out the provisions of Sections 1 through 10 of this act.

SECTION 12. The Macon County Board of Commissioners and the Jackson County Board of Commissioners may appropriate funds derived from any source including ad valorem taxes to carry out the provisions of this act in any proportion or upon any basis as may be determined by the Macon County Board of Commissioners or the Jackson County Board of Commissioners. The Macon County Board of Commissioners and the Jackson County Board of Commissioners may provide county services to the Airport Authority upon any basis as may be determined by the Macon County Board of Commissioners or the Jackson County Board of Commissioners.

SECTION 13. The Airport Authority may expend the funds that are appropriated by the county for joint airport purposes and may pledge the credit of the Airport Authority to the extent of the appropriated funds.

SECTION 14. The Airport Authority shall elect from among its members a chair and other officers at its initial meeting and then biennially thereafter. Officers shall be eligible to succeed themselves in office and to serve consecutive terms at the will of the members of the Airport Authority. A majority of the Airport Authority shall control its decisions. Each member of the Airport Authority, including the chair, shall have one vote. The Airport Authority shall meet at the places and times designated by the chair.

SECTION 15. If an airport established pursuant to this act ceases to be operated by the Airport Authority, or if any property acquired pursuant to this act for airport purposes is abandoned, then the title to that real or personal property, or rights under any existing lease, shall revert to and vest in the county in which the property is located; and on the sale of that property, the proceeds shall vest in the county in which the property is located.

SECTION 16. The powers granted to the Airport Authority shall not be effective until the members of the Airport Authority have been appointed by the Macon County Board of Commissioners and the Jackson County Board of Commissioners, acting jointly, and nothing in this act shall require either board of commissioners to make the initial appointments. It is the intent of this act to enable but not to require the formation of the Macon-Jackson Regional Airport Authority.

SECTION 17. Upon the creation of the Macon-Jackson Regional Airport Authority, either county may elect to dissolve its current county Airport Authority. The dissolution may be effectuated by a resolution of the board of county commissioners following a public hearing held on the matter, or by a resolution of the board of county commissioners ratifying a favorable binding referendum on the question of the dissolution. The referendum on the dissolution may be held at the same time as any other state or county primary, election, special election, or referendum.

SECTION 18. No fixed wing or rotary wing flights may originate or terminate in Macon County or Jackson County unless they originate or terminate from an airport approved by the Federal Aviation Authority and operated pursuant to Chapter 63 of the General Statutes.

SECTION 19. If any one or more sections, clauses, sentences, or parts of this act shall be adjudged invalid, such judgment shall not affect, impair, or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provisions held invalid, and the inapplicability or invalidity of any section, clause, sentence, or part of this act in one or more instances or circumstances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

SECTION 20. Sections 1 through 17 of this act shall expire on January 1, 2007, if the Macon County Board of County Commissioners and the Jackson County Board of County Commissioners have not appointed members of the Macon-Jackson Regional Airport Authority prior to that date.

SECTION 21. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1051

Short Title:	Macon-Jackson Regional Airport Authority.	(Local)
Sponsors:	Representatives Haire and West (Primary Sponsors).	
Referred to:	Finance.	

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO CONSOLIDATE THE EXISTING MACON COUNTY AIRPORT AUTHORITY AND THE EXISTING JACKSON COUNTY AIRPORT AUTHORITY TO CREATE A NEW MACON-JACKSON REGIONAL AIRPORT AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. S.L. 1999-238 reads as rewritten:

"Section 1. There is hereby created the ~~"Macon County~~"Macon-Jackson Regional Airport Authority" (for brevity hereinafter referred to as the "Airport Authority"), which shall be a body both corporate and politic, having the powers and jurisdiction hereinafter enumerated and such other and additional powers as shall be conferred upon it by general law and future acts of the General Assembly.

Section 2. The Airport Authority shall consist of five members, who shall be residents of Macon County or Jackson County and who shall be appointed to staggered terms of six years by agreement of the Macon County Board of Commissioners and the Jackson County Board of Commissioners. Members may succeed themselves in office and serve more than one term. Two initial appointments to the Airport Authority shall be for two years, two initial appointments to the Airport Authority shall be for four years, and the remaining initial appointment to the Airport Authority shall be for six years.

When vacancies occur in the membership of the Airport Authority, for any reason, the remaining members of the Airport Authority shall submit a list of two or more candidates to the Macon County Board of Commissioners and the Jackson County Board of Commissioners. The ~~Board~~ Boards of Commissioners shall either jointly select one from that list to fill the unexpired term of the vacant office or shall request that the Airport Authority submit additional candidates. The Airport Authority shall submit additional candidates upon request until the ~~Board~~ Boards of Commissioners ~~selects~~ select a member from the candidates submitted.

Each member shall take and subscribe before the Clerk of Superior Court of Macon County or the Clerk of the Superior Court of Jackson County, depending on the member's residence, an oath of office and file the same with the Macon County Board of Commissioners. Membership on the Macon County Board of Commissioners or the Jackson County Board of Commissioners and the Airport Authority shall not constitute double office holding within the meaning of Article VI, Section 9, of the Constitution of North Carolina.

Section 3. The Airport Authority may adopt suitable bylaws for its management. The members of the Airport Authority may receive compensation, per diem, or otherwise as the Macon County Board of Commissioners and the Jackson County Board of Commissioners from time to time ~~determines.~~jointly determine. Members shall be allowed and paid their actual expenses incurred in transacting the business and at the instance of the Airport Authority. Members of the Airport Authority shall not be personally liable for their acts as members of the Airport Authority, except for acts resulting from misfeasance or malfeasance.

Section 4.(a) The Airport Authority shall constitute a body, both corporate and politic, and shall have the following powers and authority:

(1) To purchase, acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports and landing fields for the use of airplanes and other aircraft within the limits of the county and for this purpose to purchase, improve, own, hold, lease, or operate real or personal property. The Airport Authority may exercise these powers alone or in conjunction with the ~~County~~ counties of ~~Macon.~~Macon and Jackson.

(2) To sue and be sued in the name of the Airport Authority, to make contracts and hold any personal property necessary for the exercise of the powers of the Airport Authority, and acquire by purchase, lease, or otherwise any existing lease, leasehold right, or other interest in any existing airport located in the county.

(3) To charge and collect reasonable and adequate fees and rents for the use of airport property or for services rendered in the operation of the airport.

(4) To make all reasonable rules and regulations it deems necessary for the proper maintenance, use, operation, and control of the airport, including public safety, and provide penalties for the violation of these rules and regulations; provided, the rules and regulations and schedules of fees not be in conflict with the laws of North Carolina and the regulations of the Federal Aviation Administration. The Airport Authority may administer and enforce any airport zoning regulations adopted by the ~~County~~ counties of ~~Macon.~~Macon or Jackson depending on the location of the airport.

(5) To issue bonds pursuant to Article 5 of Chapter 159 of the General Statutes.

(6) To sell, lease, or otherwise dispose of any property, real or personal, belonging to the Airport Authority, according to the procedures described in Article 12 of Chapter 160A of the General Statutes, but no sale of real property shall be made without the approval of the ~~Macon County~~ Board of ~~Commissioners.~~Commissioners of the county in which the real property is located.

(7) To purchase any insurance that the Federal Aviation Administration or the Airport Authority shall deem necessary. The Airport Authority shall be responsible for any and all insurance claims or liabilities.

(8) To deposit or invest and reinvest any of its funds as provided by the Local Government Finance Act, as it may be amended from time to time, for the deposit or investment of unit funds.

(9) To purchase any of its outstanding bonds or notes.

(10) To operate, own, lease, control, regulate, or grant to others, for a period not to exceed 20 years, the right to operate on any airport premises restaurants, snack bars, vending machines, food and beverage dispensing outlets, rental car services, catering services, novelty shops, insurance sales, advertising media, merchandising outlets, motels, hotels, barbershops, automobile parking and storage facilities, automobile service establishments, and all other types of facilities as may be directly or indirectly related to the maintenance and furnishing to the general public of a complete air terminal installation.

(11) To contract with persons, firms, or corporations for terms not to exceed 20 years, for the operation of airline-scheduled passenger and freight flights, nonscheduled flights, and any other airplane activities not inconsistent with the grant agreements under which the airport property is held.

(12) To erect and construct buildings, hangars, shops, and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; to lease these improvements and facilities for a term or terms not to exceed 20 years; to borrow money for use in making and paying for these improvements and facilities, secured by and on the credit only of the lease agreements in respect to these improvements and facilities, and to pledge and assign the leases and lease agreements as security for the authorized loans.

(13) Subject to the limitations set out in this act, to have all the same power and authority granted to cities and counties pursuant to Chapter 63 of the General Statutes, Aeronautics.

(14) To have a corporate seal, which may be altered at will.

Section 4.(b) The Airport Authority shall possess the same exemptions in respect to payment of taxes and license fees and be eligible for sales and use tax refunds to the same extent as provided for municipal corporations by the laws of the State of North Carolina.

Section 5. The Airport Authority may acquire from the ~~county,~~ counties by agreement with the ~~county,~~counties, and the ~~county~~ counties may grant and convey, either by gift or for such consideration as the county may deem wise, any real or personal property which it now owns or may hereafter acquire, including nontax monies, and which may be necessary for the construction, operation, and maintenance of any airport located in the ~~county.~~counties.

Section 6. Any lands acquired, owned, controlled, or occupied by the Airport Authority shall be, and are declared to be, acquired, owned, controlled, and occupied for a public purpose.

Section 7. Private property needed by the Airport Authority for any airport, landing field, or as facilities of an airport or landing field, may be acquired by gift or devise, or may be acquired by private purchase or by the exercise of eminent domain pursuant to Chapter 40A of the General Statutes, as a local public condemnor, including the provisions of G.S. 40A-42. If property acquired by gift, devise, purchase, or condemnation has a burial ground or graveyard, then it shall be lawful for the Airport Authority, after 30 days' notice to the surviving spouse or next of kin of the deceased buried there or the person in control of the graves, if they are known, to remove the interred body and reinter the body in another cemetery in Macon County or Jackson County. If no surviving spouse or next of kin or person in control can be found, then the Airport Authority may advertise for four consecutive weeks in a newspaper published in Macon County and Jackson County of the intended removal of the graves. The removal shall then be conducted under the supervision of the Clerk of the Superior Court of Macon County or the Clerk of the Superior Court of Jackson County or his or her representative. The expense of the removal shall be borne by the Airport Authority.

Section 8. The Airport Authority shall make an annual report to the Macon County Board of Commissioners and the Jackson County Board of Commissioners setting forth in detail the operations and transactions conducted by it pursuant to this act. The Airport Authority shall not have the power to pledge the credit of Macon County or Jackson County, or any subdivision thereof, or to impose any obligation on Macon County or Jackson County, or any of its subdivisions, except when that power is expressly granted by statute.

Section 9. Subject to the limitations as set out in this act, all rights and powers given and granted to counties or municipalities by general law, which may now be in effect, or enacted in the future, relating to the development, regulation, and control of municipal airports and the regulation of aircraft are now concurrently vested in the Airport Authority. The Macon County Board of Commissioners and the Jackson County Board of Commissioners may delegate its powers under these acts to the Airport Authority, and the Airport Authority shall have concurrent rights with Macon County and Jackson County to control, regulate, and provide for the development of aviation in Macon County or Jackson County.

Section 10. The Airport Authority may contract with and accept grants from the Federal Aviation Administration, the State of North Carolina, or any of the agencies or representatives of either of said governmental bodies relating to the purchase of land

and air easements and to the grading, constructing, equipping, improving, maintaining, or operating of an airport or its facilities or both.

Section 11. The Airport Authority may employ or contract with any agents, engineers, attorneys, and other persons whose services may be deemed by the Airport Authority to be necessary and useful in carrying out the provisions of Sections 1 through 10 of this act.

Section 12. The Macon County Board of Commissioners and the Jackson County Board of Commissioners may appropriate funds derived from any source including ad valorem taxes to carry out the provisions of this act in any proportion or upon any basis as may be determined by the Macon County Board of Commissioners or the Jackson County Board of Commissioners. The Macon County Board of Commissioners and the Jackson County Board of Commissioners may provide county services to the Airport Authority upon any basis as may be determined by the Macon County Board of Commissioners or the Jackson County Board of Commissioners.

Section 13. The Airport Authority may expend the funds that are appropriated by the county for joint airport purposes and may pledge the credit of the Airport Authority to the extent of the appropriated funds.

Section 14. The Airport Authority shall elect from among its members a chair and other officers at its initial meeting and then biennially thereafter. Officers shall be eligible to succeed themselves in office and to serve consecutive terms at the will of the members of the Airport Authority. A majority of the Airport Authority shall control its decisions. Each member of the Airport Authority, including the chair, shall have one vote. The Airport Authority shall meet at the places and times designated by the chair.

Section 15. If an airport established pursuant to this act ceases to be operated by the Airport Authority, or if any property acquired pursuant to this act for airport purposes is abandoned, then the title to that real or personal property, or rights under any existing lease, shall revert to and vest in the County of Macon and on the sale of that property, the proceeds shall vest totally in the County of Macon.

Section 16. The powers granted to the Airport Authority shall not be effective until the members of the Airport Authority have been appointed by the Macon County Board of Commissioners and the Jackson County Board of Commissioners, acting jointly, and nothing in this act shall require ~~the~~ either Board of Commissioners to make the initial appointments. It is the intent of this act to enable but not to require the formation of the ~~Macon County~~ Macon-Jackson Regional Airport Authority. Upon appointment of the members of the Macon-Jackson Regional Airport Authority, the Macon County Airport Authority and the Jackson County Airport Authority, if in existence, are dissolved.

Section 17. If any one or more sections, clauses, sentences, or parts of this act shall be adjudged invalid, such judgment shall not affect, impair, or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provisions held invalid, and the inapplicability or invalidity of any section, clause, sentence, or part of this act in one or more instances or circumstances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Section 18. Chapter 955 of the 1989 Session Laws, except for Section 10 is repealed.

Section 19. This act is effective when it becomes law."

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

HOUSE BILL 1051:
Macon-Jackson Regional Airport Authority

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Haire and West
Date:	May 24, 2005	**Analysis by:**	Martha Walston
Version:	1st Edition		Committee Counsel
	H1051-CALK-18		

SUMMARY: House Bill 1051 is a local bill that authorizes the formation of the Macon-Jackson Regional Airport Authority if the Boards of County Commissioners of Macon and Jackson Counties decide to appoint members to the proposed Airport Authority. The original version of House Bill 1051 would have consolidated the existing Macon County Airport Authority and the existing Jackson County Airport Authority to create a new Macon-Jackson Regional Airport Authority.

BILL ANALYSIS: In 1997, the General Assembly enacted legislation enabling the Jackson County Board of Commissioners to establish the Jackson County Airport Authority. In 1989, the General Assembly enacted legislation enabling the Macon County Board of Commissioners to establish the Macon County Airport Authority and allowing the Rutherford Airport Authority to lease land to the State for a period not to exceed 30 years. In 1999, the General Assembly repealed the 1989 legislation, except for the language affecting the Rutherford Airport Authority and enacted legislation authorizing the establishment of the Macon County Airport Authority. The 1999 legislation changed the number of members of the Authority, and added to the powers of the Authority.

House Bill 1051 would authorize the Boards of County Commissioners of Macon and Jackson Counties to form the Macon-Jackson Regional Airport Authority possessing the same powers that the separate county airport authorities currently have. Upon creation of the proposed Authority, each County's Board of County Commissioners may elect to dissolve its existing county airport authority. The Bill would also prohibit fixed wing or rotary wing flights from originating or terminating in Macon or Jackson County unless the flights originate or terminate from an airport approved by the Federal Aviation Authority and operated under Chapter 63 (Aeronautics) of the General Statutes.

House Bill 1051 provides that the authorization to create the Macon-Jackson Regional Airport Authority will expire January 1, 2007, if the Macon and Jackson County Boards of Commissioners have not appointed members of the new Authority by that date.

BACKGROUND: On March and April of 2005, the Jackson County Board of Commissioners and Macon County Board of Commissioners adopted resolutions requesting the General Assembly to enact legislation enabling the creation of the Macon-Jackson Regional Airport Authority. According to the resolutions, the Jackson County Airport has a runway length of only 3003 feet and the topography limits further expansion of the Jackson County Airport or extension of the runway. The Macon County Airport has a runway length of 4400 feet, and

there are plans to extend the runway to accommodate larger business-class jet aircraft. The Macon County Airport is only 30 miles from the Jackson County Airport and is an alternate local airport for Jackson County. The availability of the longer runway enhances the business climate in both counties and the entire southwestern mountain region, and a shared commitment of local resources will promote efficiency by eliminating the duplication of airport services and enhancing the overall level of airport services available to the southwestern mountain region.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1084

Committee Substitute Favorable 4/21/05

Short Title: Expunge Nonviolent Felonies/Young Offenders. (Public)

Sponsors:

Referred to:

April 4, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A YOUTHFUL OFFENDER'S CRIMINAL RECORD MAY BE EXPUNGED OF NONVIOLENT FELONIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-149. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.**

(a) For purposes of this section, the term "nonviolent felony" means any felony except the following:

(1) A Class A through E felony.

(2) A felony that includes assault as an essential element of the offense; and

(3) A felony that is an offense for which the convicted offender must register under Article 27A of Chapter 14 of the General Statutes.

(b) Notwithstanding any other provision of law, if a person is convicted of more than one nonviolent felony in the same session of court, then the multiple nonviolent felony convictions shall be treated as one nonviolent felony conviction under this section, and the expunction order issued under this section shall provide that the multiple convictions shall be expunged from the person's record in accordance with this section.

(c) Whenever any person who had not yet attained the age of 18 years at the time of the offense and has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file a petition in the court where the person was convicted for expunction of the nonviolent felony from the person's criminal record. The petition cannot be filed earlier than two years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The person shall

also perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the nonviolent felony in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage that they know the character and reputation of the petitioner in the community in which he or she lives and that the petitioner's character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expungements maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts to conduct the searches and report the findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him or her are outstanding.

(6) An affidavit by the petitioner that the petitioner has performed at least 100 hours of community service since the conviction for the nonviolent felony. The affidavit shall include a list of the community services performed, a list of the recipients of the services, and a detailed description of those services.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that the judge deems desirable.

(d) If the court, after a hearing, finds that the petitioner has remained of good behavior and has been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the nonviolent felony in question or any active sentence, period of probation or post-release supervision has been served, whichever is later, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him or her, the

petitioner was less than 18 years old at the time of the commission of the offense in question, and the petitioner has performed at least 100 hours of community service since the time of the conviction, then the court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of the person for any purpose.

(e) The court shall also order that the nonviolent felony conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief, or head of any other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(f) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged.

(g) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in the clerk's county, file with the Administrative Office of the Courts the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.

(h) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the felony which is to be expunged under this section.

(i) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred dollars ($100.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 2. This act becomes effective December 1, 2005.

House Bill 1084:
Expunge Nonviolent Felonies/Young Offenders

BILL ANALYSIS

Committee: House Finance
Date: May 23, 2005
Version: 2nd Edition

Sponsor: Reps. Bordsen and Crawford
Analysis by: Ashley Huffstetler*
Staff Attorney

SUMMARY: ***House Bill 1084 allows for the expunction of criminal records for offenders who are under the age of 18 at the time of commission of a nonviolent felony. The petitioner must wait two years after the conviction or any period of probation, or time served for an active sentence, period of probation or post-supervised release (whichever is later), perform 100 hours of community service, commit no prior or subsequent felony or non-traffic misdemeanor offenses, and present affidavits attesting to his or her character in order to receive an expunction. The PCS made several substantive changes to the original bill and increased the expunction fee from $65 to $100.***

CURRENT LAW: Article 5 of the Criminal Procedure Act allows for the expunction of criminal records of certain cases. Expunction is the process by which a record of criminal conviction is removed by order of the court, and an individual is restored to the status he or she occupied before the arrest or indictment. General Statute 15A-145 allows a person convicted of a *misdemeanor* to file a petition for expunction if the person was under 18 at the time of a conviction or, in the case of a misdemeanor alcohol possession charge, the person was under 21 at the time of conviction. The petition may not be filed sooner than two years after the conviction or completion of probation and must include the following [1]:

1) an affidavit of good behavior for the two years following conviction, stating that the petitioner has not been convicted of any felony or non-traffic misdemeanor charge;

2) two affidavits of good character from persons unrelated to the petitioner;

3) a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted; and

4) affidavits of the clerk of superior court, chief of police, and sheriff of the county of the offense and where the petitioner resides showing that petitioner has not been convicted of a felony or non-traffic misdemeanor offense prior to or in the two years since the conviction in question.

If the court finds in favor of the petitioner the clerk of superior court and the appropriate law enforcement agencies must expunge the record of the conviction.

Other sections of Article 5 provide for "Expunction of records when charges are dismissed or there are finding of not guilty as a result of identity fraud"[2] and "Expunction of DNA records when charges are dismissed on appeal or pardon of innocence is granted."[3].

BILL ANALYSIS: The bill would add a new section to Article 5 "Expunction of Records" of Chapter 15A "Criminal Procedure Act" of the General Statutes. The proposed G.S. 15A-149 would provide expunction of the criminal records of *first time offenders* who are under 18 years of age at the time of the

[1] G.S. 15A-145(a)(1) through (4).
[2] G.S. 15A-147.
[3] G.S. 15A-148.

commission of a nonviolent felony if there are no previous or subsequent felony or misdemeanor convictions, other than a traffic violation. "Nonviolent felony" would include any felony ***except*** the following:

- A Class A through E felony;
- A felony that includes assault as an essential element of the offense; and
- A felony that is an offense for which the convicted offender must register under Article 27A of Chapter 14 of the General Statutes (sex offenders).

If a person is convicted of more than one nonviolent felony in the same session of court, the bill provides that the multiple nonviolent felony convictions are to be treated as one nonviolent felony conviction, and the expunction order will expunge all convictions.

The procedure to be followed by the petitioner is modeled along the lines of existing procedures. The petition cannot be filed earlier than two years after the date of conviction or after the time when any active sentence, period of probation, or post-release supervision has been served, whichever occurs later. The petitioner is also required to perform at least 100 hours of community service before filing the petition for expunction.

The petition must contain at least the following:

1) An affidavit of good behavior by the petitioner for the two years following conviction, stating that the petitioner has not been convicted of any felony or non-traffic misdemeanor charge under the laws of the United States, this State or any other state during that time;

2) Two affidavits of good character from persons unrelated to petitioner;

3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted;

4) An application authorizing a State and national criminal record check by the Department of Justice with the results reported to the court;

5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding; and

6) An affidavit from the petitioner that he or she has performed at least 100 hours of community service.

The petition is served on the district attorney who has 10 days to file any objections. If the judge finds that the petitioner has met the requirements, the judge shall order the petitioner restored to his or her prior status, that the conviction be expunged from court records, and that all law enforcement agencies expunge their records, including the State Bureau of Investigation and the Federal Bureau of Investigation.

Any other applicable State or local government agency is directed to expunge from its records any entries made as a result of the conviction order expunged under this section. The agency is required to also reverse any administrative actions taken against a person whose record is expunged under this section.

The clerk of superior court in each North Carolina county shall file with the Administrative Offices of the Court the names of those persons granted a discharge under this provision. The Administrative Offices must maintain a confidential file with the names of persons granted conditional discharges and this

information can only be disclosed to judges of the General Court of Justice of North Carolina to determine if any person charged with an offense has been previously given a discharge.

Either a probation officer or the court *must* provide notification of the opportunity for expunction under this section.

The bill sets the filing fee for the expunction petition at $100.00, unless the petitioner is indigent. The PCS amended the fee provision in the bill by increasing the fee for filing the expunction petition from $65 to $100.

EFFECTIVE DATE: The bill would become effective December 1, 2005.

HB1084-SMRQ-003

**Ben Popkin, Attorney, Research Division, contributed to this summary. Drupti Chauhan drafted the summary in House Judiciary II.*

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 1084 (Second Edition)

SHORT TITLE: Expunge Nonviolent Felonies/Young Offenders.

SPONSOR(S): Representatives Bordsen and Crawford

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	**FY 2006-07**	**FY 2007-08**	**FY 2008-09**	**FY 2009-10**
REVENUES:	$59,600	$41,300	$22,900	$22,900	$22,900
EXPENDITURES:					
Judicial Branch	$36,750	$26,442	$13,858	$13,858	$13,858
Justice	$80,831	$48,884	$28,712	$28,712	$28,712
TOTAL EXPENDITURES:	$117,581	$75,326	$42,570	$42,570	$42,570
POSITIONS (cumulative)-DOJ:	1	1	0.5	0.5	0.5

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch; Department of Justice

EFFECTIVE DATE: December 1, 2005

BILL SUMMARY: This bill would enact new G.S. 15A-149 to allow expunction of records for nonviolent felonies committed by first-time offenders who were under the age of 18 at the time of the conviction. A nonviolent felony is defined as any felony except a Class A through Class E felony, a felony with assault as an essential element of the offense, and a felony for which the convicted offender must register as a sex offender.

To be eligible for expunction under the bill, the offender must not have been previously convicted of any felony or misdemeanor other than a traffic violation, and must have remained of good behavior and been free of conviction of any felony or misdemeanor other than a traffic violation for two years from the date of conviction of the nonviolent felony to be expunged. A petition cannot be filed earlier than two years after the date of conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The offender must also perform 100 hours of community service before filing a petition.

Source: Administrative Office of the Courts, Research and Planning (04/27/05).

ASSUMPTIONS AND METHODOLOGY:

To estimate the number of individuals eligible to file a petition for expunction under this bill, the Administrative Office of the Courts (AOC) identified the number of defendants convicted of a single nonviolent felony while under the age of eighteen by counting the number of convictions recorded per defendant's name in each county. Using this method, AOC identified 12,254 defendants eligible for expunction due to this bill.[1]

As it would be unreasonable to assume that all 12,254 eligible individuals would petition for expunction, AOC estimated the percentage of this total that would file a petition by utilizing the petition rate for existing expunction provisions under G.S. 15A-145(a), which allows for expunction of non-traffic misdemeanors committed by offenders under age eighteen. In calendar year 2004, there were 244 petitions filed out of an estimated 6,900 eligible convictions, revealing that approximately 4 percent of eligible individuals actually sought to have their convictions expunged.

For the 12,254 existing convictions that would be eligible for expunction, AOC estimates that a greater proportion of individuals would seek expunction initially and at declining rates thereafter. However, each year AOC anticipates that an additional 750 convictions would become eligible for expunction. Of these, AOC estimates that 8 percent would seek expunction, resulting in an additional 60 petitions annually. Table 1 below outlines the total number of petitions that would be filed each year based on the estimated numbers of eligible convictions and the rate at which eligible individuals would seek expunction.

Table 1: Estimated Number of Expunction Petitions Filed

	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Existing Backlog of Convictions	12,254	12,254	12,254	12,254	12,254
Percentage Seeking Expunction	6%	4%	2%	2%	2%
Petitions	**735**	**490**	**245**	**245**	**245**
New Convictions	750	750	750	750	750
Percentage Seeking Expunction	8%	8%	8%	8%	8%
Petitions	**60**	**60**	**60**	**60**	**60**
Total Estimated Petitions	**795**	**550**	**305**	**305**	**305**

[1] To the extent that two individuals with identical names would appear to be one individual with multiple convictions, this approximation would underestimate the number of defendants eligible for expunction under this bill. However, to the extent that some individuals could have a single conviction in multiple counties, this approximation would be an overestimate.

Revenues

Under this bill there would be a $100 fee when filing a petition for expunction. AOC estimates that approximately one quarter of petitioners would be indigent and would thus not pay the fee when seeking expunction. Table 2 below outlines projected revenues if 75 percent of petitioners were to pay the $100 fee.

Table 2: Estimated Revenues Resulting from $100 Fee.

	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Total Estimated Petitions	795	550	305	305	305
Non-Indigent Petitions (75%)	596	413	229	229	229
Revenues	**$59,600**	**$41,300**	**$22,900**	**$22,900**	**$22,900**

Expenditures

Judicial Branch

Petitions filed as a result of this bill would lead to additional workload and costs for superior court and the Administrative Office of the Courts.

Superior Court: Clerks would devote time to receiving, filing, and processing petitions, as well as destroying and otherwise expunging court files and records. Additionally, the petitioner would pay a $100 fee when filing a petition, and clerks would incur time receiving and processing these payments or an affidavit of indigency if the petitioner is unable to pay. The petition must also be served on the district attorney, who would then have ten days to review and file an objection. Furthermore, the bill specifies that a hearing must be held and lists the findings that would justify expunction. Under current practice, most hearings are conducted in chambers or otherwise informally, and with rare exceptions, are uncontested. Nevertheless, expunction petitions due to this bill would require additional judge time to review affidavits and other documents, hear from the petitioner, make an evaluation, and issue an order. For cases that are contested or require closer scrutiny, significant judge time would be required.

Administrative Office of the Courts: To seek expunction under existing law, a person fills out an AOC form, which is sent to the SBI for a national record check and to the AOC to determine whether the person has previously had a record expunged. In 2004, AOC processed 6,297 of these requests. As under current law, this bill would require AOC to maintain a confidential file of expungements, but unlike some provisions of current law, this bill does not specify that a person may only seek an expungement once in their lifetime (see Technical Considerations). Handling current expunction petitions requires approximately one-half of a position in order to look up the information, handle related communications with the clerk and SBI, answer citizen questions, and maintain the files. Also, AOC would incur costs for programming, development, production of forms, postage, copying, printing, mailing, and similar operating costs.

Table 3 on the next page outlines the additional costs that would be needed to process the estimated number of expunction petitions resulting from this bill each year. These figures represent additional resource costs for the Courts but, as they are formulated on fractional position estimates, do not represent the need for additional positions.

Table 3: Estimated Judiciary Position and Operating Expenditures

	FY 05-06 795 Petitions		FY 06-07 550 Petitions		FY 07-08 to FY 09-10 305 Petitions	
	Positions	Cost	Positions	Cost	Positions	Cost
Deputy Clerks	0.20	$6,766	0.14	$4,736	0.08	$2,706
Superior Court Judges	0.11	$16,452	0.08	$11,965	0.04	$5,982
Assistant District Attorneys	0.11	$8,597	0.08	$6,252	0.04	$3,126
AOC Staff	0.07	$3,345	0.05	$2,389	0.03	$1,434
Operating Costs	-	$1,590	-	$1,100	-	$610
Total		**$36,750**		**$26,442**		**$13,858**

Department of Justice

The State Bureau of Investigation (SBI) in the Department of Justice is involved in the expunction process in three ways:

1. The SBI reviews applications for expunction to determine whether the applicant is eligible, and transmits that information to the Court system.
2. Upon a judicial order for expunction, the SBI removes information from its databases and forwards the expunction order to the Federal Bureau of Investigation.
3. This analysis assumes that new subsection (f) in this bill would require that an offender's DNA profile also be removed from the Convicted Offender DNA Information System (CODIS). Beginning in December 2003, all convicted felons were required to provide a DNA sample.

The workload of seven different positions in the SBI is affected by this bill – two processing assistants, a fingerprint technician supervisor, an attorney, an evidence technician, and a DNA database analyst. It requires a total of approximately 67 minutes of staff time to process an application, 172 minutes of staff time to process an expunction order, and 30 minutes of staff time to remove the DNA record from CODIS. The SBI estimates that 87 percent of applications result in expunction orders. Using data and methodology from the Administrative Office of the Courts, we estimate the following:

Table 4: Estimated SBI Position and Operating Expenditures

	2005-06	2006-07	2007-08
Number of applications	795	550	305
Number of orders (87%)	692	479	265
Cost per Application	$27.79	$27.79	$27.79
Cost per Order	$61.24	$61.24	$61.24
Postage per Order	$1.27	$1.27	$1.27
Subtotal non-DNA Cost	**$65,455**	**$45,284**	**$25,112**
DNA Cost per Order	$22.20	$22.20	$22.20
Est. orders with DNA*	124	60	60
Subtotal DNA cost	**$15,376**	**$3,600**	**$3,600**
TOTAL	**$80,831**	**$48,884**	**$28,712**
Positions required	**0.96**	**0.92**	**0.52**

*Estimated number of eligible convictions that occurred on or after December 1, 2003.

The staff time required to process 795 applications is equivalent to one full-time position. Therefore, the box on the front page reflects one additional position required for the SBI in FY 2005-06. Position requirements will decrease in later years as workload declines.

SOURCES OF DATA: Administrative Office of the Courts, Department of Justice

TECHNICAL CONSIDERATIONS:

1. Effective date: This bill would be effective December 1, 2005. AOC notes that considerable preparation would be necessary to implement this bill, including hiring and training personnel, modifying computer programs, and coordination between AOC and the SBI to prepare for the anticipated increase in petitions. AOC expects that an effective date no earlier than January 1, 2006 would be necessary to implement the bill.

2. Notice to Department of Correction and Division of Motor Vehicles: The bill does not include the Department of Correction or Division of Motor Vehicles among the agencies to whom the Clerk must send a certified copy of an expungement order. The mechanism by which DOC and DMV would receive notice of an expungement order is not specified.

3. DNA Expungement: It is unclear whether subsection (f) (which requires any other applicable State or local government agency to expunge from its records entries made as a result of the conviction to be expunged) would require that DNA profiles be removed from the Convicted Offender DNA Information System. This fiscal analysis assumes that this provision would require DNA to be expunged and Department of Justice costs are calculated accordingly.

4. Fee for Expungement. This bill sets a fee of $100 for expungements resulting from this legislation. Currently, the fee for expungement is $65. Senate Bill 622 (2005 Appropriations Act), which has passed the Senate and been referred to the House, would increase fees for expungements to $125.

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Official
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APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: May 19, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1340

Short Title:	Reestablish Boxing Commission.	(Public)
Sponsors:	Representative Faison.	
Referred to:	Finance.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO REESTABLISH THE NORTH CAROLINA STATE BOXING COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. The regulation of boxing under the authority of the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety is transferred to the North Carolina State Boxing Commission reestablished pursuant to Article 68A of Chapter 143 of the General Statutes, as enacted in Section 3 of this act, within the Department of Commerce, Division of Tourism, Film, and Sports Development by a Type II transfer, as defined by G.S. 143A-6(b).

SECTION 2. Article 68 of Chapter 143 of the General Statutes is repealed.

SECTION 3. Chapter 143 of the General Statutes is amended by adding the following new Article to read:

"Article 68A.

"North Carolina State Boxing Commission.

"**§ 143-659.1. Legislative findings and declarations.**

The General Assembly finds and declares to be the public policy of this State that it is in the best interest of the public and of boxing that boxing should be subject to an effective and efficient system of strict control and regulation in order to:

(1) Protect the safety and well-being of participants in boxing; and

(2) Promote the public confidence and trust in the regulatory process and the conduct of boxing.

To further the public confidence and trust, the provisions of this Article are designed to regulate all persons, practices, and associations related to the operation of any live boxing event, performance, or contest held in North Carolina.

"**§ 143-659.2. Definitions.**

The following definitions apply in this Article:

(1) Amateur. – A person who is not receiving or competing for and has never received or competed for any purse or other article or thing of value for participating in a match.
(2) Announcer. – Any person who engages in the act of announcing a boxing match.
(3) Boxer. – Any person who engages as a participant in a boxing match.
(4) Boxing match. – A match where the participants engage in the use of full contact boxing techniques (using the fist only), and where the object of a match is to win by decision, knockout (KO), or technical knockout (TKO).
(5) Commission. – The North Carolina State Boxing Commission.
(6) Contest. – A boxing match in which the participants strive earnestly to win.
(7) Contestant. – Any person who engages as a participant in a boxing match.
(8) Division. – The Division of Tourism, Film, and Sports Development of the Department of Commerce.
(9) Exhibition. – A boxing match where the participants display their boxing skills and technique without necessarily striving to win.
(10) Judge. – A person who has a vote in determining the winner of any match or contest.
(11) Kickboxer. – Any person who engages as a participant in a kickboxing match.
(12) Kickboxing match. – A match in which the participants engage in full contact martial arts fighting techniques using the hands and the feet, and where the object of the match is to win by decision, knockout (KO), or technical knockout (TKO).
(13) Licensee. – Any person, club, corporation, organization, or association to whom a license has been issued pursuant to the provisions of this Article.
(14) Manager. – Any person who controls or administers the boxing affairs of any contestant, and who:
a. By contract, agreement, or other arrangement with any person undertakes or has undertaken to represent in any way the interest of the contestant in any professional boxing contest in which the boxer is to participate as a contestant, and is entitled under that contract, agreement, or arrangement to receive monetary or other compensation for his or her services, without regard to the sources of the compensation. The term 'manager' shall not be construed to mean any attorney licensed to practice in this State whose participation in the activities is restricted solely to his representing the interests of a professional boxer as a client.

b. Directs or controls the professional boxing activities of any professional boxer.

c. Receives or is entitled to receive a percentage of the gross purse or gross income of any professional boxing contest.

(15) Match. – Any boxing or kickboxing contest or exhibition, and includes any event, engagement, sparring or practice session, show or program where the public is admitted and in which there is intended to be physical contact, whether an exhibition or contest. This definition does not include training or practice sessions when no admission is charged.

(16) Matchmaker. – A person through whom matches are arranged for participants and who otherwise assists participants in procuring engagement dates for boxing.

(17) Natural person. – An individual.

(18) Participant. – Any person who engages in a match or exhibition and performs as a boxer.

(19) Person. – An individual, group of individuals, business, corporation, limited liability company, partnership, or any other individual or collective entity.

(20) Physician. – An individual licensed to practice medicine in this State.

(21) Professional. – Any person who is licensed as a professional boxer under the federal Professional Boxing Safety Act of 1996.

(22) Promoter. – Any person who produces, arranges, stages, holds, or gives any match in North Carolina involving a professional participant.

(23) Referee. – The official who shall enter and remain in the ring for the duration of a match and shall enforce the rules and maintain order in the ring.

(24) Ring official. – Any person who performs an official function for the duration of a match.

(25) Sanctioned amateur. – A person who competes in a sanctioned amateur match.

(26) Sanctioned amateur match. – Any boxing or kickboxing match regulated by an amateur sports organization that has been recognized and approved by the North Carolina Boxing Commission.

(27) Second. – Any person who will work or be present in the corner of a participant for the duration of a match.

(28) Timekeeper. – Any person who will operate the clock or watch for the duration of a match for the purpose of keeping the official time of the match.

(29) Toughman contestant. – Any person who competes in a toughman event.

(30) Toughman event. – An elimination program of matches in which: (i) the contestants are not professional boxers; (ii) the finalist receives a purse or other article of value; (iii) the participants engage in the use of

full contact boxing techniques; and (iv) the object of each match is to win by decision, knockout (KO), or technical knockout (TKO).

(31) Ultimate warrior match. – A match where the participants use any combination of boxing, kicking, wrestling, hitting, punching, or other combative, contact techniques and which combination of techniques is not specifically authorized by and conducted pursuant to this Article.

"**§ 143-659.3. State Boxing Commission.**

(a) Creation. – The North Carolina State Boxing Commission is created within the Division of Tourism, Film, and Sports Development of the Department of Commerce to regulate in North Carolina live boxing and kickboxing matches, whether professional, amateur, sanctioned amateur, or toughman events, in which admission is charged for viewing, or the contestants compete for a purse or prize of value greater than twenty-five dollars ($25.00). The Commission shall consist of seven members. All the members shall be residents of this State and meet requirements for membership under the Professional Boxing Safety Act of 1996. The initial Commission members shall be appointed as follows:

(1) The General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint two Commission members, one to serve a two-year term and one to serve a three-year term.

(2) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint two Commission members, one to serve a one-year term and one to serve a two-year term.

(3) The Governor shall appoint two Commission members, one to serve a one-year term and one to serve a three-year term.

(4) The Lieutenant Governor shall appoint one Commission member to serve a two-year term.

Upon the expiration of the terms of the initial Commission members, each member shall be appointed for a term of three years and shall serve until a successor is appointed. The Governor shall designate which member of the Commission is to serve as chair. A member of the Commission may be removed from office by the Division. Each member before entering upon the duties of a member shall take and subscribe an oath to perform the duties of the office faithfully, impartially, and justly to the best of the member's ability. A record of these oaths shall be filed in the Division.

(b) Vacancies. – Members shall serve until their successors are appointed and have been qualified. Any vacancy in the membership of the Commission shall be filled in the same manner as the original appointment. Vacancies for members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. A vacancy in the membership of the Commission other than by expiration of term shall be filled for the unexpired term only.

(c) Meetings. – Meetings of the Commission shall be called by the chair or by any two members of the Commission, and meetings shall be held at least quarterly. Any three members of the Commission shall constitute a quorum at any meeting. Action may be taken and motions and resolutions adopted by the Commission at any

meeting by the affirmative vote of a majority of the members of the Commission present at a meeting at which a quorum exists. Any or all members may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in the meeting by this means is deemed to be present in person at the meeting.

(d) Rule-Making Authority of the Commission. – The Commission shall have the exclusive authority to approve and issue rules for the regulation of the conduct, promotion, and performances of live boxing, kickboxing, sanctioned amateur, amateur, and toughman matches and exhibitions in this State. The rules shall be issued pursuant to the provisions of Chapter 150B of the General Statutes and may include, without limitation, the following subjects:

(1) Requirements for issuance of licenses and permits required by this Article.
(2) Regulation of ticket sales.
(3) Physical requirements for contestants, including classification by weight and skill.
(4) Supervision of matches and exhibitions by licensed physicians and referees.
(5) Insurance and bonding requirements.
(6) Compensation of participants and licensees.
(7) Contracts and financial arrangements.
(8) Prohibition of dishonest, unethical, and injurious practices.
(9) Facilities.
(10) Approval of sanctioning amateur sports organizations.
(11) Procedures and requirements for compliance with the Professional Boxing Safety Act of 1996.

(e) Compensation. – None of the members of the Commission shall receive compensation for serving on the Commission. However, members of the Commission may be reimbursed for their expenses in accordance with the provisions of Chapter 138 of the General Statutes.

(f) Staff Assistance. – The Division shall hire a person to serve as Executive Director of the Commission and shall provide staff assistance to the Executive Director. The Executive Director shall enforce this Article through the Division. If necessary, the Executive Director may train and contract with independent contractors for the purpose of regulating and monitoring events, issuing licenses, collecting fees, and enforcing rules of the Commission. The Executive Director may initiate and review criminal background checks on persons requesting to work as independent contractors for the Commission or persons applying to be licensed by the Commission.

"**§ 143-659.4. Licensing and permitting.**

(a) License and Permit Required. – Except for sanctioned amateur matches, it is unlawful for any person to act in this State as an announcer, contestant, judge, manager, matchmaker, promoter, referee, timekeeper, or second unless the person is licensed to do so under this Article. It is unlawful for a promoter to present a match in this State,

other than a sanctioned amateur match, unless the promoter has a permit issued under this Article to do so. The Commission has the exclusive authority to issue, deny, suspend, or revoke any license or permit provided for in this Article.

(b) License. – All licenses issued under this Article shall be valid only during the calendar year in which they are issued, except contestant licenses shall be valid for one year from the date of issuance. A license for an announcer, contestant, judge, matchmaker, referee, timekeeper, or second shall be issued only to a natural person. A natural person shall not transfer or assign a license or change it into another name. A license for a manager or promoter may be issued to a corporation or partnership; provided, however, that all officers or partners shall submit an application for individual licensure, and only those officers or partners who are licensed shall be entitled to negotiate or sign contracts. The addition of a new officer or partner during the license period shall necessitate the filing of an application for individual licensure by the new officer or partner.

An applicant for a license shall file with the Commission the appropriate nonrefundable fee and any forms, documents, medical examinations, or exhibits the Commission may require in order to properly administer this Article. The information requested shall include the date of birth and social security number of each applicant as well as any other personal data necessary to positively identify the applicant and may include the requirement of verification of any documents the Commission deems appropriate. A person may not participate under a fictitious or assumed name in any match unless the person has first registered the name with the Commission.

(c) Surety Bond. – An applicant for a promoter's license must submit, in addition to any other forms, documents, or exhibits requested by the Commission, a surety bond payable to the Commission for the benefit of any person injured or damaged by (i) the promoter's failure to comply with any provision of this Article or any rules adopted by the Commission or (ii) the promoter's failure to fulfill the obligations of any contract related to the holding of a boxing event. The surety bond shall be issued in an amount to be no less than five thousand dollars ($5,000). The amount of the surety bond shall be negotiable upon the sole discretion of the Commission. All surety bonds shall be upon forms approved by the Division and supplied by the Commission.

(d) Permit. – A permit issued to a promoter under this Article is valid for a single match. An applicant for a permit shall file with the Commission the appropriate nonrefundable fee and any forms or documents the Commission may require.

"**§ 143-659.5. Fees; State Boxing Commission Revenue Account.**

(a) License Fees. – The Commission shall collect the following license fees:

Announcer	$50.00
Contestant	$25.00
Judge	$50.00
Manager	$100.00
Matchmaker	$200.00
Promoter	$300.00
Referee	$50.00
Timekeeper	$50.00

Second	$25.00.

The annual license renewal fees shall not exceed the initial license fees.

(b) Permit Fees. – The Commission may establish a fee schedule for permits issued under this Article. The fees may vary depending on the seating capacity of the facility to be used to present a match. The fee may not exceed the following amounts:

Seating Capacity	Fee Amount
Less than 2,000	$100.00
2,000 – 5,000	$200.00
Over 5,000	$300.00.

(c) State Boxing Commission Revenue Account. – There is created the State Boxing Commission Revenue Account within the Division of Tourism, Film, and Sports Development of the Department of Commerce. Moneys collected pursuant to the provisions of this Article shall be credited to the Account and applied to the administration of the Article.

"**§ 143-659.6. Contracts and financial arrangements.**

Any contract between licensees and related to a boxing match or exhibition held or to be held in this State must meet the requirements of administrative rules as set forth by the Commission. Any contract which does not satisfy the requirements of the administrative rules shall be void and unenforceable. All contracts shall be in writing.

"**§ 143-659.7. Sanctioned amateur matches.**

In addition to the other applicable provisions of this Article, a sanctioned amateur match shall be conducted pursuant to the rules of the sports organization sanctioning the boxing match or exhibition.

"**§ 143-659.8. Violations.**

(a) Civil Penalties. – The Division may issue an order against a licensee or other person who willfully violates any provision of this Article, imposing a civil penalty of up to five thousand dollars ($5,000) for a single violation or of up to twenty-five thousand dollars ($25,000) for multiple violations in a single proceeding or a series of related proceedings. No order under this subsection may be entered without giving the licensee or other person 15 days' prior notice and an opportunity for a contested case hearing conducted pursuant to Article 3 of Chapter 150B of the General Statutes.

The clear proceeds of civil penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Criminal Penalties. – A willful violation of any provision of this Article shall constitute a Class 2 misdemeanor. The Division may refer any available evidence concerning violations of this Article to the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings.

(c) Injunction. – Whenever it appears to the Division that a person has engaged or is about to engage in an act or practice constituting a violation of any provision of this Article or any rule or order hereunder, the Division may bring an action in any court of competent jurisdiction to enjoin those acts or practices and to enforce compliance with this Article or any rule or order issued pursuant to this Article."

SECTION 4. G.S. 18B-502(a) reads as rewritten:

"(a) Authority. – To procure evidence of violations of the ABC law, alcohol law-enforcement agents, employees of the Commission, local ABC officers, and officers of local law-enforcement agencies that have contracted to provide ABC enforcement under G.S. 18B-501(f) shall have authority to investigate the operation of each licensed premises for which an ABC permit has been issued, to make inspections that include viewing the entire premises, and to examine the books and records of the permittee. The inspection authorized by this section may be made at any time it reasonably appears that someone is on the premises. Alcohol law-enforcement agents are also authorized to be on the premises to the extent necessary to enforce the provisions of ~~Article 68~~Article 68A of Chapter 143 of the General Statutes."

SECTION 5. G.S. 90-18.3 reads as rewritten:

"**§ 90-18.3. Physical examination by nurse practitioners and physician assistants.**

(a) Whenever a statute or State agency rule requires that a physical examination shall be conducted by a physician, the examination may be conducted and the form signed by a nurse practitioner or a physician's assistant, and a physician need not be present. Nothing in this section shall otherwise change the scope of practice of a nurse practitioner or a physician's assistant, as defined by G.S. 90-18.1 and G.S. 90-18.2, respectively.

(b) This section shall not apply to physical examinations conducted pursuant to G.S. 1A-1, Rule 35; G.S. 15B-12; ~~G.S. 90-14~~G.S. 90-14; or any rules adopted by the North Carolina Boxing Commission requiring physical examinations unless those statutes or rules are amended to make the provisions of this section applicable."

SECTION 6. This act is effective when it becomes law.

HOUSE BILL 1340:
Reestablish Boxing Commission

BILL ANALYSIS

Committee:	House Finance	**Date:**	May 24, 2005
Introduced by:	Rep. Faison	**Summary by:**	Martha Walston
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1340 transfers the regulation of boxing from the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety to the Department of Commerce, Division of Tourism, Film, and Sports Development and reestablishes the North Carolina State Boxing Commission within the Division of Tourism, Film, and Sports Development. The current license fees, permit fees, civil penalties, and criminal penalties remain the same.

CURRENT LAW: The Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety currently regulates the following boxing activities:

- Live boxing and kickboxing matches, whether professional, amateur, sanctioned amateur, or toughman events, in which admission is charged for viewing, or the contestants compete for a purse or prize of value greater than $25.

Prior to July 1, 2004, the above activities (hereinafter referred to as boxing) were controlled by the North Carolina State Boxing Commission created within the Department of Crime Control and Public Safety.

BILL ANALYSIS: House Bill 1340 reestablishes the North Carolina State Boxing Commission within the Department of Commerce, Division of Tourism, Film, and Sports Development and transfers regulation of boxing to this Commission. The Commission will differ from the previous Commission in two ways:

- The **new Commission** will be composed of seven members who are residents of the State and meet requirements for membership under the Professional Boxing Safety Act of 1996. The initial members shall be appointed as follows:
  (1) Four members appointed by the General Assembly (two by the Speaker of the House of Representatives and two by the President Pro Tempore of the Senate).
  (2) Two members appointed by the Governor
  (3) One member appointed by the Lieutenant Governor

  The **previous Commission** consisted of six voting and two nonvoting advisory members who were residents of N.C. and met requirements for membership under the Professional Boxing Safety Act of 1999 as follows:
  (1) One voting member appointed by the Governor
  (2) Four members appointed by the General Assembly (Two members, one voting and one nonvoting, by the Speaker of the House of Representatives and two members, one voting and one nonvoting, by the President Pro Tempore of the Senate)
  (3) Two voting members appointed by the Secretary of Crime Control and Public Safety
  (4) One member appointed by the Tribal Council of the Eastern Band of the Cherokee.[1]

[1] This member may serve on the Commission only if an agreement exists and remains in effect between the Tribal Council of the Eastern Band of the Cherokee and the Commission authorizing the Commission to regulate professional boxing matches within the Cherokee Indian Reservation as provided by the Professional Boxing Safety Act of 1996.

- House Bill 1340 deletes the prohibition against ultimate warrior matches. These matches are also prohibited under current law. An "ultimate warrior match" is defined as a match where the participants use any combination of boxing, kicking, wrestling, hitting, punching, or other combative, contact techniques and which combination of techniques is not specifically authorized by and conducted pursuant to this Article.

House Bill 1340 provides that rules adopted by the Commission requiring physical examinations are not governed by the statute in Chapter 90 that allows a physical examination to be conducted by a nurse practitioner or a physician's assistant when a statute or agency rule requires a physician to conduct the physical examination.

The current license fees and permit fees will remain the same except they will be placed in a State Boxing Commission Revenue Account within the Department of Commerce instead of the Department of Crime Control and Public Safety. The fees are set out below:

License Fees The annual license renewal fees may not exceed the initial license fees

Announcer	$50
Contestant	$25
Judge	$50
Manager	$100
Matchmaker	$200
Promoter	$300
Referee	$50
Timekeeper	$50
Second	$25

Permit Fees The Commission may establish a fee schedule for permits issued under this Article. The fees may vary depending on the seating capacity of the facility to be used to present a match. The fee may not exceed the following amounts:

Seating Capacity	Fee amount
Less than 2, 000	$100
2,000 – 5,000	$200
Over 5,000	$300

The current civil penalties and criminal penalties for violations of the Article also remain the same, except that the penalties will be under the authority of the Division of Tourism, Film, and Sports Development within the Department of Commerce, instead of the Division of Crime Control and Public Safety.

EFFECTIVE DATE: House Bill 1340 is effective when it becomes law.

H1340e1-SMLA

North Carolina General Assembly

House Committee on Finance

Minutes

~

May 26, 2005

The House Committee on Finance met on Thursday, May 26, 2005 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, Luebke, McComas and Wainwright; Vice-Chairs Hill, Ross, Weiss, and Womble; and Representatives Blackwood, Bordsen, Capps, Carney, Cunningham, Faison, Folwell, Glazier, Hackney, Holliman, Jones, Lewis, McGee, Rayfield, Underhill, Walend, and Wiley. Also present were Sergeant-at-Arms Bill Freeman, Fred Hines, Dusty Rhodes, and Walter Spell. Staff persons present included Cindy Avrette, Rodney Bizzell, Erika Churchill, Brenna Erford, Ashley Huffstetler, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman McComas called the meeting to order at 8:31 am and recognized the three (3) pages present: Ellen Carter of Davie County, sponsored by Representative Howard; Christina Garrett of Harnett County, sponsored by Representative Lewis; and Spencer Powell of Harnett County, sponsored by Representative Lewis.

Chairman McComas then recognized Representative Alexander who announced the birthday of Chairman McComas. She proceeded to lead the members of the Committee in singing the birthday song in honor of Chairman McComas.

Chairman McComas then called the matter of business before the Committee. The sole bill considered at this meeting was **HB 1541 – HOMEOWNER ASSOCIATION AMENDMENTS** (see **attachment 3**). Chairman McComas first recognized Representative Rayfield who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Representative Earle was then recognized and explained the background to the bill. She stated that this bill is an attempt to protect homeowners by making it more difficult for homeowner associations to foreclose on homes for a failure to pay association fees. Representative Earle reported that the bill sponsors have been working closely with the Bar Association to develop this bill. She reported that the only issue not agreed to by the Bar is the $1,200 cap on attorney's fees that is included in the bill. (The Bar was recommending a $1,500 cap.) Representative Stam was then recognized and presented a more technical summary of the bill (see the attached bill summary for further detail). Chairman McComas then recognized Representative Weiss who stated that a tremendous amount of work has been done to craft the bill and that the bill represented a good balance. Following the explanation, Representative Womble was recognized and inquired about the difference between the proposed committee substitute and the original bill. Chairman McComas recognized Martha Walston from Fiscal Research who reported that the proposed committee substitute is a major rework of the original bill incorporating added safeguards for property owners

and the Bar Association's recommendations. Representative Hackney was then recognized and asked why the North Carolina State flag was not included along with the United States flag in the bill. Chairman McComas recognized Representative Stam who mentioned that he was not aware that the display of the State flag had ever been a major issue. Representative Underhill was then recognized and sent forth an amendment and moved for its adoption (see **attachment 4**). She explained that the amendment stemmed from a case in her district involving a constituent and would prohibit an executive board member of a homeowners' association from paying themselves a fee for service without approval of the executive board of an association. Representative Weiss was recognized to respond to the amendment and asked that Representative Underhill withdraw the amendment so more time could be given to take a closer look at the issue. Chairman McComas then recognized Representative Underhill who withdrew her amendment. Representative Wainwright was then recognized and asked why the executive board would be able to meet in a closed session. Chairman McComas recognized Representative Stam who responded by stating that private meetings would need to be held for personnel or disciplinary actions. Representative Gibson was then recognized and offered an amendment (see **attachment 5**) and moved for its adoption. Rep. Gibson was recognized by the Chair to explain his amendment and stated that it would add the North Carolina State flag to the provision protecting the homeowners' ability to display a flag on their property. Seeing no further discussion, Chairman McComas called the motion to a vote and the amendment was adopted. Representative Wainwright was then recognized and asked if homeowners were provided the right to cast a proxy vote. Chairman McComas then recognized Henry Jones from the Bar Association who replied said that the Planned Community Act (already a part of the General Statutes) provides homeowners with the ability to vote by proxy. Chairman McComas next recognized Mr. Jim Laumann of the Homeowner Associations of North Carolina who reported that there are over thirteen thousand homeowner associations in North Carolina and only twenty percent (20%) are professionally managed. Mr. Laumann inquired if the State was planning to provide financing to help inform the homeowner associations of the changes to the law if this bill were passed. Representative Stam was recognized and responded that homeowner associations would be informed through the press and members of the General Assembly. Representative Holliman was then recognized and asked if the effective date of October 1, 2005 would give the homeowners' associations enough time to be in compliance with the new regulations. Following his comments, Representative Holliman was then recognized to send forth an amendment (see **attachment 6**) and moved for its adoption. He explained that the amendment would change the effective date from October 1, 2005 to January 1, 2006, providing homeowners and associations more time to comply with the bill. As there was no debate on the amendment, Chairman McComas called the motion to a vote and the amendment was adopted by the Committee. Representative Underhill was then recognized and sent forth another amendment (see **attachment 7**). Ashley Huffstetler from Research explained that the amendment, which she noted was similar in nature to Representative Underhill's first amendment, limits officers and directors of homeowner associations from sub-dealings. Chairman McComas recognized Representative Stam who opposed the amendment saying that the bill sponsors needed more time to review the real effect of the amendment. Thus, Representative Underhill was again recognized and withdrew the amendment. Chairman McComas then recognized Representative Wiley who sent forth an amendment (see **attachment 8**) allowing homeowner associations to regulate the number of flags that could be displayed on a homeowner's property, except on the occasion of patriotic holidays. Representative Hackney was then recognized and expressed concerns that the amendment would not allow for proper regulation by the associations of all other types of flags. At that time, Representative Wiley was again recognized and withdrew the amendment. Chairman McComas then recognized Representative Womble who moved for a favorable report to the proposed committee substitute, incorporating the adopted amendments, and an unfavorable report to the original bill. Seeing no further discussion, Chairman McComas called the motion to a vote and it carried without objection.

Chairman McComas then announced the inclusion of a chart detailing the Wire-line Emergency 911 Charge Fund Balances by county for FY2003-04 (see **attachment 9**). Chairman McComas reminded the members that this information had been committed to the Committee members during the Committee meeting on May 24, 2005.

As there was no further business before the Committee, Chairman McComas then adjourned the meeting at 9:35 am.

Respectfully submitted,

Representative Danny McComas
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. House Bill 1541 (and related materials)
4. Underhill Amendment on HB 1541 - **WITHDRAWN**
5. Gibson Amendment on HB 1541 - **ADOPTED**
6. Holliman Amendment on HB 1541 – **ADOPTED**
7. Underhill Amendment No.2 on HB 1541 – **WITHDRAWN**
8. Wiley Amendment on HB 1541 – **WITHDRAWN**
9. Emergency 911 Charges for FY2003-04

AGENDA

ATTACHMENT 1

House Finance Committee

May 26, 2005
8:30 a.m.
Room 544 LOB
Chaired by: Rep. McComas

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard
Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order

Introduction of Pages

Bills:

HB 1541 HOMEOWNER ASSOCIATION AMENDMENTS
Reps. Earle, Weiss, Stam, & Barnhart

Adjournment

ATTACHMENT 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — May 26, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Lawrence	Homeowner Associations of North Carolina
Lee Hyde	ILLW
David Barnes	Poyner + Spruill
Holly Howington	intern, Rep Eddins
Hope Carmichael	AHorney - Raleigh
[illegible]	Atty Raleigh
Stacy Flannery	NCHCFA
Rick Zechini	NC Assoc. of Realtors
Liz Clarke	intern
Michael Honser	NCAE
John Bardach	AOA

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — May 26, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ryland Pond	Intern - Rep. Carney
Bill Rustad	ACP
Doug Heizon	NC BAR ASSOC
Ken Melton	D.O.R.
Terry [illegible]	NCPC
Andy Ellen	NCRMA
[illegible]	Capitol Drop
Boyd Cable	City of Charlotte
Michelle Frazier	NC Bar Ass'n

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Thursday, May 26, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 1541 – HOMEOWNER ASSOCIATION AMENDMENTS
– Reps. Earle, Weiss, Stam, & Barnhart

Respectfully,
Representatives Alexander, Gibson, Howard, Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **2:20 p.m.** on **May 25, 2005.**

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H D

HOUSE BILL 1541
PROPOSED COMMITTEE SUBSTITUTE H1541-CSLAf-11 [v.13]

5/25/2005 9:05:59 PM

Short Title: Homeowner Association Amendments. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING HOMEOWNER ASSOCIATIONS TO PROVIDE GREATER PROTECTIONS FOR HOMEOWNERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47F-3-102(11) reads as rewritten:

"**§ 47F-3-102. Powers of owners' association.**

Unless the articles of incorporation or the declaration expressly provides to the contrary, the association may:

...

(11) Impose reasonable charges for late payment of ~~assessments~~ assessments, not to exceed the greater of twenty-five dollars ($25.00) or ten percent (10%) of the amount of the unpaid assessment and, after notice and an opportunity to be heard, suspend privileges or services provided by the association (except rights of access to lots) during any period that assessments or other amounts due and owing to the association remain unpaid for a period of 30 days or longer;

...."

SECTION 2. G.S. 47F-3-103 is amended by adding a new subsection to read:

"(f) The association shall publish the names and addresses of all officers and board members of the association within 30 days of their election."

SECTION 3. G.S. 47F-3-107.1 reads as rewritten:

"**§ 47F-3-107.1. Procedures for fines and suspension of planned community privileges or services.**

Unless a specific procedure for the imposition of fines or suspension of planned community privileges or services is provided for in the declaration, a hearing shall be held before the executive board or an adjudicatory panel appointed by the executive board to determine if any lot owner should be fined or if planned community privileges

or services should be suspended pursuant to the powers granted to the association in G.S. 47F-3-102(11) and (12). Any adjudicatory panel appointed by the executive board shall be composed of members of the association who are not officers of the association or members of the executive board. ~~If the executive board fails to appoint an adjudicatory panel to hear such matters, hearings under this section shall be held before the executive board.~~ The lot owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred ~~fifty~~ dollars ~~($150.00)~~ $100.00) may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation occurs. Such fines shall be shall be assessments secured by liens under G.S. 47F-3-116. If it is decided that a suspension of planned community privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured. The lot owner may appeal the decision of an adjudicatory panel to the full executive board by delivering written notice of appeal to the executive board within 15 days after the date of the decision. The executive board may affirm, vacate, or modify the prior decision of the adjudicatory body."

SECTION 4. G.S. 47F-3-108 reads as rewritten:

"**§ 47F-3-108. Meetings.**

(a) A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by lot owners having ten percent (10%), or any lower percentage specified in the bylaws, of the votes in the association. Not less than 10 nor more than 60 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each lot or to any other mailing address designated in writing by the lot owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the lot owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.

(b) Meetings of the executive board shall be held as provided in the bylaws. At regular intervals, the executive board meeting shall provide lot owners an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues or concerns. The executive board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak.

(c) Except as otherwise provided in the bylaws, meetings of the association and the executive board shall be conducted in accordance with general principles of parliamentary procedure so as to facilitate the orderly and efficient completion of business."

SECTION 5. G.S. 47F-3-116 reads as rewritten:

"**§ 47F-3-116. Lien for assessments.**

(a) Any assessment levied against a lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided herein. Unless the declaration otherwise provides, fees, charges, late charges, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1,and 47F-3-115 are enforceable as assessments under this section. ~~The~~ Except as provided in subsections (a1) and (a2) of this section, the association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. ~~Unless the declaration otherwise provides, fees, charges, late charges, fines, interest, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are enforceable as assessments under this section.~~

(a1) An association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(a2) An association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any lot owner unless the fee is expressly allowed in the declaration. Any lien securing a debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(b) The lien under this section is prior to all liens and encumbrances on a lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the lot) recorded before the docketing of the claim of lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments and charges against the lot. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the clerk of superior court.

(d) This section does not prohibit other actions to recover the sums for which subsection (a) of this section creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party. If the lot owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorney's fees shall not exceed one thousand two hundred dollars ($1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the lot owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided

in this section. The attorney's fee limitation in this subsection shall not apply to judicial foreclosures or to proceedings authorized under subsection (d) of this section or G.S. 47F-3-120.

(e1) A lot owner may not be required to pay attorneys' fees and court costs until the lot owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first class mail to the property address and, if different, to the mailing address for the lot owner in the association's records. In addition, the notice must either be hand-delivered to the property address or sent certified mail with confirmation of delivery by the U.S. Postal Service to the property address and, if different, to the mailing address for the lot owner in the association's records. The notice shall set out the outstanding balance due as of the date of the notice and state that the lot owner has 15 days from the mailing of the notice by first class mail to pay the outstanding balance without the attorneys' fees and court costs. If the lot owner pays the outstanding balance within this period, then the lot owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the lot owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (e2) of this section and shall provide the name and telephone number of the representative.

(e2) The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the lot owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule only after the lot owner has been given notice as required in subsection (e1) of this section.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments against such lot which became due prior to the acquisition of title to such lot by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the lot owners including such purchaser, its heirs, successors, and assigns.

(g) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed."

SECTION 6. G.S. 47F-3-118 reads as rewritten:

"**§ 47F-3-118. Association records.**

(a) The association shall keep financial records sufficiently detailed to enable the association to comply with this Chapter. All financial and other ~~records~~ records, including records of meetings of the association and executive board, shall be made reasonably available for examination by any lot owner and the lot owner's authorized ~~agents.~~agents as required in the bylaws and Chapter 55A of the General Statutes. If the

bylaws do not specify particular records to be maintained, the association shall keep accurate records of all cash receipts and expenditures and all assets and liabilities. In addition to any specific information that is required by the bylaws to be assembled and reported to the lot owners at specified times, the association shall make an annual income and expense statement and balance sheet available to all lot owners at no charge and within 75 days after the close of the fiscal year to which the information relates. Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the executive board or by the affirmative vote of two-thirds of the lot owners present in person or by proxy at any annual meeting or any special meeting duly called for that purpose.

(b) The association, upon written request, shall furnish to a lot owner or the lot owner's authorized agents a statement setting forth the amount of unpaid assessments and other charges against a lot. The statement shall be furnished within 10 business days after receipt of the request and is binding on the association, the executive board, and every lot owner."

SECTION 7. Article 3 of Chapter 47F of the General Statutes is amended by adding the following new section to read:

"**§ 47F-3-121. American flag and political sign displays.**

Notwithstanding any provision in any declaration of covenants, no restriction on the use of land shall be construed to:

(1) Regulate or prohibit the display of the flag of the United States, of a size no greater than four feet by six feet, which is displayed in accordance with the patriotic customs set forth in 4 U.S.C. §§ 5-10, as amended, governing the display and use of the flag of the United States unless:

a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the following terms:

1. Flag of the United States of America;
2. American flag; or
3. United States flag.

b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of the United States flag only if the restriction specifically states: '**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA**'.

This subdivision shall apply to owners of property who display the flag of the United States on property owned exclusively by them and does not apply to common areas, easements, rights-of-way, or other areas owned by others.

(2) Regulate or prohibit the indoor or outdoor display of a political sign by an association member on property owned exclusively by the member, unless:

a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the term 'political signs'.

b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of political signs only if the restriction specifically states: **'THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE POLITICAL SIGNS'.**

Even when display of a political sign is permitted under this subdivision, an association (i) may prohibit the display of political signs earlier than 45 days before the day of the election and later than seven days after an election day, and (ii) may regulate the size and number of political signs that may be placed on a member's property if the association's regulation is no more restrictive than any applicable city, town, or county ordinance that regulates the size and number of political signs on residential property. If the local government in which the property is located does not regulate the size and number of political signs on residential property, the association shall permit at least one political sign with the maximum dimensions of 24 inches by 24 inches on a member's property. For the purposes of this subdivision, 'political sign' means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot. This subdivision shall apply to owners of property who display political signs on property owned exclusively by them and does not apply to common areas, easements, rights-of-way, or other areas owned by others."

SECTION 8. G.S. 47C-3-102(11) reads as rewritten:

"**§ 47C-3-102. Powers of unit owners' association.**

(a) Unless the declaration expressly provides to the contrary, the association, even if unincorporated, may:

...

(11) Impose charges for late payment of ~~assessments~~ assessments, not to exceed the greater of twenty-five dollars ($25.00) or ten percent (10%) of the amount of the unpaid assessment and, after notice and an opportunity to be heard, levy reasonable fines not to exceed one hundred ~~fifty~~dollars ~~($150.00)~~($100.00) (G.S. 47C-3-107.1) for violations of the declaration, bylaws, and rules and regulations of the association;".

SECTION 9. G.S. 47C-3-103 is amended by adding a new subsection to read:

"(g) The association shall publish the names and addresses of all officers and board members of the association within 30 days of the election."

SECTION 10. G.S. 47C-3-107.1 reads as rewritten:

"**§ 47C-3-107.1. ~~Charges for late payments, fines.~~Procedures for fines and suspension of condominium privileges or services.**

~~The bylaws of the association may provide for a hearing before an adjudicatory panel to determine if a unit owner should be fined not to exceed one hundred fifty dollars ($150.00) for a violation of the declaration, bylaws or rules and regulations of the association. Such panel shall accord to the party charged with the violation notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. Such a fine shall be an assessment secured by lien under G.S. 47C-3-116.~~ Unless a specific procedure for the imposition of fines or suspension of condominium privileges or services is provided for in the declaration, a hearing shall be held before the executive board or an adjudicatory panel appointed by the executive board to determine if any unit owner should be fined or if condominium privileges or services should be suspended pursuant to the powers granted to the association in G.S. 47C-3-102(11). Any adjudicatory panel appointed by the executive board shall be composed of members of the association who are not officers of the association or members of the executive board. The unit owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars ($100.00) may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation occurs. Such fines shall be assessments secured by liens under G.S. 47C-3-116. If it is decided that a suspension of condominium privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured. A unit owner may appeal a decision of an adjudicatory panel to the full executive board by delivering written notice of appeal to the executive board within 15 days after the date of the decision. The executive board may affirm, vacate, or modify the prior decision of the adjudicatory body."

SECTION 11. G.S. 47C-3-108 reads as rewritten:

"**§ 47C-3-108. Meetings.**

(a) A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by unit owners having twenty percent (20%) or any lower percentage specified in the bylaws of the votes in the association. Not less than 10 nor more than 50 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda,

including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.

(b) Meetings of the executive board shall be held as provided in the bylaws. At regular intervals, the executive board meeting shall provide unit owners an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues and concerns. The executive board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak.

(c) Except as otherwise provided for in the bylaws, meetings of the association and executive board shall be conducted in accordance with general principles of parliamentary procedure so as to facilitate the orderly and efficient completion of business."

SECTION 12. G.S. 47C-3-116 reads as rewritten:

"**§ 47C-3-116. Lien for assessments.**

(a) Any assessment levied against a unit remaining unpaid for a period of 30 days or longer shall constitute a lien on that unit when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the unit is located in the manner provided therefor by Article 8 of Chapter 44 of the General Statutes. Unless the declaration otherwise provides, fees, charges, late charges and other charges imposed pursuant to G.S. 47C-3-102, 47C-3-107, 47C-3-107.1, and 47C-3-115 are enforceable as assessments under this section. Except as provided in subsections (a1) and (a2) of this section, ~~The~~ the association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. ~~Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to G.S. 47C-3-102(10), (11), and (12), G.S. 47C-3-107(d) and 47C-3-107.1, are enforceable as assessments under this section.~~

(a1) An association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(a2) An association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any unit owner unless the fee is expressly allowed in the declaration. Any lien secured by debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(b) The lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the unit) recorded before the docketing of the lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments or charges against the unit. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing thereof in the office of the clerk of superior court.

(d) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section ~~must~~ shall include costs and reasonable attorneys' fees for the prevailing party. If the unit owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars ($1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the unit owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or proceedings authorized under subsection (d) of this section or G.S. 47F-4-117.

(e1) A unit owner may not be required to pay attorneys' fees and court cost until the unit owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first class mail to the property address and, if different, to the mailing address for the unit owner in the association's records. In addition, the notice must either be hand-delivered to the property address or sent certified mail with confirmation of delivery by the U.S. Postal Service to the property address and, if different, to the mailing address for the unit owner in the association's records. The notice shall set out the outstanding balance due as of the date of the notice and state that the unit owner has 15 days from the mailing of the notice by first class mail to pay the outstanding balance without the attorneys' fees and court costs. If the unit owner pays the outstanding balance within this period, then the unit owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the unit owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (e2) of this section and shall provide the name and telephone number of the representative.

(e2) The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the unit owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule only after the unit owner has been given notice as required in subsection (e1) of this section.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a unit, obtains title to the unit as a result of foreclosure of a first mortgage or first deed of trust, such purchaser, and its heirs, successors and assigns, shall not be

liable for the assessments against such unit which became due prior to acquisition of title to such unit by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the unit owners including such purchaser, and its heirs, successors and assigns."

SECTION 13. G.S. 47C-3-118 reads as rewritten:

"**§ 47C-3-118. Association records.**

(a) The association shall keep financial records sufficiently detailed to enable the association to comply with this chapter. All financial and other ~~records~~ records, including records of meetings of the association and executive board, shall be made reasonably available for examination by any unit owner and the unit owner's ~~his~~ authorized ~~agents.~~agents as required by the bylaws and by Chapter 55A of the General Statutes if the association is a nonprofit corporation. If the bylaws do not specify particular records to be maintained, the association shall keep accurate records of all cash receipts and expenditures and all assets and liabilities. In addition to any specific information that is required by the bylaws to be assembled and reported to the unit owners at specified times, the association shall make an annual income and expense statement and balance sheet available to all unit owners at no charge and within 75 days after the close of the fiscal year to which the information relates. Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the executive board or by the affirmative vote of two-thirds of the unit owners present in person or by proxy at any annual meeting or any special meeting duly called for that purpose.

(b) The association, upon written request, shall furnish a unit owner or the unit owner's authorized agents a statement setting forth the amount of unpaid assessments and other charges against a unit. The statement shall be furnished within 10 business days after receipt of the request and is binding on the association, the executive board, and every unit owner."

SECTION 14. Article 3 of Chapter 47C of the General Statutes is amended by adding the following news section to read:

"**§ 47C-3-121. American flag and political sign displays.**

Notwithstanding any provision in any declaration of covenants, no restriction on the use of land shall be construed to:

(1) Regulate or prohibit the display of the flag of the United States, of a size no greater than four feet by six feet, which is displayed in accordance with the patriotic customs set forth in 4 U.S.C. §§ 5-10, as amended, governing the display and use of the flag of the United States unless:

a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the following terms:

1. Flag of the United States of America;
2. American flag; or
3. United States flag.

b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of the United States flag only if the restriction specifically states: **'THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA'.**

This subdivision shall apply to owners of property who display the flag of the United States on property owned exclusively by them and does not apply to common areas, easements, rights-of-way, or other areas owned by others.

(2) Regulate or prohibit the indoor or outdoor display of a political sign by an association member on that member's property owned exclusively by the member, unless:

a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the term 'political signs'.

b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of political signs only if the restriction specifically states: **'THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE POLITICAL SIGNS'.**

Even when display of a political sign is permitted under this subdivision, an association (i) may prohibit the display of political signs earlier than 45 days before the day of the election and later than seven days after an election day, and (ii) may regulate the size and number of political signs that may be placed on a member's property if the association's regulation is no more restrictive than any applicable city, town, or county ordinance that regulates the size and number of political signs on residential property. If the local government in which the property is located does not regulate the size and number of political signs on residential property, the association shall permit at least one political sign with the maximum dimensions of 24 inches by 24 inches on a member's property. For the purposes of this subdivision, 'political sign' means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot. This subdivision shall apply to owners of property who display political signs on property owned exclusively by them and

does not apply to common areas, easements, rights-of-way, or other areas owned by others."

SECTION 15. This act becomes effective October 1, 2005, and applies to violations occurring and proceeding commenced on or after that date and to fiscal years beginning on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1541

Short Title:	Homeowner Association Amendments.	(Public)
Sponsors:	Representatives Earle, Weiss, Stam, Barnhart (Primary Sponsors); and Carney.	
Referred to:	Finance.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING HOMEOWNER ASSOCIATIONS TO PROVIDE GREATER PROTECTIONS FOR HOMEOWNERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47F-3-102(11) reads as rewritten:

"**§ 47F-3-102. Powers of owners' association.**

Unless the articles of incorporation or the declaration expressly provides to the contrary, the association may:

...

(11) Impose reasonable charges for late payment of ~~assessments~~ assessments, not to exceed the greater of fifteen dollars ($15.00) or ten percent (10%) of the amount of the unpaid assessment and, after notice and an opportunity to be heard, suspend privileges or services provided by the association (except rights of access to lots) during any period that assessments or other amounts due and owing to the association remain unpaid for a period of 30 days or longer;

...."

SECTION 2. G.S. 47F-3-107.1 reads as rewritten:

"**§ 47F-3-107.1. Procedures for fines and suspension of planned community privileges or services.**

Unless a specific procedure for the imposition of fines or suspension of planned community privileges or services is provided for in the declaration, a hearing shall be held before an adjudicatory panel appointed by the executive board to determine if any lot owner should be fined or if planned community privileges or services should be suspended pursuant to the powers granted to the association in G.S. 47F-3-102(11) and (12). The adjudicatory panel shall be composed of members of the association who are not officers of the association or members of the executive board. Decisions by the adjudicatory panel shall be appealable by the lot owner to the full executive board. If the

executive board fails to appoint an adjudicatory panel to hear such matters, hearings under this section shall be held before the full executive board. The lot owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred ~~fifty~~ dollars ~~($150.00)~~($100.00) may be imposed for the violation and without further hearing, for each day more than 10 days after the decision that the violation ~~occurs.~~ occurs, up to a maximum of one thousand dollars ($1,000). Such fines shall be G.S. 47F-3-116. If it is decided that a suspension of planned community privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured."

SECTION 3. G.S. 47F-3-108 reads as rewritten:

"**§ 47F-3-108. Meetings.**

(a) A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by lot owners having ten percent (10%), or any lower percentage specified in the bylaws, of the votes in the association. Not less than 10 nor more than 60 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each lot or to any other mailing address designated in writing by the lot owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the lot owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.

(b) All meetings of the association and the board of directors shall be open to all members of the association or any person designated by a member in writing as the member's representative and all members or designated representatives so desiring shall be permitted to attend and speak at an appropriate time during the deliberations and proceedings. The board may place reasonable time restrictions on those persons speaking during the meeting but shall permit a member or a member's representative to speak before the association or board takes formal action on an item under discussion in addition to any other opportunities to speak. The board shall provide for a reasonable number of persons to speak on each side of an issue.

(c) Except as otherwise provided for in the declaration, meetings of the association and board of directors shall be conducted in accordance with general principles of parliamentary procedure. The provisions of the most recent edition of Robert's Rules of Order shall govern any procedural matter for which no other provision has been made."

SECTION 4. G.S. 47F-3-116 reads as rewritten:

"**§ 47F-3-116. Lien for assessments.**

(a) Any assessment levied against a lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided herein. Except for fines assessed under G.S. 47F-3-107.1, interest on

unpaid fines and attorneys' fees allowed for the collection of fines, the~~The~~ association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. Unless the declaration otherwise provides, fees, charges, late charges, ~~fines, interest,~~interest other than interest on fines, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, ~~47F-3-107.1,~~ and 47F-3-115 are enforceable as assessments under this section. An association may not foreclose an association assessment lien if the debt securing the lien consists solely of fines assessed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines assessed by the association.

A lot owner may redeem the property from any purchaser at a sale foreclosing an association's assessment lien not later than the 180th day after the date the association mails written notice of the sale to the owner under Article 2A of Chapter 45 of the General Statutes.

(b) The lien under this section is prior to all liens and encumbrances on a lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the lot) recorded before the docketing of the claim of lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments and charges against the lot. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the clerk of superior court.

(d) This section does not prohibit other actions to recover the sums for which subsection (a) of this section creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section shall include costs and may include reasonable attorneys' fees for the prevailing ~~party.~~party in an amount not to exceed the amount in controversy. The amount in controversy means the principal obligation due at the time of the filing of the proceeding together with interest on the principal amount actually accrued through the date of the order or judgment.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments against such lot which became due prior to the acquisition of title to such lot by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the lot owners including such purchaser, its heirs, successors, and assigns.

(g) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed."

SECTION 5. Article 3 of Chapter 47F is amended by adding the following new sections to read:

"**§ 47F-3-116.1. Collections.**

(a) Notwithstanding any law or any provisions of the governing documents to the contrary, this section shall apply to debts for assessments that arise on and after January 1, 2006.

(b) An association that seeks to collect delinquent regular or special assessments of an amount less than two thousand five hundred dollars ($2,500), not including any late charges, fees and costs of collection, attorneys' fees, or interest, may not collect that debt through judicial or nonjudicial foreclosure, but may attempt to collect or secure that debt in any of the following ways:

(1) By a civil action in small claims court, pursuant to Article 19 of Chapter 7A of the General Statutes. An association that chooses to proceed by an action in small claims court, and prevails, may enforce the judgment as permitted under Article 28 of Chapter 1 of the General Statutes. The amount that may be recovered in small claims court to collect upon a debt for delinquent assessments may not exceed the jurisdictional limits of the small claims court and shall be the sum of the following:

a. The amount owed as of the date of filing the complaint in the small claims court proceeding.

b. In the discretion of the court, an additional amount described in sub-subdivision a. of this subsection equal to the amount owed for the period from the date the complaint is filed until the estimated date of judgment.

(2) By recording a lien on the owner's separate interest upon which the association may not foreclose until the amount of the delinquent assessments secured by the lien, exclusive of any late charges, fees and costs of collection, attorneys' fees, or interest, equals or exceeds two thousand five hundred dollars ($2,500). An association that chooses to record a lien under these provisions, prior to recording the lien, shall offer the owner and, if so requested by the owner, participate in dispute resolution as set forth in G. S. 7A-38.4A.

(3) Any other manner provided by law, except for judicial or nonjudicial foreclosure.

(c) An association that seeks to collect delinquent regular or special assessments of an amount of two thousand five hundred dollars ($2,500) or more, not including any late charges, fees and costs of collection, attorneys' fees, or interest, may use judicial or nonjudicial foreclosure subject to the following conditions:

(1) Prior to initiating a foreclosure on an owner's separate interest, the association shall offer the owner and, if so requested by the owner, participate in dispute resolution as set forth in G.S. 7A-38.4A. The decision to pursue dispute resolution shall be the choice of the owner, except that binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

(2) The decision to initiate foreclosure of a lien for delinquent assessments that has been validly recorded shall be made only by the board of

directors of the association and may not be delegated to an agent of the association. The board shall approve the decision by a majority vote of the board members in an executive session. The board shall record the vote in the minutes of that meeting. The board shall maintain the confidentiality of the owner or owners of the separate interest by identifying the matter by the parcel number of the property, rather than the name of the owner or owners.

(3) The board shall provide personal notice to an owner of a separate interest who occupies the separate interest if the board votes to foreclose upon the separate interest. The board shall provide written notice to an owner of a separate interest who does not occupy the separate interest by first-class mail, postage prepaid, at the most current address shown on the books of the association.

(4) A nonjudicial foreclosure by an association to collect upon a debt for delinquent assessments shall be subject to a right of redemption as set forth in G.S. 47F-3-116.

(5) A nonjudicial or judicial foreclosure by an association to collect upon a debt for delinquent assessments shall comply with the following requirements:

a. The minimum bid shall be at least seventy-five percent (75%) of the appraised value, excluding any senior liens subject to which the successful bidder would be taking title.

b. An appraiser appropriately licensed under Article 1 of Chapter 93E of the General Statutes shall perform the exterior appraisal. The cost of the appraisal shall be recouped at sale if the property is auctioned or at cure of the default prior to sale. The appraisal shall be completed at least 30 days, but no more than 60 days, prior to sale unless, in the event of a judicial foreclosure, the court orders a different completion date.

"**§ 47F-3-117. Financial reporting.**

(a) The association shall prepare an annual financial report within 60 days after the close of the fiscal year. The association shall, within 75 days after the close of the fiscal year, provide each lot owner with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the lot owner.

(b) Financial reports shall be prepared as follows:

(1) An association that meets the criteria of this subdivision shall prepare or cause to be prepared a complete set of financial statements in accordance with generally accepted accounting principles. The financial statements shall be based upon the association's total annual revenues, as follows:

a. An association with total annual revenues of one hundred thousand dollars ($100,000) or more, but less than two hundred

thousand dollars ($200,000), shall prepare compiled financial statements.

b. An association with total annual revenues of at least two hundred thousand dollars ($200,000), but less than four hundred thousand dollars ($400,000), shall prepare reviewed financial statements.

c. An association with total annual revenues of four hundred thousand dollars ($400,000) or more shall prepare audited financial statements.

d. An association with total annual revenues of less than one hundred thousand dollars ($100,000) shall prepare a report of cash receipts and expenditures.

(2) An association in a community of fewer than 50 parcels, regardless of the association's annual revenues, may prepare a report of cash receipts and expenditures in lieu of financial statements required by subdivision (1) of this subsection unless the declaration provides otherwise.

(3) A report of cash receipts and disbursement must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves if maintained by the association.

(c) If twenty percent (20%) of the parcel owners petition the board for a level of financial reporting higher than that required by this section, the association shall duly notice and hold a meeting of members within 30 days of receipt of the petition for the purpose of voting on raising the level of reporting for that fiscal year. Upon approval of a majority of the total voting interests of the lot owners, the association shall prepare or cause to be prepared, shall amend the budget or adopt a special assessment to pay for the financial report regardless of any provision to the contrary in the declaration, and shall provide within 90 days of the meeting or the end of the fiscal year, whichever occurs later, one of the following:

(1) Compiled, reviewed, or audited financial statements, if the association is otherwise required to prepare a report of cash receipts and expenditures.

(2) Reviewed or audited financial statements, if the association is otherwise required to prepare compiled financial statements.

(3) Audited financial statements, if the association is otherwise required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare or cause to be prepared, one of the following:

(1) A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement.

(2) A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement.

(3) A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement."

SECTION 6. G.S. 47F-3-120 reads as rewritten:

"**§ 47F-3-120. Declaration limits on attorneys' fees.**

Except as provided in G.S. 47F-3-116, in an action to enforce provisions of the articles of incorporation, the declaration, bylaws, or duly adopted rules or regulations, the court may award reasonable attorneys' fees to the prevailing party up to a maximum of two thousand five hundred dollars ($2,500), if recovery of attorneys' fees is allowed in the declaration. A lot owner is not liable for attorneys' fees incurred by the association relating to a matter described by notice under G.S. 47F-3-107.1 if the attorneys' fees are incurred before the conclusion of the hearing under G.S. 47F-3-107.1. Attorneys' fees may be collected by the association only if the lot owner is provided a written notice that attorneys' fees and cost will be charged to the lot owner if the delinquency or violation continues after a date certain, at least 10 days after the notice is received by the lot owner."

SECTION 7. Article 3 of Chapter 47F of the General Statutes is amended by adding the following new section to read:

"**§ 47F-3-121. American flag and political sign displays.**

Notwithstanding any provision in any declaration of covenants, no restriction on the use of land shall be construed to:

(1) Regulate or prohibit the display of the flag of the United States, of a size no greater than four feet by six feet, which is displayed in accordance with the patriotic customs set forth in 4 U.S.C. §§ 5-10, as amended, governing the display and use of the flag of the United States unless:

a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the following terms:

1. Flag of the United States of America;

2. American flag; or

3. United States flag.

b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of the United States flag only if

the restriction specifically states: **'THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA'.**

This subdivision shall apply to owners of property who display the flag of the United States on their property and does not apply to common areas, easements, rights-of-way, or other areas owned by others.

(2) Regulate or prohibit the indoor or outdoor display of a political sign by an association member on that member's property, unless:

a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the term "political signs".

b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of political signs only if the restriction specifically states: **'THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE POLITICAL SIGNS'.**

When permitted under this subdivision, an association may prohibit the display of political signs earlier than 45 days before the day of the election and later than seven days after an election day. An association may regulate the size and number of political signs that may be placed on a member's property if the association's regulation is no more restrictive than any applicable city, town, or county ordinance that regulates the size and number of political signs on residential property. If the local government in which the property is located does not regulate the size and number of political signs on residential property, the association shall permit at least one political sign with the maximum dimensions of 24 inches by 24 inches on a member's property. For the purposes of this subdivision, "political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot. This subdivision shall apply to owners of property who display political signs on their property and does not apply to common areas, easements, rights-of-way, or other areas owned by others."

SECTION 8. G.S. 47C-3-102(11) reads as rewritten:

"**§ 47C-3-102. Powers of unit owners' association.**

(a) Unless the declaration expressly provides to the contrary, the association, even if unincorporated, may:

...

(11) Impose charges for late payment of ~~assessments~~ assessments, not to exceed the greater of fifteen dollars ($15.00) or ten percent (10%) of

the amount of the unpaid assessment and, after notice and an opportunity to be heard, levy reasonable fines not to exceed one hundred fifty dollars ($150.00) (G.S. 47C-3-107.1) for violations of the declaration, bylaws, and rules and regulations of the association;".

SECTION 9. G.S. 47C-3-107.1 reads as rewritten:

"**§ 47C-3-107.1. Charges for late payments, fines.**

~~The bylaws of the association may provide for a hearing before an adjudicatory panel to determine if a unit owner should be fined not to exceed one hundred fifty dollars ($150.00) for a violation of the declaration, bylaws or rules and regulations of the association. Such panel shall accord to the party charged with the violation notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. Such a fine shall be an assessment secured by lien under G.S. 47C-3-116.~~ Unless a specific procedure for the imposition of fines or suspension of condominium privileges or services is provided for in the declaration, a hearing shall be held before an adjudicatory panel appointed by the executive board to determine if any unit owner should be fined or if condominium privileges or services should be suspended pursuant to the powers granted to the association in G.S. 47C-3-102(11). The adjudicatory panel shall be composed of members of the association who are not officers of the association or members of the executive board. Decisions by the adjudicatory panel shall be appealable by the unit owner to the full executive board. If the executive board fails to appoint an adjudicatory panel to hear such matters, hearings under this section shall be held before the full executive board. The unit owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars ($100.00) may be imposed for the violation and without further hearing, for each day more than 10 days after the decision that the violation occurs, up to a maximum of one thousand dollars ($1,000). Such fines shall be assessments secured by liens on the property but may not be foreclosed under G.S. 47C-3-116. If it is decided that a suspension of condominium privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured."

SECTION 10. G.S. 47C-3-108 reads as rewritten:

"**§ 47C-3-108. Meetings.**

(a) A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by unit owners having twenty percent (20%) or any lower percentage specified in the bylaws of the votes in the association. Not less than 10 nor more than 50 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.

(b) All meetings of the association and the board of directors shall be open to all members of the association or any person designated by a member in writing as the member's representative, and all members or designated representatives so desiring shall be permitted to attend and speak at an appropriate time during the deliberations and proceedings. The board may place reasonable time restrictions on those persons speaking during the meeting but shall permit a member or a member's representative to speak before the association or board takes formal action on an item under discussion in addition to any other opportunities to speak. The board shall provide for a reasonable number of persons to speak on each side of an issue.

(c) Except as otherwise provided for in the declaration, meetings of the association and board of directors shall be conducted in accordance with general principles of parliamentary procedure. The provisions of the most recent edition of Robert's Rules of Order shall govern any procedural matter for which no other provision has been made."

SECTION 11. G.S. 47C-3-116 reads as rewritten:

"**§ 47C-3-116. Lien for assessments.**

(a) Any assessment levied against a unit remaining unpaid for a period of 30 days or longer shall constitute a lien on that unit when filed of record in the office of the clerk of superior court of the county in which the unit is located in the manner provided therefor by Article 8 of Chapter 44 of the General Statutes. Except for fines assessed under G.S. 47C-3-107.1, interest on unpaid fines and attorneys' fees allowed for the collection of fines, the ~~The~~ association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. Unless the declaration otherwise provides, fees, charges, late charges, ~~fines,~~ and ~~interest~~ interest other than interest on fines, charged pursuant to ~~G.S. 47C-3-102(10), (11), and (12), G.S. 47C-3-107(d), and 47C-3-107.1,~~ G.S. 47C-3-102(10), (11), and (12) and G.S. 47C-3-107(d), are enforceable as assessments under this section. An association may not foreclose an association assessment lien if the debt securing the lien consists solely of fines assessed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines assessed by the association.

A lot owner may redeem the property from any purchaser at a sale foreclosing an association's assessment lien not later than the 180th day after the date the association mails written notice of the sale to the owner under Article 2A of Chapter 45 of the General Statutes.

(b) The lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the unit) recorded before the docketing of the lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments or charges against the unit. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing thereof in the office of the clerk of superior court.

(d) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section ~~must~~ shall include costs and may include reasonable attorneys' fees for the prevailing ~~party.~~party in an amount not to exceed the amount in controversy. The amount in controversy means the principal obligation due at the time of the filing of the proceeding together with interest on the principal amount actually accrued through the date of the order or judgment.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a unit, obtains title to the unit as a result of foreclosure of a first mortgage or first deed of trust, such purchaser, and its heirs, successors and assigns, shall not be liable for the assessments against such unit which became due prior to acquisition of title to such unit by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the unit owners including such purchaser, and its heirs, successors and assigns."

SECTION 12. Article 3 of Chapter 47C of the General Statutes is amended by adding the following new sections to read:

"**§ 47C-3-116.1. Collections.**

(a) Notwithstanding any law or any provisions of the governing documents to the contrary, this section shall apply to debts for assessments that arise on and after January 1, 2006.

(b) An association that seeks to collect delinquent regular or special assessments of an amount less than two thousand five hundred dollars ($2,500), not including any late charges, fees and costs of collection, attorneys' fees, or interest, may not collect that debt through judicial or nonjudicial foreclosure, but may attempt to collect or secure that debt in any of the following ways:

(1) By a civil action in small claims court, pursuant to Article 19 of Chapter 7A of the General Statutes. An association that chooses to proceed by an action in small claims court, and prevails, may enforce the judgment as permitted under Article 28 of Chapter 1 of the General Statutes. The amount that may be recovered in small claims court to collect upon a debt for delinquent assessments may not exceed the jurisdictional limits of the small claims court and shall be the sum of the following:

a. The amount owed as of the date of filing the complaint in the small claims court proceeding.

b. In the discretion of the court, an additional amount described in sub-subdivision a. of this subsection equal to the amount owed for the period from the date the complaint is filed until the estimated date of judgment.

(2) By recording a lien on the owner's separate interest upon which the association may not foreclose until the amount of the delinquent assessments secured by the lien, exclusive of any late charges, fees and costs of collection, attorneys' fees, or interest, equals or exceeds two

thousand five hundred dollars ($2,500). An association that chooses to record a lien under these provisions, prior to recording the lien, shall offer the owner and, if so requested by the owner, participate in dispute resolution as set forth in G. S. 7A-38.4A.

(3) Any other manner provided by law, except for judicial or nonjudicial foreclosure.

(c) An association that seeks to collect delinquent regular or special assessments of an amount of two thousand five hundred dollars ($2,500) or more, not including any late charges, fees and costs of collection, attorneys' fees, or interest, may use judicial or nonjudicial foreclosure subject to the following conditions:

(1) Prior to initiating a foreclosure on an owner's separate interest, the association shall offer the owner and, if so requested by the owner, participate in dispute resolution as set forth in G.S. 7A-38.4A. The decision to pursue dispute resolution shall be the choice of the owner, except that binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

(2) The decision to initiate foreclosure of a lien for delinquent assessments that has been validly recorded shall be made only by the board of directors of the association and may not be delegated to an agent of the association. The board shall approve the decision by a majority vote of the board members in an executive session. The board shall record the vote in the minutes of that meeting. The board shall maintain the confidentiality of the owner or owners of the separate interest by identifying the matter by the parcel number of the property, rather than the name of the owner or owners.

(3) The board shall provide personal notice to an owner of a separate interest who occupies the separate interest if the board votes to foreclose upon the separate interest. The board shall provide written notice to an owner of a separate interest who does not occupy the separate interest by first-class mail, postage prepaid, at the most current address shown on the books of the association.

(4) A nonjudicial foreclosure by an association to collect upon a debt for delinquent assessments shall be subject to a right of redemption as set forth in G.S. 47C-3-116.

(5) A nonjudicial or judicial foreclosure by an association to collect upon a debt for delinquent assessments shall comply with the following requirements:

a. The minimum bid shall be at least seventy-five percent (75%) of the appraised value, excluding any senior liens subject to which the successful bidder would be taking title.

b. An appraiser appropriately licensed under Article 1 of Chapter 93E of the General Statutes shall perform the exterior appraisal. The cost of the appraisal shall be recouped at sale if the property is auctioned or at cure of the default prior to sale. The

appraisal shall be completed at least 30 days, but no more than 60 days, prior to sale unless, in the event of a judicial foreclosure, the court orders a different completion date.

"**§ 47C-3-116.2. Financial reporting.**

(a) The association shall prepare an annual financial report within 60 days after the close of the fiscal year. The association shall, within 75 days after the close of the fiscal year, provide each lot owner with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the lot owner.

(b) Financial reports shall be prepared as follows:

(1) An association that meets the criteria of this subdivision shall prepare or cause to be prepared a complete set of financial statements in accordance with generally accepted accounting principles. The financial statements shall be based upon the association's total annual revenues, as follows:

a. An association with total annual revenues of one hundred thousand dollars ($100,000) or more, but less than two hundred thousand dollars ($200,000), shall prepare compiled financial statements.

b. An association with total annual revenues of at least two hundred thousand dollars ($200,000), but less than four hundred thousand dollars ($400,000), shall prepare reviewed financial statements.

c. An association with total annual revenues of four hundred thousand dollars ($400,000) or more shall prepare audited financial statements.

d. An association with total annual revenues of less than one hundred thousand dollars ($100,000) shall prepare a report of cash receipts and expenditures.

(2) An association in a community of fewer than 50 parcels, regardless of the association's annual revenues, may prepare a report of cash receipts and expenditures in lieu of financial statements required by subdivision (1) of this subsection unless the declaration provides otherwise.

(3) A report of cash receipts and disbursement must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves if maintained by the association.

(c) If twenty percent (20%) of the parcel owners petition the board for a level of financial reporting higher than that required by this section, the association shall duly notice and hold a meeting of members within 30 days of receipt of the petition for the purpose of voting on raising the level of reporting for that fiscal year. Upon approval of a majority of the total voting interests of the lot owners, the association shall prepare or cause to be prepared, shall amend the budget or adopt a special assessment to pay for the financial report regardless of any provision to the contrary in the declaration, and shall provide within 90 days of the meeting or the end of the fiscal year, whichever occurs later, one of the following:

(1) Compiled, reviewed, or audited financial statements, if the association is otherwise required to prepare a report of cash receipts and expenditures.

(2) Reviewed or audited financial statements, if the association is otherwise required to prepare compiled financial statements.

(3) Audited financial statements, if the association is otherwise required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare or cause to be prepared, one of the following:

(1) A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement.

(2) A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement.

(3) A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

"**§ 47C-3-121. American flag and political sign displays.**

Notwithstanding any provision in any declaration of covenants, no restriction on the use of land shall be construed to:

(1) Regulate or prohibit the display of the flag of the United States, of a size no greater than four feet by six feet, which is displayed in accordance with the patriotic customs set forth in 4 U.S.C. §§ 5-10, as amended, governing the display and use of the flag of the United States unless:

a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the following terms:

1. Flag of the United States of America;

2. American flag; or

3. United States flag.

b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to

regulate or prohibit the display of the United States flag only if the restriction specifically states: **'THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA'**.

This subdivision shall apply to owners of property who display the flag of the United States on their property and does not apply to common areas, easements, rights-of-way, or other areas owned by others.

(2) Regulate or prohibit the indoor or outdoor display of a political sign by an association member on that member's property, unless:

a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the term "political signs".

b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of political signs only if the restriction specifically states: **'THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE POLITICAL SIGNS'**.

When permitted under this subdivision, an association may prohibit the display of political signs earlier than 45 days before the day of the election and later than seven days after an election day. An association may regulate the size and number of political signs that may be placed on a member's property if the association's regulation is no more restrictive than any applicable city, town, or county ordinance that regulates the size and number of political signs on residential property. If the local government in which the property is located does not regulate the size and number of political signs on residential property, the association shall permit at least one political sign with the maximum dimensions of 24 inches by 24 inches on a member's property. For the purposes of this subdivision, "political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot. This subdivision shall apply to owners of property who display political signs on their property and does not apply to common areas, easements, rights-of-way, or other areas owned by others."

SECTION 13. G.S. 47C-4-117 reads as rewritten:

"**§ 47C-4-117. Effect of violations on rights of action; attorney's fees.**

If a declarant or any other person subject to this chapter fails to comply with any provision hereof or any provision of the declaration or bylaws, any person or class of person adversely affected by that failure has a claim for appropriate relief. ~~The court may award reasonable attorney's fees to the prevailing party.~~ Except as otherwise

provided for in G.S. 47C-3-116(e), in an action to enforce provisions of the articles of incorporation, the declaration, bylaws, or duly adopted rules or regulations, the court may award reasonable attorneys' fees to the prevailing party up to a maximum of two thousand five hundred dollars ($2,500), if recovery of attorneys' fees is allowed in the declaration. A unit owner is not liable for attorneys' fees incurred by the association relating to a matter described by notice under G.S. 47C-3-107.1 if the attorneys' fees are incurred before the conclusion of the hearing under G.S. 47C-3-107.1. Attorneys' fees may be collected by the association only if the unit owner is provided a written notice that attorneys' fees and cost will be charged to the unit owner if the delinquency or violation continues after a date certain, at least 10 days after the notice is received by the unit owner."

SECTION 14. This act becomes effective October 1, 2005, and applies to violations occurring on or after that date and fiscal years beginning on or after that date.

HOUSE BILL 1541:
Homeowner Association Amendments

BILL ANALYSIS

Committee:	House Finance	**Date:**	May 26, 2005
Introduced by:	Reps. Earle, Weiss, Stam, Barnhart	**Summary by:**	Martha Walston
Version:	PCS to First Edition H1541-CSLAf-11		Committee Counsel

SUMMARY: House Bill 1541 makes numerous amendments to the existing law affecting both homeowners' associations and condominium unit associations. These amendments include:

- Capping the late payment of assessments,
- Capping attorneys' fees in uncontested actions,
- Reducing the maximum fine that my be imposed from $150 to $100 a day and adding that the fine applies to each day more than five days after the decision,
- Providing owners notice by first class mail and either certified mail or hand-delivery before attorneys' fees and court costs may be assessed and allowing the owner 15 days from the date of the mailing to pay the outstanding balance without the attorneys' fees and court costs,
- Limiting foreclosure to judicial sale when the debt securing a lien consists solely of fines or service, collection, consulting, or administration fees imposed by the association,
- Prohibiting an association from charging a service, collection, consulting or administration fee from the owner unless expressly allowed by declaration,
- Requiring executive boards to provide owners an opportunity to attend and speak at meetings,
- Requiring associations to maintain detailed records and to provide access to owners,
- Limiting restrictions on the display of the U.S. flag and political signs unless the deed of conveyance clearly sets out these restrictions.

BILL ANALYSIS: Sections 1 through 7 of the bill makes changes to Article 3 of the North Carolina Planned Community Act, governing management of a planned community. Sections 8 through 14 make conforming changes to Article 3 of the North Carolina Condominium Act, governing management of the condominium.

Under current law a **planned community** is defined as "real estate with respect to which any person, by virtue of that person's ownership of a lot, is expressly obligated by a declaration to pay real property taxes, insurance premiums, or other expenses to maintain, improve, or benefit other lots or other real estate described in the declaration. Ownership of a lot does not include holding a leasehold interest of less than 20 years in a lot, including renewal options."

Under current law a **condominium** is defined as "real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners."

Section 1 of the bill places a cap on charges for late payment of assessments not to exceed the greater of $25 or 10% of the amount of the unpaid assessment. Current law authorizes a lot owners' association to impose reasonable late payment of assessments but does not provide a cap.

Section 2 of the bill requires the association to publish the names and addresses of all officers and board members of the association within 30 days of their election.

Section 3 of the bill amends the procedures for fines and suspension of planned community privileges or services as follows:

- Provides that a hearing to determine the imposition of fines or suspension of privileges or services may also be held before the executive board. If a hearing is held before an adjudicatory panel, the panel must be composed of members of the association who are not officers of the association or members of the executive board. Current law provides for a hearing only before an adjudicatory panel appointed by the executive board.
- Provides that if a fine is imposed it may not exceed $100 (now $150), and it may not be imposed without further hearing, for each day more than five days after the decision that the violation occurs.
- Provides a process allowing the lot owner to appeal the decision of the adjudicatory panel to the full executive board.

Section 4 of the bill requires that lot owners must be given an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues or concerns. The board may place reasonable restrictions on the number of speakers and the time allotted to speak. Unless otherwise provided in the bylaws, meetings of the association and executive board must be conducted under general principles of parliamentary procedure.

Section 5 of the bill amends the statute governing liens for assessments as follows:

- Prohibits an association from foreclosing an assessment lien on the lot in the manner as a mortgage on real estate under power of sale when the debt secured by the lien consists solely of fines, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines. However, the association may enforce a lien on the lot by judicial foreclosure. This is a sale of property authorized by order of a judge or clerk.
- Prohibits an association from levying, charging, or attempting to collect a service, collection, consulting, or administration fee from a lot owner unless the fee is expressly allowed in the declaration. Liens securing a debt consisting solely of these fees may only be enforced by judicial foreclosure.
- Makes the following changes to the reasonable attorneys' fees incurred when collecting a debt and enforcing a lien. Current law allows that a judgment, decree, or order in an action under this section shall include costs and reasonable attorneys' fees for the prevailing party:
  - Provides that a lot owner may not be required to pay attorneys' fees and court costs until the owner is notified in writing of the association's intent to seek attorneys' fees and court costs. The notice must be sent by first class mail and either hand-delivered to the owner are sent by certified mail with confirmation of delivery by the U.S. Postal Service. The notice must give the owner 15 days from the mailing of the first class notice to pay the outstanding balance. If the balance is paid within this period then there is no obligation to pay attorneys' fees and court costs. The notice must also inform the lot owner of the opportunity to contact a representative of the association to discuss paying the outstanding balance in installments. The representative's name and telephone number must be set out in the notice.

- If the lot owner does not contest the collection of the debt and enforcement of a lien after the collection of the 15-day period following notice, then reasonable attorneys' fees may not exceed $1,200, not including costs or expenses incurred. This fee limitation does not apply to judicial foreclosures, to other actions to recover the sums that create a lien under this section, or to actions to enforce provisions of the articles of incorporation, the declaration, bylaws, or rules.
- The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the owner is obligated to offer or accept any proposed installment schedule.

Section 6 of the bill amends the statute governing association records by adding that the association must also make the records of meetings of the association and executive board available for examination by the unit owner or the owner's authorized agents. The association is also required to make an annual income and expense statement and balance sheet available to lot owners at no charge and within 75 days after the close of the fiscal year to which the information relates. A more extensive compilation, review, or audit of the association's books requires a vote of the majority of the executive board or the affirmative vote of two-thirds of the lot owners present or by proxy at an annual meeting or any special meeting.

Section 7 of the bill adds a new section that limits the ability of covenants to regulate the display of a U.S. flag that is no greater than four feet by six feet unless (1) for restrictions registered prior to October 1, 2005, the restriction specifically uses the terms of flag of the USA, American flag, or US flag, and (2) for restrictions registered on or after October 1, 2005, the following restriction is written on the first page of the deed of conveyance in boldface type and capital letters: "**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES".**

Section 7 of the bill also limits the ability of covenants to regulate the indoor or outdoor display of a political sign by an association member on property owned exclusively by the member unless: (1) for restrictions registered prior to October 1, 2005, the restriction specifically uses the term "political signs", and (2) for restrictions registered on or after October 1, 2005, the following restriction is written on the first page of the deed of conveyance in boldface type and capital letters: "**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE POLITICAL SIGNS".**

Even when display of political signs is permitted, an association may prohibit the display of the sign earlier than 45 days before the election and later than 7 days after the election. The association may also regulate the size and number of political signs that may be placed on a member's property if the association's regulation is no more restrictive than the local government ordinance regulating size and number of signs on residential property. If there is no local government ordinance, the association must permit at least one political sign with the maximum dimensions of 24 inches by 24 inches.

Sections 8 through 13 of the bill make conforming changes to the article regulating the management of the condominium under the North Carolina Condominium Act.

EFFECTIVE DATE: The act becomes effective October 1, 2005, and applies to violations occurring and proceedings commenced on or after that date and to fiscal years beginning on or after that date.

H1541e1-SMLA-CSLA

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1541

H1541-ALA-6 [v.1]

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

Withdrawn

Date 5/26/ ,2005

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

Representative Underhill

moves to amend the bill on page 5, line 16, by adding the following new subsection after that line"

"(c) No financial payment, including goods and services, shall be made to any officer or member of the association's executive board, to the business of an officer or member, to a business associate of an officer or member, or to a relative of an officer or member, except for expenses incurred on behalf of the association. Lot owners must be notified of detailed expense claims of the association at least one month prior to payment of expenses. The notice may be by newsletter, e-mail, or direct mail, and must inform the lot owner that he or she has fifteen days to object in writing to the expense claims. If at least five percent (5%) of the lot owners object to the expense claims, the treasurer of the association must place the funds in trust until the next annual meeting of the association. At that time, the expense claims will be placed before the membership and may be approved by a majority of the lot owners present in person or by proxy.";

and on page 13, line 28, by adding the following new subsection after that line:

"(c) No financial payment, including goods and services, shall be made to any officer or member of the association's executive board, to the business of an officer or member, to a business associate of an officer or member, or to a relative of an officer or member, except for expenses incurred on behalf of the association. Unit owners must be notified of detailed expense claims of the association at least one month prior to payment of expenses. The notice may be by newsletter, e-mail, or direct mail, and must inform the unit owner that he or she has fifteen days to object in writing to the expenses claims. If at least five percent (5%) of the unit owners object to the expense claims, the treasurer of the association must place the funds in trust until the next annual meeting of

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1541

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

H1541-ALA-6 [v.1]

the association. At that time, the expense claims will be placed before the membership and may be approved by a majority of the unit owners present in person or by proxy."

SIGNED Alice G. Underhill
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT ATTACHMENT 5

(Please type or use ballpoint pen)

EDITION No. PCS CSLAf-11 v.13

H. B. No. 1541 DATE 5-26-2005

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

COMMITTEE SUBSTITUTE _____

Rep.) Gibson
Sen.)

moves to amend the bill on page 5, line 19

( ) WHICH CHANGES THE TITLE

by rewriting the line to read

"§ 47F-3-121. American and State flags and political sign displays.

on page 5, lines 22-24 by ~~adding after the word "State" the phrase "or North Carolina"~~ rewriting those lines to read

"(1) Regulate or prohibit the display of the flag of the United States or North Carolina, of a size no greater than four feet by six feet. The United States flag must be displayed in accordance with the patriotic customs set forth in 4 U.S.C. §§ 5-10, as"

on page 5, line 31, by adding immediately after the line

"~~(4)~~ 4. North Carolina flag."

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. PCS CSLAf-11 v.13

H. B. No. 1541 DATE 5-26-05

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

COMMITTEE SUBSTITUTE _____

Rep.)
) Gibson
Sen.)

moves to amend the bill on page 5, line 37

( ) WHICH CHANGES THE TITLE

by adding after the word "States" the phrase "or North Carolina"

on page 5, line 40 rewrite the line to read

"FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA'."

on page 5, line 42

by adding ~~the phrase~~ after the word "States" the phrase "or North Carolina"

SIGNED GVBS

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT ATTACHMENT 6

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1541 PCS DATE 5-26-05

S. B. No. _____ Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Holliman
Sen.)

1 moves to amend the bill on page 12, line s 3-4
2 ( ) WHICH CHANGES THE TITLE
3 by rewriting the lines to read:
4 "This act becomes effective January 1, 2006, and
5 applies to violations occurring and proceedings
6 commenced on or after that date and to fiscal
7 years"
8
9
10
11
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18
19

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT ATTACHMENT 7

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1541 DATE 5-26-2005

S. B. No. _____ Amendment No. _____

COMMITTEE SUBSTITUTE _____ (to be filled in by Principal Clerk)

Withdrawn

Rep.) Underhill
Sen.)

moves to amend the bill on page 5, line 16

( ) WHICH CHANGES THE TITLE

by adding the following new subsection after that line:

"(c) No financial payment, including goods and services, shall be made to any officer or member of the association's executive board, to the business of an officer or member, to a business associate of an officer or member, or to a relative of an officer or member, except for expenses incurred on behalf of the association."

~~by~~ and on page 10, line 28 by adding the following subsection after that line:

"(c) No financial payment, including goods and services, shall be made to any officer or member of the association's executive board, to the business of an officer or member, to a business associate of an officer or member, or to a relative of an officer or member, except for expenses incurred on behalf of the association."

SIGNED Alice B. Underhill

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

ATTACHMENT 8

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1541 DATE 5/24/05

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

COMMITTEE SUBSTITUTE _____

withdrawn

(Rep.) Wiley

Sen.)

moves to amend the bill on page 5, line 22

( ) WHICH CHANGES THE TITLE

by ~~adding the~~ deleting the word "the" immediately before the word "flag" and substituting the word "one"

on page 14, line 30 by deleting the word "the" before the word "flag" and substituting the word "one",

and page 15, line 8

on page 8, line 7, by adding a sentence after the end of the line to read:

"Multiple ~~flags may be~~ flags may be displayed on a patriotic holiday."

SIGNED Laura Y. Wiley

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 1541 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAWS GOVERNING HOMEOWNER ASSOCIATIONS TO PROVIDE GREATER PROTECTIONS FOR HOMEOWNERS.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

Emergency 911 Charges for Fis[illegible]Year Ending June 30, 2004

Unit Name		E 911 Charges per AFIR Report			E 911 Fund Balance per Audited Financial Statements			Notes
		911 Charges per AFIR	Wireless	Wire Line	E 911 - Fund Balance	Wireless	Wire Line	
Alamance County		618,006	185,915	432,091	937,078	324,078	613,000	
Alexander County		222,832	92,791	130,041	241,713	234,615	7,098	
Alleghany County		225,922	91,353	134,569	442,731	71,353	371,378	
Anson County		172,580	0	172,580	110,347	0	110,347	
Ashe County		385,326	84,147	301,179	906,069	74,550	831,519	
Avery County		262,719	71,819	190,900	188,268	128,009	60,259	
Beaufort County		300,173	N/A	N/A	357,048	N/A	N/A	FB Split not shown in audit
Bertie County		188,156	79,742	108,414	431,207	278,931	152,276	
Bladen County		286,899	91,635	195,264	250,741	0	250,741	
Brunswick County		1,073,460	271,483	801,977	899,843	281,896	617,947	
Buncombe County		1,015,224	401,580	613,644	1,073,565	506,295	567,270	
Burke County		704,350	438,112	266,238	2,421,036	N/A	N/A	FB Split not shown in audit
Cabarrus County		549,300	189,316	359,984	1,528,326	N/A	N/A	No FB Split Available
Caldwell County		575,001	116,564	458,437	977,232	431,503	545,729	
Camden County		1,381	1,381	N/A	15,827	2,584	13,243	
Carteret County		312,540	116,537	196,003	455,418	318,099	137,319	
Caswell County		244,649	83,196	161,453	550,664	N/A	N/A	FB Split not shown in audit
Catawba County		999,230	195,733	803,497	3,458,342	857,013	2,601,329	
Chatham County		392,280	109,315	282,965	1,503,953	305,948	1,198,005	
Cherokee County		274,858	65,981	208,877	113,822	N/A	N/A	No FB Split Available
Chowan County		139,867	81,060	58,807	41,244	N/A	N/A	No FB Split Available
Clay County		143,636	69,825	73,811	432,014	N/A	N/A	No FB Split Available
Cleveland County		432,075	123,389	308,686	634,260	571,705	62,555	
Columbus County		615,158	111,826	503,332	431,276	N/A	N/A	No FB Split Available
Craven County		403,470	97,279	306,191	501,473	346,933	154,540	
Cumberland County		979,864	227,456	752,408	2,748,525	977,749	1,770,776	
Currituck County		171,743	0	171,743	319,712	0	319,712	
Dare County		516,977	90,746	426,231	1,015,690	262,412	753,278	
Davidson County		691,900	198,449	493,451	689,787	224,483	465,304	
Davie County		310,362	95,067	215,295	814,793	N/A	N/A	No FB Split Available
Duplin County		382,456	107,675	274,781	724,318	173,920	550,398	
Durham County		1,359,129	0	1,359,129	3,178,687	565,619	2,613,068	
Edgecombe County		229,747	89,927	139,820	110,361	N/A	N/A	No FB Split Available
Forsyth County		644,510	174,815	469,695	92,220	N/A	N/A	No FB Split Available
Franklin County		367,418	96,799	270,619	659,593	277,720	381,873	
Gaston County		1,122,755	227,655	895,100	136,828	0	136,828	
Gates County		128,906	70,776	58,130	131,746	93,103	38,643	
Graham County		148,602	68,376	80,226	255,537	234,394	21,143	
Granville County		387,970	169,732	218,238	605,302	267,063	338,239	
Greene County		241,862	79,185	162,677	639,538	198,872	440,666	
Guilford County		1,038,001	166,021	871,980	449,170	403,975	45,195	
Halifax County		436,120	113,883	322,237	419,788	13,862	405,926	
Harnett County		772,741	140,446	632,295	414,303	N/A	N/A	No FB Split Available
Haywood County		530,694	111,981	418,713	946,283	145,547	800,736	
Henderson County		490,783	145,548	345,235	252,691	76,942	175,749	
Hertford County		184,122	0	184,122	107,460	0	107,460	
Hoke County		236,642	0	236,642	228,230	N/A	N/A	FB Split not shown in audit
Hyde County		111,129	61,029	50,100	380,117	130,034	250,083	

N/A = Information not Available

ATTACHMENT 9

Emergency 911 Charges for Fis[illegible]Year Ending June 30, 2004

Unit Name	E 911 Charges per AFIR Report			E 911 Fund Balance per Audited Financial Statements			Notes
	911 Charges per AFIR	Wireless	Wire Line	E 911 - Fund Balance	Wireless	Wire Line	
Iredell County	566,818	180,621	386,197	499,729	0	499,729	
Jackson County	479,633	101,151	378,482	1,035,524	N/A	N/A	No FB Split Available
Johnston County	860,003	196,136	663,867	(831,662)	N/A	N/A	No FB Split Available
Jones County	127,410	70,829	56,581	88,010	27,477	60,533	
Lee County	445,829	110,460	335,369	689,117	453,298	235,819	
Lenoir County	488,162	115,887	372,275	852,127	401,954	450,173	
Lincoln County	484,508	122,322	362,186	485,122	0	485,122	
Macon County	399,057	89,712	309,345	502,631	37,612	465,019	
Madison County	187,099	0	187,099	60,779	0	60,779	
Martin County	232,169	84,510	147,659	437,686	266,049	171,637	
McDowell County	279,632	100,849	178,783	179,358	N/A	N/A	No FB Split Available
Mecklenburg County	1,726,466	0	1,726,466	1,286,503	0	1,286,503	
Mitchell County	236,775	76,030	160,745	188,546	16,456	172,090	
Montgomery County	254,905	86,398	168,507	499,952	0	499,952	
Moore County	585,301	132,301	453,000	754,570	N/A	N/A	No FB Split Available
Nash County	350,004	116,201	233,803	1,417,643	299,895	1,117,748	
New Hanover County	886,499	196,693	689,806	1,776,314	539,923	1,236,391	
Northampton County	254,473	0	254,473	460,475	0	460,475	
Onslow County	604,447	200,546	403,901	561,237	428,430	132,807	
Orange County	540,260	162,527	377,733	1,256,154	662,752	593,402	
Pamlico County	203,307	68,243	135,064	208,582	1,311	207,271	
Pasquotank County	379,714	100,795	278,919	703,990	N/A	N/A	No FB Split Available
Pender County	365,601	100,788	264,813	562,735	395,220	167,515	
Perquimans County	109,624	72,048	37,576	134,689	58,802	75,887	
Person County	393,388	95,038	298,350	488,103	292,491	195,612	
Pitt County	620,371	187,433	432,938	669,043	414,230	254,813	
Polk County	208,126	76,558	131,568	275,478	132,085	143,393	
Randolph County	698,307	171,829	526,478	1,857,083	468,414	1,388,669	
Richmond County	305,510	95,929	209,581	445,955	311,688	134,267	
Robeson County	878,144	709,319	168,825	387,075	N/A	N/A	FB Split not shown in audit
Rockingham County	365,124	116,494	248,630	589,934	260,725	329,209	
Rowan County	683,712	183,268	500,444	748,753	N/A	N/A	No FB Split Available
Rutherford County	508,230	120,144	388,086	851,351	N/A	N/A	No FB Split Available
Sampson County	465,204	117,966	347,238	1,504,254	N/A	N/A	No FB Split Available
Scotland County	238,444	0	238,444	552,885	0	552,885	
Stanly County	293,121	124,233	168,888	612,072	4,637	607,435	
Stokes County	251,656	103,057	148,599	272,244	0	272,244	
Surry County	610,245	127,442	482,803	898,474	205,894	692,580	
Swain County	235,883	78,099	157,784	286,102	166,345	119,757	
Transylvania County	214,856	88,406	126,450	351,244	150,533	200,711	
Tyrrell County	N/A	N/A	N/A	N/A	N/A	N/A	Audit Not Received
Union County	985,205	187,481	797,724	2,115,549	N/A	N/A	No FB Split Available
Vance County	406,995	102,026	304,969	175,324	127,721	47,603	
Wake County	994,391	0	994,391	327,842	N/A	N/A	No FB Split Available
Warren County	208,775	79,776	128,999	244,280	N/A	N/A	No FB Split Available
Washington County	300,196	73,899	226,297	426,335	N/A	N/A	No FB Split Available
Watauga County	361,920	87,967	273,953	651,986	206,610	445,376	
Wayne County	735,250	0	735,250	712,785	0	712,785	

N/A = Information not Available

Emergency 911 Charges for Fis[illegible]Year Ending June 30, 2004

	E 911 Charges per AFIR Report			E 911 Fund Balance per Audited Financial Statements			Notes
Unit Name	911 Charges per AFIR	Wireless	Wire Line	E 911 - Fund Balance	Wireless	Wire Line	
Wilkes County	533,484	124,919	408,565	678,800	451,373	227,427	
Wilson County	518,255	152,509	365,746	687,260	0	687,260	
Yadkin County	307,201	93,791	213,410	162,296	N/A	N/A	No FB Split Available
Yancey County	N/A	N/A	N/A	N/A	N/A	N/A	Audit Not Received
Total Counties:	**41,772,239**	**9,721,365**	**32,050,874**	**65,006,494**	**14,729,181**	**44,791,465**	
City of Charlotte	4,702,000	692,000	4,010,000	2,266	0	2,266	
City of Dunn	165,034	69,721	95,313	235,701	169,730	65,971	
City of Durham	2,528,545	61,801	2,466,744	0	0	0	FB Resides with County
City of Eden	151,054	75,994	75,060	61,359	61,359	0	
City of Fayetteville	1,041,170	158,745	882,425	1,852,856	0	1,852,856	
City of Greensboro	270,146	270,146	0	978,430	978,430	0	
City of Havelock	106,679	81,679	25,000	262,663	N/A	N/A	No FB Split Available
City of Jacksonville	243,492	0	243,492	199,671	0	199,671	
City of Lenoir	77,494	77,494	0	158,269	158,269	0	
City of Lumberton	188,988	188,988	0	303,060	303,060	0	
City of Mount Holly	115,116	69,905	45,211	54,875	44,323	10,552	
City of New Bern	251,275	88,827	162,448	382,768	N/A	N/A	No FB Split Available
City of Raeford	24,929	0	24,929	0	0	0	
City of Raleigh	596,849	596,849	0	1,405,538	1,405,538	0	
City of Reidsville	133,995	69,088	64,907	210,134	N/A	N/A	No FB Split Available
City of Rocky Mount	355,317	87,354	267,963	676,130	N/A	N/A	No FB Split Available
City of Washington	75,415	0	75,415	76,557	0	76,557	
Town of Ahoskie	37,913	N/A	N/A	357,717	N/A	N/A	FB Split not shown in audit
Town of Beech Mountain	57,424	13,248	44,176	116,419	N/A	N/A	No FB Split Available
Town of Boone	169,280	76,383	92,897	107,596	119	107,477	
Town of Cary	327,618	154,913	172,705	97,629	41,528	56,101	
Town of Davidson	54,049	0	54,049	53,826	53,826	0	
Town of Erwin	0	N/A	N/A	5,995	N/A	N/A	FB Split not shown in audit
Town of Harrells	0	0	0	0	0	0	
Town of Holly Springs	50,669	0	50,669	(186,515)	0	(186,515)	
Town of Huntersville	4	0	4	31,126	0	31,126	
Town of Kernersville	142,019	0	142,019	85,554	0	85,554	
Town of Murfreesboro	0	0	0	0	0	0	
Town of North Wilkesboro	0	0	0	0	0	0	
Town of Oak Island	77,074	64,815	12,259	0	0	0	
Town of Robbins	0	0	0	0	0	0	
Town of Roper	N/A	N/A	N/A	N/A	N/A	N/A	Not shown in Audit
Town of Tarboro	123,993	71,235	52,758	66,033	0	66,033	
Town of Wentworth	0	0	0	0	0	0	
Town of Winton	N/A	N/A	N/A	N/A	N/A	N/A	Audit not Received
Total Municipalities:	**11,787,520**	**2,834,649**	**8,952,871**	**6,996,244**	**3,046,452**	**3,948,792**	

N/A = Information not Available

North Carolina General Assembly

House Committee on Finance

Minutes

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June 2, 2005

The House Committee on Finance met on Thursday, June 2, 2005 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, Luebke, and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, and Womble; and Representatives Blackwood, Carney, Faison, Folwell, McGee, Rayfield, Underhill, and Wiley. Also present were Sergeant-at-Arms Bill Freeman, Fred Hines, Dusty Rhodes, and Walter Spell. Staff persons present included Cindy Avrette, Rodney Bizzell, Brenna Erford, Ashley Huffstetler, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairwoman Howard called the meeting to order at 8:30 am and recognized the two (2) pages present: Mary Christoph of Alamance County, sponsored by Representative Bordsen; Suzanne Jordan of Wake County, sponsored by Representative Ross.

Chairwoman Howard referred **Senate Bill 92 – WATAUGA DISTRICT U OCCUPANCY TAX** to the Subcommittee on Occupancy Tax.

The first bill under the Committee's consideration was **HB 863 – KERNERSVILLE/WOODFIN LOCAL ACT** (see **attachment 3**). Chairwoman Howard first recognized Representative Hill who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Cindy Avrette from Research was recognized and explained that House Bill 863 provides for the annexation of approximately 100 acres into the town limits of Woodfin. The proposed committee substitute removes the part of the bill that would have allowed the Town of Kernersville to convey certain property by private sale or trade because it was included in House Bill 787, the Omnibus Local Laws bill that passed the House the previous night. Following the explanation, Representative Alexander moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairwoman Howard called the motion to a vote and it carried without objection.

The next bill considered by the Committee was **HB 945 – OMNIBUS OCCUPANCY TAXES & DURHAM P-P PARTNERSHIPS** (see **attachment 4**). Chairwoman Howard first recognized Representative Carney who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Chairwoman Howard then recognized Representative Luebke who explained that House Bill 945 is an omnibus occupancy tax bill that includes a number of counties and municipalities and conforms to the standard occupancy tax guidelines. He also stated that the bill clarifies the authority of the County of Durham to enter

into public-private projects. Representative Luebke also reported that the bill had received a favorable report from the Subcommittee on Occupancy Tax. Representative Luebke then offered an amendment (see **attachment 5**). Ashley Huffstetler from Staff was then recognized and explained that the amendment removes the City of Wilson from the bill and provides clarifying language to the Halifax Occupancy Tax. Chairwoman Howard then recognized Representative Womble who stated that he supported the amendment and then moved for its adoption. As there was no further debate, Chairwoman Howard called the motion to a vote and the amendment was adopted. Representative Alexander was then recognized and moved for a favorable report to the proposed committee substitute, incorporating the adopted amendments, and an unfavorable report to the original bill. Representative Daughtridge was then recognized and asked general questions about the Durham public-private partnership provision of the bill. Seeing no further discussion, Chairwoman Howard called the motion to a vote and it carried by consent.

As there was no further business before the Committee, Chairwoman Howard then adjourned the meeting at 8:43 am.

Respectfully submitted,

Representative Julia Howard
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. House Bill 863 (and related materials)
4. House Bill 945 (and related materials)
5. Luebke Amendment on HB 945 - **ADOPTED**

AGENDA

ATTACHMENT 1

House Finance Committee

June 2, 2005
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Howard

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard

Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order

Introduction of Pages

Bills:

HB 863 KERNERSVILLE/WOODFIN LOCAL ACT *Rep. Warren*

HB 945 DURHAM OCCUPANCY TAX
Reps. Luebke, Michaux, Miller, & Wilkins

Adjournment

ATTACHMENT 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 2, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
ANN LORE	DUHS
Rich Webb	NCGA Intern
Andy Romanet	NCLM
Jeff Bode	Bode Call & Stroupe
Lou Wilson	NCACTC
Julie Woodson	NCPC
Matt Benson	Capitol Group
Beau Mills	NC Metropolitan Coalitions
Luis Luberas	Intern

Chair's Supplemental Agenda – June 2, 2005

The following bill is referred to the Subcommittee on Occupancy Tax:

- SB 92 – Watauga District U Occupancy Tax

CORRECTED NOTICE:
HB 650, HB 1051, HB 1330, HB 1340, HB 1421, SB 14, SB 15, SB 206, SB 466 – REMOVED

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Thursday, June 2, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

~~**HB 650 – BUSINESS COURT CASES/FEE – Reps. Haire & Glazier**~~

HB 863 – KERNERSVILLE/WOODFIN LOCAL ACT – Rep. Warren

HB 945 – DURHAM OCCUPANCY TAX – Reps. Luebke, Michaux, Miller, & Wilkins

~~**HB 1051 – MACON-JACKSON REGIONAL AIRPORT AUTHORITY – Reps. Haire & West**~~

~~**HB 1330 – AMEND ELECTROLYSIS PRACTICE ACT/FEES – Rep. Jeffus**~~

~~**HB 1340 – REESTABLISH BOXING COMMISSION – Rep. Faison**~~

~~**HB 1421 – RANDLEMAN DAM BONDS – Rep. Jones, Adams, Jeffus, & Wiley**~~

~~**SB 14 – HOLDEN BEACH CANAL DREDGING FEE – Sen. Soles**~~

~~**SB 15 – WATER AND SEWER DISTRICT BOUNDARIES – Sen. Soles**~~

~~**SB 206 – SALEMBURG BOUNDARY VALIDATION – Sen. Albertson**~~

~~**SB 466 – BURLINGTON/GIBSONVILLE BOUNDARY – Sen. P. Berger**~~

Respectfully,
Representatives Alexander, Gibson, Howard, Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **11:50 am** on **June 1, 2005.**

X Principal Clerk
X Reading Clerk - House Chamber
Jason A. Cannon (Committee Clerk)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Thursday, June 2, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 650 – BUSINESS COURT CASES/FEE – Reps. Haire & Glazier

HB 863 – KERNERSVILLE/WOODFIN LOCAL ACT – Rep. Warren

HB 945 – DURHAM OCCUPANCY TAX – Reps. Luebke, Michaux, Miller, & Wilkins

HB 1051 – MACON-JACKSON REGIONAL AIRPORT AUTHORITY – Reps. Haire & West

HB 1330 – AMEND ELECTROLYSIS PRACTICE ACT/FEES – Rep. Jeffus

HB 1340 – REESTABLISH BOXING COMMISSION – Rep. Faison

HB 1421 – RANDLEMAN DAM BONDS – Rep. Jones, Adams, Jeffus, & Wiley

SB 14 – HOLDEN BEACH CANAL DREDGING FEE – Sen. Soles

SB 15 – WATER AND SEWER DISTRICT BOUNDARIES – Sen. Soles

SB 206 – SALEMBURG BOUNDARY VALIDATION – Sen. Albertson

SB 466 – BURLINGTON/GIBSONVILLE BOUNDARY – Sen. P. Berger

Respectfully,
Representatives Alexander, Gibson, Howard, Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **10:40 am** on **June 1, 2005.**

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H **D**

HOUSE BILL 863

Committee Substitute Favorable 5/12/05
Committee Substitute #2 Reported Without Prejudice 5/19/05
PROPOSED COMMITTEE SUBSTITUTE H863-CSRBx-19 [v.1]

6/1/2005 8:00:37 PM

Short Title: Woodfin Annexation. (Local)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO ADD CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF WOODFIN.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is added to the corporate limits of the Town of Woodfin:

Tract I

Beginning at a point, a corner of the existing municipal boundary established pursuant to Ordinance No. 2930 establishing the corporate limits of the City of Asheville, North Carolina, said beginning point being located North 16 Degrees, 30 Minutes, 10 Seconds West, 154.03 feet, from the Southeast corner of Ordinance No. 2930 in the center of Elk Mountain Scenic Highway, said beginning point also being the Northeast corner of phase 7 Robinhood Villas as shown in Plat Book 52, Page 150, thence from said beginning and with the limits of the City of Asheville (Ordinance No. 2930) the following twenty-three courses: North 62 Degrees, 47 Minutes, 22 Seconds, West 446.42 feet, to a point in the Eastern right-of-way of Robinhood Road, thence with said right-of-way 66.46 feet along a curve to the left of radius 430.14 feet, a chord bearing and distance of North 26 Degrees, 30 Minutes, 29 Seconds, East 66.40 feet, to a point, thence North 22 Degrees, 04 Minutes, 54 Seconds, East 112.48 feet, to a point, thence 40.88 feet along a curve to the left of radius 1225.16 feet, a chord bearing and distance of North 19 Degrees, 48 Minutes, 42 Seconds, East 40.88 feet, to a point, thence North 17 Degrees, 32 Minutes, 31 Seconds, East 15.08 feet, to a point, thence North 18 Degrees, 38 Minutes, 48 Seconds, East 102.74 feet, to a point, thence North 19 Degrees, 45 Minutes, 05 Seconds, East 46.07 feet, to a point, thence 77.55 feet along a curve to the left of radius 45.55 feet, a chord bearing and distance of North 29 Degrees, 02 Minutes, 01 Seconds, West 68.52 feet, to a point, thence 72.49 feet along a curve to the

left of radius 57.61 feet, a chord bearing and distance of South 64 Degrees, 46 Minutes, 40 Seconds, West 67.80 feet, to a point, thence South 28 Degrees, 33 Minutes, 14 Seconds, West 42.63 feet, to a point, thence 53.97 feet along a curve to the right of radius 98.10 feet, a chord bearing and distance of South 44 Degrees, 18 Minutes, 55 Seconds, West 53.29 feet, to a point, thence South 60 Degrees, 04 minutes, 35 Seconds, West 27.04 feet, to a point, thence 92.94 feet along a curve to the right of radius 198.33 feet, a chord bearing and distance of South 73 Degrees, 30 minutes, 04 Seconds, West 92.09 feet, to a point, thence 61.87 feet along a curve to the left of radius 466.86 feet, a chord bearing and distance of South 83 Degrees, 07 minutes, 45 Seconds, West 61.82 feet, to a point in the right-of-way of Robinhood Road, thence leaving said right-of-way and with the Eastern line of Deed Book 1470, Page 567, North 0 Degrees, 06 Minutes, 02 Seconds, West 393.83 feet, to a point, the Northeast corner of Deed Book 1470, Page 567, thence with the Northern line of Deed Book 1470, Page 567, South 87 Degrees, 14 Minutes, 25 Seconds, West 208.58 feet, to a point, thence North 80 Degrees, 16 minutes, 11 Seconds, West 79.59 feet, to a point, the Northeast corner of Plat Book 67, Page 96, thence with the North line of Plat Book 67, Page 96, North 80 Degrees, 16 Minutes, 11 Seconds, West 183.64 feet, to a point, thence North 86 Degrees, 55 Minutes, 36 Seconds, West 184.74 feet, to a point, the Northeast corner of Deed Book 2521, Page 187, thence with the North line of Deed Book 2521, Page 187, North 86 Degrees, 55 Minutes, 36 Seconds, West 84.71 feet, to a point, thence North 72 Degrees, 36 Minutes, 43 Seconds, West 55.05 feet, to a point, the Northeast corner of Plat Book 59, Page 118, thence with the North line of Plat Book 59, Page 118, North 72 Degrees, 36 Minutes, 43 Seconds, West 195.63 feet, to a point, thence North 58 Degrees, 49 Minutes, 09 Seconds, West 27.86 feet, to a point, the Northeast corner of Plat Book 95, Page 58, thence leaving the limits of the City of Asheville (Ordinance No. 2930) and with the North line of Plat Book 95, Page 58, North 58 Degrees, 49 Minutes, 09 Seconds, West 272.57 feet, to a point, the Northeast corner of Plat Book 59, Page 78, thence with Plat Book 59, Page 78 the following two courses: North 50 Degrees, 11 Minutes, 11 Seconds, West 164.41 feet, to a point, thence South 41 Degrees, 22 Minutes, 16 Seconds, West 245.83 feet, to a point, in the Northern right-of-way of Robinhood Road and the limits of the City of Asheville (Ordinance No. 2930), thence with the Northern right-of-way of Robinhood Road and the limits of the City of Asheville (Ordinance No. 2930) the following nine courses: 94.52 feet along a curve to the left of radius 4125.62 feet, a chord bearing and distance of North 49 Degrees, 00 Minutes, 29 Seconds, West 94.52 feet, to a point, thence North 49 Degrees, 39 Minutes, 52 Seconds, West 15.87 feet, to a point, thence 28.97 feet along a curve to the right of radius 66.85 feet, a chord bearing and distance of North 37 Degrees, 14 Minutes, 50 Seconds, West 28.75 feet, to a point, thence North 24 Degrees, 49 Minutes, 48 Seconds, West 25.63 feet, to a point, thence 63.73 feet along a curve to the left of radius 215.68 feet, a chord bearing and distance of North 33 Degrees, 17 Minutes, 41 Seconds, West 63.50 feet, to a point, thence North 41 Degrees, 45 Minutes, 34 Seconds, West 40.26 feet, to a point, thence 18.28 feet along a curve to the right of radius 91.06 feet, a chord bearing and distance of North 36 Degrees, 00 Minutes, 31 Seconds, West 18.25 feet, to a point, thence North 30 Degrees, 15 Minutes, 29 Seconds, West 36.00 feet, to a point,

thence 14.20 feet along a curve to the left of radius 125.22 feet, a chord bearing and distance of North 33 Degrees, 30 Minutes, 26 Seconds, West 14.20 feet, to a point, thence leaving the Northern right-of-way of Robinhood Road and continuing with the limits of the City of Asheville (Ordinance No. 2930) and the East line of Plat Book 77, Page 45 the following three courses: North 31 Degrees, 54 Minutes, 01 Seconds, East 156.98 feet, to a point, thence North 29 Degrees, 37 Minutes, 00 Seconds, West 115.00 feet, to a point, thence North 5 Degrees, 13 Minutes, 00 Seconds, East 205.35 feet, to a point, the Southwest corner of Plat Book 46, Page 191, thence leaving the limits of the City of Asheville (Ordinance No. 2930) and with the Southern line of Plat Book 46, Page 191 the following three courses: South 87 Degrees, 37 Minutes, 09 Seconds, East 791.53 feet, to a point, thence South 87 Degrees, 52 Minutes, 18 Seconds, East 100.07 feet, to a point, thence South 87 Degrees, 42 Minutes, 59 Seconds, East 880.32 feet, to a point, the Southeast corner of Plat Book 46, Page 191, thence with the East line of Deed Book 1137, Page 454, South 16 Degrees, 31 minutes, 03 Seconds, East 1761.69 feet, to the point, and place of the Beginning. Containing 37.57 acres, more or less.

Tract II

Beginning at a point, the most Northern corner of the existing municipal boundary established pursuant to City of Asheville Ordinance No. 2930 establishing the corporate limits of the City of Asheville, North Carolina, said beginning point also being the most Northern corner of Plat Book 77, Page 45, said beginning point being located North 29 Degrees, 54 Minutes, 25 Seconds, West 97.65 feet from the Northwest corner of the property described in Tract I (Sherwood Heights Annexation Area One), thence from said Beginning and with the limits of the City of Asheville (Ordinance No. 2930) and Plat Book 77, Page 45 the following nine courses: South 78 Degrees, 23 Minutes, 00 Seconds, West 38.98 feet, to a point, thence South 84 Degrees, 12 Minutes, 00 Seconds, West 192.26 feet, to a point, thence South 56 Degrees, 03 Minutes, 00 Seconds, West 79.19 feet, to a point, thence North 83 Degrees, 31 Minutes, 12 Seconds, West 79.08 feet, to a point, thence North 73 Degrees, 31 Minutes, 46 Seconds, West 90.00 feet, to a point, thence South 16 Degrees, 00 Minutes, 52 Seconds, West 130.00 feet, to a point, thence South 22 Degrees, 07 minutes, 32 Seconds, East 272.24 feet, to a point, thence South 27 Degrees, 12 Minutes, 12 Seconds, East 130.33 feet, to a point, thence South 82 Degrees, 43 Minutes, 22 Seconds, East 55.00 feet, to a point in the Western right-of-way of Robinhood Road, thence continuing with the limits of the City of Asheville (Ordinance No. 2930) and the Western right-of-way of Robinhood Road the following eleven courses: 54.07 feet along a curve to the left of radius 68.81 feet, a chord bearing and distance of South 15 Degrees, 13 Minutes, 54 Seconds, East 52.69 feet, to a point, thence South 37 Degrees, 44 Minutes, 21 Seconds, East 43.66 feet, to a point, thence 109.33 feet along a curve to the right of radius 366.14 feet a chord bearing and distance of South 29 Degrees, 11 Minutes, 12 Seconds, East 108.92 feet, to a point, thence South 20 Degrees, 37 Minutes, 58 Seconds, East 12.65 feet, to a point, thence 106.23 feet along a curve to the right of radius 407.52 feet, a chord bearing and distance of South 13 Degrees, 09 Minutes, 54 Seconds, East 105.93 feet, to a point, thence South 5 Degrees, 41 Minutes, 49 Seconds, East 54.43 feet, to a point, thence 99.16 feet along a curve to the right of radius 2073.47 feet, a chord bearing and distance of South 4

Degrees, 19 Minutes, 37 Seconds, East 99.15 feet, to a point, thence South 2 Degrees, 57 Minutes, 26 Seconds, East 164.83 feet, to a point, thence 79.36 feet along a curve to the right of radius 462.40 feet, a chord bearing and distance of South 1 Degree, 57 Minutes, 34 Seconds, West 79.26 feet, to a point, thence South 6 Degrees, 52 minutes, 34 Seconds, West 70.23 feet, to a point, thence 113.38 feet along a curve to the left of radius 275.40 feet, a chord bearing and distance of South 4 Degrees, 55 Minutes, 03 Seconds, East 112.58 feet, to a point, the Northeast corner of Plat Book 59, Page 50, thence leaving the Western right-of-way of Robinhood Road and continuing with the limits of the City of Asheville (Ordinance No. 2930) the following eight courses: South 82 Degrees, 52 Minutes, 31 Seconds, West 246.33 feet, to a point, the Northwest corner of Plat Book 59, Page 50, thence South 6 Degrees, 47 Minutes, 9 Seconds, East 21.01 feet, to a point, thence South 2 Degrees, 31 Minutes, 51 Seconds, East 86.43 feet, to a point, thence South 17 Degrees, 02 Minutes, 18 Seconds, West 106.33 feet, to a point, the Northwest corner of Plat Book 59, Page 28, thence South 17 Degrees, 02 Minutes, 18 Seconds, West 111.92 feet, to a point, thence South 2 Degrees, 29 Minutes, 06 Seconds, East 214.73 feet, to a point, the Southwest corner of Plat Book 59, Page 28 and the Northwest corner of lot 19 Plat Book, 51 Page 65, thence South 13 Degrees, 12 Minutes, 37 Seconds, East 64.05 feet, to a point, in the West line of lot 19 Plat Book 51, Page 65 and in the existing municipal boundary line established pursuant to Chapter 840 of the 1959 Session Laws establishing the corporate limits of the City of Asheville, thence with the municipal boundary of the corporate limits of the City of Asheville (Chapter 840 of the 1959 Session Laws) the following two courses: Due West 526.49 feet, to a point within the property described in Deed Book 1756, Page 537, thence Due South 1218.35 feet, to a point in the Northern right-of-way of Beaverbrook Road, thence leaving said limits of the City of Asheville and with the Northern right-of-way of Beaverbrook Road the following eight courses: North 58 Degrees, 00 Minutes, 44 Seconds, West 70.14 feet, to a point, thence 98.41 feet along a curve to the right of radius 154.05 feet, a chord bearing and distance of North 39 Degrees, 42 Minutes, 44 Seconds, West 96.74 feet, to a point, thence North 22 Degrees, 15 Minutes, 38 Seconds, West 106.36 feet, to a point, thence North 10 Degrees, 22 Minutes, 32 Seconds, East 5.84 feet, to a point, thence 52.15 feet along a curve to the left of radius 66.12 feet, a chord bearing and distance of North 68 Degrees, 55 Minutes, 20 Seconds, West 50.89 feet, to a point, thence 88.53 feet along a curve to the left of radius 83.67 feet, a chord bearing and distance of South 45 Degrees, 11 Minutes, 56 Seconds, West 84.45 feet, to a point, thence South 14 Degrees, 53 Minutes, 16 Seconds, West 156.84 feet, to a point, thence 29.96 feet along a curve to the left of radius 502.49 feet, a chord bearing and distance of South 13 Degrees, 10 Minutes, 47 Seconds, West 29.96 feet, to a point, the Northeast Corner of Deed Book 1046, Page 617, thence leaving the right-of-way of Beaverbrook Road and with the Northern boundaries of Deed Book 1046, Page 617, Deed Book 2200, Page 316 (Plat Book 41, Page 3), and Deed Book 1630, Page 99, North 81 Degrees, 07 Minutes, 19 Seconds, West 418.38 feet, to a point, thence continuing with Deed Book 1630, Page 99 the following three courses: 23.62 feet along a curve to the left of radius 15.03 feet, a chord bearing and distance of South 53 Degrees, 51 Minutes, 27 Seconds, West 21.27 feet, to a point, thence South 8 Degrees,

52 Minutes, 00 Seconds, West 144.92 feet, to a point, thence 23.62 feet along a curve to the left of radius 15.03 feet, a chord bearing and distance of South 36 Degrees, 08 Minutes, 33 Seconds, East 21.27 feet, to a point in the Northern right-of-way of Beaverbrook Road, thence crossing Beaverbrook Road, South 2 Degrees, 18 Minutes, 19 Seconds, West 50.33 feet, to a point in the Southern right-of-way Beaverbrook Road and the Northwest corner of Plat Book 35, Page 109, thence with Plat Book 35, Page 109 the following two courses: South 12 Degrees, 49 Minutes, 59 Seconds, East 220.29 feet, to a point, thence North 80 Degrees, 21 Minutes, 01 Seconds, East 52.71 feet, to a point in the right-of-way of Beaverbrook Place, thence with the right-of-way of Beaverbrook Place the following seven courses: South 9 Degrees, 20 Minutes, 25 Seconds, East 111.69 feet, to a point, thence 78.69 feet along a curve to the left of radius 30.00 feet, a chord bearing and distance of South 24 Degrees, 32 Minutes, 13 Seconds, East 57.91 feet, to a point, thence 78.69 feet along a curve to the left of radius 30.00 feet, a chord bearing and distance of North 5 Degrees, 27 Minutes, 49 Seconds, East 57.99 feet, to a point, thence North 9 Degrees, 40 Minutes, 55 Seconds, West 116.58 feet, to a point, thence 81.92 feet along a curve to the right of radius 64.31 feet, a chord bearing and distance of North 26 Degrees, 48 Minutes, 33 Seconds, East 76.49 feet, to a point, thence North 65 Degrees, 23 Minutes, 42 Seconds, East 52.11 feet, to a point, thence North 65 Degrees, 23 Minutes, 42 Seconds, East 146.88 feet, to a point, the Northwest corner of Plat Book 39, Page 88, thence leaving the right-of-way of Beaverbrook Place and with Plat Book 39, Page 88 the following two courses: South 26 Degrees, 49 Minutes, 06 Seconds, East 190.65 feet, to a point, thence North 67 Degrees, 25 Minutes, 30 Seconds, East 164.18 feet, to a point, the Southwest corner of Deed Book 3972, Page 664, thence with Deed Book 3972, Page 664 and Deed Book 1416, Page 76 (Plat Book 28, Page 7), North 67 Degrees, 27 Minutes, 21 Seconds, East 165.80 feet, to a point, the Southeast corner of Plat Book 28, Page 7, thence with Deed Book 922, Page 377, South 9 Degrees, 55 Minutes, 18 Seconds, East 110.44 feet, to a point in the existing municipal boundary established pursuant to Chapter 840 of the 1959 Session Laws establishing the corporate limits of the City of Asheville, thence with the municipal boundary of the corporate limits of the City of Asheville (Chapter 840 of the 1959 Session Laws), Due South 192.02 feet, to a point in said municipal boundary, thence leaving said municipal boundary and with Deed Book 922, Page 377, South 80 Degrees, 41 Minutes, 21 Seconds, West 798 feet more or less, to a point, the Southwest corner of Deed Book 922, Page 377 and in the East line of Plat Book 32, Page 137 and in the existing municipal boundary line established pursuant to Chapter 840 of the 1959 Session Laws establishing the corporate limits of the City of Asheville, thence with the existing municipal boundary line established pursuant to Chapter 840 of the 1959 Session Laws and Plat Book 32, Page 137, North 9 Degrees, 06 Minutes, 16 Seconds, West 1190 feet more or less, to a point, the Northeast corner of Plat Book 32, Page 137 and in the existing municipal boundary established pursuant to City of Asheville Ordinance No. 2924 establishing the corporate limits of the City of Asheville, thence with the limits of the City of Asheville (Ordinance No. 2924) and Deed Book 922, Page 377, the following four courses: North 58 Degrees, 28 Minutes, 48 Seconds, East 362.28 feet, to a point, thence North 6 Degrees, 40 minutes, 40 Seconds, East 62.89

feet, to a point, thence North 16 Degrees, 28 Minutes, 56 Seconds, East 1485.66 feet, to a point, thence North 84 Degrees, 56 Minutes, 43 Seconds, West 366.95 feet, to a point, the most Southern corner of Plat Book 46, Page 191, thence leaving the existing municipal boundary established pursuant to City of Asheville Ordinance No. 2924 establishing the corporate limits of the City of Asheville and with Plat Book 46, Page 191 and Deed Book 922, Page 377 the following eleven courses: North 6 Degrees, 49 Minutes, 20 Seconds, East 355.63 feet, to a point, thence North 20 Degrees, 32 Minutes, 28 Seconds, East 342.51 feet, to a point, thence North 19 Degrees, 10 Minutes, 28 Seconds, East 1218.19 feet, to a point, thence North 79 Degrees, 25 Minutes, 51 Seconds, East 215.30 feet, to a point, thence South 55 Degrees, 18 Minutes, 09 Seconds, East 242.00 feet, to a point, thence South 36 Degrees, 06 Minutes, 17 Seconds, East 301.60 feet, to a point, thence North 79 Degrees, 30 Minutes, 55 Seconds, East 195.99 feet, to a point, thence South 0 Degrees, 55 Minutes, 41 Seconds, West 197.99 feet, to a point, thence South 72 Degrees, 03 Minutes, 57 Seconds, East 148.49 feet, to a point, thence South 12 Degrees, 04 Minutes, 23 Seconds, East 148.00 feet, to a point, thence South 29 Degrees, 54 Minutes, 23 Seconds, East 66.13 feet, to a point, and place of Beginning. Containing 91.16 acres, more or less.

The orientation of the directions described in this section is True North and the distances described are horizontal ground lengths in feet. Any directions in recorded documents that are used in this description that were not oriented to True North have been rotated for consistency with other record documents that are oriented to True North. It is the intent of this description to describe the property described in Deed Book 760, Page 275, Deed Book 922, Page 377, and Deed Book 1137, Page 454 (conveyed to Sherwood Heights Incorporated) and in Deed Book 1756, Page 537 (conveyed to Thomas W. Coleman) and located outside the corporate limits of the City of Asheville, North Carolina.

All deed book and plat book references in the descriptions in this section refer to documents recorded in the Buncombe County Register of Deeds Office.

SECTION 2. This act applies only to the Town of Woodfin.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 863
Committee Substitute Favorable 5/12/05
Committee Substitute #2 Reported Without Prejudice 5/19/05

Short Title: Kernersville/Woodfin Local Act. (Local)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF KERNERSVILLE TO CONVEY CERTAIN PROPERTY BY PRIVATE SALE OR TRADE, AND TO ADD CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF WOODFIN.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Notwithstanding Article 12 of Chapter 160A of the General Statutes, the Town of Kernersville may convey by private negotiation and sale or trade, with or without monetary consideration, any or all of its right, title, and interest in the following described properties:

PROPERTY I

That property consisting of approximately 30 acres, more or less, as described in Forsyth County Registry Deed Book 764, at page 292; and more particularly described as follows:

"Being all of that certain 30.028 acre tract of land lying in Abbotts Creek Township, Forsyth County, North Carolina; and bounded by natural boundaries and/or lands owned by and/or in possession of persons, as follows: on the north and east by Stephen E. Dotson, on the south by Edith B. Schulz and Mary B. Shropshire, and on the west by Arbor Development Corporation; as tract being particularly described by courses (according to the North Carolina Grid System as determined by solar observations) and distances according to a survey and plat prepared by the Town of Kernersville Engineering Department, Division of Public Works, under the seal of H. Stephen Bowers Professional Land Surveyor No. L-2455, dated May 2, 1986, and revised April 5, 2005, to which reference is hereby made, as follows:

BEGINNING at a 1" outside diameter found existing iron pipe, 3" high, the northwesterly corner of Mary Ruth B. Shropshire and husband Donald G. Shropshire (see Deed Book 1840 Page 622 of the Forsyth County Registry), in the easterly line of Arbor Development Corporation (see Deed Book 1513 Page 806 of said Registry); said

iron pipe having N.C. grid coordinates of North 844,495.89 (feet) and East 1,680,885.63 (feet) as per the North American Datum of 1983, as taken from survey from North Carolina Geodetic Station and horizontal control monument "UNION CROSS;" thence with the easterly line of said Arbor Development Corporation North 1 Degrees, 27 Minutes, 35 Seconds East, 1387.76 feet, to a 1 ¼" outside diameter found existing iron pipe, 6" high, the southwesterly corner of Stephen E. Dotson and wife Sandra C. Dotson (see Deed Book 1689 Page 224 of said Registry); thence with the southerly line of said Stephen E. Dotson and wife Sandra C. Dotson South 88 Degrees, 30 Minutes, 30 Seconds East, 923.08 feet, to a 1 ¼" outside diameter found existing iron pipe, 5" high, the northwesterly corner of other lands of said Stephen E. Dotson and wife Sandra C. Dotson (see now Deed Book 2452 Page 4397, "TRACT 1," of said Registry); thence with the westerly line of said Stephen E. Dotson and wife Sandra C. Dotson South 1 Degrees, 28 Minutes, 30 Seconds West, 1446.89 feet, to a found existing stone with new cut cross, 5" by 12 top, 6" high, painted yellow, the northwesterly and northeasterly corner, respectively, of Donald Davis and wife Helen S. Davis (see Deed Book 1664 Page 981 of said Registry), and Edith B. Schulz and W. Bradford Schulz co-trustees or successor trustees for the benefit of Edith B. Schulz Living Trust (see Deed Book 1961 Page 2962 of said Registry); thence with the northerly line of said Edith B. Schulz and falling in with the northerly line of said Mary Ruth B. Shropshire and husband Donald G. Shropshire North 84 Degrees, 50 Minutes, 30 Seconds West, 924.62 feet, to the BEGINNING said 1" outside diameter found existing iron pipe, 3" high.

FOR REFERENCE SEE: that deed recorded in Deed Book 764 at Page 292 of the Forsyth County Registry;

The above described 30.028 acre tract is generally known and designated as being all of tax lot 1 of tax block 5629 of Forsyth County Tax Maps as presently constituted."

PROPERTY II

That property consisting of approximately 1.566 acres more or less and denoted as Lot Two on the plat recorded in Plat Book 48, Page 116 of the Forsyth County Registry.

SECTION 1.(b) The Town of Kernersville shall use the property described in subsection (a) of this section for a public purpose that stimulates the local economy and promotes business in the Town of Kernersville, including the location of new or expanded service or industrial facilities, manufacturing, assembly, fabrication, processing, warehousing, research and development, office use or use as a shell business, or a new business incubator. The Town of Kernersville may lease, subdivide, mortgage, sell, trade, or convey the property for any public purpose authorized in this act.

SECTION 2. The following described property is added to the corporate limits of the Town of Woodfin:

Tract I

Beginning at a point, a corner of the existing municipal boundary established pursuant to Ordinance No. 2930 establishing the corporate limits of the City of Asheville, North Carolina, said beginning point being located North 16 Degrees, 30 Minutes, 10 Seconds West, 154.03 feet, from the Southeast corner of Ordinance No. 2930 in the center of Elk Mountain Scenic Highway, said beginning point also being the Northeast corner of

phase 7 Robinhood Villas as shown in Plat Book 52, Page 150, thence from said beginning and with the limits of the City of Asheville (Ordinance No. 2930) the following twenty-three courses: North 62 Degrees, 47 Minutes, 22 Seconds, West 446.42 feet, to a point in the Eastern right-of-way of Robinhood Road, thence with said right-of-way 66.46 feet along a curve to the left of radius 430.14 feet, a chord bearing and distance of North 26 Degrees, 30 Minutes, 29 Seconds, East 66.40 feet, to a point, thence North 22 Degrees, 04 Minutes, 54 Seconds, East 112.48 feet, to a point, thence 40.88 feet along a curve to the left of radius 1225.16 feet, a chord bearing and distance of North 19 Degrees, 48 Minutes, 42 Seconds, East 40.88 feet, to a point, thence North 17 Degrees, 32 Minutes, 31 Seconds, East 15.08 feet, to a point, thence North 18 Degrees, 38 Minutes, 48 Seconds, East 102.74 feet, to a point, thence North 19 Degrees, 45 Minutes, 05 Seconds, East 46.07 feet, to a point, thence 77.55 feet along a curve to the left of radius 45.55 feet, a chord bearing and distance of North 29 Degrees, 02 Minutes, 01 Seconds, West 68.52 feet, to a point, thence 72.49 feet along a curve to the left of radius 57.61 feet, a chord bearing and distance of South 64 Degrees, 46 Minutes, 40 Seconds, West 67.80 feet, to a point, thence South 28 Degrees, 33 Minutes, 14 Seconds, West 42.63 feet, to a point, thence 53.97 feet along a curve to the right of radius 98.10 feet, a chord bearing and distance of South 44 Degrees, 18 Minutes, 55 Seconds, West 53.29 feet, to a point, thence South 60 Degrees, 04 minutes, 35 Seconds, West 27.04 feet, to a point, thence 92.94 feet along a curve to the right of radius 198.33 feet, a chord bearing and distance of South 73 Degrees, 30 minutes, 04 Seconds, West 92.09 feet, to a point, thence 61.87 feet along a curve to the left of radius 466.86 feet, a chord bearing and distance of South 83 Degrees, 07 minutes, 45 Seconds, West 61.82 feet, to a point in the right-of-way of Robinhood Road, thence leaving said right-of-way and with the Eastern line of Deed Book 1470, Page 567, North 0 Degrees, 06 Minutes, 02 Seconds, West 393.83 feet, to a point, the Northeast corner of Deed Book 1470, Page 567, thence with the Northern line of Deed Book 1470, Page 567, South 87 Degrees, 14 Minutes, 25 Seconds, West 208.58 feet, to a point, thence North 80 Degrees, 16 minutes, 11 Seconds, West 79.59 feet, to a point, the Northeast corner of Plat Book 67, Page 96, thence with the North line of Plat Book 67, Page 96, North 80 Degrees, 16 Minutes, 11 Seconds, West 183.64 feet, to a point, thence North 86 Degrees, 55 Minutes, 36 Seconds, West 184.74 feet, to a point, the Northeast corner of Deed Book 2521, Page 187, thence with the North line of Deed Book 2521, Page 187, North 86 Degrees, 55 Minutes, 36 Seconds, West 84.71 feet, to a point, thence North 72 Degrees, 36 Minutes, 43 Seconds, West 55.05 feet, to a point, the Northeast corner of Plat Book 59, Page 118, thence with the North line of Plat Book 59, Page 118, North 72 Degrees, 36 Minutes, 43 Seconds, West 195.63 feet, to a point, thence North 58 Degrees, 49 Minutes, 09 Seconds, West 27.86 feet, to a point, the Northeast corner of Plat Book 95, Page 58, thence leaving the limits of the City of Asheville (Ordinance No. 2930) and with the North line of Plat Book 95, Page 58, North 58 Degrees, 49 Minutes, 09 Seconds, West 272.57 feet, to a point, the Northeast corner of Plat Book 59, Page 78, thence with Plat Book 59, Page 78 the following two courses: North 50 Degrees, 11 Minutes, 11 Seconds, West 164.41 feet, to a point, thence South 41 Degrees, 22 Minutes, 16 Seconds, West 245.83 feet, to a point, in the Northern right-of-way of

Robinhood Road and the limits of the City of Asheville (Ordinance No. 2930), thence with the Northern right-of-way of Robinhood Road and the limits of the City of Asheville (Ordinance No. 2930) the following nine courses: 94.52 feet along a curve to the left of radius 4125.62 feet, a chord bearing and distance of North 49 Degrees, 00 Minutes, 29 Seconds, West 94.52 feet, to a point, thence North 49 Degrees, 39 Minutes, 52 Seconds, West 15.87 feet, to a point, thence 28.97 feet along a curve to the right of radius 66.85 feet, a chord bearing and distance of North 37 Degrees, 14 Minutes, 50 Seconds, West 28.75 feet, to a point, thence North 24 Degrees, 49 Minutes, 48 Seconds, West 25.63 feet, to a point, thence 63.73 feet along a curve to the left of radius 215.68 feet, a chord bearing and distance of North 33 Degrees, 17 Minutes, 41 Seconds, West 63.50 feet, to a point, thence North 41 Degrees, 45 Minutes, 34 Seconds, West 40.26 feet, to a point, thence 18.28 feet along a curve to the right of radius 91.06 feet, a chord bearing and distance of North 36 Degrees, 00 Minutes, 31 Seconds, West 18.25 feet, to a point, thence North 30 Degrees, 15 Minutes, 29 Seconds, West 36.00 feet, to a point, thence 14.20 feet along a curve to the left of radius 125.22 feet, a chord bearing and distance of North 33 Degrees, 30 Minutes, 26 Seconds, West 14.20 feet, to a point, thence leaving the Northern right-of-way of Robinhood Road and continuing with the limits of the City of Asheville (Ordinance No. 2930) and the East line of Plat Book 77, Page 45 the following three courses: North 31 Degrees, 54 Minutes, 01 Seconds, East 156.98 feet, to a point, thence North 29 Degrees, 37 Minutes, 00 Seconds, West 115.00 feet, to a point, thence North 5 Degrees, 13 Minutes, 00 Seconds, East 205.35 feet, to a point, the Southwest corner of Plat Book 46, Page 191, thence leaving the limits of the City of Asheville (Ordinance No. 2930) and with the Southern line of Plat Book 46, Page 191 the following three courses: South 87 Degrees, 37 Minutes, 09 Seconds, East 791.53 feet, to a point, thence South 87 Degrees, 52 Minutes, 18 Seconds, East 100.07 feet, to a point, thence South 87 Degrees, 42 Minutes, 59 Seconds, East 880.32 feet, to a point, the Southeast corner of Plat Book 46, Page 191, thence with the East line of Deed Book 1137, Page 454, South 16 Degrees, 31 minutes, 03 Seconds, East 1761.69 feet, to the point, and place of the Beginning. Containing 37.57 acres, more or less.

Tract II

Beginning at a point, the most Northern corner of the existing municipal boundary established pursuant to City of Asheville Ordinance No. 2930 establishing the corporate limits of the City of Asheville, North Carolina, said beginning point also being the most Northern corner of Plat Book 77, Page 45, said beginning point being located North 29 Degrees, 54 Minutes, 25 Seconds, West 97.65 feet from the Northwest corner of the property described in Tract I (Sherwood Heights Annexation Area One), thence from said Beginning and with the limits of the City of Asheville (Ordinance No. 2930) and Plat Book 77, Page 45 the following nine courses: South 78 Degrees, 23 Minutes, 00 Seconds, West 38.98 feet, to a point, thence South 84 Degrees, 12 Minutes, 00 Seconds, West 192.26 feet, to a point, thence South 56 Degrees, 03 Minutes, 00 Seconds, West 79.19 feet, to a point, thence North 83 Degrees, 31 Minutes, 12 Seconds, West 79.08 feet, to a point, thence North 73 Degrees, 31 Minutes, 46 Seconds, West 90.00 feet, to a point, thence South 16 Degrees, 00 Minutes, 52 Seconds, West 130.00 feet, to a point, thence South 22 Degrees, 07 minutes, 32 Seconds, East 272.24 feet, to a point, thence

South 27 Degrees, 12 Minutes, 12 Seconds, East 130.33 feet, to a point, thence South 82 Degrees, 43 Minutes, 22 Seconds, East 55.00 feet, to a point in the Western right-of-way of Robinhood Road, thence continuing with the limits of the City of Asheville (Ordinance No. 2930) and the Western right-of-way of Robinhood Road the following eleven courses: 54.07 feet along a curve to the left of radius 68.81 feet, a chord bearing and distance of South 15 Degrees, 13 Minutes, 54 Seconds, East 52.69 feet, to a point, thence South 37 Degrees, 44 Minutes, 21 Seconds, East 43.66 feet, to a point, thence 109.33 feet along a curve to the right of radius 366.14 feet a chord bearing and distance of South 29 Degrees, 11 Minutes, 12 Seconds, East 108.92 feet, to a point, thence South 20 Degrees, 37 Minutes, 58 Seconds, East 12.65 feet, to a point, thence 106.23 feet along a curve to the right of radius 407.52 feet, a chord bearing and distance of South 13 Degrees, 09 Minutes, 54 Seconds, East 105.93 feet, to a point, thence South 5 Degrees, 41 Minutes, 49 Seconds, East 54.43 feet, to a point, thence 99.16 feet along a curve to the right of radius 2073.47 feet, a chord bearing and distance of South 4 Degrees, 19 Minutes, 37 Seconds, East 99.15 feet, to a point, thence South 2 Degrees, 57 Minutes, 26 Seconds, East 164.83 feet, to a point, thence 79.36 feet along a curve to the right of radius 462.40 feet, a chord bearing and distance of South 1 Degree, 57 Minutes, 34 Seconds, West 79.26 feet, to a point, thence South 6 Degrees, 52 minutes, 34 Seconds, West 70.23 feet, to a point, thence 113.38 feet along a curve to the left of radius 275.40 feet, a chord bearing and distance of South 4 Degrees, 55 Minutes, 03 Seconds, East 112.58 feet, to a point, the Northeast corner of Plat Book 59, Page 50, thence leaving the Western right-of-way of Robinhood Road and continuing with the limits of the City of Asheville (Ordinance No. 2930) the following eight courses: South 82 Degrees, 52 Minutes, 31 Seconds, West 246.33 feet, to a point, the Northwest corner of Plat Book 59, Page 50, thence South 6 Degrees, 47 Minutes, 9 Seconds, East 21.01 feet, to a point, thence South 2 Degrees, 31 Minutes, 51 Seconds, East 86.43 feet, to a point, thence South 17 Degrees, 02 Minutes, 18 Seconds, West 106.33 feet, to a point, the Northwest corner of Plat Book 59, Page 28, thence South 17 Degrees, 02 Minutes, 18 Seconds, West 111.92 feet, to a point, thence South 2 Degrees, 29 Minutes, 06 Seconds, East 214.73 feet, to a point, the Southwest corner of Plat Book 59, Page 28 and the Northwest corner of lot 19 Plat Book, 51 Page 65, thence South 13 Degrees, 12 Minutes, 37 Seconds, East 64.05 feet, to a point, in the West line of lot 19 Plat Book 51, Page 65 and in the existing municipal boundary line established pursuant to Chapter 840 of the 1959 Session Laws establishing the corporate limits of the City of Asheville, thence with the municipal boundary of the corporate limits of the City of Asheville (Chapter 840 of the 1959 Session Laws) the following two courses: Due West 526.49 feet, to a point within the property described in Deed Book 1756, Page 537, thence Due South 1218.35 feet, to a point in the Northern right-of-way of Beaverbrook Road, thence leaving said limits of the City of Asheville and with the Northern right-of-way of Beaverbrook Road the following eight courses: North 58 Degrees, 00 Minutes, 44 Seconds, West 70.14 feet, to a point, thence 98.41 feet along a curve to the right of radius 154.05 feet, a chord bearing and distance of North 39 Degrees, 42 Minutes, 44 Seconds, West 96.74 feet, to a point, thence North 22 Degrees, 15 Minutes, 38 Seconds, West 106.36 feet, to a point, thence North 10 Degrees, 22 Minutes, 32 Seconds, East

5.84 feet, to a point, thence 52.15 feet along a curve to the left of radius 66.12 feet, a chord bearing and distance of North 68 Degrees, 55 Minutes, 20 Seconds, West 50.89 feet, to a point, thence 88.53 feet along a curve to the left of radius 83.67 feet, a chord bearing and distance of South 45 Degrees, 11 Minutes, 56 Seconds, West 84.45 feet, to a point, thence South 14 Degrees, 53 Minutes, 16 Seconds, West 156.84 feet, to a point, thence 29.96 feet along a curve to the left of radius 502.49 feet, a chord bearing and distance of South 13 Degrees, 10 Minutes, 47 Seconds, West 29.96 feet, to a point, the Northeast Corner of Deed Book 1046, Page 617, thence leaving the right-of-way of Beaverbrook Road and with the Northern boundaries of Deed Book 1046, Page 617, Deed Book 2200, Page 316 (Plat Book 41, Page 3), and Deed Book 1630, Page 99, North 81 Degrees, 07 Minutes, 19 Seconds, West 418.38 feet, to a point, thence continuing with Deed Book 1630, Page 99 the following three courses: 23.62 feet along a curve to the left of radius 15.03 feet, a chord bearing and distance of South 53 Degrees, 51 Minutes, 27 Seconds, West 21.27 feet, to a point, thence South 8 Degrees, 52 Minutes, 00 Seconds, West 144.92 feet, to a point, thence 23.62 feet along a curve to the left of radius 15.03 feet, a chord bearing and distance of South 36 Degrees, 08 Minutes, 33 Seconds, East 21.27 feet, to a point in the Northern right-of-way of Beaverbrook Road, thence crossing Beaverbrook Road, South 2 Degrees, 18 Minutes, 19 Seconds, West 50.33 feet, to a point in the Southern right-of-way Beaverbrook Road and the Northwest corner of Plat Book 35, Page 109, thence with Plat Book 35, Page 109 the following two courses: South 12 Degrees, 49 Minutes, 59 Seconds, East 220.29 feet, to a point, thence North 80 Degrees, 21 Minutes, 01 Seconds, East 52.71 feet, to a point in the right-of-way of Beaverbrook Place, thence with the right-of-way of Beaverbrook Place the following seven courses: South 9 Degrees, 20 Minutes, 25 Seconds, East 111.69 feet, to a point, thence 78.69 feet along a curve to the left of radius 30.00 feet, a chord bearing and distance of South 24 Degrees, 32 Minutes, 13 Seconds, East 57.91 feet, to a point, thence 78.69 feet along a curve to the left of radius 30.00 feet, a chord bearing and distance of North 5 Degrees, 27 Minutes, 49 Seconds, East 57.99 feet, to a point, thence North 9 Degrees, 40 Minutes, 55 Seconds, West 116.58 feet, to a point, thence 81.92 feet along a curve to the right of radius 64.31 feet, a chord bearing and distance of North 26 Degrees, 48 Minutes, 33 Seconds, East 76.49 feet, to a point, thence North 65 Degrees, 23 Minutes, 42 Seconds, East 52.11 feet, to a point, thence North 65 Degrees, 23 Minutes, 42 Seconds, East 146.88 feet, to a point, the Northwest corner of Plat Book 39, Page 88, thence leaving the right-of-way of Beaverbrook Place and with Plat Book 39, Page 88 the following two courses: South 26 Degrees, 49 Minutes, 06 Seconds, East 190.65 feet, to a point, thence North 67 Degrees, 25 Minutes, 30 Seconds, East 164.18 feet, to a point, the Southwest corner of Deed Book 3972, Page 664, thence with Deed Book 3972, Page 664 and Deed Book 1416, Page 76 (Plat Book 28, Page 7), North 67 Degrees, 27 Minutes, 21 Seconds, East 165.80 feet, to a point, the Southeast corner of Plat Book 28, Page 7, thence with Deed Book 922, Page 377, South 9 Degrees, 55 Minutes, 18 Seconds, East 110.44 feet, to a point in the existing municipal boundary established pursuant to Chapter 840 of the 1959 Session Laws establishing the corporate limits of the City of Asheville, thence with the municipal boundary of the corporate limits of the City of Asheville (Chapter

840 of the 1959 Session Laws), Due South 192.02 feet, to a point in said municipal boundary, thence leaving said municipal boundary and with Deed Book 922, Page 377, South 80 Degrees, 41 Minutes, 21 Seconds, West 798 feet more or less, to a point, the Southwest corner of Deed Book 922, Page 377 and in the East line of Plat Book 32, Page 137 and in the existing municipal boundary line established pursuant to Chapter 840 of the 1959 Session Laws establishing the corporate limits of the City of Asheville, thence with the existing municipal boundary line established pursuant to Chapter 840 of the 1959 Session Laws and Plat Book 32, Page 137, North 9 Degrees, 06 Minutes, 16 Seconds, West 1190 feet more or less, to a point, the Northeast corner of Plat Book 32, Page 137 and in the existing municipal boundary established pursuant to City of Asheville Ordinance No. 2924 establishing the corporate limits of the City of Asheville, thence with the limits of the City of Asheville (Ordinance No. 2924) and Deed Book 922, Page 377, the following four courses: North 58 Degrees, 28 Minutes, 48 Seconds, East 362.28 feet, to a point, thence North 6 Degrees, 40 minutes, 40 Seconds, East 62.89 feet, to a point, thence North 16 Degrees, 28 Minutes, 56 Seconds, East 1485.66 feet, to a point, thence North 84 Degrees, 56 Minutes, 43 Seconds, West 366.95 feet, to a point, the most Southern corner of Plat Book 46, Page 191, thence leaving the existing municipal boundary established pursuant to City of Asheville Ordinance No. 2924 establishing the corporate limits of the City of Asheville and with Plat Book 46, Page 191 and Deed Book 922, Page 377 the following eleven courses: North 6 Degrees, 49 Minutes, 20 Seconds, East 355.63 feet, to a point, thence North 20 Degrees, 32 Minutes, 28 Seconds, East 342.51 feet, to a point, thence North 19 Degrees, 10 Minutes, 28 Seconds, East 1218.19 feet, to a point, thence North 79 Degrees, 25 Minutes, 51 Seconds, East 215.30 feet, to a point, thence South 55 Degrees, 18 Minutes, 09 Seconds, East 242.00 feet, to a point, thence South 36 Degrees, 06 Minutes, 17 Seconds, East 301.60 feet, to a point, thence North 79 Degrees, 30 Minutes, 55 Seconds, East 195.99 feet, to a point, thence South 0 Degrees, 55 Minutes, 41 Seconds, West 197.99 feet, to a point, thence South 72 Degrees, 03 Minutes, 57 Seconds, East 148.49 feet, to a point, thence South 12 Degrees, 04 Minutes, 23 Seconds, East 148.00 feet, to a point, thence South 29 Degrees, 54 Minutes, 23 Seconds, East 66.13 feet, to a point, and place of Beginning. Containing 91.16 acres, more or less.

The orientation of the directions described in this section is True North and the distances described are horizontal ground lengths in feet. Any directions in recorded documents that are used in this description that were not oriented to True North have been rotated for consistency with other record documents that are oriented to True North. It is the intent of this description to describe the property described in Deed Book 760, Page 275, Deed Book 922, Page 377, and Deed Book 1137, Page 454 (conveyed to Sherwood Heights Incorporated) and in Deed Book 1756, Page 537 (conveyed to Thomas W. Coleman) and located outside the corporate limits of the City of Asheville, North Carolina.

All deed book and plat book references in the descriptions in this section refer to documents recorded in the Buncombe County Register of Deeds Office.

SECTION 3. Section 1 of this act shall apply only to the Town of Kernersville. Section 2 of this act shall apply only to the Town of Woodfin.

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

HOUSE BILL 863:
Woodfin Annexation

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 2, 2005
Sponsored by:	Rep. Sherrill	**Summary by:**	Cindy Avrette
Version:	PCS to Third Edition H863-CSRB		Committee Counsel

SUMMARY: ***House Bill 863 would annex approximately 100 acres into the town limits of Woodfin. The proposed committee substitute removes the part of the bill that would have allowed the Town of Kernersville to convey certain property by private sale or trade because it is included in House Bill 787, the Omnibus Local Laws bill, that passed 2nd and 3rd reading on the House floor last night.***

BILL ANALYSIS: House Bill 863 would annex two tracts of property into the Town of Woodfin. The Town cannot annex the property into the Town under existing annexation laws because the property is not contiguous to its limits and it is contiguous to the city limits of Asheville. It appears that approximately 10 feet separates this property from the corporate limits of Woodfin. One person owns the property and that person has requested that the property be annexed by the Town of Woodfin for development into high end residential development.

EFFECTIVE DATE: The bill would become effective when it becomes law.

H0863e3-SMRB-CSRB

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

HB 863 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE TOWN OF KERNERSVILLE TO CONVEY CERTAIN PROPERTY BY PRIVATE SALE OR TRADE, AND TO ADD CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF WOODFIN.

☒ With a favorable report as to the committee substitute bill 3, which changes the title, unfavorable as to Committee Substitute Bill 2.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 945
PROPOSED COMMITTEE SUBSTITUTE H945-CSMBx-11 [v.10]

6/1/2005 10:31:18 AM

Short Title: Omnibus Occ. Taxes & Durham P-P Partnerships. (Local)

Sponsors:

Referred to:

March 29, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE LEVY OF ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAXES IN CASWELL COUNTY, THE CITIES OF EDEN AND REIDSVILLE, THE TOWNS OF BENSON, BOILING SPRINGS, KENLY, AND YANCEYVILLE, AND TO AMEND OCCUPANCY TAXES IN DURHAM, HALIFAX, SELMA, SMITHFIELD, AND WILSON; AND TO CLARIFY THE AUTHORITY OF THE COUNTY OF DURHAM TO ENTER INTO PUBLIC-PRIVATE PROJECTS.

The General Assembly of North Carolina enacts:

PART I. CASWELL COUNTY OCCUPANCY TAX.

SECTION 1.1. Occupancy Tax. – (a) Authorization and Scope. – The Caswell County Board of Commissioners may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

SECTION 1.1.(c) Distribution and Use of Tax Revenue. – Caswell County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Caswell County Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Caswell and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

SECTION 1.2. Caswell County Tourism Development Authority. – (a) Appointment and Membership. – When the Caswell County Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Caswell County shall be the ex officio finance officer of the Authority.

SECTION 1.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

SECTION 1.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Caswell County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

PART II. EDEN OCCUPANCY TAX.

SECTION 2.1. Occupancy Tax. – (a) Authorization and Scope. – The Eden City Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax

imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 2.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 2.1.(c) Distribution and Use of Tax Revenue. – The City of Eden shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Eden Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Eden and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a city or to attract tourists or business travelers to the city. The term includes tourism-related capital expenditures.

SECTION 2.2. Eden Tourism Development Authority. – (a) Appointment and Membership. – When the Eden City Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a city Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the city, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the city. The city council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Eden shall be the ex officio finance officer of the Authority.

SECTION 2.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall

promote travel, tourism, and conventions in the city, sponsor tourist-related events and activities in the city, and finance tourist-related capital projects in the city.

SECTION 2.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Eden City Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the city council may require.

PART III. REIDSVILLE OCCUPANCY TAX.

SECTION 3.1. Occupancy Tax. – (a) Authorization and Scope. – The Reidsville City Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 3.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 3.1.(c) Distribution and Use of Tax Revenue. – The City of Reidsville shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Reidsville Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Reidsville and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a city or to attract tourists or business travelers to the city. The term includes tourism-related capital expenditures.

SECTION 3.2. Reidsville Tourism Development Authority. – (a) Appointment and Membership. – When the Reidsville City Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a city Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the

membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the city, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the city. The city council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Reidsville shall be the ex officio finance officer of the Authority.

SECTION 3.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the city, sponsor tourist-related events and activities in the city, and finance tourist-related capital projects in the city.

SECTION 3.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Reidsville City Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the city council may require.

PART IV. BENSON OCCUPANCY TAX.

SECTION 4.1. Occupancy Tax. – (a) Authorization and Scope. – The Town of Benson may levy a room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 4.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 4.1.(c) Distribution and Use of Tax Revenue. – The Town of Benson shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Johnston County Tourism Authority created in Chapter 647 of the 1987 Session Laws. The Johnston County Tourism Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Benson and shall use the remainder for tourism-related expenditures in Benson. The net proceeds of the occupancy tax levied under this Part shall supplement rather than supplant any proceeds being used in the Town of Benson derived from the occupancy tax levied by Johnston County pursuant to Chapter 647 of the 1987 Session Laws.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred

thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in these activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a town by attracting tourists or business travelers to the town. The term includes tourism-related capital expenditures.

PART V. BOILING SPRINGS OCCUPANCY TAX.

SECTION 5.1. Occupancy Tax. – (a) Authorization and Scope. – The Boiling Springs Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 5.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 5.1.(c) Distribution and Use of Tax Revenue. – The Town of Boiling Springs shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Boiling Springs Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Boiling Springs and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a

town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 5.2. Boiling Springs Tourism Development Authority. – (a) Appointment and Membership. – When the Boiling Springs Town Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Boiling Springs shall be the ex officio finance officer of the Authority.

SECTION 5.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 5.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Boiling Springs Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the town council may require.

PART VI. KENLY OCCUPANCY TAX.

SECTION 6.1. Occupancy Tax. – (a) Authorization and Scope. – The Town of Kenly may levy a room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 6.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 6.1.(c) Distribution and Use of Tax Revenue. – The Town of Kenly shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Johnston County Tourism Authority created in Chapter 647 of the 1987 Session Laws. The Johnston County Tourism Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Kenly and shall use the remainder for tourism-related expenditures in Kenly. The net proceeds of the

occupancy tax levied under this Part shall supplement rather than supplant any proceeds being used in the Town of Kenly derived from the occupancy tax levied by Johnston County pursuant to Chapter 647 of the 1987 Session Laws.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in these activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a town by attracting tourists or business travelers to the town. The term includes tourism-related capital expenditures.

PART VII. YANCEYVILLE OCCUPANCY TAX.

SECTION 7.1. Occupancy Tax. – (a) Authorization and Scope. – The Yanceyville Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 7.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 7.1.(c) Distribution and Use of Tax Revenue. – The Town of Yanceyville shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Yanceyville Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Yanceyville and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 7.2. Yanceyville Tourism Development Authority. – (a) Appointment and Membership. – When the Yanceyville Town Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Yanceyville shall be the ex officio finance officer of the Authority.

SECTION 7.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 7.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Yanceyville Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the town council may require.

PART VIII. DURHAM OCCUPANCY TAX.

SECTION 8.1. Section 7(a) of S.L. 2001-480, as amended by Section 1 of S.L. 2002-36, reads as rewritten:

"**SECTION 7.(a)** If a plan for financing a Performing Arts Theater has not been approved by the Durham City Council and has been disapproved by the Durham County Commissioners within ~~42~~54 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, the county's authority to levy the one percent (1%) tax described under Section 6(c) of this act and the levy of the one percent (1%) tax described in this subsection are repealed on the first day of the second month following the ~~42-month~~54-month period.

If construction on the Performing Arts Theater has not begun within ~~42~~54 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, the county's authority to levy the one percent (1%) tax described in Section 6(c) of this act and the levy of the one percent (1%) tax described in Section 6(c) of this act are repealed on the first day of the second month following the ~~42-month~~54-month period.

It is the goal of the General Assembly that a plan for financing the Performing Arts Theater shall be adopted within ~~12~~54 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, and construction of the Performing Arts Theater shall begin within ~~24~~54 months of the levy of the one percent (1%) tax described in Section 6(c) of this act.

Any funds collected but not spent before the repeal date shall be redistributed to the Durham Convention and Visitors Bureau to promote travel and tourism."

SECTION 8.2. Section 9(e) of S.L. 2001-480, as amended by Section 4 of S.L. 2002-36, reads as rewritten:

"**SECTION 9.(e)** Use of Proceeds From Additional One Percent (1%) Tax After First 24 Months. – The net proceeds of the tax collected under Section 6(c) of this act after the first 24 months that the tax is levied shall be remitted monthly to the Durham Convention and Visitors Bureau as set out in Section 10 of this act. The Bureau shall use and distribute these net proceeds in the following priority order:

(1) To the City of Durham, the first one million four hundred thousand dollars ($1,400,000) collected annually to finance the debt service associated with the construction of the Performing Arts ~~Theater.~~Theater and for the design and engineering costs associated with the construction of the Theater. But no more than two million seven hundred fifty-two thousand dollars ($2,752,000) of those proceeds may be used for design and engineering costs associated with the construction of the Theater. Until those funds are distributed to the City of Durham for that purpose, they shall be held by the Durham Convention and Visitors Bureau in a capital reserve fund as provided by Part 2 of Article 3 of Chapter 159 of the General Statutes except they may be expended as provided by the last sentence of Section 7(a) of this act if the tax is repealed as provided by Section 7(a) of this act. Any interest earned by that fund shall be credited to the fund.

(2) Thirty-two years after the levy of the tax authorized under Section 6(c) of this act, instead of the allocation under subdivision (1) of this subsection, the first one million four hundred thousand dollars ($1,400,000) collected annually shall be used by the Bureau to promote travel and tourism or for tourism related expenditures.

(3) To Durham County, the next five hundred thousand dollars ($500,000) collected annually to be used for improvements to the Museum of Life and Science. This may include the financing of debt service. Any of these funds that are not needed for this purpose shall be returned to the Bureau and used to promote travel and tourism.

(4) The Bureau shall use any net proceeds in excess of that provided by subdivisions (1), (2), and (3) of this subsection to promote travel, tourism, and conventions in Durham County.

As used in this subsection, "annually" means the 12-month period beginning after the first 24 months that the tax authorized under Section 6(c) of this act is levied."

PART IX. HALIFAX COUNTY OCCUPANCY TAX.

SECTION 9. Chapter 377 of the 1987 session laws, as amended by S.L. 2005-46, reads as rewritten:

"Section 1. Occupancy ~~tax.~~Tax. – (a) Authorization and ~~scope.~~Scope. – The Halifax County Board of Commissioners may levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of ~~additional tax.~~Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Halifax County Board of Commissioners may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection ~~must~~shall be in accordance with the provisions of this section. Halifax County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. – A tax levied under this section ~~must~~shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

(c) Distribution and ~~use~~Use of ~~tax revenue.~~Tax Revenue. – Halifax County ~~must.~~shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Halifax County Tourism Development Authority. The Authority ~~must~~shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Halifax County and ~~must~~shall use the remainder for tourism-related expenditures.

The following definitions apply to this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of the gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the county by attracting tourists or business travelers to the county. The term includes tourism-related capital expenditures.

Sec. 2. Tourism Development Authority. – (a) Appointment and ~~membership.~~Membership. – When the Halifax County Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it ~~must~~shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution ~~must~~shall provide for the membership of the Authority including the members' qualifications and terms of office, and for the filling of vacancies on the Authority. At least one-fifth of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least ~~three-fourths~~one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the county. ~~The Authority must designate one member as chair and one member as treasurer.~~The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority ~~must~~shall meet at the call of the chair and ~~must~~shall adopt rules of procedure to govern its meetings. The Finance Officer for Halifax County shall be the ex officio finance officer of the Authority.

(b) Duties. – The Authority must expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority must promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. – The Authority ~~must~~shall report quarterly and at the close of the fiscal year to the Halifax County Board of County Commissioners on its receipts and expenditures for the year in such detail as the Board may require.

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

PART X. SELMA OCCUPANCY TAX.

SECTION 10. Part X of S.L. 2001-439 reads as rewritten:

"**SECTION 10.1.** Occupancy ~~tax.~~Tax. – (a) Authorization and Scope. – The Selma Town Council ~~of the Town of Selma~~ may levy a room occupancy tax of one percent (1%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

(a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Selma Town Council may levy an additional room occupancy tax of up to one percent (1%) of the gross receipts derived from the rental of

accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. The Selma Town Council may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

SECTION 10.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 10.1.(c) Distribution and Use of Tax Revenue. – The Town of Selma shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Johnston County Tourism Authority created in Chapter 647 of the 1987 Session Laws. The Johnston County Tourism Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Selma and shall use the remainder for tourism-related expenditures in Selma. The net proceeds of the occupancy tax levied under this Part shall supplement rather than supplant any proceeds being used in the Town of Selma derived from the occupancy tax levied by Johnston County pursuant to Chapter 647 of the 1987 Session Laws.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in these activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a town by attracting tourists or business travelers to the town. The term includes tourism-related capital expenditures.

~~"**SECTION 10.2.** A tax levied under this Part expires five years after the effective date of its levy. The town's authority to levy a tax under this Part expires five years after the effective date of its levy of a tax under this Part. The expiration of a tax pursuant to this Part does not affect the rights or liabilities of the town, a taxpayer, or another person arising under the expired tax before the effective date of its expiration; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the expired tax before the effective date of its expiration."~~

PART XI. SMITHFIELD OCCUPANCY TAX.

SECTION 11. Part XI of S.L. 2001-439 reads as rewritten:

"**SECTION 11.1.** Occupancy ~~tax.~~Tax. – (a) Authorization and Scope. – The Smithfield Town Council ~~of the Town of Smithfield~~ may levy a room occupancy tax of one percent (1%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

(a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Smithfield Town Council may levy an additional room occupancy tax of up to one percent (1%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. The Smithfield Town Council may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

SECTION 11.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 11.1.(c) Distribution and Use of Tax Revenue. – The Town of Smithfield shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Johnston County Tourism Authority created in Chapter 647 of the 1987 Session Laws. The Johnston County Tourism Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Smithfield and shall use the remainder for tourism-related expenditures in Smithfield. The net proceeds of the occupancy tax levied under this Part shall supplement rather than supplant any proceeds being used in the Town of Smithfield derived from the occupancy tax levied by Johnston County pursuant to Chapter 647 of the 1987 Session Laws.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in these activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a town by attracting tourists or business travelers to the town. The term includes tourism-related capital expenditures.

~~"SECTION 11.2. A tax levied under this Part expires five years after the effective date of its levy. The town's authority to levy a tax under this Part expires five years after the effective date of its levy of a tax under this Part. The expiration of a tax pursuant to this Part does not affect the rights or liabilities of the town, a taxpayer, or another person arising under the expired tax before the effective date of its expiration; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the expired tax before the effective date of its expiration."~~

PART XII. WILSON OCCUPANCY TAX.

SECTION 12. Chapter 848 of Session Law 1987 reads as rewritten:

"Section 1. Occupancy Tax. – (a) Authorization and ~~scope.~~Scope. – The Wilson County Board of Commissioners may ~~by resolution, after not less than ten (10) days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under ~~G.S. 105-164.4(3).~~G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations, by summer camps, or by businesses that offer to rent no more than five units.

~~(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

(c) Administration. ~~The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~ – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall be subject to and pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or~~

~~pay the tax for a period of thirty (30) days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both~~.

(e) Distribution and ~~use~~Use of ~~tax revenue.~~Tax Revenue. – Wilson County shall, on a ~~monthly~~quarterly basis, remit the net proceeds of the occupancy tax to the Wilson County Tourism Development Authority. ~~The Authority may spend funds remitted to it under this subsection only to further the development of travel, tourism, and conventions in Wilson County through advertising and promotion, to sponsor tourist-oriented events and activities in Wilson County, and to finance tourist-related capital projects in Wilson County. As used in this subsection, "net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, which may not exceed five percent (5%) of the gross proceeds.~~The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Wilson County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this section:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Wilson County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted.~~

~~Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

Sec. 2. Wilson County Tourism Development Authority. – (a) Appointment and ~~membership.~~Membership. – When the ~~board of commissioners~~Wilson County Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Wilson County Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the county. The Board of Commissioners shall appoint three members, the City Council shall appoint three members, and the Chamber of Commerce shall appoint one member of the Authority.

~~The resolution shall provide that the Authority shall be composed of the following seven members:~~

~~(1) A Wilson County Commissioner appointed by the board of commissioners;~~

~~(2) A member of the Wilson City Council appointed by the city council;~~

~~(3) Three owners or operators of motels, hotels, or other taxable accommodations in Wilson County that have at least 5 units, one of whom shall be appointed by the Wilson City Council, one by the Wilson County Board of Commissioners, and one by the Wilson County Chamber of Commerce; and~~

~~(4) Two individuals involved in the tourist business who have demonstrated an interest in tourist development and do not own or operate hotels, motels, or other taxable tourist accommodations, appointed as follows: one by the Wilson City Council and one by the Wilson County Board of Commissioners.~~

All members of the Authority shall serve without compensation. Vacancies shall be filled in the same manner as original appointments. Members appointed to fill vacancies shall serve for the remainder of the unexpired term. The Authority shall elect each year from its membership a chairman. No member may serve as chairman more than two one-year terms in succession. The Authority shall meet at the call of the chairman or of any three members and shall adopt rules of procedure to govern its meetings. The Finance Officer for Wilson County shall be the ex officio finance officer of the Authority.

(b) Terms of office. Members of the Authority appointed by the Board of Commissioners and the City County shall serve three-year ~~terms except that the initial appointees shall serve the following terms:~~

~~(1) Members appointed pursuant to subdivisions (a)(1) and (a)(2) of this section shall serve one-year terms.~~

~~(2) Of the members appointed pursuant to subdivision (a)(3) of this section, the appointee of the Wilson City Council shall serve a three-~~

~~year term and the appointee of the board of commissioners shall serve a two-year term.~~

~~(3) Of the members appointed pursuant to subdivision (a)(4) of this section, the appointee of the Wilson City Council shall serve a one-year term, the appointee of the board of commissioners shall serve a three-year term, and the appointee of the Chamber of Commerce shall serve a two-year term.~~terms. The member of the Authority appointed by the Chamber of Commerce shall serve a two-year term.

(c) ~~Powers and duties. The Authority may contract with any person, firm, or agency to assist it in carrying out the purposes for which the tax proceeds levied by this act may be expended. The board of county commissioners may from time to time determine an appropriate percentage of net proceeds that may be expended for administrative services.~~Duties. – The Authority shall expend the net proceeds of the tax levied under this Act for the purposes provided in this Act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(d) Reports. The Authority shall report quarterly and at the close of the fiscal year to the ~~board of county commissioners~~Wilson County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

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

PART XIII. UNIFORM PROVISIONS.

SECTION 13.1. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Caswell, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Granville, Halifax, Madison, Montgomery, Nash, New Hanover, Pasquotank, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, ~~and Washington~~Washington, and Wilson Counties, and to the Township of Averasboro in Harnett County."

SECTION 13.2. G.S. 160A-215 reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Elizabeth City, Eden, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Reidsville, Roanoke Rapids, Shelby, Statesville, Washington, and Wilmington, to the Towns of Beech Mountain, Benson, Blowing Rock, Boiling Springs, Carolina Beach, Carrboro, Franklin, Kenly, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, West Jefferson, Wilkesboro~~, and Wrightsville Beach.~~Wrightsville Beach, and Yanceyville, and to the municipalities in Avery and Brunswick Counties."

PART XIV. DURHAM COUNTY PUBLIC-PRIVATE PARTNERSHIPS.

SECTION 14. Section 1 of Chapter 908 of the 1986 Session Laws, as amended by Section 2 of Chapter 789 of the 1987 Session Laws, reads as rewritten:

"Section 1. (a) Definition. For the purpose of this act, ~~an "urban development project"~~ a "public-private project" is defined as a capital project which is comprised of one or more buildings or other improvements and includes both public and private facilities. ~~By way of illustration and not limitation, such a project might include a single building comprising a publicly owned parking structure and publicly owned convention center, and a privately owned hotel or office building.~~ The public-private project may be located anywhere within Durham County, including those portions of Durham County within municipal limits.

(b) Authorization. If the Board of Commissioners of Durham County determines that the County will significantly benefit from the County's participation in the development of ~~an urban development~~ a public-private project, as defined, then the County may acquire, construct, own, and operate or participate in the acquisition, construction, ownership, and operation of ~~an urban development~~ a public-private project, or of specific facilities within such a project, including the making of loans and grants from moneys lawfully available therefore. The County may enter into binding contracts with the City of Durham or one or more private developers, or both, with respect to acquiring, constructing, owning, or operating such a project. ~~Such a~~ The contract shall among other provisions, specify the following:

(1) The property interest of the County and all other participants in the development of the project.

(2) The responsibilities of the County and all other participants in the development of the project.

(3) The responsibilities of the County and all other participants with respect to financing of the project.

~~Such a~~ The contract may be entered into before or after the acquisition of any real property necessary to the project.

(c) Property acquisition. ~~An urban development~~ A public-private project may be constructed on property acquired by the developer or developers, on property acquired by the County, on property acquired by the City, or on property acquired by the County, City, and developers.

(d) Property disposition. The County may lease or convey its interest in ~~urban development~~ public-private projects property or other property owned by it, including air rights over public facilities, through any of the methods authorized in G.S. 153A-176 and G.S. 160A-266 including private negotiation and sale without limitation as to value of the interest conveyed. Notwithstanding the provisions of G.S. 160A-272, property owned by the County may be leased for a period of 10 years or longer without being treated as a sale of the property.

(e) Construction of the project. The contract between the county and the developer or developers may provide that the developer or developers shall be responsible for: (i) construction of the entire ~~urban development~~ public-private project, (ii) reconstruction and/or repair of the ~~urban development~~ public-private project or any part thereof subsequent to construction of said project, (iii) construction of any addition to the ~~urban development~~ public-private project, (iv) renovation of the ~~urban development~~ public-private project or any part thereof, and/or (v) purchase of apparatus,

supplies, materials, or equipment for the ~~urban development~~ public-private project (whether during the initial equipping of the said project or subsequent thereto). Additionally, the contract between the county and the developer or developers may provide that the county and the developer or developers shall use the same contractor or contractors in constructing a portion of or the entire public-private project. If so, the contract shall include such provisions as the board of county commissioners deems sufficient to assure that the public facility or facilities included in the project or added thereto are constructed, reconstructed, repaired and/or renovated, and the apparatus, supplies, materials and equipment purchased for the public facility or facilities included in the project, are purchased at a reasonable price and the provisions of Article 8 of Chapter 143 and Article 3 of Chapter 44A of the General Statutes shall not apply to ~~such urban development~~ the public-private project.

(f) Operation. The County may contract for the operation of any public facility or facilities included in ~~an urban development~~ a public-private project by any person, firm, or corporation, public or private.

(g) Financing. To assist in the financing of its share of ~~an urban development~~ a public-private project, the County may apply for, accept, and expend funds from the federal or State government or any other lawful source.

(h) Other authority. The authority granted by this section is in addition to and not in derogation of any other lawful authority granted to the County by law. The County may exercise any authority granted to it by local act or general statute or law in furtherance of ~~an urban development~~ a public-private project. By way of illustration but not of limitation, the County may exercise the following authority in furtherance of ~~an urban development~~ a public-private project:

(1) The authority granted in G.S. 153A-176 and Article 12 of Chapter 160A with respect to the public or private sale, lease, rent, exchange, or other conveyance of property.

(2) The authority of G.S. 153A-13 and G.S. 153A-449 with respect to contracts with, and appropriation of money to, persons, associations or corporations for the accomplishment of public purposes."

PART XV. EFFECTIVE DATES.

SECTION 15. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 945

Short Title:	Durham Occupancy Tax.	(Local)
Sponsors:	Representatives Luebke, Michaux, Miller, and Wilkins (Primary Sponsors).	
Referred to:	Finance.	

March 29, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DURHAM COUNTY OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7.(a) of S.L. 2001-480, as amended by Section 1 of S.L. 2002-36, reads as rewritten:

"**SECTION 7.(a)** If a plan for financing a Performing Arts Theater has not been approved by the Durham City Council and has been disapproved by the Durham County Commissioners within ~~42~~54 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, the county's authority to levy the one percent (1%) tax described under Section 6(c) of this act and the levy of the one percent (1%) tax described in this subsection are repealed on the first day of the second month following the ~~42-month~~54-month period.

If construction on the Performing Arts Theater has not begun within ~~42~~54 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, the county's authority to levy the one percent (1%) tax described in Section 6(c) of this act and the levy of the one percent (1%) tax described in Section 6(c) of this act are repealed on the first day of the second month following the ~~42-month~~54-month period.

It is the goal of the General Assembly that a plan for financing the Performing Arts Theater shall be adopted within ~~12~~54 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, and construction of the Performing Arts Theater shall begin within ~~24~~54 months of the levy of the one percent (1%) tax described in Section 6(c) of this act.

Any funds collected but not spent before the repeal date shall be redistributed to the Durham Convention and Visitors Bureau to promote travel and tourism."

SECTION 2. Section 9(e) of S.L. 2001-480, as amended by Section 4 of S.L. 2002-36, reads as rewritten:

"**SECTION 9.(e)** Use of Proceeds From Additional One Percent (1%) Tax After First 24 Months. – The net proceeds of the tax collected under Section 6(c) of this act

after the first 24 months that the tax is levied shall be remitted monthly to the Durham Convention and Visitors Bureau as set out in Section 10 of this act. The Bureau shall use and distribute these net proceeds in the following priority order:

(1) To the City of Durham, the first one million four hundred thousand dollars ($1,400,000) collected annually to finance the debt service associated with the construction of the Performing Arts ~~Theater.~~Theater and for the design and engineering costs associated with the construction of the Theater. But no more than two million seven hundred fifty-two thousand dollars ($2,752,000) of those proceeds may be used for design and engineering costs associated with the construction of the Theater. Until those funds are distributed to the City of Durham for that purpose, they shall be held by the Durham Convention and Visitors Bureau in a capital reserve fund as provided by Part 2 of Article 3 of Chapter 159 of the General Statutes except they may be expended as provided by the last sentence of Section 7(a) of this act if the tax is repealed as provided by Section 7(a) of this act. Any interest earned by that fund shall be credited to the fund.

(2) Thirty-two years after the levy of the tax authorized under Section 6(c) of this act, instead of the allocation under subdivision (1) of this subsection, the first one million four hundred thousand dollars ($1,400,000) collected annually shall be used by the Bureau to promote travel and tourism or for tourism related expenditures.

(3) To Durham County, the next five hundred thousand dollars ($500,000) collected annually to be used for improvements to the Museum of Life and Science. This may include the financing of debt service. Any of these funds that are not needed for this purpose shall be returned to the Bureau and used to promote travel and tourism.

(4) The Bureau shall use any net proceeds in excess of that provided by subdivisions (1), (2), and (3) of this subsection to promote travel, tourism, and conventions in Durham County.

As used in this subsection, "annually" means the 12-month period beginning after the first 24 months that the tax authorized under Section 6(c) of this act is levied."

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

House Bill 945:
Omnibus Occupancy Taxes and Durham Public-Private Partnerships.

BILL ANALYSIS

Committee: House Finance
Date: June 2, 2005

Sponsors: Representatives Luebke, Miller, Michaux, and Wilkins

Version: PCS H945-CSMBx-11

Analysis by: Ashley Huffstetler

SUMMARY: *The PCS to House Bill 945 authorizes the levy of new occupancy taxes in Caswell County, the cities of Eden and Reidsville, and the towns of Benson, Boiling Springs, Kenly, and Yanceyville, and the levy of additional occupancy taxes in Selma and Smithfield, and amends other provisions of the existing Durham, Halifax, and Wilson occupancy taxes. It also clarifies the authority of Durham County to enter into "public-private partnerships."*

BILL ANALYSIS:

Occupancy Taxes

This bill authorizes the levy of *new* occupancy taxes in seven local government units. These include Caswell County, the cities of Eden and Reidsville, and the towns of Benson, Boiling Springs, Kenly, and Yanceyville. None of these local units currently levy a room occupancy and tourism development tax. Every new occupancy tax is drafted in a manner that completely conforms to the House occupancy tax guidelines.

1. Caswell County and the Town of Yanceyville

   The Town of Yanceyville is located in Caswell County. Neither the county nor any city in the county currently levies an occupancy tax. This bill authorizes the levy of a 3% tax in Caswell County and a 3% tax in the Town of Yanceyville.

   See Caswell p. 1 and Yanceyville p. 8

2. Eden and Reidsville

   The cities of Eden and Reidsville are located in Rockingham County. Neither city currently levies an occupancy tax, but Rockingham County does levy a 3% tax. This bill authorizes the levy of a 3% tax in each city, and, if enacted, the total amount levied in Eden and Reidsville would be 6% (when combined with the county rate).

   See Eden p. 2 and Reidsville p. 4

3. Benson and Kenly

   The towns of Benson and Kenly are located in Johnston County. Neither town currently levies an occupancy tax, but Johnston County does levy a 3% tax. This bill authorizes the levy of a 2% tax in each town, and, if enacted, the total amount levied in Benson and Kenly would be 5% (when combined with the county rate). The Johnston County Tourism Development Authority would administer the proceeds of the tax.

   See Benson p. 5 and Kenly p. 7

4. Boiling Springs

The Town of Boiling Springs is located in Cleveland County. It does not currently levy an occupancy tax, but Cleveland County does levy a 3% tax. This bill authorizes the levy of a 3% tax in the town, and, if enacted, the total amount levied in Boiling Springs will be 6% (when combined with the county rate).

See Boiling Springs p. 6

The bill authorizes the levy of *additional* occupancy taxes in two towns. These are Selma and Smithfield.

5. Selma and Smithfield

In 2001, the General Assembly authorized the towns of Selma and Smithfield to levy occupancy taxes at a rate of 1%. Selma and Smithfield are located in Johnston County, which is authorized to levy a 3% tax. The bill authorizes each town to levy an additional 1% tax, and, if enacted, the total amount levied in each town would be 5% (when combined with the county rate). The bill also removes sunsets on both towns' taxes and makes other technical changes. These occupancy taxes fully conform to House guidelines.

See Selma p. 12 and Smithfield p. 13.

The bill also amends certain provisions of three occupancy taxes, *but does not make any rate change to existing taxes.* These are Durham, Halifax, and Wilson.

6. Durham

In Durham, the city and county split the proceeds of the tax and may use the money for any purpose authorized by law. This allocation does not comply with House guidelines, but was reached by consensus during the 2001 session. The continued authorization of the *final* 1% of the occupancy tax is conditioned upon the development of a plan for paying for and constructing a performing arts theater. The existing legislation requires that the Durham City Council develop a plan for financing and beginning construction of the theater within 42 months of Durham County voting to levy the 1% tax, or the 1% tax is repealed. Once the tax has been levied for 24 months, the first $1,400,000 of the net proceeds must be used to finance the debt associated with the construction of the performing arts theater.

This bill extends the time allowed the city to plan for and construct the performing arts theater. It gives the city 54 months (4 ½ years) to plan and begin construction, and the 1% tax will not automatically be repealed until that time. Also, the bill modifies how the proceeds of the tax are to be used after the tax has been levied for 24 months. The Visitor's Bureau must continue to distribute the money to the City of Durham to finance the debt associated with the performing arts theater, and must also distribute money to pay for the design and engineering costs associated with building the theater. The bill caps the amount at $2,752,000 that may be used for design and engineering costs.

See Durham p. 9.

7. Halifax

Halifax County levies an occupancy tax at rate of 1%. Its existing legislation conforms to House guidelines. The bill makes changes to the administrative procedures for the tourism and development authority and other technical changes. It also reinstates the provision that the authority is to make quarterly reports to the board of commissioners.

See Halifax p. 11.

8. Wilson

Wilson County levies an occupancy tax at a rate of 3%. Its legislation was drafted in 1987 and does not conform to House guidelines. This bill amends it to conform to the guidelines and further amends the membership of the tourism authority. It allows for the appointment of nine members: three appointed by the board of commissioners, three by the city council, and one by the chamber of commerce. Previously,

there were only seven members. It also changes the way those members are chosen and implements the requirement that 1/3 of the members must be affiliated with businesses that collect the tax in the county, and ½ must be members who are active in promoting travel and tourism in the county.

See Wilson p. 15.

Durham Public-Private Partnerships

The bill also clarifies the authority of Durham County to enter into public-private partnerships.

Durham County currently has the authority to enter into "urban development projects," which are defined as capital projects compromised of one or more buildings or other improvements and includes public or private projects. If the Board of Commissioners determines that the County would significantly benefit from the County's participation in an urban development project, the County may participate in the project and may enter into contracts with the City of Durham or private developers to acquire, construct, own, or operate a project.

This bill changes the term "urban development project" to "public-private project," and clarifies that the projects may be located within the municipal limits of Durham. It also creates an exception to G.S. 160A-272 and allows the County to lease property for more than ten years without having to treat that lease as a sale of the property. Further, the County and a developer may enter into contracts providing that they will use the same contractor for the work being done on all or a portion of a project.

See Durham Public-Private Partnerships p. 18.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 945 (Sixth Edition)

SHORT TITLE: Durham Occupancy Tax.

SPONSOR(S): Representatives Luebke, Michaux, Miller, and Wilkins

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund	No General Fund Impact				
City of Durham	No Change in Fiscal Impact				
City of Eden	$44,348	$45,368	$46,366	$47,293	$48,239
City of Reidsville	$53,217	$54,441	$55,639	$56,751	$57,886
Town of Boiling Springs	$14,783	$15,123	$15,456	$15,765	$16,080
Town of Smithfield	$28,825	$29,487	$30,136	$30,739	$31,446
Town of Selma	$68,237	$69,807	$71,342	$72,769	$74,443
Caswell County	$3,127	$3,199	$3,270	$3,335	$3,412
Town of Yanceyville	$3,127	$3,199	$3,270	$3,335	$3,412
Town of Benson	$8,200	$8,389	$8,573	$8,745	$8,946
Town of Kenly	$16,400	$16,777	$17,146	$17,489	$17,891
Halifax County	No Fiscal Impact				
Town of Wilson	No Fiscal Impact				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: City of Durham, City of Eden, City of Reidsville, Town of Boiling Springs, Town of Smithfield, Town of Selma, Caswell County, Town of Yanceyville, Town of Benson, Town of Kenly, Halifax County and the Town of Wilson

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:

The PCS to House Bill 945 authorizes the levy of new occupancy taxes in Caswell County, the cities of Eden and Reidsville, and the towns of Benson, Boiling Springs, Kenly, and Yanceyville. It also authorizes the levy of additional occupancy taxes in Selma and Smithfield, and amends other provisions of the existing Durham, Halifax, and Wilson occupancy taxes.

ASSUMPTIONS AND METHODOLOGY:

Durham
Because the bill does not change the current occupancy tax rate for Durham and only makes changes related to the time allowed for planning and construction of a performing arts center and the use of the proceeds, this bill does not change the fiscal impact for the Durham occupancy tax.

Eden
According to the City of Eden, there are 5 motels in the city limits. Assuming an average of 30 rooms in each, an average room rate of $45 per night and a 60% rate of room occupancy, FRD estimates the 3% occupancy tax would generate $44,348 per year. Because no historic data is available, the General Consumer Price Index estimated rate of increase is used to estimate future growth in occupancy tax receipts. The following chart illustrates the five-year fiscal estimate:

	Eden	Each 1%
FY06	$44,348	$14,782
FY07	$45,368	$15,122
FY08	$46,366	$15,455
FY09	$47,293	$15,764
FY10	$48,239	$16,079

Reidsville
According to the City of Reidsville, there are 6 motels in the city limits. Assuming an average of 30 rooms in each, an average room rate of $45 per night and a 60% rate of room occupancy, FRD estimates the 3% occupancy tax would generate $53,217 per year. Because no historic data is available, the General Consumer Price Index estimated rate of increase is used to estimate future growth in occupancy tax receipts. No development of additional motels or other accommodations is assumed in the estimates of subsequent year revenues. Based on these assumptions, the following five-year stream of additional revenue is suggested:

	Reidsville	Each 1%
FY06	$53,217	$17,739
FY07	$54,441	$18,147
FY08	$55,639	$18,546
FY09	$56,751	$18,917
FY10	$57,886	$19,295

Town of Boiling Springs
According to the Town of Boiling Springs, there is 1 motel in the city limits with approximately 50 rooms. Assuming an average room rate of $45 per night and a 60% rate of room occupancy, FRD estimates the 3% occupancy tax would generate $14,783 per year. Because no historic data is available, the General Consumer Price Index estimated rate of increase is used to estimate future growth in occupancy tax receipts. No development of additional motels or other accommodations is assumed in the estimates of subsequent year revenues.

	Boiling Springs	Each 1%
FY06	$14,783	$4,927
FY07	$15,123	$5,041
FY08	$15,456	$5,152
FY09	$15,765	$5,255
FY10	$16,080	$5,360

Smithfield

The 1% occupancy tax for the Town of Smithfield generated $27,651 in revenue during FY 2004. Applying the General Consumer Price Index rate of increase suggests the following revenue increase as a result of the proposed 1% rate increase:

	Smithfield
FY06	$28,825
FY07	$29,487
FY08	$30,136
FY09	$30,739
FY10	$31,446

Selma

The current 1% occupancy tax in the Town of Selma generated $65,459 in FY04. Applying the General Consumer Price Index rate of increase suggests the following revenue increase as a result of the proposed 1% increase:

	Selma
FY06	$68,237
FY07	$69,807
FY08	$71,342
FY09	$72,769
FY10	$74,443

Caswell County and the Town of Yanceyville

According to the county manager for Caswell County, there is one motel in the county. The motel is located in Yanceyville and is expected to generate approximately $3,000 each for the Town of Yanceyville and Caswell County based on the proposed occupancy tax rate of 3% each for the county and the town. Applying the General Consumer Price Index rate of increase for future years provides the following revenue estimate:

	Yanceyville	Caswell Co.	Each 1%
FY06	$3,127	$3,127	$1,042
FY07	$3,199	$3,199	$1,066
FY08	$3,270	$3,270	$1,090
FY09	$3,335	$3,335	$1,112
FY10	$3,412	$3,412	$1,137

Benson
According to the town manager of Benson, there are 2 motels located in the city limits. Assuming and average of 25 rooms and a 50% rate of occupancy, the annual revenue for a 2% occupancy tax is approximately $8,200. Estimates for future years are based on the General Consumer Price Index rate of increase.

	Benson	Each 1%
FY06	$8,200	$4,100
FY07	$8,389	$4,195
FY08	$8,573	$4,287
FY09	$8,745	$4,373
FY10	$8,946	$4,473

Kenly
According to the town manager of Kenly, there are 4 motels in Kenly. Assuming an average of 25 rooms each and a 50% rate of room occupancy, the annual revenue for a 2% occupancy tax is approximately $16,400. Estimates for future years are based on the General Consumer Price Index rate of increaser.

	Kenly	Each 1%
FY06	$16,400	$8,200
FY07	$16,777	$8,388
FY08	$17,146	$8,573
FY09	$17,489	$8,744
FY10	$17,891	$8,945

Halifax County
The PCS makes changes to the administrative procedures for the tourism and development authority for Halifax County and makes other technical changes, but does not have a fiscal impact.

Wilson
The bill amends the Wilson County occupancy tax to conform to House guidelines. This portion of the bill does not have a fiscal impact.

SOURCES OF DATA: City of Durham, City of Eden, City of Reidsville, Town of Boiling Springs, Town of Smithfield, Town of Selma, Caswell County, Town of Benson, Town of Kenly, NC Department of State Treasurer

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

Official
Fiscal Research Division
Publication

DATE: June 1, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 945

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

H945-AMB-7 [v.2]

Date 6/21 ,2005

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

Representative Luebke

moves to amend the bill on page 1, line 6, by rewriting the line to read:
"HALIFAX, SELMA, AND SMITHFIELD; AND TO CLARIFY THE"

moves to amend the bill on page 12, lines 28 and 29, by rewriting the lines to read:
"fiscal year to the Halifax County Board of ~~County~~ Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board may require."

Moves to amend the bill on page 15, line 9 through page 18, line 22 by deleting those lines and renumbering the parts and sections that follow accordingly.

Moves to amend the bill on page 18, line 29 by rewriting the line to read:
"Transylvania, Tyrrell, Vance, and Washington Counties, and to"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 945 A BILL TO BE ENTITLED AN ACT TO AMEND THE DURHAM COUNTY OCCUPANCY TAX.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

North Carolina General Assembly

House Committee on Finance

Minutes

~

June 7, 2005

The House Committee on Finance met on Tuesday, June 7, 2005 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Luebke, McComas and Wainwright; Vice-Chairs Daughtridge, Hill, Weiss, and Womble; and Representatives Blackwood, Blust, Bordsen, Capps, Carney, Faison, Folwell, Glazier, Hackney, Harrell, Holliman, Jones, Lewis, McGee, Rayfield, Underhill, Walend, and Wiley. Also present were Sergeant-at-Arms Bill Freeman, Fred Hines, Dusty Rhodes, Bill Sullivan, and James Worth. Staff persons present included Cindy Avrette, Rodney Bizzell, Gerry Cohen, Brenna Erford, Ashley Huffstetler, and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2.**

Chairman Gibson called the meeting to order at 8:35 am and recognized the ten (10) pages present: (1) Katie Amspacher of Carteret County, sponsored by Representative Preston; (2) Casey Cline of Lincoln County, sponsored by Representative McMahan; (3) Ward Collins of Macon County, sponsored by Representative Haire; (4) Jarrett Frazier of Jackson County, sponsored by Representative Haire; (5) Chris Hall of Robeson County, sponsored by Speaker Black; (6) Amelia Muse of Durham County, sponsored by Representative Hackney; (7) Carrie Neal of New Hanover County, sponsored by Representative McComas; (8) Scott Poseil of Wake County, sponsored by Representative Yongue; (9) Lauren Umbolenstock of Wake County, sponsored by Representative Dollar; and (10) Rob Williams of Johnston County, sponsored by Representative Daughtry

The first bill under the Committee's consideration was **SB 396 – COUNTY SERVICE DISTRICTS** (see **attachment 3**). Chairman Gibson first recognized the bill sponsor, Senator Hoyle, who explained that the bill gives counties the authority to make changes to service districts. He reported that the bill was passed by the Senate and received no opposition. Chairman Gibson then recognized Representative Rayfield who moved that Senate Bill 396 be given a favorable report by the Committee. Seeing no further discussion, Chairman Gibson called the motion to a vote and it carried by consent.

The next bill considered by the Committee was **SB 442 – BLOWING ROCK OFF-STREET PARKING FUND** (see **attachment 4**). Chairman Gibson recognized Senator Garwood who explained that the bill requires developers to provide adequate off-street parking for developments or pay a fee based on number of parking spaces required by development. He stated that the fee would be used to finance a municipal parking deck. Representative Ross was then recognized and moved that Senate Bill 442 be given a favorable report by the Committee. As there was no further debate, Chairman Gibson called the motion to a vote and it carried without objection.

The following bill considered by the Committee was **SB 466 - BURLINGTON/GIBSONVILLE BOUNDARY** (see **attachment 5**). Chairman Gibson first recognized Senator Phil Berger who explained that this bill removes certain property from the Town of Gibsonville and annexes it into the City of Burlington. He reported that the bill had been agreed upon and requested by the two towns. Representative Holliman was then recognized and moved that Senate Bill 466 be given a favorable report by the Committee. Seeing no further discussion, Chairman Gibson called the motion to a vote and it carried by consent.

Chairman Gibson then recognized Representative Fisher to explain **SB 249 – ASHEVILLE SATELLITE ANNEXATIONS** (see **attachment 6**). Representative Fisher, on behalf of Senator Apodaca, stated that Senate Bill 249 added certain property to the City of Asheville. She also reported that she knew of no opposition to the bill. Chairman Gibson then recognized Representative Glazier who moved that Senate Bill 249 be given a favorable report by the Committee. As there was no further debate, Chairman Gibson called the motion to a vote and it carried without objection.

The next bill under consideration by the Committee was **HB 892 – REGULATE SALE OF MALT BEVERAGE KEGS** (see **attachment 7**). Chairman Gibson first recognized Representative Carney who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Chairman Gibson then recognized Representative Alexander, the bill sponsor, who explained that the bill would require malt beverage retailers to put a unique coded tag or adhesive label on beer kegs and collect identifying information from the retail keg purchaser to be tied to the individual beer keg. She further explained that persons who remove or destroy the coded tag or adhesive label, or fail to return a tagged or labeled keg would be guilty of a Class I misdemeanor. Representative Alexander reported that the bill before the House Finance Committee because it authorizes the ABC Commission to charge fees to the malt beverage retailer to cover the costs of producing the required coded tags. The bill had already received a favorable report from the House Commerce Committee. As general questions existed on the bill, Representative Alexander addressed the concerns as much as possible and Chairman Gibson recognized Andy Allen of the Retail Merchant's Association. Mr. Allen stated that he still had a few concerns on the bill but was still working with the bill sponsor to resolve them. Representative Weiss was then recognized and moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Chairman Gibson then recognized Representative Blackwood who said that teenagers could still participate in underage drinking with bottles or cans. Chairman Gibson then recognized Mark Newbold, an attorney for the Charlotte-Mecklenburg Police Department. He stated that the bill encourages adults purchasing kegs to be responsible. Reverend Mark Creech with the Christian Action League was then recognized by Chairman Gibson and read a list of organizations who had endorsed the bill. Chairman Gibson then recognized Dan Blau from the American Civil Liberties Union (ACLU) and stated that he generally supports the proposed committee substitute but does not agree with police officers having the ability to preemptively investigate where parties will be held. In response, Chairman Gibson recognized Representative Alexander who reported that the form used by keg buyers would not include the date or place of consumption. Representative Lewis was then recognized and asked why retailers should be required to keep records once the keg is returned. Chairman Gibson again recognized Mr. Newbold who explained that retailers asked for this provision so that in the event of a lawsuit, the retailer would have the records to prove that they did not sale the keg to an underage drinker and, therefore, would not be liable. Representative Wainwright was then recognized and asked why the ABC Commission is charging the retailers for the labels and forms. Representative Alexander was recognized to respond and stated that the labels and forms should be a minimal cost and the ABC Commission would not be able to afford this cost

out of its current budget. Chairman Gibson then temporarily displaced the bill, pending the formulation of amendments.

Chairman Gibson next recognized Representative Faison who moved for the adoption of the proposed committee substitute for the Committee's consideration for **SB 15 – WATER & SEWER DISTRICT BOUNDARIES; PER DIEM** (see **attachment 8**). The motion was adopted. Chairman Gibson recognized Representative Hill who, on behalf of the bill sponsor Senator Soles, explained that this bill allows State-owned property to be moved from one county water and sewer district to another, but only if the State acquired the property from the county. Following the explanation, Representative Faison was recognized and moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Representative Wiley was then recognized and inquired as to why the per diem rates for members of Water and Sewer Authorities was being increased from $2,000 to $4,000 annually. Representative McComas was then recognized and explained that the provision was added at his request and that the increase was necessary as there had been no increase since 1975. Seeing no further discussion, Chairman Gibson called Representative Faison's motion to a vote, and it carried by consent. (NOTE: Representative Hackney did not vote on the bill.)

The next bill under consideration by the Committee was **SB 14 – HOLDEN BEACH CANAL DREDGING FEE** (see **attachment 9**). Chairman Gibson recognized Representative Hill who explained that the bill allows the Town of Holden Beach to impose a canal dredging fee for all properties that are contiguous to a canal. He noted that the Committee had already approved the companion to this bill (HB 350) at an earlier meeting. Representative Luebke was then recognized and moved that Senate Bill 14 be given a favorable report by the Committee. As there was no further debate, Chairman Gibson called the motion to a vote, and it carried without objection.

The next bill considered by the Committee was **HB 723 – UNC/CRIMINAL RECORD CHECKS/FEE** (see **attachment 10**). Chairman Gibson recognized Representative Glazier who sent forth a technical amendment (see **attachment 11**) and moved its adoption. Chairman Gibson called the motion to a vote and the amendment was adopted. Representative Glazier then explained the bill stating that it authorizes the Department of Justice to provide criminal record checks to the University of North Carolina for applicants for employment and promotion. Seeing no further discussion, Chairman Gibson called the motion to a vote and the amendment was adopted. Representative Hackney was the recognized and stated that there was no need for an immunity clause on page 4, section F. He then sent forth an amendment (see **attachment 12**) and moved for its adoption, which takes out the immunity clause of the bill. Seeing no further discussion, Chairman Gibson called the motion to a vote and it carried by consent. Chairman Gibson then recognized Representative Weiss who moved for a favorable report to the proposed committee substitute, incorporating the amendment, and an unfavorable report to the original bill. As there was no further debate, Chairman Gibson called the motion to a vote and it carried by without objection.

The next bill under consideration by the Committee was **HB 1340 – REESTABLISH BOXING COMMISSION** (see **attachment 13**). Chairman Gibson then recognized Representative Womble who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion passed. Chairman Gibson then recognized Representative Faison who explained that this bill reestablishes the North Carolina Boxing Commission in order for the State to provide oversight over boxing. Representative Rayfield was recognized and asked about the increase in funding required by the bill. Chairman Gibson then recognized Representative Faison who stated that the increase in funding from the State would only be $2,600 per year. Both Representatives Rayfield and Blust questioned about the need for the reestablishment of the Boxing

Commission after it was eliminated in 2001. Representative Faison was then recognized and reported that North Carolina was one out of six states without a boxing commission and the State needs more oversight into boxing. Representative Walend was recognized and asked how many boxing events take place each year. Chairman Gibson then recognized Frank Douglas, a former member of the NC Boxing Commission, who stated that North Carolina had already had 20 events this year. Representative Womble was then recognized and moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairman Gibson called the motion to a vote and it carried by consent.

Chairman Gibson replaced House Bill 892 before the Committee. Representative Wainwright was recognized and sent forth amendment (see **amendment 14**) that would require ABC to pay for tags. Chairman Gibson then displaced House Bill 892 from the Committee's consideration.

Chairman Gibson then recognized Senator Albertson to explain **SB 206 – SALEMBURG BOUNDARY VALIDATION** (see **attachment 15**). Senator Albertson stated that Senate Bill 206 clarifies the corporate limits of the Town of Salemburg and validates elections and acts of the town. Chairman Gibson then recognized Representative Hill who moved that Senate Bill 206 be given a favorable report by the Committee. As there was no further debate, Chairman Gibson called the motion to a vote and it carried without objection.

Chairman Gibson then replaced House Bill 892 again before the Committee. Representative Wainwright was recognized and withdrew his amendment. Representative Lewis was then recognized and sent forth an amendment (see **amendment 16**) that restricts access to records kept by retail merchants to law enforcement agencies only. Representative Lewis then moved for the amendment's adoption. Chairman Gibson then recognized Representative Daughtridge who expressed his support for the Lewis amendment that could help prevent the spread of identity theft across the State. Seeing no further discussion, Chairman Gibson called the motion to a vote and the amendment was adopted. Representative Weiss was then recognized and moved for a favorable report to the proposed committee substitute, incorporating the amendment, and an unfavorable report to the original bill and so moved for the re-referral of the bill to the Appropriations Committee. As there was no further debate, Chairman Gibson called the motion to a vote it carried by consent.

As there was no further business before the Committee, Chairman Gibson then adjourned the meeting at 9:53 am.

Respectfully submitted,

Representative Pryor Gibson
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. Senate Bill 396 (and related materials)

4. Senate Bill 442 (and related materials)
5. Senate Bill 466 (and related materials)
6. Senate Bill 249 (and related materials)
7. House Bill 892 (and related materials)
8. Senate Bill 15 (and related materials)
9. Senate Bill 14 (and related materials)
10. House Bill 723 (and related materials)
11. Glazier Amendment on HB 723 - **ADOPTED**
12. Hackney Amendment on HB 723 - **ADOPTED**
13. House Bill 1340 (and related materials)
14. Wainwright Amendment on HB 892 – **WITHDRAWN**
15. Senate Bill 206 (and related materials)
16. Lewis Amendment on HB 892 – **ADOPTED**

AGENDA

ATTACHMENT 1

House Finance Committee

June 7, 2005
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Gibson

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard

Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order

Introduction of Pages

Bills:

HB 723	**UNC/CRIMINAL RECORD CHECKS/FEE.-AB**	*Reps. Glazier & Dickson*
HB 892	**REGULATE SALE OF MALT BEVERAGE KEGS**	*Rep. Alexander*
HB 1340	**REESTABLISH BOXING COMMISSION**	*Rep. Faison*
SB 14	**HOLDEN BEACH CANAL DREDGING FEE**	*Sen. Soles*
SB 15	**WATER AND SEWER DISTRICT BOUNDARIES**	*Sen. Soles*
SB 206	**SALEMBURG BOUNDARY VALIDATION**	*Sen. Albertson*
SB 249	**ASHEVILLE SATELLITE ANNEXATIONS**	*Sen. Apodaca*
SB 396	**COUNTY SERVICE DISTRICTS**	*Sen. Hoyle*
SB 442	**BLOWING ROCK OFF-STREET PARKING FUND**	*Sen. Garwood*
SB 466	**BURLINGTON/GIBSONVILLE BOUNDARY**	*Sen. P. Berger*

Adjournment

ATTACHMENT 2

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dan Blau	ACLU-NC
Russ Dubishy	CCPS
Dean Plaquett	NCBWWA
	NCRA
Chris Vallin	NC Ben & Wine Assoc.
Mike Robertson	NCACE
Roger Hutchings	NCACE
FRANK Douglas	Boxing Comm
Suzanne Brelley	Governor's Office
Ryland Pond	Intern - Rep. Carney
	Poyner & Spruill

VISITOR REGISTRATION SHEET

HOUSE FINANCE
Name of Committee

6/07/05
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gene Ainsworth	Winston-Salem NC
Cam Cover	Boone NC
Jennifer Horne	NCMS
Elaine Cabinum Foelker	NCMS Greenville, NC
Ben Odell	Wilmington NC
Trey Thomas	Roanoke Rapids, NC
Shirish Devasthal	Fayetteville, NC
Pam Hilgenstein	NCMS
George Cooper	NCMS / FAY. Chamber of Commerce
Sabine M Maas	NCMS / Linville NC
Joyce Goodlock	NCMS

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 7, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	NCAE
JOHN SHUCK	CAROLINA BREWING COMPANY, 140 THOMAS MILL RD. HOLLY SPRINGS, NC 27540
Jim Blackburn	NC Association of County Commissioners
R. Paul Wilms	NCHBA
[illegible]	Parker Poe
MARK NEWBOLD	CHAR-MECK POLICE ATTORNEY
Boyd Cauble	City of Charlotte
Alice Garland	NCDOC
ANN LORE	DUNS
Colleen Kochanek	NCACP
Mark Flynn	University

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 7, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rick Zechini	NC Assoc. of Rem Hlth C
David Barnes	Poyner + Spruill
John Melton	Governor's
Roz Savitt	NCCCA
Rebecca Key	Rep. Gibson - intern
Barbara Carsley	BRGR
Patricia O'Connor	HMW
John Hale	Poyner ; Spruill

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chad Essick	Poyner & Spruill, LLP
John Lymn	NCJ Grange
Marvin Waters	CCPS
Hal Miller	NCACCT

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, June 7, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 723 – UNC/CRIMINAL RECORD CHECKS/FEE.-AB – Reps. Glazier & Dickson

HB 892 – REGULATE SALE OF MALT BEVERAGE KEGS – Rep. Alexander

HB 1340 – REESTABLISH BOXING COMMISSION – Rep. Faison

SB 14 – HOLDEN BEACH CANAL DREDGING FEE – Sen. Soles

15 – WATER AND SEWER DISTRICT BOUNDARIES – Sen. Soles

SB 206 – SALEMBURG BOUNDARY VALIDATION – Sen. Albertson

SB 249 – ASHEVILLE SATELLITE ANNEXATIONS – Sen. Apodaca

SB 396 – COUNTY SERVICE DISTRICTS – Sen. Hoyle

SB 442 – BLOWING ROCK OFF-STREET PARKING FUND – Sen. Garwood

SB 466 – BURLINGTON/GIBSONVILLE BOUNDARY – Sen. P. Berger

Respectfully,
Representatives Alexander, Gibson, Howard, Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **11:00 a.m.** on **June 2, 2005.**

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 396

Finance Committee Substitute Adopted 3/30/05

Short Title: County Service Districts. (Public)

Sponsors:

Referred to:

March 7, 2005

A BILL TO BE ENTITLED

AN ACT ALLOWING COUNTIES TO MAKE CHANGES IN SERVICE DISTRICTS CREATED PURSUANT TO ARTICLE 16 OF CHAPTER 153A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 16 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-304.3. Changes in adjoining service districts.**

(a) Changes. – The board of county commissioners may by resolution relocate the boundary lines between adjoining county service districts if the districts were established for substantially similar purposes. The boundary lines may be changed in accordance with a petition from landowners or may be changed in any manner the board deems appropriate. Upon receipt of a request to change service district boundaries, the board of county commissioners shall set a date and time for a public hearing on the request prior to taking action on the request.

(b) Report. – Before the public hearing required by subsection (a) of this section, the board of county commissioners shall cause to be prepared a report containing all of the following:

(1) A map of the service district and the adjacent territory showing the current and proposed boundaries of the district.

(2) A statement indicating that the proposed boundary relocation meets the requirements of subsection (a) of this section.

(3) A plan for providing service to the area affected by the relocation of district boundaries.

(4) The effect that the changes in the amount of taxable property will have on the ability of the district to provide services or to service any debt.

The report shall be available for public inspection in the office of the clerk of the board for at least two weeks before the date of the public hearing.

(c) Notice and Hearing. – The board shall hold a public hearing before adopting any resolution relocating the boundaries of a service district. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a statement that the report required by subsection (b) of this section is available for inspection in the office of the clerk to the board. The notice shall be published at least once not less than one week before the date of the hearing.

(d) Effective Date. – The resolution changing the boundaries of the districts shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the board."

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

SENATE BILL 396:
County Service Districts

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 7, 2005
Introduced by:	Sen. Hoyle	**Summary by:**	Cindy Avrette
Version:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 396 would allow counties, after notice and a public hearing, to relocate boundary lines between adjoining county service districts, if the districts were established for substantially similar purposes. A resolution changing the boundaries would take effect at the beginning of the fiscal year commencing after its passage.***

CURRENT LAW: Article 16 of Chapter 153A authorizes counties to create county service districts in order to finance and provide the following types of services, facilities, or functions at a greater extent than those financed and provided for the entire county:

- Beach erosion control and flood and hurricane protection works
- Fire protection
- Recreation
- Sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems
- Solid waste collection and disposal systems
- Water supply and distribution systems.
- Ambulance and rescue
- Watershed improvement projects, drainage projects, and water resources development projects
- Cemeteries
- Law enforcement, under certain circumstances

To finance these services, facilities, or functions, a county may levy property taxes within a defined service district in addition to those levied throughout the county. The tax rate is capped at an amount that, when combined with the rate levied countywide, does not exceed $1.50 on each $100 of appraised value of property, unless a greater rate is approved by a majority of qualified voters residing within the district.

Prior to adopting a resolution creating a service district, the board of county commissioners must make the following findings, followed by notice and a public hearing:

1. There is a demonstrable need for providing one or more of the services listed above.
2. It is impossible or impracticable to provide those services on a countywide basis.
3. There is a demonstrable demand for the proposed services by persons residing in the district.

Current law provides for the extension of, consolidation of, reduction of after annexation, and abolition of service districts but does not provide for the relocation of boundary lines.

BILL ANALYSIS: Senate Bill 396 creates a new statutory section in the Article on County Service Districts that would allow counties, by resolution, to relocate the boundary lines between adjoining county service districts if the districts were established for substantially similar purposes. Before relocating the boundary lines, a county would be required to do the following:

1. Issue a Report. – The report must contain a map of the service district showing the current and proposed boundaries of the district, a statement indicating that the adjoining service districts were established for substantially similar purposes, and a plan for providing service to the area affected by the relocation. The board is also required to consider any effect the relocation will have on any outstanding debt that may be secured by district tax revenues.
2. Provide Notice. – The notice must include a statement that the report is available for public inspection. The notice must be published not less than one week before the date of the hearing.
3. Hold a Public Hearing.

The resolution changing the boundaries of the districts shall take effect at the beginning of the fiscal year commencing after the passage of the resolution.

The bill would be effective when it becomes law.

BACKGROUND: This bill was requested by the Gaston County EMS Director. When initially established, district lines reflect the needs of current conditions, but as infrastructure develops, travel patterns are altered, often changing the most reasonable responder to a particular location. Since the current law does not allow counties to reduce a district other than as the result of an annexation, this change would allow counties to readjust boundary lines to reflect growth and changing infrastructure to best serve the citizens.

S0396e2-SMRB

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

SB 396 A BILL TO BE ENTITLED AN ACT ALLOWING COUNTIES TO MAKE CHANGES IN SERVICE DISTRICTS CREATED PURSUANT TO ARTICLE 16 OF CHAPTER 153A OF THE GENERAL STATUTES.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 442

Short Title:	Blowing Rock Off-Street Parking Fund.	(Local)
Sponsors:	Senator Garwood.	
Referred to:	Finance.	

March 9, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE TOWN OF BLOWING ROCK TO ESTABLISH AN OFF-STREET PARKING FUND.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding any other provision of law, the governing body of a municipality may establish a fund into which payments from individual firms, persons, corporations, or property owners shall be deposited for the purpose of providing off-street parking facilities, and from which appropriations shall be made exclusively for the purpose of organizing, establishing, developing, or enlarging off-street parking facilities within the municipality. The governing board may provide in the municipality's land-use ordinance that all developers must either provide adequate off-street parking (on-site or off-site) to serve their developments or pay a fee to the municipality's off-street parking facilities fund based on the number of required parking spaces not provided.

SECTION 2. This act applies to the Town of Blowing Rock only.

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

SENATE BILL 442:
Blowing Rock Off-Street Parking Fund

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 7, 2005
Introduced by:	Sen. Garwood	**Summary by:**	Cindy Avrette
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 442 would allow the Town of Blowing Rock to establish a fund to help provide revenues for a municipal parking facility. Both Chapel Hill (1969) and Carrboro (1985) have similar authority. The bill is effective when it becomes law.***

BILL ANALYSIS: Municipalities have the authority to regulate parking and to provide off-street parking facilities. A municipality may impose fees and charges for the use of the facilities through any feasible means. [1]

The Town of Blowing Rock has an ordinance requiring businesses to provide a minimum number of parking spaces. A business may meet the minimum parking space requirement through on-site parking or satellite parking that is within 400 feet of the business. A business may not use the public parking along the streets to meet its minimum parking space requirements.

To help alleviate the scarcity of parking in the Town of Blowing Rock, the Town has purchased property on which it plans to construct a municipal parking deck. Business owners have approached the Town about assisting it in the cost of the facility as a way to meet the minimum parking space requirements. The Town anticipates that the parking facility will be constructed within the next five years.

Senate Bill 442 would allow the Town of Blowing Rock to establish a fund to be used exclusively to establish a municipal parking facility. The Town may by ordinance set forth a fee schedule that would allow businesses and developers to contribute towards the cost of the facility based on the number of required parking spaces. The Town anticipates that the fee would be a one-time capital cost. Although current law may be sufficient authority to allow the Town to construct and finance the parking facility in the manner the Town envisions, the Town decided to seek specific legislative authority. Chapel Hill received this authority in 1969 and Carrboro received the same authority in 1985.

S0442e1-SMRB

[1] G.S. 160A-301 and G.S. 160A-302. See also G.S. 160A-536.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

SB 442 A BILL TO BE ENTITLED AN ACT AUTHORIZING THE TOWN OF BLOWING ROCK TO ESTABLISH AN OFF-STREET PARKING FUND.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 466*
Finance Committee Substitute Adopted 5/12/05

Short Title: Burlington/Gibsonville Boundary. (Local)

Sponsors:

Referred to:

March 10, 2005

A BILL TO BE ENTITLED

AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF GIBSONVILLE AND ANNEX IT TO THE CITY OF BURLINGTON, AND TO REMOVE CERTAIN PROPERTY FROM THE CORPORATE LIMITS OF THE CITY OF BURLINGTON AND TO ANNEX IT TO THE TOWN OF GIBSONVILLE, ALL AS REQUESTED BY THE TWO MUNICIPALITIES.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate limits of the Town of Gibsonville and is added to the corporate limits of the City of Burlington:

Tract I

Beginning in Guilford County at an existing iron pipe, said existing iron pipe being located at the Southeast Intersection of Greeson Road & N.C. Hwy. #61; thence running along the Eastern Right-of-Way line of N.C. Hwy. #61 South 17 Degrees, 00 Minutes, & 01 Second West 382.28 Ft. to a point along same said Right-of-Way, also said point being on the Northern Right-of-Way line of Pace Drive; thence continuing along the Northern Right-of-Way of Pace Drive South 69 Degrees, 00 Minutes, & 44 Seconds East 1.74 Ft. to a point the P.C. of a curve to the right, the radius being 305 Ft., the chord being South 48 Degrees, 17 Minutes, & 20 Seconds East 215.85 Ft. to a point the P.T. of the curve; thence continuing along same said Right-of-Way South 27 Degrees, 33 Minutes, & 56 Seconds East 73.68 Ft. to a point the P.C. of a curve to the Left, the radius being 225 Ft., the chord being South 40 Degrees, 59 Minutes, & 09 Seconds East 104.44 Ft. to a point the P.T. of the curve; thence continuing along same said Right-of-Way South 54 Degrees, 24 Minutes, & 23 Seconds East 266.14 Ft. to a point the P.C. of a curve to the Left, the radius being 295 Ft., the chord being South 68 Degrees, 14 Minutes, & 35 Seconds East 141.10 Ft. to a point the P.T. of a curve;

thence continuing along same said Right-of-Way South 82 Degrees, 04 Minutes, & 47 Seconds East 256.27 Ft. to a point the P.C. of a curve to the Left, the radius being 4,555.68 Ft., the chord being South 83 Degrees, 19 Minutes, & 47 Seconds East 198.76 Ft. to a point the P.T. of the curve; thence continuing along same said Right-of-Way South 84 Degrees, 34 Minutes, & 47 Seconds East 475.94 Ft. to a point; thence continuing North 04 Degrees, 38 Minutes, & 11 Seconds East 931.19 Ft. to an existing iron on the Southern Right-of-Way of Greeson Road; thence continuing along same said Right-of-Way South 89 Degrees, 42 Minutes, & 32 Seconds West 312.50 Ft. to an existing iron on same said Right-of-Way; thence continuing along same said Right-of-Way North 89 Degrees, 14 Minutes, & 31 Seconds West 616.11 Ft. to an existing iron pipe on same said Right-of-Way; thence continuing along same said Right-of-Way North 88 Degrees, 07 Minutes, & 24 Seconds West 175.78 Ft. to an existing iron pipe on same said Right-of-Way; thence continuing along same said Right-of-Way North 86 Degrees, 31 Minutes, & 49 Seconds West 397.88 Ft. to an existing iron pipe the point of beginning containing 28.051 acres more or less; the same being Lot 1 of the property of Pace Oil Company as recorded in Plat Book 89, Page 36; SAVE AND EXCEPT THEREFROM that parcel of land deeded to the Department of Transportation recorded in Book 3683, Page 765, Guilford County Registry.

Tract II

Beginning in Guilford County at a new iron pipe on the Eastern Right-of-Way line of N.C. 61, said new iron pipe being a common corner with G. H. Kirkpatrick, Jr.; thence running along the Northern line of Kirkpatrick South 30 Degrees, 47 Minutes & 49 Seconds East 336.12 Ft. to a new iron pipe in the Northern line of Thelma T. Wheeler, thence along the Northern line of Thelma T. Wheeler North 88 Degrees, 49 Minutes & 45 Seconds East 145.14 Ft. to a point along the Southern Right-of-Way of Pace Drive; thence continuing along the Southern Right-of-Way of Pace Drive North 54 Degrees, 24 Minutes & 23 Seconds West 68-31 Ft. to a point the P.C. of a curve to the Right, the radius being 275 Ft., the chord being North 40 Degrees, 59 Minutes & 10 Seconds West 127.65 Ft. to a point, the P.T. of the curve; thence continuing along the Southern Right-of-Way of Pace Drive North 27 Degrees, 33 Minutes & 56 Seconds West 73.68 Ft. to a point the P.C. of a curve to the Left the radius being 255 Ft., the chord being North 48 Degrees, 05 Minutes & 35 Seconds West 178.84 Ft. to a point the P.T. of the curve, said point being also on the Eastern Right-of-Way of N.C. Hwy. 61, thence continuing along said Right-of-Way South 17 Degrees, 00 Minutes & 01 Second West 36.73 Ft. to a new iron pipe, the point of beginning, containing 0.6754 acres more or less; also being Lot 2 of the Property of Pace Oil Company as recorded in Plat Book 89, Page 36; SAVE AND EXCEPT THEREFROM that parcel of land deeded to the Department of Transportation recorded in Book 3683, Page 765, Guilford County Registry.

Tract III

Beginning in Guilford County at an existing R/W monument, situated East of the intersection of the up-ramp from the Westbound lane of Interstate 85, and N.C. Highway 61, thence North 07 Degrees, 44 Minutes, & 52 Seconds West along said Right-of-Way of up-ramp 93.24 Ft. to a new iron pipe on the East Right-of-Way line of N.C. #61, thence North 27 Degrees, 13 Minutes & 12 Seconds East 87.78 Ft. to a new iron pipe along same said Right-of-Way; thence continuing along same said Right-of-Way North 21 Degrees, 12 Minutes & 24 Seconds East 83.53 Ft. to a new iron pipe a corner with Pace Oil Co.; thence running South 30 Degrees, 47 Minutes & 49 Seconds East 336.12 Ft. to a new iron pipe in the Northern line of Thelma T. Wheeler property; thence running along Thelma T. Wheeler's North line North 77 Degrees, 47 Minutes & 03 Seconds West 3.36 Ft. to a concrete Right-of-Way monument; thence continuing along Thelma T. Wheeler's North line South 87 Degrees, 16 Minutes & 03 Seconds West 191.97 Ft. to an existing iron pipe on the East side of the up-ramp leading from Interstate 85; thence continuing along said up-ramp North 41 Degrees, 11 Minutes, & 57 Seconds West 20.84 Ft. to an existing Right-of-Way Monument; thence continuing along up-ramp North 32 Degrees, 30 Minutes & 03 Seconds West 39.32 Ft. to an existing Right-of-Way monument, the Point of Beginning, containing 0.883 acres more or less; SAVE AND EXCEPT THEREFROM that parcel of land deeded to the Department of Transportation recorded in Book 3651, Page 704, Guilford County Registry; the same being that property deeded to Pace Oil Company, Inc. recorded in Book 3673, Page 20, Guilford County Registry.

Tract IV

BEGINNING in Guilford County at a new iron stake in the northern margin of the right of way of Interstate 85, a corner with Pace Oil Company, Inc. and running thence from said point of beginning with Pace Oil Company, Inc., North 17° 48' 29" East 1021.71 feet to an existing iron stake in the southern margin of the 60 foot right of way of Greeson Road (SR 3065), a corner with Pace Oil Company, Inc.; thence along the southern margin of the 60 foot right of way of Greeson Road, South 84° 36' 26" East 383.39 feet to an existing iron stake in the southern margin of Greeson Road; thence continuing along the southern margin of Greeson Road, South 83° 40' 30" East 175.56 feet to an existing iron stake in the southern margin of Greeson Road, a corner with Radcliffe, Rudd and Lanier, Jr., thence with Radcliffe, Rudd and Lanier, Jr., South 1° 53' 16" W. 241.74 feet to an existing stone corner with Radcliffe et al and Pace Oil Company, Inc.; thence with Pace Oil Company, Inc., South 29° 52' 50" West 828.41 feet to a new iron stake in the northern margin of the right of way of Interstate 85, a corner with Pace Oil Company, Inc.; thence along the northern margin of the right of way of Interstate 85, North 84° 34' 47" West 450 feet to the point and place of BEGINNING, containing 12.642 acres, more or less.

The foregoing description was taken from surveys of William L. Knight, Jr., dated December 28, 1988 and January 12, 1989.

Also included is a tract 60 feet in width and running along the southern boundary of Tract A, containing 11.770 acres, more or less, now or formerly owned by Pace Oil

Company, Inc.; said property being adjacent to the northern margin of the right of way of Interstate 85. Said property is more particularly described on that certain survey of Pace Oil Company, Inc., dated January 12, 1989, a copy of which is attached to that certain deed from Pace Oil Company, Inc. to Scholl America, Inc., dated January 13, 1989, which deed is recorded in Deed Book 3713, at Page 1759 of the Guilford County Registry.

Tract V

BEGINNING in Guilford County at a crossmark in I-85 a corner with Springwood Church; running thence North 4° 39' East 1052 feet to a crossmark in the center of Springwood Church Road a corner with Robert E. Sheahan (after leaving I-85 the line runs to the center of Springwood Church Road) thence with the line of Robert E Sheahan North 88° 11' East 609.07 feet to an iron stake a corner with Sheahan (iron stake set in this line 30 feet from center of road); thence again with Sheahan North 4° 08' East 297.95 feet to an iron stake in the line of Carson T. Ingle (control corner set in this line 30.15 feet from the beginning point of the call) running thence with line of Ingle South 85° 51' East 1488.50 feet to an iron stake in the line of O.W. Williams (old stake in this line 279.77 feet from the corner); running thence with the line of O.W. Williams South 2° 50' West 977.02 feet to a crossmark in I-85 (iron stake set in this line at the right-of-way of I-85 which is 132.13 feet from a crossmark in I-85); thence in the right-of-way of I-85 South 82° 30' West 2169.74 feet to the Beginning point containing 53.28 acres, more or less, of which 6.47 acres is within the right-of-way of I-85. This conveyance is made subject to the right-of-way of I-85, the right-of-way of Springwood Church Road and the right-of-way of the power line as shown on the plat drawn by J. Mark McAdams on June 24, 1967.

SECTION 2. The following described property is removed from the corporate limits of the City of Burlington and is added to the corporate limits of the Town of Gibsonville:

A certain tract or parcel of land in Rock Creek Township, Guilford County, North Carolina, adjoining the lands of Billy D. Moser and Ethel H. Moser, Shirley M. Perry, H. Clay Hemric, Jr. and Nancy G. Hemric, US 70 – South Church Street, Randy Lynn Ingle and others and being more particularly described as follows:

BEGINNING at a point in the south right-of-way line of US 70 – South Church Street, said point lying N. 87° 22' 02" E. 324.45 feet from a common corner with Michael F. Turner and Victoria C. Tanner and Randy Lynn Ingle in the south right-of-way line of US 70 – South Church Street and running thence from said Beginning Point across US 70 and continuing with the line of Billy D. and Ethel H. Moser, N. 2° 45' 03" W. 433.21 feet to a point in the line of Shirley M. Perry; thence with the line of Shirley M. Perry the following courses and distances: S. 70° 13' 01" E. 106.33 feet to a point; thence S. 25° 54' 33" E. 30.55 feet to a point; thence S. 53° 27' 06" E. 49.46 feet to a point; thence S. 83° 17' 44" E. 80.51 feet to a point; thence S. 45° 39' 32" E. 85.22 feet to a point; thence S. 67° 54' 40" E. 68.64 feet to a point; thence N. 76° 18' 58" E. 30.37 feet to a point; thence N. 21° 23' 30" E. 158.99 feet to a point;

thence N. 51° 01' 39" E. 154.14 feet to a corner with H. Clay Hemric, Jr. and Nancy G. Hemric; thence with the said Hemric the following courses and distances: S. 69° 26' 48" E. 113.50 feet to a point; thence S. 76° 11' 42" E. 108.93 feet to a point; thence S. 59° 10' 39" E. 186.25 feet to a point; thence S. 33° 03' 34" E. 188.62 feet to a point; thence S. 66° 28' 14" E. 59.85 feet to a point; thence S. 86° 44' 36" E. 82.83 feet to a point; thence with said Hemric and continuing across US 70 – South Church Street, S. 03° 05' 49" W. 96.43 feet to a point in the south right-of-way line of US 70 – South Church Street and in the line of Randy Lynn Ingle; thence with the south right-of-way line of US 70 – South Church Street and the line of said Ingle, S. 87° 22' 02" W. 1152.65 feet to the point of BEGINNING and containing 8.583 acres (0.0134 sq. mile) and being all of Lot No. 4 and the right-of-way of US 70 – South Church Street that adjoins Lot No. 4 as shown on a plat by Simmons Engineering and Surveying, Inc. entitled Property of City of Burlington and Randy Lynn Ingle, dated December 4, 2000, and recorded at Plat Book 140, page 101 in the Guilford County Register of Deeds.

SECTION 3. This act shall have no effect upon the validity of any liens of the Town of Gibsonville or the City of Burlington for ad valorem taxes or special assessments outstanding before the effective date of this act. Such liens may be collected or foreclosed upon after the effective date of this act as though the property were still within the corporate limits of the Town of Gibsonville or the City of Burlington.

SECTION 4. This act becomes effective June 30, 2005.

SENATE BILL 466:
Burlington/Gibsonville Boundary

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 7, 2005
Introduced by:	Sen. Berger of Rockingham	**Summary by:**	Cindy Avrette
Version:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 466 removes certain property from the corporate limits of the Town of Gibsonville and annexes it to the City of Burlington, and removes certain property from the corporate limits of the City of Burlington and annexes it to the Town of Gibsonville, as requested by the two municipalities.***

BILL ANALYSIS: Senate Bill 466 removes three satellite properties from the Town of Gibsonville and annexes them to the City of Burlington. These properties are commercial in nature and border I-85. The bill also deannexes certain property from the corporate limits of the City of Burlington and annexes it to the Town of Gibsonville. This property is zoned for office space but there are no structures on the property at present.

EFFECTIVE DATE: The act would become effective June 30, 2005.

BACKGROUND: Both municipalities have requested this legislation as part of an annexation agreement, which is designed in part to clarify and clean up the boundaries between the two municipalities.

S0466e2-SMRB

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

SB 466 A BILL TO BE ENTITLED AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF GIBSONVILLE AND ANNEX IT TO THE CITY OF BURLINGTON, AND TO REMOVE CERTAIN PROPERTY FROM THE CORPORATE LIMITS OF THE CITY OF BURLINGTON AND TO ANNEX IT TO THE TOWN OF GIBSONVILLE, ALL AS REQUESTED BY THE TWO MUNICIPALITIES.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S **2**

SENATE BILL 249

Finance Committee Substitute Adopted 5/18/05

Short Title: Asheville Satellite Annexations. (Local)

Sponsors:

Referred to:

March 1, 2005

A BILL TO BE ENTITLED

AN ACT ADDING CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is added to the corporate limits of the City of Asheville:

(a) LOT 3 OF THE REPLAT OF SOUTHRIDGE ASSOCIATES, LLC PROPERTY: Located in Limestone Township, Buncombe County, North Carolina and being more particularly described as follows:

BEGINNING at a point on the northwesterly side of Airport Road (N.C. 280), said point being the southwesterly corner to Lot 4 Southridge Associates LLC Property; thence, with the northwesterly side of Airport Road (N.C. 280) three courses: (1) South 25 degrees 50 minutes 38 seconds West – 39.02 feet to a point; (2) South 25 degrees 30 minutes 39 seconds West – 50.15 feet to a right-of-way monument; and (3) South 25 degrees 27 minutes 18 seconds West – 220.74 feet to an iron rod, a northeasterly corner to C.E. Shope; thence, with C.E. Shope and continuing with Smith Land & Improvement Corporation North 76 degrees 31 minutes 32 seconds West – 535.53 feet to an iron pipe; thence, with Smith Land & Improvement Corporation South 05 degrees 17 minutes 48 seconds West – 518.24 feet to a iron pipe, a northeasterly corner to Dennis Weaver; thence with Dennis Weaver North 72 degrees 50 minutes 27 seconds West – 182.87 feet to an iron rod, a northeasterly corner to Rockwood Road, LLC; thence with Rockwood Road, LLC and continuing with Lot 6 Southridge Associates LLC Property North 65 degrees 04 minutes 25 seconds West – 431.63 feet to an iron rod, a southeasterly corner to Lot 5 Southridge Associates LLC Property; thence with Lot 5 Southridge Associates LLC Property three courses: (1)North 00 degrees 20 minutes 42 seconds West – 285.78 feet to an iron rod; (2)South 89 degrees 39 minutes 18 seconds West – 201.14 feet to an iron rod; and (3) Around a curve to the left (Chord South 44 degrees 39 minutes 18 seconds West – 77.78 feet, Radius 55.00 feet, Delta 90 degrees 00 minutes 00 seconds, Length 86.39 feet) to an iron rod on the line of Lot 2

Southridge Associates LLC; thence with Lot 2 Southridge Associates LLC Property ten courses: (1) North 00 degrees 20 minutes 42 seconds West – 73.00 feet to a railroad spike; (2) North 89 degrees 39 minutes 18 seconds East – 467.34 feet to a railroad spike; (3) North 00 degrees 20 minutes 42 seconds West – 67.51 feet to a railroad spike; (4) Around a curve to the left (Chord North 81 degrees 53 minutes 04 seconds East – 79.15 feet, Radius 314.50 feet, Delta 14 degrees 27 minutes 29 seconds, Length 79.36 feet) to an iron rod; (5) North 74 degrees 39 minutes 18 seconds East – 16.64 feet to an iron rod; (6) North 00 degrees 20 minutes 42 seconds West – 470.27 feet to an iron rod; (7) South 89 degrees 39 minutes 18 seconds West – 57.86 feet to an iron rod; (8) North 00 degrees 20 minutes 42 seconds West – 183.56 feet to an iron rod; (9) North 89 degrees 39 minutes 18 seconds East – 10.19 feet to an iron rod; and (10) North 00 degrees 20 minutes 42 seconds West – 342.00 feet to an iron rod on the line of Ovalformer, LLC; thence with Ovalformer, LLC and continuing with Jules Johnson and Anthony Kushigian South 86 degrees 36 minutes 54 seconds East – 1,014.99 to an iron rod, a northwesterly corner to Lot 4 Southridge Associates LLC; thence with Lot 4 Southridge Associates LLC South 00 degrees 20 minutes 42 seconds East – 888.69 feet to the BEGINNING. Containing 31.105 acres, more or less.

(b) LOT 4 OF THE REPLAT OF SOUTHRIDGE ASSOCIATES, LLC PROPERTY: Located in Limestone Township, Buncombe County, North Carolina and being more particularly described as follows: BEGINNING at a point on the northwesterly side of Airport Road (N.C. 280), said point being the southeasterly corner to Lot 3 Southridge Associates LLC Property; thence with Lot 3 Southridge Associates LLC Property North 00 degrees 20 minutes 42 seconds West – 888.69 feet to an iron rod on the line of Anthony Kushigian; thence with Anthony Kushigian three courses: (1) South 86 degrees 36 minutes 54 seconds East – 140.97 feet to an iron pipe; (2) South 31 degrees 07 minutes 34 seconds East – 258.10 feet to an iron pipe; and (3) South 83 degrees 53 minutes 06 seconds East – 251.34 feet to an iron rod on the northwesterly side of Airport Road (N.C. 280); thence with the northwesterly side of Airport Road (N.C. 280) two courses: (1) South 55 degrees 40 minutes 08 seconds West – 1.48 feet to an iron rod; and (2) Around a curve to the left (Chord South 50 degrees 17 minutes 18 seconds West – 246.10 feet, Radius 1,482.39 feet, Delta 09 degrees 31 minutes 22 seconds, Length 246.38 feet) to an iron rod, a southeasterly corner to Lot 4A Southridge Associates LLC Property; thence with Lot 4A Southridge Associates LLC Property five courses: (1) North 44 degrees 01 minutes 00 seconds West – 88.83 feet to an iron rod; (2) Around a curve to the right (Chord North 37 degrees 34 minutes 17 seconds West – 50.74 feet, Radius 226.00 feet, Delta 12 degrees 53 minutes 26 seconds, Length 50.85 feet) to an iron rod; (3) North 31 degrees 07 minutes 34 seconds West – 49.95 feet to an iron rod; (4) South 54 degrees 29 minutes 19 seconds West – 147.41 feet to an iron rod; and (5) South 09 degrees 04 minutes 44 seconds East – 295.83 feet to an iron rod on the northwesterly side of Airport Road (N.C. 280); thence with the northwesterly side of Airport Road (N.C. 280) six courses: (1) Around a curve to the left (Chord South 32 degrees 40 minutes 49 seconds West – 63.40 feet, Radius 1,482.39 feet, Delta 02 degrees 27 minutes 03 seconds, Length 63.41 feet) to a right-of-way monument; (2)

South 30 degrees 30 minutes 38 seconds West – 51.60 feet to a point; (3) South 28 degrees 50 minutes 40 seconds West – 51.31 feet to a point; (4) South 27 degrees 30 minutes 40 seconds West – 51.02 feet to a point; (5) South 26 degrees 30 minutes 40 seconds West – 50.73 feet to a point; and (6) South 25 degrees 50 minutes 38 seconds West – 11.42 feet to the BEGINNING. Containing 3.379 acres, more or less.

(c) LOT 4A OF THE REPLAT OF SOUTHRIDGE ASSOCIATES, LLC PROPERTY: Located in Limestone Township, Buncombe County, North Carolina, and being more particularly described as follows: BEGINNING at a point on the northwesterly side of Airport Road (N.C. 280), said point being the northeasterly corner to Lot 4 Southridge Associates LLC Property; thence with the northwesterly side of Airport Road (N.C. 280) two courses: (1) South 55 degrees 40 minutes 08 seconds West – 1.48 feet to an iron rod; and (2) Around a curve to the left (Chord South 50 degrees 17 minutes 18 seconds West – 246.10 feet, Radius 1,482.39 feet, Delta 09 degrees 31 minutes 22 seconds, Length 246.38 feet) to an iron rod, the TRUE POINT OF BEGINNING. Thence with Lot 4 Southridge Associates LLC Property five courses: (1) North 44 degrees 01 minutes 00 seconds West – 88.83 feet to an iron rod; (2) Around a curve to the right (Chord North 37 degrees 34 minutes 17 seconds West – 50.74 feet, Radius 226.00 feet, Delta 12 degrees 53 minutes 26 seconds, Length 50.85 feet) to an iron rod; (3) North 31 degrees 07 minutes 34 seconds West – 49.95 feet to an iron rod; (4) South 54 degrees 29 minutes 19 seconds West – 147.41 feet to an iron rod; and (5) South 09 degrees 04 minutes 44 seconds East – 295.83 feet to an iron rod on the northwesterly side of Airport Road (N.C. 280); thence with the northwesterly side of Airport Road (N.C. 280) around a curve to the right (Chord North 39 degrees 42 minutes 59 seconds East – 300.16 feet, Radius 1,482.39 feet, Delta 11 degrees 37 minutes 16 seconds, Length 300.67 feet) to the BEGINNING. Containing 1.029 acres, more or less.

(d) LOT 5 OF THE REPLAT OF SOUTHRIDGE ASSOCIATES, LLC PROPERTY: Located in Limestone Township, Buncombe County, North Carolina, and being more particularly described as follows: BEGINNING at an iron rod on the easterly line of Lot 2 Southridge Associates, LLC Property, said iron rod being a northwesterly corner to Lot 6 Southridge Associates, LLC Property; thence with Lot 2 North 00 degrees 20 minutes 42 seconds West – 230.78 feet to an iron rod, a westerly corner to Lot 3 Southridge Associates, LLC Property; thence with Lot 3 Southridge Associates, LLC Property three courses: (1) Around a curve to the right (Chord North 44 degrees 39 minutes 18 seconds East – 77.78 feet, Radius 55.00 feet, Delta 90 degrees 00 minutes 00 seconds, Length 86.39 feet) to an iron rod; (2) North 89 degrees 39 minutes 18 seconds East – 201.14 feet to an iron rod; and (3) South 00 degrees 20 minutes 42 seconds East – 285.78 feet to an iron rod, a northerly corner to Lot 6 Southridge Associates, LLC Property; thence with Lot 6 South 89 degrees 39 minutes 18 seconds West – 256.14 feet to the BEGINNING. Containing 1.666 acres, more or less.

(e) LOT 6 OF THE REPLAT OF SOUTHRIDGE ASSOCIATES, LLC PROPERTY: Located in Limestone Township, Buncombe County, North Carolina, and being more particularly described as follows: BEGINNING at an iron rod on the northerly side of Rockwood Road (S.R. 3568), said iron rod being a southeasterly corner to Lot 2 Southridge Associates, LLC Property; thence with Lot 2 three courses: (1) Around a curve to the right (North 15 degrees 14 minutes 09 seconds East – 42.25 feet, Radius 50.00 feet, Delta 49 degrees 59 minutes 25 seconds, Length 43.63 feet) to a mag nail; (2) Around a curve to the left (Chord North 19 degrees 56 minutes 31 seconds East – 81.83 feet, Radius 118.00 feet, Delta 40 degrees 34 minutes 26 seconds, Length 83.56 feet) to a mag nail; and (3) North 00 degrees 20 minutes 42 seconds West – 88.47 feet to an iron rod, a southwesterly corner to Lot 5 Southridge Associates, LLC Property; thence with Lot 5 Southridge Associates, LLC Property North 89 degrees 39 minutes 18 seconds East – 256.14 feet to an iron rod, a southwesterly corner to Lot 3 Southridge Associates, LLC Property; thence with Lot 3 South 65 degrees 04 minutes 25 seconds East – 12.64 feet to a iron pipe, a northwesterly corner to Rockwood Road, LLC; thence with Rockwood Road, LLC South 12 degrees 15 minutes 00 seconds West – 374.37 feet to an iron rod on the northerly side of Rockwood Road; thence with the northerly side of Rockwood Road two courses: (1) North 57 degrees 41 minutes 58 seconds West – 161.39 feet to an iron rod; and (2) North 49 degrees 26 minutes 20 seconds West – 118.77 feet to the BEGINNING. Containing 1.740 acres, more or less.

(f) LOT 7 OF THE REPLAT OF SOUTHRIDGE ASSOCIATES, LLC PROPERTY: Located in Limestone Township, Buncombe County, North Carolina, and being more particularly described as follows: BEGINNING at a mag nail in Rockwood Road (S.R. 3568), said mag nail being a southwesterly corner to Lot 1 Southridge Associates, LLC Property; thence down Rockwood Road (S.R. 3568) five courses: (1) North 49 degrees 26 minutes 20 seconds West – 70.89 feet to a pk nail; (2) North 04 degrees 11 minutes 40 seconds East – 14.55 feet to a pk nail; (3) North 35 degrees 44 minutes 47 seconds West – 141.78 feet to a pk nail; (4) North 40 degrees 10 minutes 37 seconds West – 68.52 feet to a pk nail; and (5) North 43 degrees 32 minutes 08 seconds West – 364.75 feet to a pk nail; thence North 03 degrees 51 minutes 25 seconds East – 28.26 feet to an iron rod; thence North 46 degrees 16 minutes 25 seconds East – 10.61 feet to an iron rod on the northerly side of Rockwood Road (S.R. 3568); thence with the northerly side of Rockwood Road (S.R. 3568) five courses: (1) North 43 degrees 43 minutes 35 seconds West – 203.79 feet to an iron rod; (2) Around a curve to the right (Chord North 31 degrees 30 minutes 04 seconds West – 100.54 feet, Radius 288.31 feet, Delta 20 degrees 04 minutes 59 seconds, Length 101.06 feet) to an iron rod; (3) North 28 degrees 06 minutes 00 seconds West – 53.85 feet to an iron rod; (4) North 22 degrees 44 minutes 00 seconds West – 356.99 feet to an iron rod; and (5) North 21 degrees 21 minutes 00 seconds West – 44.52 feet to a right-of-way monument; thence with Able Outdoor, Inc. North 10 degrees 09 minutes 30 seconds East – 409.62 feet to an iron rod; thence with Rita Bullman, ETAL South 89 degrees 09 minutes 39 seconds East – 216.19 feet to an iron rod, a northwest corner to Lot 1 Southridge Associates, LLC Property; thence with Lot 1 Southridge Associates, LLC Property twelve courses: (1)

South 00 degrees 20 minutes 42 seconds East – 339.36 feet to an iron rod; (2) North 89 degrees 39 minutes 18 seconds East – 47.00 feet to an iron rod; (3) South 00 degrees 20 minutes 42 seconds East – 420.00 feet to an iron rod; (4) South 30 degrees 20 minutes 42 seconds East – 257.34 feet to an iron rod; (5) North 59 degrees 19 minutes 51 seconds East – 18.01 feet to an iron rod; (6) Around a curve to the left (Chord South 60 degrees 30 minutes 27 seconds East – 348.28 feet, Radius 350.00 feet, Delta 59 degrees 40 minutes 30 seconds, Length 364.53 feet) to an iron rod; (7) North 89 degrees 39 minutes 18 seconds East – 16.38 feet to an iron rod; (8) Around a curve to the right (Chord South 45 degrees 20 minutes 42 seconds East – 77.78 feet, Radius 55.00 feet, Delta 90 degrees 00 minutes 00 seconds, Length 86.39 feet) to an iron rod; (9) South 00 degrees 20 minutes 42 seconds East – 319.26 feet to an iron rod; (10) Around a curve to the right (Chord South 23 degrees 47 minutes 48 seconds West – 67.08 feet, Radius 82.00 feet, Delta 48 degrees 17 minutes 01 seconds, Length 69.10 feet) to an iron rod; (11) Around a curve to the right (Chord North 84 degrees 14 minutes 55 seconds West – 37.05 feet, Radius 25.00 feet, Delta 95 degrees 37 minutes 31 seconds, Length 41.72 feet) to an iron rod; and (12) South 40 degrees 33 minutes 40 seconds West – 4.65 feet to the BEGINNING. Containing 8.817 acres, more or less.

SECTION 2. Paragraph (e) of Section 1 of this act becomes effective October 31, 2005. Paragraphs (a), (b), (c), (d) and (f) of Section 1 of this act become effective October 31, 2006.

SENATE BILL 249:
Asheville Satellite Annexations

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 7, 2005
Introduced by:	Sen. Apodaca	**Summary by:**	Cindy Avrette
Version:	Second Edition		Committee Counsel

SUMMARY: Senate Bill 249 is a local bill that would allow the City of Asheville to add certain described property to the corporate limits of the City of Asheville.

BILL ANALYSIS: Senate Bill 249 would annex six parcels of land into the city limits of Asheville. The tracts are located in Buncombe County and range in size from one acre to 31 acres. The tracts encompass an area that is being developed for commercial use. The area lies in the vicinity of the airport and Interstate 26.

The area is being annexed at the request of the property owners. The City chose to annex the property through legislation because the area is closer to the town limits of Fletcher than the City of Asheville. However, under its charter[1], the Town of Fletcher is prohibited from annexing any area within Buncombe County.

The annexation for one of the six parcels becomes effective October 1, 2005. A restaurant will be located on this parcel and it needs to be incorporated for purposes of an ABC permit. Development on the remaining five parcels should be completed by October 1, 2006. The annexation of these remaining five parcels becomes effective October 1, 2006.

S0249e2-SMRB

[1] Section 2.1(b), Chapter 44 of the 1989 Session Laws.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

SB 249 A BILL TO BE ENTITLED AN ACT ADDING CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 892*
Committee Substitute Favorable 5/25/05
PROPOSED COMMITTEE SUBSTITUTE H892-CSRU-50 [v.4]

6/6/2005 4:00:55 PM

Short Title: Regulate Sale of Malt Beverage Kegs. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT REGULATING THE SALE OF KEGS CONTAINING MALT BEVERAGES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-310. Keg sales of malt beverages.**

(a) As used in this section, the term 'keg' means a container capable of holding at least seven and three-quarters gallons of malt beverage.

(b) The sale of malt beverages in kegs is subject to all of the following:

(1) Every keg of malt beverages resold by a retail seller, while outside the retail seller's possession or control, shall be tagged with a uniquely numbered and coded tag or adhesive label that meets all of the following requirements:

a. It shall be issued by the Alcoholic Beverage Control Commission to the malt beverage retailer.

b. It shall be used for a single sale of the marked keg.

(2) The retail seller of the keg shall require the retail purchaser of the keg to complete a form that is provided to the retail seller by the Alcoholic Beverage Control Commission. The form shall include all of the following:

a. The retail purchaser's name.

b. The retail purchaser's address.

c. The retail purchaser's telephone number.

d. The retail purchaser's date of birth, verified by viewing a valid drivers license, a special identification card issued under G.S. 20-37.7, a military identification card, or a passport,

showing his age to be at least the required age for purchase and bearing a physical description of the person named on the card reasonably describing the purchaser.

e. The keg's unique tag number or code.

f. The date the keg is due to be returned.

g. The form will summarize all of the following information:

1. The requirements of this section.

2. The penalties for violating any provision of this section.

3. The penalties for providing malt beverages to underage persons.

h. The signature of the retail purchaser.

(3) The retail purchaser shall return the coded tag or adhesive label along with the keg to the retail seller. The retail seller shall remove the coded tag or adhesive label and return the keg to the beverage wholesaler. The retail seller shall maintain a copy of the signed form required by subdivision (2) of this subsection for a period of one year from the date of purchase. The form and the information contained on it are public records.

(c) The Alcoholic Beverage Control Commission may charge fees to the malt beverage retailer to cover the cost of producing the coded tag or adhesive label and the forms required under subdivisions (b)(1) and (b)(2) of this section.

(d) The following penalties shall apply to violations of the provisions of this section:

(1) Any person, other than an ABC permittee or law enforcement officer or agent, who defaces or removes the coded tag or adhesive label provided by the Alcoholic Beverage Control Commission on a keg or who possesses an unlabeled or untagged keg containing or having contained malt beverages shall be guilty of a Class 1 misdemeanor and shall be fined not less than fifty dollars ($50.00).

(2) Any retail purchaser who fails either to return a keg or to provide the retail seller with the reason for the failure to return the keg within 30 days of the date the keg is due to be returned shall be guilty of a Class 1 misdemeanor and shall be fined not less than fifty dollars ($50.00)."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 892*
Committee Substitute Favorable 5/25/05

Short Title: Regulate Sale of Malt Beverage Kegs. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT REGULATING THE SALE OF KEGS CONTAINING MALT BEVERAGES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-310. Keg sales of malt beverages.**

(a) As used in this section, the term 'keg' means a container capable of holding at least seven and three-quarters gallons of malt beverage.

(b) The sale of malt beverages in kegs is subject to all of the following:

(1) Every keg of malt beverages resold by a retail seller, while outside the retail seller's possession or control, shall be tagged with a uniquely numbered and coded tag or adhesive label that meets all of the following requirements:

a. It shall be issued by the Alcoholic Beverage Control Commission to the malt beverage retailer.

b. It shall be used for a single sale of the marked keg.

(2) The retail seller of the keg shall require the retail purchaser of the keg to complete a form that is provided to the retail seller by the Alcoholic Beverage Control Commission. The form shall include all of the following:

a. The retail purchaser's name.

b. The retail purchaser's address.

c. The retail purchaser's telephone number.

d. The retail purchaser's date of birth, verified by viewing a valid drivers license, a special identification card issued under G.S. 20-37.7, a military identification card, or a passport, showing his age to be at least the required age for purchase and

bearing a physical description of the person named on the card reasonably describing the purchaser.

e. The keg's unique tag number or code.

f. The specific address or location where the malt beverage in the keg will be consumed and the date or dates on which it will be consumed.

g. The form will summarize all of the following information:

1. The requirements of this section.

2. The penalties for violating any provision of this section.

3. The penalties for providing malt beverages to underage persons.

h. The signature of the retail purchaser.

(3) The retail purchaser shall return the coded tag or adhesive label along with the keg to the retail seller. The retail seller shall remove the coded tag or adhesive label and return the keg to the beverage wholesaler. The retail seller shall maintain a copy of the signed form required by subdivision (2) of this subsection for a period of three years from the date of purchase. The form and the information contained on it are public records.

(c) The Alcoholic Beverage Control Commission may charge fees to the malt beverage retailer to cover the cost of producing the coded tag or adhesive label and the forms required under subdivisions (b)(1) and (b)(2) of this section.

(d) The following penalties shall apply to violations of the provisions of this section:

(1) Any person, other than an ABC permittee or law enforcement officer or agent, who defaces or removes the coded tag or adhesive label provided by the Alcoholic Beverage Control Commission on a keg or who possesses an unlabeled or untagged keg containing or having contained malt beverages shall be guilty of a Class 1 misdemeanor and shall be fined not less than fifty dollars ($50.00).

(2) Any retail purchaser who fails either to return a keg or to provide the retail seller with the reason for the failure for the return of the keg within 30 days after purchase shall be guilty of a Class 1 misdemeanor and shall be fined not less than fifty dollars ($50.00)."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

HOUSE BILL 892:
Regulate Sale of Malt Beverage Kegs

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 7, 2005
Introduced by:	Rep. Alexander	**Summary by:**	Martha Walston
Version:	PCS to Second Edition H892-CSRU-50[v.4]		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 892 would require malt beverage retailers to put a unique coded tag or adhesive label on beer kegs and collect identifying information from the retail keg purchaser to be tied to the individual beer keg. Persons who remove or destroy the coded tag or adhesive label, or fail to return a tagged or labeled keg would be guilty of a Class 1 misdemeanor.***

HB 892 is in House Finance because it authorizes the ABC Commission to charge fees to the malt beverage retailer to cover cost of producing the required coded tag or adhesive label and the forms.

The 2nd edition of the bill was given a favorable report in House Commerce.

CURRENT LAW: Current law does not require beer kegs to be uniquely identifiable.

BILL ANALYSIS: The PCS for House Bill 892 requires the following for kegs[1] of beer sold at retail:

- When the retail seller sells and give possession of the keg to the retail purchaser, the retail seller must contain a coded tag or adhesive label uniquely numbered on the keg.
- At the time of sale, the retail seller must have the retail purchaser complete a form showing the purchaser's name, address, telephone number, date of birth, coded tag or adhesive label number, purchaser's signature, date the keg is due to be returned, and a summary on the tag law and underage drinking. (The 2nd edition of the bill also required that the form include the location and dates for the consumption of the keg. The 2nd edition did not require the form to show the date the keg is due to be returned.)
- After the return of the keg, the retail seller is to remove the tag or label.
- The retail seller must maintain a copy of the signed form for one year from the date of purchase. (The 2nd edition of the bill required that the form be kept for three years.)
- The Alcoholic Beverage Control Commission may charge a fee to recover the cost of the coded tags or adhesive labels and the required forms.

An unauthorized person who defaces or removes a coded tag or adhesive label, or possesses an untagged or labeled keg, and a retail purchaser who fails to return a keg within 30 days of the date the keg is due to be returned is guilty of a Class 1 misdemeanor with a minimum $50.00 fine. (The 2nd edition required return within 30 days after the purchase.)

EFFECTIVE DATE: This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

Walker Reagan, counsel to House Commerce, contributed substantially to this summary.

H0892e1-SMRU-CSRU-29

[1] A keg is defined as a container capable of holding at least seven and three-quarters gallons of malt beverage.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 6, 2005

TO: Representative Alexander

FROM: Denise Thomas
Fiscal Research Division

RE: House Bill 892 (6/6 PCS [v.4])

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	**FY 2006-07**	**FY 2007-08**	**FY 2008-09**	**FY 2009-10**
REVENUES:					
ABC Commission		No estimate	available		
EXPENDITURES:					
ABC Commission		No estimate	available		
Correction		No estimate	available		
Judicial		No estimate	available		
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Alcohol Beverage Control Commission; Judicial Branch; Correction

EFFECTIVE DATE: December 1, 2005

BILL SUMMARY:

March 24, 2005
H 892. REGULATE SALE OF MALT BEVERAGE KEGS (=S 476). REGULATING THE SALE OF KEGS CONTAINING MALT BEVERAGE. Identical to S 476, introduced 3/10/05.

May 11, 2005
H892-CRSU-29 [v.3] amends 1st edition to remove the requirements for malt beverage wholesalers and require affected retail permittees to retain coded tags and forms for a period of three years from the date of purchase.

June 6, 2005
H892-CSRU-50[v.4] amends 2nd edition to require affected retail permittees to retain coded tages and forms for a period of one year from the date of purchase

ASSUMPTIONS AND METHODOLOGY: the bill requires that beer retailers attach to every malt beverage keg sold, a uniquely numbered and coded tag provided by the Alcoholic Beverage Control (ABC) Commission. The retail seller shall require every purchaser of a keg to complete and sign a form, provided by ABC, indicating among other information the purchaser's name, address, date of birth, the keg identification number, coded tag number, address and date where the keg is to be consumed. When the keg is returned, the retailer shall remove the tag before returning the empty keg to the wholesaler. The retailer shall maintain a copy of the signed form for a period of one year.

New penalties are established for violations of the provisions of the bill. An unauthorized person who defaces or removes a coded tag, or possesses an untagged keg, and a retail purchaser who fails to return a keg within 30 days is guilty of a Class 1 misdemeanor with a minimum $50.00 fine.

Alcoholic Beverage Control (ABC) Commission:
Under the proposal, the ABC Commission would be responsible for issuing the coded tags and a new form to all malt beverage retailers subject to the bill. Because this is a new responsibility, there is no data available to estimate ABC's cost. The bill authorizes ABC to charge malt beverage retailers a fee to recover the costs of the coded tags and required forms.

Judicial Branch
The Administrative Office of the Courts (AOC) indicates that no substantial increase in workload is expected from this bill. Presently, a person who fails to return a keg could be charged with the offense of failure to return rental property (G.S. 14-167), a Class 2 misdemeanor under current law. Thus, some defendants currently charged with Class 2 misdemeanors would be charged with Class 1 misdemeanors under this new bill. AOC data for calendar year 2004 indicate a total of 1,798 defendants charged with this offense. Data are not available on how many of these offenses involved failure to return a keg.

This bill also creates a new Class 1 misdemeanor offense for a person who defaces or removes a required keg identification tag or who possesses an unregistered keg. AOC discussions with Alcohol Law Enforcement (ALE) Division personnel revealed that ALE currently uses existing identification markings on kegs to enforce laws dealing with underage consumption and distribution of alcohol. However, AOC has no way to estimate how this new bill would enhance alcohol law enforcement and if it would result in additional charges. AOC has no data available to estimate the number of keg sales that would violate the law or the number of new criminal charges that might occur as a result of this offense.

Defendants who would be charged under this new bill could currently be charged with some alcohol offense. To the extent that is true, the charges that might occur as a result of this bill would be brought in addition to related charges such as selling or giving malt beverages or unfortified wine to anyone less than 21 years old (G.S. 18B-302(a)(1), also a Class 1 misdemeanor). On the other hand, some and perhaps many of the charges created by this bill would be new, adding additional cases.

Department of Correction

Since the proposed bill creates new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced for the proposed offenses. In FY 2003/04, 19% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served was 31.2 days. Offenders serving active sentences of 90 days or less are housed in county jails. The Department of Correction reimburses county jails at the rate of $18/day for offenders serving active sentences of 30 to 90 days. Convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

For misdemeanor classes, offenders may be given non-active sentences – intermediate or community sanctions. Offenders given intermediate sanctions or the community sanction of supervised probation are supervised by the Division of Community Corrections (DCC), which also supervises offenders on community service. The estimated cost associated with an intermediate offender is $10.94 per day[1] for the first six months and $1.87 for each day thereafter. The estimated cost for a supervised community offender is $1.87 per day.[2] Community corrections costs are projected to begin in FY 2006-07, due to the effective date of December 1 and the lag time between charge and conviction. For these reasons, it is not possible to determine the potential fiscal impact of the bill on the Department of Correction.

SOURCES OF DATA: NC Sentencing and Policy Advisory Commission; Administrative Office of the Courts

TECHNICAL CONSIDERATIONS: None

[1] This is the cost of intensive probation, the most common intermediate sanction.

[2] DCC also incurs costs of $0.67 per day for each offender sentenced to community service; however, the total cost for community service cannot be determined.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

HB 892 A BILL TO BE ENTITLED AN ACT REGULATING THE SALE OF KEGS CONTAINING MALT BEVERAGES.

☒ With a favorable report as to the committee substitute bill 2, unfavorable as to Committee Substitute Bill 1, and recommendation that the committee substitute bill 2 be re-referred to the Committee on APPROPRIATIONS.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 15
PROPOSED HOUSE COMMITTEE SUBSTITUTE S15-CSLA-14 [v.1]

6/3/2005 11:16:57 AM

Short Title: Water & Sewer District Boundaries; Per Diem. (Public)

Sponsors:

Referred to:

January 31, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW STATE-OWNED PROPERTY TO BE MOVED FROM ONE COUNTY WATER AND SEWER DISTRICT TO ANOTHER AND TO INCREASE THE MAXIMUM ANNUAL PER DIEM OF MEMBERS OF WATER AND SEWER AUTHORITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 6 of Chapter 162A of the General Statutes is amended by adding the following new section:

"**§ 162A-87.1B. Transfer of State-owned property from one district to another.**

If any property owned by the State is located in a county water and sewer district, the board of commissioners of that county by resolution may transfer the property to another county water and sewer district in that county. This section only applies if the State acquired the property from the county. Any such resolution shall become effective on the date specified in the resolution, and a copy of the resolution shall be sent to the Department of Administration."

SECTION 2. G.S. 162A-5(c) reads as rewritten:

(c) Each member of the authority before entering upon his duties shall take and subscribe an oath or affirmation to support the Constitution of the United States and of this State and to discharge faithfully the duties of his office, and a record of each such oath shall be filed with the secretary of the authority.

The authority shall select one of its members as chairman and another as vice-chairman and shall also select a secretary and a treasurer who may but need not be members of the authority. The offices of secretary and treasurer may be combined. The terms of office of the chairman, vice-chairman, secretary and treasurer shall be as provided in the bylaws of the authority.

A majority of the members of the authority shall constitute a quorum and the affirmative vote of a majority of all of the members of the authority shall be necessary for any action taken by the authority. No vacancy in the membership of the authority

shall impair the right of a quorum to exercise all the rights and perform all of the duties of the authority. The members of the authority may be paid a per diem compensation set by the authority which per diem may not exceed the total amount of ~~two thousand dollars ($2,000)~~four thousand dollars ($4,000) annually, and shall be reimbursed for the amount of actual expenses incurred by them in the performance of their duties.

SECTION 3. This act is effective when it becomes law. For each water and sewer authority organized under Article 1 of Chapter 162 of the General Statutes, Section 2 of this act applies on the first day of the fiscal year of the authority that begins on or after the date this act becomes effective.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 15

Short Title:	Water and Sewer District Boundaries.	(Public)
Sponsors:	Senator Soles.	
Referred to:	Finance.	

January 31, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW STATE-OWNED PROPERTY TO BE MOVED FROM ONE COUNTY WATER AND SEWER DISTRICT TO ANOTHER.

The General Assembly of North Carolina enacts:

SECTION 1. Article 6 of Chapter 162A of the General Statutes is amended by adding the following new section:

"**§ 162A-87.1B. Transfer of State-owned property from one district to another.**

If any property owned by the State is located in a county water and sewer district, the board of commissioners of that county by resolution may transfer the property to another county water and sewer district in that county. This section only applies if the State acquired the property from the county. Any such resolution shall become effective on the date specified in the resolution, and a copy of the resolution shall be sent to the Department of Administration."

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

SENATE BILL 15:
Water and Sewer District Boundaries

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Sen. Soles
Date:	June 7, 2005	**Summary by:**	Martha Walston
Version:	S15-CSLA-14		Committee Counsel

SUMMARY: Senate Bill 15 would allow State-owned property to be moved from one county water and sewer district to another, but only if the State acquired the property from the county. This act would be effective when it becomes law.

The proposed committee substitute would increase the maximum annual per diem that a water and sewer authority member may receive from $2,000 to $4,000.

CURRENT LAW: The board of commissioners of any county may create a county water and sewer district after notice and a public hearing. Following the public hearing, the board of commissioners may, by resolution, create a county water and sewer district if the board finds all of the following:

(1) There is a demonstrable need for providing in the district water services, or sewer services, or both.
(2) The residents of all the territory to be included in the district will benefit from the district's creation.
(3) It is economically feasible to provide the proposed service or services in the district without unreasonable or burdensome annual tax levies.

A board of commissioners also has authority to annex territory to any water and sewer district if certain conditions are met. Before adopting any resolution extending the boundaries of a water and sewer district, a board of commissioners must hold a public hearing.

Among its powers, a county water and sewer district may sue and be sued; may contract and be contracted with; may acquire and hold any property, real and personal, devised, bequeathed, sold, or in any manner conveyed, dedicated to, or otherwise acquired by them, and from time to time may hold, invest, sell, or dispose of the same; and may establish, revise and collect rates, fees or other charges and penalties for the use of or the services furnished or to be furnished by any sanitary sewer system, water system or sanitary sewer and water system of the district.

BILL ANALYSIS: Section 1 of Senate Bill 15 would allow a county, by resolution, to transfer State-owned property from one county water and sewer district to another, but only if the State acquired the property from the county. The transfer from district to another would not require a public hearing, but a copy of the resolution must be sent to the Department of Administration.

Columbus County has five water and sewer districts. The county would like to have the property on which a new correctional facility will be built to be shifted from one water and sewer district to another within the county to help finance certain improvements within the transferee district.

Section 2 of Senate Bill 15 would increase the annual maximum per diem paid to a member of a water and sewer authority enacted under Article 1 of Chapter 162A from $2,000 to $4,000. The General Assembly enacted the $2,000 maximum per diem in 1975. One or more counties, cities, sanitary districts, and other subdivisions may create a water and sewer authority by adopting resolutions stating their intent to do so. Each resolution must be adopted after notice is published and a public hearing is held on the issue. A political subdivision can withdraw from an authority at any time before obligations of the authority have been created. A water and sewer authority may issue revenue bonds; enter into installment finance contracts; impose rates, fees, and charges; and levy special assessments. Water and sewer authorities may also apply for grants from the Clean Water Revolving Loan and Grant Fund. A list of water and sewer authorities in the State is set out below:

Dare Beaches Water and Sewer Authority
Franklin Water and Sewer Authority
Lower Cape Fear Water and Sewer Authority
Moore Water and Sewer Authority
Neuse Regional Water and Sewer Authority
Onslow Water and Sewer Authority
Orange Water and Sewer Authority
South Brunswick Water and Sewer Authority
South Granville Water and Sewer Authority
The Stokes County Water-Sewer Authority
Tuckaseigee Water and Sewer Authority
Water and Sewer Authority of Cabarrus County

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 6, 2005

TO: Senator Soles

FROM: Rodney Bizzell
Fiscal Research Division

RE: Senate Bill 15 (Unknown Edition)

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
EXPENDITURES:					
General Fund	No General Fund Impact				
Water/Sewer Authorities	$168,000	$168,000	$168,000	$168,000	$168,000

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Water/Sewer Authorities

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY: Senate Bill 15 would allow State-owned property to be moved from one county water and sewer district to another, but only if the State acquired the property from the county.

The proposed committee substitute would increase the maximum annual per diem that a water and sewer authority member may receive from $2,000 to $4,000.

ASSUMPTIONS AND METHODOLOGY: The proposed committee substitute increases the annual maximum per diem amount from $2,000 to $4,000 for each water and sewer authority member. Assuming a total of twelve water and sewer authorities affected by the bill and an average number of seven members per authority, the bill would have a total impact of $168,000

annually. This estimate assumes that each member receives the maximum per diem amount each year.

SOURCES OF DATA:

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

SB 15 A BILL TO BE ENTITLED AN ACT TO ALLOW STATE-OWNED PROPERTY TO BE MOVED FROM ONE COUNTY WATER AND SEWER DISTRICT TO ANOTHER.

☒ With a favorable report as to the House committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 14
Finance Committee Substitute Adopted 3/16/05

Short Title: Holden Beach Canal Dredging Fee.	(Local)
Sponsors:	
Referred to:	

January 31, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWN OF HOLDEN BEACH TO IMPOSE A CANAL DREDGING FEE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7 of S.L. 2004-104 reads as rewritten:

"**SECTION 7.** This act applies only within the municipal boundaries of the ~~Town~~ Towns of Holden Beach and Ocean Isle Beach."

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

SENATE BILL 14:
Holden Beach Canal Dredging Fee

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 7, 2005
Introduced by:	Sen. Soles	**Summary by:**	Cindy Avrette
Version:	Second Edition		Committee Counsel

SUMMARY: Senate Bill 14 is a local bill that would allow the Town of Holden Beach to create a fee-supported canal dredging district for all properties that are contiguous to a canal. The fee may not exceed the cost of dredging and will be imposed on owners of each dwelling unit or parcel that could or does benefit from water access through the canal system. On April 7, 2005, House Finance gave a favorable report to the companion bill, House Bill 350, sponsored by Rep. Stiller.

BILL ANALYSIS: Last year, the General Assembly authorized the Town of Ocean Isle Beach to create a fee-supported canal dredging district for properties that are contiguous to a canal within the town limits (House Bill 1734; S.L. 2004-104). The legislation provided the following:

- The annual fee may not exceed the cost of providing for the dredging of canals, both natural and concrete.
- The fee would be imposed on owners of each dwelling unit or parcel of property that could or does benefit from water access through the canal system.
- The dredging fee may be included on the property tax bill and collected in the same manner as property taxes. The remedies for collection of taxes will also apply to the collection of these fees.
- The fees collected shall be placed in a separate fund to be used only to pay the bill for canal dredging.

This legislation was proposed to provide the means to remove the silt and sand that have flowed into the canals in the Town impeding the navigability of the canals. These canals provide water access from the Intracoastal Waterway to lots and rights-of-way within the Town limits.

Senate Bill 14 would authorize the Town of Holden Beach to create a fee-supported canal dredging district in the same manner and under the same conditions that have already been authorized for the Town of Ocean Isle Beach.

S0014e2-SMRB

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

SB 14 A BILL TO BE ENTITLED AN ACT TO ALLOW THE TOWN OF HOLDEN BEACH TO IMPOSE A CANAL DREDGING FEE.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 723
Committee Substitute Favorable 5/26/05

Short Title: UNC/Criminal Record Checks/Fee.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE UNIVERSITY OF NORTH CAROLINA TO OBTAIN CRIMINAL RECORD CHECKS, TO ALLOW CERTAIN FEES TO BE CHARGED FOR THE CRIMINAL RECORD CHECK, AND TO MAKE IT A CRIMINAL OFFENSE TO PROVIDE FALSE INFORMATION THAT IS THE BASIS OF A CRIMINAL RECORD CHECK.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.2A. Criminal record checks of university personnel.**

(a) The Department of Justice may provide a criminal record check to administrators of The University of North Carolina, or of any of its institutions or entities, concerning a person who has applied for employment or a promotion in The University of North Carolina System, or its institutions or entities, if the applicant consents to the record check. The Department may also provide a criminal record check to The University of North Carolina by fingerprint card from National Repositories of Criminal Histories, in accordance with G.S. 116-40.5A. The information shall be kept confidential as provided in G.S. 116-40.5A.

(b) University law enforcement personnel who are certified DCI operators may conduct the criminal record check, to the extent permitted by law. For a criminal record check performed by the Department of Justice, the Department shall charge a reasonable fee for conducting a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information.

(c) The Department of Justice shall adopt rules to implement this section."

SECTION 2. Chapter 116 of the General Statutes is amended by adding a new section to read:

"**§ 116-40.5A. University personnel criminal history checks.**

(a) As used in this section:

(1) "Criminal history" means a county, State, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates the applicant (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties for The University of North Carolina. Such crimes include the following crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 4A, Prohibited Secret Societies and Activities; Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive, Legislative, and Court Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 9, Hazing; Article 10, Kidnapping and Abduction; Article 11, Abortion and Kindred Offenses; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 19C, Financial Identity Fraud; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 27A, Sex Offender and Public Protection Registration Programs; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36, Offenses Against the Public Safety; Article 36A, Riots and Civil Disorders; Article 36B, Nuclear, Biological, or Chemical Weapons of Mass Destruction; Article 39, Protection of Minors; Article 47, Cruelty to Animals; Article 51, Protection of Athletic Contests; Article 52, Miscellaneous Police Regulations; Article 58, Records, Tapes and Other Recorded Devices; and Article 60, Computer-Related Crime.

Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

In addition to the crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(2) "University personnel" means any:

a. Applicant for employment or promotion with The University of North Carolina or any of its institutions or entities whether full-time or part-time, or

b. Independent contractor or employee of an independent contractor of The University of North Carolina, or any of its institutions or entities, if the independent contractor carries out duties customarily performed by university personnel, whether paid with federal, State, local, or other funds.

(3) "University" means The University of North Carolina, or any of its institutions or entities, including the University of North Carolina Health Care System.

(b) The Board of Governors of The University of North Carolina shall adopt a policy to be applied uniformly to all constituent institutions of the University and the General Administration on whether and under what circumstances an applicant for a position or promotion shall be required to be checked for a criminal history before the applicant is offered an unconditional job or promotion. The Board of Directors of the UNC Health Care System shall adopt such a policy for the Health Care System. Each constituent institution and other entities of the University shall apply its policy uniformly in requiring applicants for University positions or promotions to be checked for a criminal history. The University may employ an applicant conditionally while the University is checking the person's criminal history and making a decision based on the results of the check.

(c) The Department of Justice shall provide to the University the criminal history from the State and National Repositories of Criminal Histories of any applicant for a University position or promotion in the University, or any of its institutions or entities, which requires a criminal history check. The University shall require the person to be checked by the Department of Justice to (i) be fingerprinted and to provide any additional information required by the Department of Justice to a person designated by the University, or to the local sheriff or the municipal police, whichever is more convenient for the person, and (ii) sign a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories. The University shall consider refusal to consent when making employment decisions and decisions with regard to independent contractors.

(d) The University shall review the criminal history it receives on a person. The University shall determine whether the results of the review indicate that the person (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as a University employee and shall use the information when making employment decisions and decisions with regard to independent contractors. The University shall make written findings with regard to how it used the information when making employment decisions and decisions with regard to independent contractors. The University may delegate any of the duties in this section to one or more of its administrators.

(e) All the information received by the University through the checking of the criminal history in accordance with this section is privileged information and is not a public record but is for the exclusive use of the University. The University may destroy the information after it is used for the employment purposes authorized by this section after one calendar year.

(f) There shall be no liability for negligence on the part of the University, or its employees, arising from any act taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification under Article 31A of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Chapter 31 of Chapter 143 of the General Statutes.

(g) Any applicant for employment or promotion who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor."

SECTION 3. This act becomes effective December 1, 2005. G.S. 116-40.5A(g), as enacted by this act, applies to offenses committed on or after that date.

House Bill 723:
UNC/Criminal Record Check/Fee.-AB

BILL ANALYSIS

Committee: House Finance
Date: June 7, 2005
Version: 2nd Edition

Sponsor: Reps. Glazier and Dickson
Analysis by: Ashley Huffstetler*
Staff Attorney

SUMMARY: ***The 2nd Edition of House Bill 723 authorizes the Department of Justice (DoJ) to provide criminal record checks to the University of North Carolina (UNC) for applicants for employment and promotion. The bill becomes effective December 1, 2005, and applies to offenses committed on or after that date.***

CURRENT LAW: Under current State law, criminal record check provisions exist for residential school personnel, employees of local boards of education, and employees of charter schools. The provisions of House Bill 723 are substantially similar to these existing statutes.

2nd EDITION CHANGES TO ORIGINAL BILL: The bill was amended in House Judiciary IV. The 2nd Edition:

- Requires that the Board of Governors adopt a policy to be applied uniformly to all constituent institutions regarding the circumstances in which criminal record checks will be required before an offer of employment or promotion is made at the constituent institutions. The original bill directed the Board of Trustees of each constituent institution to develop such a policy.
- Allows the University to charge the applicant a fee to pay for the criminal record check and for fingerprinting. The original bill prohibited such a fee.

BILL ANALYSIS: Section 1.: The bill adds a new section to Chapter 114 of the General Statutes (Department of Justice) that:

- Authorizes DOJ to provide a criminal record check to UNC administrators for a person who has applied for employment or promotion in the UNC System, with the applicant's consent.
- Authorizes DOJ to provide a criminal record check to UNC by fingerprint card from National Repositories of Criminal Histories.
- Provides that the information obtained must be kept confidential.
- Provides that DOJ may charge a reasonable fee for conducting the criminal record check, not to exceed the actual cost of locating, editing, researching, and retrieving the information.
- Authorizes certain University law enforcement officers, who are certified Division of Criminal Information-State Bureau of Investigation (DCI) operators, to conduct the criminal record check.
- Directs DOJ to adopt rules to implement the provisions.

Section 2.: The bill adds a new section to Chapter 116 of the General Statutes (Higher Education) that:

- Provides that "criminal history" means a conviction of a crime, whether misdemeanor or felony, that indicates the applicant (i) poses a threat to the physical safety of students or personnel, or (ii) has

demonstrated that he or she does not have the integrity or honesty to fulfill the his or her duties, and lists crimes included within definition.

- Provides that the term "University personnel" includes applicants for employment or promotion, and independent contractors who carry out duties customarily performed by university personnel.
- Requires that the UNC Board of Governors adopt a policy regarding when criminal record checks will be required before an unconditional offer of employment or promotion.
- Includes requirements regarding fingerprinting and obtaining consent forms and requires the University to consider refusal to consent to a check when making employment decisions.
- Directs the University to determine in writing whether the results of the check indicate that a person (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that the person does not have the integrity or honesty to fulfill his or her duties.
- Provides that the results of the check are confidential and allows the University to destroy the information after one calendar year.
- Provides limitations on liability for the University and its employees.
- Makes it a Class A1 misdemeanor to willfully furnish, supply, or give false information on an employment application that is the basis for a criminal record check. A Class A1 misdemeanor is punishable by 1 to 60 days of active, intermediate, or community punishment, assuming no prior convictions.

BACKGROUND: Currently, some campuses in the UNC System conduct pre-employment criminal conviction checks on prospective employees. Those that perform checks are using the Administrative Office of the Courts database, which contains only North Carolina convictions or are using automated databases in certain states that are available through commercial vendors.

EFFECTIVE DATE: The bill becomes effective December 1, 2005, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 723 (Second Edition)

SHORT TITLE: UNC/Criminal Record Checks/Fee.-AB

SPONSOR(S): Representatives Glazier and Dickson

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
GENERAL FUND REVENUES					
Justice	Up to $199,000 annually (see pgs. 2 - 4)				
GENERAL FUND EXPENDITURES					
Correction	Exact amount cannot be determined				
Judicial	Exact amount cannot be determined				
Justice	Up to $202,000 annually (see pgs. 2 - 4)				
UNC	Up to $199,000 annually (see pgs. 2 - 4)				
ADDITIONAL PRISON BEDS*	No significant impact anticipated				
POSITIONS: (cumulative)	No additional positions anticipated				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Department of Justice; University of North Carolina System

EFFECTIVE DATE: December 1, 2005

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY: This bill would add new G.S. 114-19.2A providing that the Department of Justice (DOJ) may provide a criminal record check to University of North Carolina (UNC) administrators concerning a person who has applied for employment or promotion in the UNC System, with the consent of the applicant. DOJ also may provide a criminal record check to UNC by fingerprint card from National Repositories of Criminal Histories, in accordance with G.S. 116-40.5A. The bill additionally authorizes certain University law enforcement officers to conduct the criminal record check. The UNC Board of Governors would be required to adopt

policies with respect to when criminal record checks will be required. It would be a Class A1 misdemeanor under this bill to willfully furnish, supply or give false information on an employment application that is the basis for a criminal record check. The Second Edition of this bill permits UNC to charge applicants for the cost of the criminal history and associated fingerprints. *Source: Adapted from Bill Digest H.B. 723 (03/17/0200).*

ASSUMPTIONS AND METHODOLOGY:

Department of Justice and University of North Carolina

The UNC System estimates that it could request as many as 5,266 criminal histories per year. This is the number of new employees hired in 2004. While the Department of Justice is authorized to conduct state and national background checks for the UNC System under this bill, it is unclear whether the UNC System could also request background checks from other sources. UNC personnel have indicated that they will probably request state and national fingerprint background checks from DOJ only if the applicant has lived out of state. Otherwise, they anticipate requesting name checks through commercial vendors; some campuses already use commercial vendors for some background checks.

Costs of commercial background checks vary, and may not be permitted under this bill. If new G.S. 116-40.5A(c) in fact requires that all background checks on UNC employees be state and national fingerprint checks conducted through the Department of Justice, with the exception of those checks that UNC police can perform themselves, the following fees would apply:

NC Fingerprint Check:	$14
National Fingerprint Check:	$24 ($2 to DOJ, $22 remitted to the FBI)
Total:	$38

The State Bureau of Investigation (SBI) in the Department of Justice conducts background checks for criminal justice and non-criminal justice agencies. For the latter group, the Department charges fees that are used to support the positions required to conduct the checks. In addition to the $22 remitted to the Federal Bureau of Investigation for national checks, costs to the SBI per state and national check average $16.33,[1] not including overhead or equipment. Each person in the fingerprint identification section can perform, on average, 10,000 checks per year. The number of checks anticipated by UNC would be the equivalent of one half-time position. The Department believes that this workload can be absorbed by existing personnel.

The UNC Police can access criminal history information on applicants for employment with the police department through a national name check, but they cannot share that information outside of the police department. As a law enforcement agency, UNC Police can also request state and national fingerprint criminal history checks on their employees from the SBI free of charge. The annual number of UNC Police applicants is unknown at this time.

In addition to the fees for criminal histories, local law enforcement agencies may charge for fingerprinting. Charges range from $0 to $15. The second edition of this bill permits UNC to pass

[1] In 2003, average cost was $11.45 per electronic fingerprint check and $17.95 per paper fingerprint check; approximately 25% of non-criminal justice fingerprint submissions were electronic.

the costs of criminal record checks and fingerprinting on to the applicants. In practice, UNC has indicated that it does not plan to charge applicants for either cost.

Alternative Background Check Costs: The language in this bill is similar to the language in G.S. 115C-332, which permits local education agencies (LEAs) to request criminal history checks on prospective employees. Some LEAs request checks from private vendors rather than the Department of Justice, and UNC has indicated that it plans to do the same. If this bill permits UNC to request other types of criminal histories or use other sources, options include:

DOJ ***Fingerprint*** Checks: NC Only	$14.00
DOJ ***Fingerprint*** Checks: NC and National ($22 remitted to the FBI)	$38.00
DOJ ***Fingerprint*** Checks: NC and National - UNC Police applicants	no charge
DOJ ***Name*** Checks	$10.00
Clerks of Court ***Name*** Checks: single NC county	$10.00
Private Vendor ***Name*** Checks: NC or Multi-State	varies
UNC Police ***Name*** Checks: UNC Police applicants only	internal cost

General – Criminal Penalties

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

As this bill would create a new Class A1 misdemeanor offense for intentionally falsifying information furnished in relation to a criminal history check performed prior to employment or promotion for selected positions within the North Carolina University System, no historical data is available to estimate the number of additional convictions that would result.

- In FY 2003-04, 24 percent of Class A1 misdemeanors resulted in active sentences and the average active sentence length was 73 days. Active sentences of less than ninety days are served in county jail, and DOC reimburses counties at a rate of $18 per day for any sentence between thirty and ninety days in length.
- The remaining 76 percent of Class A1 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Corrections (DCC) would incur costs of $1.87 per offender per day. Offenders sentenced to community service would cost $0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

Because most Class A1 misdemeanants serving active time as a result of this bill would be housed in county jails, this legislation is not expected to significantly impact prison population.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

As this bill would create a new Class A1 misdemeanor offense for intentionally falsifying information furnished in relation to a criminal history check concerning employment or promotion in the North Carolina University system, no historical data is available to estimate the number of additional convictions that would result. Of the additional background checks that would occur under this bill, it is not possible to estimate the number that would result in charges for intentionally falsifying information provided to conduct the criminal history check.

Based on the costs of time in court, attorney preparation time, and indigent defense, the average estimated cost to process one Class A1 misdemeanor is $3,589 per trial and $286 per guilty plea. The trial cost includes an estimated $2,087 in jury fees, costs of time in court, and attorney costs and an additional $1,502 in indigent defense. Based on prior-year data, the majority of any new Class A1 misdemeanor charges that are not dismissed are likely to be settled by plea.

SOURCES OF DATA: Department of Correction, Judicial Branch, North Carolina Sentencing and Policy Advisory Commission, Office of State Budget and Management, Department of Justice, University of North Carolina

TECHNICAL CONSIDERATIONS: It is unclear whether UNC is required under this bill to request all criminal history checks through the Department of Justice, and whether UNC must request a state and national fingerprint check on each applicant for whom a criminal history check is required. Maximum costs on the front page box assume that all checks will be state and national fingerprint checks conducted through the Department of Justice.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Aaron Paul and Chloe Gossage

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

Official
Fiscal Research Division
Publication

DATE: May 27, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 11

EDITION No. ~~PCS~~ 2nd

H. B. No. 723 DATE 6-7-2005

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

COMMITTEE SUBSTITUTE _____

Rep. Glazier
Sen.)

1 moves to amend the bill on page 1, line 8 19 & 20

2 ( ) WHICH CHANGES THE TITLE

3 by deleting the sentence beginning on line

4 19.

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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

ATTACHMENT 12

(Please type or use ballpoint pen)

EDITION No. 2nd

H. B. No. 723 DATE 6-7-05

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

COMMITTEE SUBSTITUTE _____

(Rep.) Hackney
Sen.)

1 moves to amend the bill on page 4, line 1-8

2 ( ) WHICH CHANGES THE TITLE

3 by deleting those lines and renumbering the

4 Sections that follow

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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

HB 723 A BILL TO BE ENTITLED AN ACT TO PERMIT THE UNIVERSITY OF NORTH CAROLINA TO OBTAIN CRIMINAL RECORD CHECKS, TO ALLOW CERTAIN FEES TO BE CHARGED FOR THE CRIMINAL RECORD CHECK, AND TO MAKE IT A CRIMINAL OFFENSE TO PROVIDE FALSE INFORMATION THAT IS THE BASIS OF A CRIMINAL RECORD CHECK.

☒ With a favorable report as to the committee substitute bill 2, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H D

HOUSE BILL 1340
PROPOSED COMMITTEE SUBSTITUTE H1340-CSLAf-12 [v.4]

6/2/2005 10:55:58 AM

Short Title: Reestablish Boxing Commission. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO REESTABLISH THE NORTH CAROLINA STATE BOXING COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. The regulation of boxing under the authority of the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety is transferred to the North Carolina State Boxing Commission reestablished pursuant to Article 68A of Chapter 143 of the General Statutes, as enacted in Section 3 of this act, within the Department of Crime Control and Public Safety.

SECTION 2. Article 68 of Chapter 143 of the General Statutes is repealed.

SECTION 3. Chapter 143 of the General Statutes is amended by adding the following new Article to read:

"Article 68A.

"North Carolina State Boxing Commission.

"**§ 143-659.1. Legislative findings and declarations.**

The General Assembly finds and declares to be the public policy of this State that it is in the best interest of the public and of boxing that boxing should be subject to an effective and efficient system of strict control and regulation in order to:

(1) Protect the safety and well-being of participants in boxing; and

(2) Promote the public confidence and trust in the regulatory process and the conduct of boxing.

To further the public confidence and trust, the provisions of this Article are designed to regulate all persons, practices, and associations related to the operation of any live boxing event, performance, or contest held in North Carolina.

"**§ 143-659.2. Definitions.**

The following definitions apply in this Article:

(1) Amateur. – A person who is not receiving or competing for and has never received or competed for any purse or other article or thing of value for participating in a match.
(2) Announcer. – Any person who engages in the act of announcing a boxing match.
(3) Boxer. – Any person who engages as a participant in a boxing match.
(4) Boxing match. – A match where the participants engage in the use of full contact boxing techniques (using the fist only), and where the object of a match is to win by decision, knockout (KO), or technical knockout (TKO).
(5) Commission. – The North Carolina State Boxing Commission.
(6) Contest. – A boxing match in which the participants strive earnestly to win.
(7) Contestant. – Any person who engages as a participant in a boxing match.
(8) Exhibition. – A boxing match where the participants display their boxing skills and technique without necessarily striving to win.
(9) Judge. – A person who has a vote in determining the winner of any match or contest.
(10) Kickboxer. – Any person who engages as a participant in a kickboxing match.
(11) Kickboxing match. – A match in which the participants engage in full contact martial arts fighting techniques using the hands and the feet, and where the object of the match is to win by decision, knockout (KO), or technical knockout (TKO).
(12) Licensee. – Any person, club, corporation, organization, or association to whom a license has been issued pursuant to the provisions of this Article.
(13) Manager. – Any person who controls or administers the boxing affairs of any contestant, and who:
a. By contract, agreement, or other arrangement with any person undertakes or has undertaken to represent in any way the interest of the contestant in any professional boxing contest in which the boxer is to participate as a contestant, and is entitled under that contract, agreement, or arrangement to receive monetary or other compensation for his or her services, without regard to the sources of the compensation. The term 'manager' shall not be construed to mean any attorney licensed to practice in this State whose participation in the activities is restricted solely to his representing the interests of a professional boxer as a client.
b. Directs or controls the professional boxing activities of any professional boxer.

c. Receives or is entitled to receive a percentage of the gross purse or gross income of any professional boxing contest.

(14) Match. – Any boxing or kickboxing contest or exhibition, and includes any event, engagement, sparring or practice session, show or program where the public is admitted and in which there is intended to be physical contact, whether an exhibition or contest. This definition does not include training or practice sessions when no admission is charged.

(15) Matchmaker. – A person through whom matches are arranged for participants and who otherwise assists participants in procuring engagement dates for boxing.

(16) Natural person. – An individual.

(17) Participant. – Any person who engages in a match or exhibition and performs as a boxer.

(18) Person. – An individual, group of individuals, business, corporation, limited liability company, partnership, or any other individual or collective entity.

(19) Physician. – An individual licensed to practice medicine in this State.

(20) Professional. – Any person who is licensed as a professional boxer under the federal Professional Boxing Safety Act of 1996.

(21) Promoter. – Any person who produces, arranges, stages, holds, or gives any match in North Carolina involving a professional participant.

(22) Referee. – The official who shall enter and remain in the ring for the duration of a match and shall enforce the rules and maintain order in the ring.

(23) Ring official. – Any person who performs an official function for the duration of a match.

(24) Sanctioned amateur. – A person who competes in a sanctioned amateur match.

(25) Sanctioned amateur match. – Any boxing or kickboxing match regulated by an amateur sports organization that has been recognized and approved by the North Carolina Boxing Commission.

(26) Second. – Any person who will work or be present in the corner of a participant for the duration of a match.

(27) Timekeeper. – Any person who will operate the clock or watch for the duration of a match for the purpose of keeping the official time of the match.

(28) Toughman contestant. – Any person who competes in a toughman event.

(29) Toughman event. – An elimination program of matches in which: (i) the contestants are not professional boxers; (ii) the finalist receives a purse or other article of value; (iii) the participants engage in the use of full contact boxing techniques; and (iv) the object of each match is to win by decision, knockout (KO), or technical knockout (TKO).

(30) Ultimate warrior match. – A match where the participants use any combination of boxing, kicking, wrestling, hitting, punching, or other combative, contact techniques and which combination of techniques is not specifically authorized by and conducted pursuant to this Article.

"**§ 143-659.3. State Boxing Commission.**

(a) Creation. – The North Carolina State Boxing Commission is created within the Department of Crime Control and Public Safety to regulate in North Carolina live boxing and kickboxing matches, whether professional, amateur, sanctioned amateur, or toughman events, in which admission is charged for viewing, or the contestants compete for a purse or prize of value greater than twenty-five dollars ($25.00). The Commission shall consist of five voting members and two nonvoting advisory members. All the members shall be residents of this State and meet requirements for membership under the Professional Boxing Safety Act of 1996. The initial members shall be appointed as follows:

(1) Three voting members appointed by the Governor, one to serve a three-year term, one to serve a two-year term, and one to serve a one-year term.

(2) One voting member appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, for a one-year term, in accordance with G.S. 120-121.

(3) One voting member appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, for a three-year term, in accordance with G.S. 120-121.

(4) One nonvoting advisory member appointed by the President Pro Tempore of the Senate for a two-year term, from nominations made by the North Carolina Medical Society. The North Carolina Medical Society shall nominate two licensed physicians for the position.

(5) One nonvoting advisory member appointed by the Speaker of the House of Representatives for a two-year term, from nominations made by the North Carolina Medical Society. The North Carolina Medical Society shall nominate two licensed physicians for the position.

The two nonvoting advisory members appointed pursuant to subdivisions (4) and (5) of subsection (a) of this section shall advise the Commission on matters concerning the health and physical condition of boxers and health issues relating to the conduct of exhibitions and boxing matches. The two nonvoting advisory members may prepare and submit to the Commission for its consideration and approval any rules that in their judgment will safeguard the physical welfare of all participants engaged in boxing.

Upon the expiration of the terms of the initial Commission members, each member shall be appointed for a term of three years and shall serve until a successor is appointed. The two nonvoting advisory members shall continue to be appointed by the original appointing authority from nominations made by the North Carolina Medical Society, which shall nominate two licensed physicians for each position. The Secretary of Crime Control and Public Safety shall designate which member of the Commission is to serve as chair. A member of the Commission may be removed from office by the

Secretary of Crime Control and Public Safety. Each member before entering upon the duties of a member shall take and subscribe an oath to perform the duties of the office faithfully, impartially, and justly to the best of the member's ability. A record of these oaths shall be filed in the Department of the Secretary of Crime Control and Public Safety.

(b) Vacancies. – Members shall serve until their successors are appointed and have been qualified. Any vacancy in the membership of the Commission shall be filled in the same manner as the original appointment. Vacancies for members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. A vacancy in the membership of the Commission other than by expiration of term shall be filled for the unexpired term only.

(c) Meetings. – Meetings of the Commission shall be called by the chair or by any two members of the Commission, and meetings shall be held at least quarterly. Any three members of the Commission shall constitute a quorum at any meeting. Action may be taken and motions and resolutions adopted by the Commission at any meeting by the affirmative vote of a majority of the members of the Commission present at a meeting at which a quorum exists. Any or all members may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in the meeting by this means is deemed to be present in person at the meeting.

(d) Rule-Making Authority of the Commission. – The Commission shall have the exclusive authority to approve and issue rules for the regulation of the conduct, promotion, and performances of live boxing, kickboxing, sanctioned amateur, amateur, and toughman matches and exhibitions in this State. The rules shall be issued pursuant to the provisions of Chapter 150B of the General Statutes and may include, without limitation, the following subjects:

(1) Requirements for issuance of licenses and permits required by this Article.
(2) Regulation of ticket sales.
(3) Physical requirements for contestants, including classification by weight and skill.
(4) Supervision of matches and exhibitions by licensed physicians and referees.
(5) Insurance and bonding requirements.
(6) Compensation of participants and licensees.
(7) Contracts and financial arrangements.
(8) Prohibition of dishonest, unethical, and injurious practices.
(9) Facilities.
(10) Approval of sanctioning amateur sports organizations.
(11) Procedures and requirements for compliance with the Professional Boxing Safety Act of 1996.

(e) Compensation. – None of the members of the Commission shall receive compensation for serving on the Commission. However, members of the Commission

may be reimbursed for their expenses in accordance with the provisions of Chapter 138 of the General Statutes.

(f) Staff Assistance. – The Secretary of Crime Control and Public Safety shall hire a person to serve as Executive Director of the Commission and shall provide staff assistance to the Executive Director. The Executive Director shall enforce this Article through the Department of Crime Control and Public Safety. If necessary, the Executive Director may train and contract with independent contractors for the purpose of regulating and monitoring events, issuing licenses, collecting fees, and enforcing rules of the Commission. The Executive Director may initiate and review criminal background checks on persons requesting to work as independent contractors for the Commission or persons applying to be licensed by the Commission.

"**§ 143-659.4. Ultimate warrior matches prohibited.**

Ultimate warrior matches, whether the participants are professional or amateurs, are prohibited. No person shall promote, conduct, or engage in ultimate warrior matches. This section shall not preclude boxing and kickboxing as regulated in this Article or professional wrestling.

"**§ 143-659.5. Licensing and permitting.**

(a) License and Permit Required. – Except for sanctioned amateur matches, it is unlawful for any person to act in this State as an announcer, contestant, judge, manager, matchmaker, promoter, referee, timekeeper, or second unless the person is licensed to do so under this Article. It is unlawful for a promoter to present a match in this State, other than a sanctioned amateur match, unless the promoter has a permit issued under this Article to do so. The Commission has the exclusive authority to issue, deny, suspend, or revoke any license or permit provided for in this Article.

(b) License. – All licenses issued under this Article shall be valid only during the calendar year in which they are issued, except contestant licenses shall be valid for one year from the date of issuance. A license for an announcer, contestant, judge, matchmaker, referee, timekeeper, or second shall be issued only to a natural person. A natural person shall not transfer or assign a license or change it into another name. A license for a manager or promoter may be issued to a corporation or partnership; provided, however, that all officers or partners shall submit an application for individual licensure, and only those officers or partners who are licensed shall be entitled to negotiate or sign contracts. The addition of a new officer or partner during the license period shall necessitate the filing of an application for individual licensure by the new officer or partner.

An applicant for a license shall file with the Commission the appropriate nonrefundable fee and any forms, documents, medical examinations, or exhibits the Commission may require in order to properly administer this Article. The information requested shall include the date of birth and social security number of each applicant as well as any other personal data necessary to positively identify the applicant and may include the requirement of verification of any documents the Commission deems appropriate. A person may not participate under a fictitious or assumed name in any match unless the person has first registered the name with the Commission.

(c) Surety Bond. – An applicant for a promoter's license must submit, in addition to any other forms, documents, or exhibits requested by the Commission, a surety bond payable to the Commission for the benefit of any person injured or damaged by (i) the promoter's failure to comply with any provision of this Article or any rules adopted by the Commission or (ii) the promoter's failure to fulfill the obligations of any contract related to the holding of a boxing event. The surety bond shall be issued in an amount to be no less than five thousand dollars ($5,000). The amount of the surety bond shall be negotiable upon the sole discretion of the Commission. All surety bonds shall be upon forms approved by the Secretary of Crime Control and Public Safety and supplied by the Commission.

(d) Permit. – A permit issued to a promoter under this Article is valid for a single match. An applicant for a permit shall file with the Commission the appropriate nonrefundable fee and any forms or documents the Commission may require.

"**§ 143-659.5. Fees; State Boxing Commission Revenue Account.**

(a) License Fees. – The Commission shall collect the following license fees:

Announcer	$50.00
Contestant	$25.00
Judge	$50.00
Manager	$100.00
Matchmaker	$200.00
Promoter	$300.00
Referee	$50.00
Timekeeper	$50.00
Second	$25.00.

The annual license renewal fees shall not exceed the initial license fees.

(b) Permit Fees. – The Commission may establish a fee schedule for permits issued under this Article. The fees may vary depending on the seating capacity of the facility to be used to present a match. The fee may not exceed the following amounts:

Seating Capacity	Fee Amount
Less than 2,000	$100.00
2,000 – 5,000	$200.00
Over 5,000	$300.00.

(c) State Boxing Commission Revenue Account. – There is created the State Boxing Commission Revenue Account within the Department of Crime Control and Public Safety. Moneys collected pursuant to the provisions of this Article shall be credited to the Account and applied to the administration of the Article.

"**§ 143-659.6. Contracts and financial arrangements.**

Any contract between licensees and related to a boxing match or exhibition held or to be held in this State must meet the requirements of administrative rules as set forth by the Commission. Any contract which does not satisfy the requirements of the administrative rules shall be void and unenforceable. All contracts shall be in writing.

"**§ 143-659.7. Sanctioned amateur matches.**

In addition to the other applicable provisions of this Article, a sanctioned amateur match shall be conducted pursuant to the rules of the sports organization sanctioning the boxing match or exhibition.

"**§ 143-659.8. Violations.**

(a) Civil Penalties. – The Secretary of Crime Control and Public Safety may issue an order against a licensee or other person who willfully violates any provision of this Article, imposing a civil penalty of up to five thousand dollars ($5,000) for a single violation or of up to twenty-five thousand dollars ($25,000) for multiple violations in a single proceeding or a series of related proceedings. No order under this subsection may be entered without giving the licensee or other person 15 days' prior notice and an opportunity for a contested case hearing conducted pursuant to Article 3 of Chapter 150B of the General Statutes.

The clear proceeds of civil penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Criminal Penalties. – A willful violation of any provision of this Article shall constitute a Class 2 misdemeanor. The Secretary of Crime Control and Public Safety may refer any available evidence concerning violations of this Article to the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings.

(c) Injunction. – Whenever it appears to the Secretary of Crime Control and Public Safety that a person has engaged or is about to engage in an act or practice constituting a violation of any provision of this Article or any rule or order hereunder, the Secretary of Crime Control and Public Safety may bring an action in any court of competent jurisdiction to enjoin those acts or practices and to enforce compliance with this Article or any rule or order issued pursuant to this Article."

SECTION 4. G.S. 18B-502(a) reads as rewritten:

"(a) Authority. – To procure evidence of violations of the ABC law, alcohol law-enforcement agents, employees of the Commission, local ABC officers, and officers of local law-enforcement agencies that have contracted to provide ABC enforcement under G.S. 18B-501(f) shall have authority to investigate the operation of each licensed premises for which an ABC permit has been issued, to make inspections that include viewing the entire premises, and to examine the books and records of the permittee. The inspection authorized by this section may be made at any time it reasonably appears that someone is on the premises. Alcohol law-enforcement agents are also authorized to be on the premises to the extent necessary to enforce the provisions of ~~Article 68~~Article 68A of Chapter 143 of the General Statutes."

SECTION 5. G.S. 90-18.3 reads as rewritten:

"**§ 90-18.3. Physical examination by nurse practitioners and physician assistants.**

(a) Whenever a statute or State agency rule requires that a physical examination shall be conducted by a physician, the examination may be conducted and the form signed by a nurse practitioner or a physician's assistant, and a physician need not be present. Nothing in this section shall otherwise change the scope of practice of a nurse practitioner or a physician's assistant, as defined by G.S. 90-18.1 and G.S. 90-18.2, respectively.

(b) This section shall not apply to physical examinations conducted pursuant to G.S. 1A-1, Rule 35; G.S. 15B-12; ~~G.S. 90-14~~G.S. 90-14; or any rules adopted by the North Carolina Boxing Commission requiring physical examinations unless those statutes or rules are amended to make the provisions of this section applicable."

SECTION 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1340

Short Title:	Reestablish Boxing Commission.	(Public)
Sponsors:	Representative Faison.	
Referred to:	Finance.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO REESTABLISH THE NORTH CAROLINA STATE BOXING COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. The regulation of boxing under the authority of the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety is transferred to the North Carolina State Boxing Commission reestablished pursuant to Article 68A of Chapter 143 of the General Statutes, as enacted in Section 3 of this act, within the Department of Commerce, Division of Tourism, Film, and Sports Development by a Type II transfer, as defined by G.S. 143A-6(b).

SECTION 2. Article 68 of Chapter 143 of the General Statutes is repealed.

SECTION 3. Chapter 143 of the General Statutes is amended by adding the following new Article to read:

"Article 68A.

"North Carolina State Boxing Commission.

"**§ 143-659.1. Legislative findings and declarations.**

The General Assembly finds and declares to be the public policy of this State that it is in the best interest of the public and of boxing that boxing should be subject to an effective and efficient system of strict control and regulation in order to:

(1) Protect the safety and well-being of participants in boxing; and

(2) Promote the public confidence and trust in the regulatory process and the conduct of boxing.

To further the public confidence and trust, the provisions of this Article are designed to regulate all persons, practices, and associations related to the operation of any live boxing event, performance, or contest held in North Carolina.

"**§ 143-659.2. Definitions.**

The following definitions apply in this Article:

(1) Amateur. – A person who is not receiving or competing for and has never received or competed for any purse or other article or thing of value for participating in a match.
(2) Announcer. – Any person who engages in the act of announcing a boxing match.
(3) Boxer. – Any person who engages as a participant in a boxing match.
(4) Boxing match. – A match where the participants engage in the use of full contact boxing techniques (using the fist only), and where the object of a match is to win by decision, knockout (KO), or technical knockout (TKO).
(5) Commission. – The North Carolina State Boxing Commission.
(6) Contest. – A boxing match in which the participants strive earnestly to win.
(7) Contestant. – Any person who engages as a participant in a boxing match.
(8) Division. – The Division of Tourism, Film, and Sports Development of the Department of Commerce.
(9) Exhibition. – A boxing match where the participants display their boxing skills and technique without necessarily striving to win.
(10) Judge. – A person who has a vote in determining the winner of any match or contest.
(11) Kickboxer. – Any person who engages as a participant in a kickboxing match.
(12) Kickboxing match. – A match in which the participants engage in full contact martial arts fighting techniques using the hands and the feet, and where the object of the match is to win by decision, knockout (KO), or technical knockout (TKO).
(13) Licensee. – Any person, club, corporation, organization, or association to whom a license has been issued pursuant to the provisions of this Article.
(14) Manager. – Any person who controls or administers the boxing affairs of any contestant, and who:
a. By contract, agreement, or other arrangement with any person undertakes or has undertaken to represent in any way the interest of the contestant in any professional boxing contest in which the boxer is to participate as a contestant, and is entitled under that contract, agreement, or arrangement to receive monetary or other compensation for his or her services, without regard to the sources of the compensation. The term 'manager' shall not be construed to mean any attorney licensed to practice in this State whose participation in the activities is restricted solely to his representing the interests of a professional boxer as a client.

b. Directs or controls the professional boxing activities of any professional boxer.

c. Receives or is entitled to receive a percentage of the gross purse or gross income of any professional boxing contest.

(15) Match. – Any boxing or kickboxing contest or exhibition, and includes any event, engagement, sparring or practice session, show or program where the public is admitted and in which there is intended to be physical contact, whether an exhibition or contest. This definition does not include training or practice sessions when no admission is charged.

(16) Matchmaker. – A person through whom matches are arranged for participants and who otherwise assists participants in procuring engagement dates for boxing.

(17) Natural person. – An individual.

(18) Participant. – Any person who engages in a match or exhibition and performs as a boxer.

(19) Person. – An individual, group of individuals, business, corporation, limited liability company, partnership, or any other individual or collective entity.

(20) Physician. – An individual licensed to practice medicine in this State.

(21) Professional. – Any person who is licensed as a professional boxer under the federal Professional Boxing Safety Act of 1996.

(22) Promoter. – Any person who produces, arranges, stages, holds, or gives any match in North Carolina involving a professional participant.

(23) Referee. – The official who shall enter and remain in the ring for the duration of a match and shall enforce the rules and maintain order in the ring.

(24) Ring official. – Any person who performs an official function for the duration of a match.

(25) Sanctioned amateur. – A person who competes in a sanctioned amateur match.

(26) Sanctioned amateur match. – Any boxing or kickboxing match regulated by an amateur sports organization that has been recognized and approved by the North Carolina Boxing Commission.

(27) Second. – Any person who will work or be present in the corner of a participant for the duration of a match.

(28) Timekeeper. – Any person who will operate the clock or watch for the duration of a match for the purpose of keeping the official time of the match.

(29) Toughman contestant. – Any person who competes in a toughman event.

(30) Toughman event. – An elimination program of matches in which: (i) the contestants are not professional boxers; (ii) the finalist receives a purse or other article of value; (iii) the participants engage in the use of

full contact boxing techniques; and (iv) the object of each match is to win by decision, knockout (KO), or technical knockout (TKO).

(31) Ultimate warrior match. – A match where the participants use any combination of boxing, kicking, wrestling, hitting, punching, or other combative, contact techniques and which combination of techniques is not specifically authorized by and conducted pursuant to this Article.

"**§ 143-659.3. State Boxing Commission.**

(a) Creation. – The North Carolina State Boxing Commission is created within the Division of Tourism, Film, and Sports Development of the Department of Commerce to regulate in North Carolina live boxing and kickboxing matches, whether professional, amateur, sanctioned amateur, or toughman events, in which admission is charged for viewing, or the contestants compete for a purse or prize of value greater than twenty-five dollars ($25.00). The Commission shall consist of seven members. All the members shall be residents of this State and meet requirements for membership under the Professional Boxing Safety Act of 1996. The initial Commission members shall be appointed as follows:

(1) The General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint two Commission members, one to serve a two-year term and one to serve a three-year term.

(2) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint two Commission members, one to serve a one-year term and one to serve a two-year term.

(3) The Governor shall appoint two Commission members, one to serve a one-year term and one to serve a three-year term.

(4) The Lieutenant Governor shall appoint one Commission member to serve a two-year term.

Upon the expiration of the terms of the initial Commission members, each member shall be appointed for a term of three years and shall serve until a successor is appointed. The Governor shall designate which member of the Commission is to serve as chair. A member of the Commission may be removed from office by the Division. Each member before entering upon the duties of a member shall take and subscribe an oath to perform the duties of the office faithfully, impartially, and justly to the best of the member's ability. A record of these oaths shall be filed in the Division.

(b) Vacancies. – Members shall serve until their successors are appointed and have been qualified. Any vacancy in the membership of the Commission shall be filled in the same manner as the original appointment. Vacancies for members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. A vacancy in the membership of the Commission other than by expiration of term shall be filled for the unexpired term only.

(c) Meetings. – Meetings of the Commission shall be called by the chair or by any two members of the Commission, and meetings shall be held at least quarterly. Any three members of the Commission shall constitute a quorum at any meeting. Action may be taken and motions and resolutions adopted by the Commission at any

meeting by the affirmative vote of a majority of the members of the Commission present at a meeting at which a quorum exists. Any or all members may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in the meeting by this means is deemed to be present in person at the meeting.

(d) Rule-Making Authority of the Commission. – The Commission shall have the exclusive authority to approve and issue rules for the regulation of the conduct, promotion, and performances of live boxing, kickboxing, sanctioned amateur, amateur, and toughman matches and exhibitions in this State. The rules shall be issued pursuant to the provisions of Chapter 150B of the General Statutes and may include, without limitation, the following subjects:

(1) Requirements for issuance of licenses and permits required by this Article.
(2) Regulation of ticket sales.
(3) Physical requirements for contestants, including classification by weight and skill.
(4) Supervision of matches and exhibitions by licensed physicians and referees.
(5) Insurance and bonding requirements.
(6) Compensation of participants and licensees.
(7) Contracts and financial arrangements.
(8) Prohibition of dishonest, unethical, and injurious practices.
(9) Facilities.
(10) Approval of sanctioning amateur sports organizations.
(11) Procedures and requirements for compliance with the Professional Boxing Safety Act of 1996.

(e) Compensation. – None of the members of the Commission shall receive compensation for serving on the Commission. However, members of the Commission may be reimbursed for their expenses in accordance with the provisions of Chapter 138 of the General Statutes.

(f) Staff Assistance. – The Division shall hire a person to serve as Executive Director of the Commission and shall provide staff assistance to the Executive Director. The Executive Director shall enforce this Article through the Division. If necessary, the Executive Director may train and contract with independent contractors for the purpose of regulating and monitoring events, issuing licenses, collecting fees, and enforcing rules of the Commission. The Executive Director may initiate and review criminal background checks on persons requesting to work as independent contractors for the Commission or persons applying to be licensed by the Commission.

"**§ 143-659.4. Licensing and permitting.**

(a) License and Permit Required. – Except for sanctioned amateur matches, it is unlawful for any person to act in this State as an announcer, contestant, judge, manager, matchmaker, promoter, referee, timekeeper, or second unless the person is licensed to do so under this Article. It is unlawful for a promoter to present a match in this State,

other than a sanctioned amateur match, unless the promoter has a permit issued under this Article to do so. The Commission has the exclusive authority to issue, deny, suspend, or revoke any license or permit provided for in this Article.

(b) License. – All licenses issued under this Article shall be valid only during the calendar year in which they are issued, except contestant licenses shall be valid for one year from the date of issuance. A license for an announcer, contestant, judge, matchmaker, referee, timekeeper, or second shall be issued only to a natural person. A natural person shall not transfer or assign a license or change it into another name. A license for a manager or promoter may be issued to a corporation or partnership; provided, however, that all officers or partners shall submit an application for individual licensure, and only those officers or partners who are licensed shall be entitled to negotiate or sign contracts. The addition of a new officer or partner during the license period shall necessitate the filing of an application for individual licensure by the new officer or partner.

An applicant for a license shall file with the Commission the appropriate nonrefundable fee and any forms, documents, medical examinations, or exhibits the Commission may require in order to properly administer this Article. The information requested shall include the date of birth and social security number of each applicant as well as any other personal data necessary to positively identify the applicant and may include the requirement of verification of any documents the Commission deems appropriate. A person may not participate under a fictitious or assumed name in any match unless the person has first registered the name with the Commission.

(c) Surety Bond. – An applicant for a promoter's license must submit, in addition to any other forms, documents, or exhibits requested by the Commission, a surety bond payable to the Commission for the benefit of any person injured or damaged by (i) the promoter's failure to comply with any provision of this Article or any rules adopted by the Commission or (ii) the promoter's failure to fulfill the obligations of any contract related to the holding of a boxing event. The surety bond shall be issued in an amount to be no less than five thousand dollars ($5,000). The amount of the surety bond shall be negotiable upon the sole discretion of the Commission. All surety bonds shall be upon forms approved by the Division and supplied by the Commission.

(d) Permit. – A permit issued to a promoter under this Article is valid for a single match. An applicant for a permit shall file with the Commission the appropriate nonrefundable fee and any forms or documents the Commission may require.

"**§ 143-659.5. Fees; State Boxing Commission Revenue Account.**

(a) License Fees. – The Commission shall collect the following license fees:

Announcer	$50.00
Contestant	$25.00
Judge	$50.00
Manager	$100.00
Matchmaker	$200.00
Promoter	$300.00
Referee	$50.00
Timekeeper	$50.00

Second	$25.00.

The annual license renewal fees shall not exceed the initial license fees.

(b) Permit Fees. – The Commission may establish a fee schedule for permits issued under this Article. The fees may vary depending on the seating capacity of the facility to be used to present a match. The fee may not exceed the following amounts:

Seating Capacity	Fee Amount
Less than 2,000	$100.00
2,000 – 5,000	$200.00
Over 5,000	$300.00.

(c) State Boxing Commission Revenue Account. – There is created the State Boxing Commission Revenue Account within the Division of Tourism, Film, and Sports Development of the Department of Commerce. Moneys collected pursuant to the provisions of this Article shall be credited to the Account and applied to the administration of the Article.

"**§ 143-659.6. Contracts and financial arrangements.**

Any contract between licensees and related to a boxing match or exhibition held or to be held in this State must meet the requirements of administrative rules as set forth by the Commission. Any contract which does not satisfy the requirements of the administrative rules shall be void and unenforceable. All contracts shall be in writing.

"**§ 143-659.7. Sanctioned amateur matches.**

In addition to the other applicable provisions of this Article, a sanctioned amateur match shall be conducted pursuant to the rules of the sports organization sanctioning the boxing match or exhibition.

"**§ 143-659.8. Violations.**

(a) Civil Penalties. – The Division may issue an order against a licensee or other person who willfully violates any provision of this Article, imposing a civil penalty of up to five thousand dollars ($5,000) for a single violation or of up to twenty-five thousand dollars ($25,000) for multiple violations in a single proceeding or a series of related proceedings. No order under this subsection may be entered without giving the licensee or other person 15 days' prior notice and an opportunity for a contested case hearing conducted pursuant to Article 3 of Chapter 150B of the General Statutes.

The clear proceeds of civil penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Criminal Penalties. – A willful violation of any provision of this Article shall constitute a Class 2 misdemeanor. The Division may refer any available evidence concerning violations of this Article to the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings.

(c) Injunction. – Whenever it appears to the Division that a person has engaged or is about to engage in an act or practice constituting a violation of any provision of this Article or any rule or order hereunder, the Division may bring an action in any court of competent jurisdiction to enjoin those acts or practices and to enforce compliance with this Article or any rule or order issued pursuant to this Article."

SECTION 4. G.S. 18B-502(a) reads as rewritten:

"(a) Authority. – To procure evidence of violations of the ABC law, alcohol law-enforcement agents, employees of the Commission, local ABC officers, and officers of local law-enforcement agencies that have contracted to provide ABC enforcement under G.S. 18B-501(f) shall have authority to investigate the operation of each licensed premises for which an ABC permit has been issued, to make inspections that include viewing the entire premises, and to examine the books and records of the permittee. The inspection authorized by this section may be made at any time it reasonably appears that someone is on the premises. Alcohol law-enforcement agents are also authorized to be on the premises to the extent necessary to enforce the provisions of ~~Article 68~~Article 68A of Chapter 143 of the General Statutes."

SECTION 5. G.S. 90-18.3 reads as rewritten:

"**§ 90-18.3. Physical examination by nurse practitioners and physician assistants.**

(a) Whenever a statute or State agency rule requires that a physical examination shall be conducted by a physician, the examination may be conducted and the form signed by a nurse practitioner or a physician's assistant, and a physician need not be present. Nothing in this section shall otherwise change the scope of practice of a nurse practitioner or a physician's assistant, as defined by G.S. 90-18.1 and G.S. 90-18.2, respectively.

(b) This section shall not apply to physical examinations conducted pursuant to G.S. 1A-1, Rule 35; G.S. 15B-12; ~~G.S. 90-14~~G.S. 90-14; or any rules adopted by the North Carolina Boxing Commission requiring physical examinations unless those statutes or rules are amended to make the provisions of this section applicable."

SECTION 6. This act is effective when it becomes law.

HOUSE BILL 1340:
Reestablish Boxing Commission

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 7, 2005
Introduced by:	Rep. Faison	**Summary by:**	Martha Walston
Version:	PCS to First Edition H1340-CSLAf-12		Committee Counsel

SUMMARY: ***The proposed committee substitute for House Bill 1340 transfers the regulation of boxing from the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety to the newly reestablished Boxing Commission created within the Department of Crime Control and Public Safety. The current license fees, permit fees, civil penalties, and criminal penalties remain the same.***

The 1st edition of House Bill 1230 transferred the regulation of boxing to the Department of Commerce, Division of Tourism, Film, and Sports Development and reestablished the North Carolina State Boxing Commission within the Division of Tourism, Film, and Sports Development.

CURRENT LAW: The Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety currently regulates the following boxing activities:

- Live boxing and kickboxing matches, whether professional, amateur, sanctioned amateur, or toughman events, in which admission is charged for viewing, or the contestants compete for a purse or prize of value greater than $25.

Prior to July 1, 2004, the above activities (hereinafter referred to as boxing) were controlled by the North Carolina State Boxing Commission created within the Department of Crime Control and Public Safety.

BILL ANALYSIS: House Bill 1340 reestablishes the North Carolina State Boxing Commission within the Department of Crime Control and Public Safety and transfers regulation of boxing to this Commission. The Commission will differ from the previous Commission in its membership:

- The **new Commission** will be composed of seven members who are residents of the State and meet requirements for membership under the Professional Boxing Safety Act of 1996. The initial members shall be appointed as follows:
  (1) Two voting members appointed by the General Assembly (one by the Speaker of the House of Representatives for three-year term and one by the President Pro Tempore of the Senate for a one-year term).
  (2) Three voting members appointed by the Governor (one to serve a three-year term, one to serve a two-year term, and one to serve a one-year term)
  (3) Two nonvoting members to be appointed respectively by the Speaker of the House of Representatives and the President Pro Tempore of the Senate for two-year terms. (Each appointment will be made from two licensed N.C. physicians nominated by the North Carolina Medical Society.)

  The **previous Commission** consisted of six voting and two nonvoting advisory members who were residents of N.C. and met requirements for membership under the Professional Boxing Safety Act of 1999 as follows:
  (1) One voting member appointed by the Governor

(2) Four members appointed by the General Assembly (Two members, one voting and one nonvoting, by the Speaker of the House of Representatives and two members, one voting and one nonvoting, by the President Pro Tempore of the Senate)
(3) Two voting members appointed by the Secretary of Crime Control and Public Safety
(4) One member appointed by the Tribal Council of the Eastern Band of the Cherokee.[1]

House Bill 1340 continues the current prohibition against ultimate warrior matches. An "ultimate warrior match" is defined as a match where the participants use any combination of boxing, kicking, wrestling, hitting, punching, or other combative, contact techniques and which combination of techniques is not specifically authorized by and conducted pursuant to this Article.

House Bill 1340 provides that rules adopted by the Boxing Commission requiring physical examinations are not governed by the statute in Chapter 90 that allows a physical examination to be conducted by a nurse practitioner or a physician's assistant when a statute or agency rule requires a physician to conduct the physical examination. The Bill requires that a physical examination must be conducted by a physician.

The statute governing current license fees and permit fees will remain the same The fees are currently placed in a State Boxing Commission Revenue Account within the Department of Crime Control and Public Safety and applied to the administration of the Article. The fees are set out below:

License Fees: The annual license renewal fees may not exceed the initial license fees

Announcer	$50
Contestant	$25
Judge	$50
Manager	$100
Matchmaker	$200
Promoter	$300
Referee	$50
Timekeeper	$50
Second	$25

Permit Fees: The Commission may establish a fee schedule for permits issued under this Article. The fees may vary depending on the seating capacity of the facility to be used to present a match. The fee may not exceed the following amounts:

Seating Capacity	Fee amount
Less than 2, 000	$100
2,000 – 5,000	$200
Over 5,000	$300

The current civil penalties and criminal penalties for violations of the Article also remain the same.

EFFECTIVE DATE: House Bill 1340 is effective when it becomes law.

H1340e1-SMLA-CSLAf-12

[1] This member may serve on the Commission only if an agreement exists and remains in effect between the Tribal Council of the Eastern Band of the Cherokee and the Commission authorizing the Commission to regulate professional boxing matches within the Cherokee Indian Reservation as provided by the Professional Boxing Safety Act of 1996.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 6, 2005

TO: Representative Faison

FROM: Denise Thomas
Fiscal Research Division

RE: House Bill 1340, Reestablish Boxing Commission (6/2/05 PCS)

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
EXPENDITURES:	$83,954	$83,954	$83,954	$83,954	$83,954
POSITIONS (cumulative):	1.0	1.0	1.0	1.0	1.0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Crime Control and Public Safety

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

BILL SUMMARY: The proposed committee substitute for House Bill 1340 transfers the regulation of boxing from the NC Boxing Authority in the Alcohol Law Enforcement Division, Department of Crime Control and Public Safety to the newly re-established Boxing Commission created within the Department of Crime Control and Public Safety. The current license fees, permit fees, civil penalties, and criminal penalties remain the same.

ASSUMPTIONS AND METHODOLOGY: HB 1340 proposes to re-establish the Boxing Commission with the same the number of commissioners, types of events allowed, and types/ amounts of fees that were established under the former Boxing Commission. The bill directs the Secretary to hire an Executive Director and to provide staff assistance to the Director. The costs to re-establish the Boxing Commission as directed in the bill would be those associated with the seven new commission members and the compensation for the Executive Director. Because HB 1340 makes no other changes, it is assumed that the annual number of events and the fees generated would remain unchanged from the current levels. According to data provided by the NC Boxing Authority staff, the travel and per diem costs for seven Commission members to attend four meetings annually was $2,600 in FY 2003-04. The salary and compensation cost for the current Executive Director of the NC Boxing Authority is $81,354 annually. Thus the total costs to re-establish the seven-member commission and to compensate an Executive Director are estimated at $83,954 in the first year.

The 2004 Budget Bill, S.L. 2004-124, included a provision that eliminated the Boxing Commission, including its general fund appropriation, and transferred the regulation of boxing to the Division of Alcohol Law Enforcement (ALE). The bill directed the Department of Crime Control and Public Safety (CCPS) to use available salary reserve funds to reclassify the two Boxing Commission staff positions and transfer them to ALE. The former two-member Boxing Commission staff was transferred and the NC Boxing Authority was established within ALE in FY 2004-05. In FY2003-04, the annual operating budget for the NC Boxing Commission was approximately $174,449 with $40,000 in budgeted receipts for a net general fund appropriation of about $134,449. As a result of S.L. 2004-124, the CCPS general fund appropriation was reduced by $134,449, requiring the Department to re-allocate existing funds and salary reserve within its budget to support the cost of regulating boxing. HB 1340, however, does not specify if funds are to be provided to support the full administrative costs of boxing regulation. Because there are no references to other administrative costs, it is assumed for the purpose of this fiscal memorandum, that the only cost associated with this bill is the amount needed to compensate the Executive Director and support the Commissioners' actual expenses to attend four annual meetings.

SOURCES OF DATA: NC Boxing Authority staff at the Department of Crime Control and Public Safety, Division of Alcohol Law Enforcement.

TECHNICAL CONSIDERATIONS: As currently drafted, HB 1340 is not clear in the intent regarding funds to support all costs associated with boxing regulation. If no additional funds are to be provided other than the $83,954 estimated above, should it be assumed that the Department must transfer funds from ALE or other divisions to fully support the Commission's cost to regulate boxing?

S.L. 2004-124 eliminated all general fund appropriation for the Boxing Commission and directed the Department to use available funds to reclassify and transfer two positions to ALE to regulate boxing. Currently, there are two positions in the NC Boxing Authority with total budgeted personal services cost of $131,454 and another $43,000 budgeted for contracts, supplies, equipment, and other operating costs. In FY 2003-04, $29,216 in boxing receipts was realized. Outside of the one position established, should the remaining position, the funds, and other resources of the existing NC Boxing Authority be transferred to the Commission or are there to be

new recurring funds appropriated to fully support all staff and operating costs associated with the regulation of boxing in the state? Neither the former NC Boxing Commission nor the current NC Boxing Authority ever realized more than $50,000 in receipts. So anticipated receipts would not be adequate to make up the remainder of the cost of boxing regulation.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for
HB 1340 A BILL TO BE ENTITLED AN ACT TO REESTABLISH THE NORTH CAROLINA STATE BOXING COMMISSION.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on APPROPRIATIONS.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

ATTACHMENT 14

(Please type or use ballpoint pen)

Withdrawn

EDITION No. 2nd Ed

H. B. No. 892 DATE 6/7/05

S. B. No. Amendment No.

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE H892-CSRU-50

Rep.) Wainwright

Sen.)

moves to amend the bill on page 2, lines 19-21

( ) WHICH CHANGES THE TITLE

by deleting those lines

and on page 2, line 22 by deleting "(d)" and substituting "(c)".

SIGNED Thomas Wainwright

ADOPTED FAILED TABLED

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 206
Finance Committee Substitute Adopted 5/11/05

Short Title: Salemburg Boundary Validation. (Local)

Sponsors:

Referred to:

February 24, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE CORPORATE LIMITS OF THE TOWN OF SALEMBURG AND TO VALIDATE ELECTIONS AND ACTS OF THE TOWN.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2.1 of the Charter of the Town of Salemburg, being Chapter 104, Session Laws of 1967, as amended by an annexation ordinance in 1977, reads as rewritten:

"Section 2.1. Existing Corporate Boundaries. The corporate boundaries of the Town of Salemburg shall be as follows until changed in accordance with law:

~~"Being located in the County of Sampson, and described by metes and bounds as follows: BEGINNING at a stake and a point in the center of N. C. Highway No. 242, said stake and point being located South 12 degrees 18 minutes West, 2750 feet from the center point of the intersection of College Street and Main Street in the Town of Salemburg; thence South 76 degrees East, 1989.5 feet to a stake; thence North 14 degrees East, 1612 feet to a stake in the center of Laurel Lake Road; thence the same course (North 14 degrees East) 1809 feet to a stake in the center of the Clinton-Salemburg Road; thence the same course (North 14 degrees East) 2579 feet to a stake; thence North 76 degrees West, 210.12 feet to a stake in the center of a road known as "Cemetery Road"; thence the same course (North 76 degrees West) 1923 feet to a stake in the center of N. C. Highway No. 242 leading to Dunn, North Carolina; thence the same course (North 76 degrees West) 1866.88 feet to a stake; thence South 14 degrees West 1032 feet to a stake in the center of Pine Street; thence the same course (South 14 degrees West) 2780.19 feet to a stake in the center of County Road No. 1233 which leads from Salemburg to Autryville; thence the same course (South 14 degrees West) 2187.81 feet to a stake; thence South 76 degrees East 1299 feet to a stake in the center of Fayetteville Street; thence the same course (South 76 degrees East) 711.5 feet to a stake in the center of N. C. Highway No. 242; the beginning point; said description fully describing by metes and bounds the outside boundaries of the Town of Salemburg, North Carolina.~~

"BEGINNING at a stake located on the Southwestern side of N. C. Highway 242, which stake is located North 79 degrees 28 minutes 27 seconds West 231.98 feet from the CONTROL CORNER, NC GRID COORDINATES (NAD 83): N=458,194.08 feet, E=2,148,302.85 feet, COMBINED GRID CORRECTION FACTOR = 0.9998786; and runs thence from said Beginning Point North 79 degrees 28 minutes 27 seconds West 194.13 feet; thence North 79 degrees 28 minutes 27 seconds West 288.77 feet to an RRS in the centerline of South Fayetteville Street; thence North 79 degrees 28 minutes 27 seconds West 1,295.62 feet; thence North 10 degrees 31 minutes 33 seconds East 1,769.08 feet to a stake; thence South 82 degrees 32 minutes 15 seconds West 85.34 feet; thence South 83 degrees 00 minutes 38 seconds West 403.42 feet; thence South 83 degrees 48 minutes 38 seconds West 112.41 feet; thence South 86 degrees 27 minutes 38 seconds West 124.51 feet; thence North 89 degrees 22 minutes 22 seconds West 128.04 feet; thence North 85 degrees 44 minutes 22 seconds West 124.86 feet; thence North 82 degrees 27 minutes 22 seconds West 128.87 feet; thence North 77 degrees 42 minutes 22 seconds West 131.33 feet; thence North 73 degrees 44 minutes 22 seconds West 127.14 feet; thence North 70 degrees 09 minutes 22 seconds West 121.39 feet; thence North 67 degrees 47 minutes 22 seconds West 48.51 feet; thence North 22 degrees 12 minutes 38 seconds East 400 feet to an RRS in the center of West College Street; thence North 22 degrees 12 minutes 38 seconds East 300 feet to a stake; thence South 67 degrees 47 minutes 22 seconds East 34.05 feet; thence South 70 degrees 09 minutes 22 seconds East 85.03 feet; thence South 73 degrees 44 minutes 22 seconds East 81 feet; thence South 77 degrees 42 minutes 22 seconds East 78.06 feet; thence South 82 degrees 27 minutes 22 seconds East 79.78 feet; thence South 85 degrees 44 minutes 22 seconds East 82.60 feet; thence South 89 degrees 22 minutes 22 seconds East 80.37 feet; thence North 86 degrees 27 minutes 38 seconds East 82.86 feet; thence North 83 degrees 48 minutes 38 seconds East 91.33 feet; thence North 83 degrees 00 minutes 38 seconds East 494.83 feet; thence North 10 degrees 31 minutes 33 seconds East 2,529.20 feet; thence South 79 degrees 51 minutes 27 seconds East 90.98 feet to an RRS in the center of the Old Fayetteville Road (SR 1492); thence South 79 degrees 51 minutes 27 seconds East 109.02 feet to an RRS in the center of West Pine Street; thence North 11 degrees 01 minute 12 seconds East 369.53 feet to an IPS; thence South 79 degrees 47 minutes 31 seconds East 393.94 feet to an EIR; thence North 10 degrees 12 minutes 29 seconds East 496.85 feet to an IPS; thence South 88 degrees 32 minutes 14 seconds East 631.02 feet to an EIR; thence North 28 degrees 02 minutes 27 seconds East 65.09 feet to an IPS; thence South 79 degrees 28 minutes 27 seconds East 208.19 feet to an RRS in the centerline of North Fayetteville Street; thence South 79 degrees 28 minutes 27 seconds East 362.74 feet; thence North 10 degrees 31 minutes 33 seconds East 612.42 feet; thence North 07 degrees 59 minutes 09 seconds East 192.61 feet; thence North 06 degrees 50 minutes 42 seconds East 165.61 feet; thence North 72 degrees 55 minutes 38 seconds East 249.85 feet to a stake in the centerline of a 42 inch RCP culvert in the center of N C Highway 242; thence South 88 degrees 38 minutes 03 seconds East 230.60 feet; thence South 05 degrees 30 minutes 59 seconds West 88.57 feet; thence South 06 degrees 50 minutes 42 seconds West 204.96 feet; thence South 07 degrees 59 minutes 09 seconds West 207.39 feet; thence South 10 degrees 31 minutes

33 seconds West 622.62 feet; thence South 79 degrees 28 minutes 27 seconds East 1,694.52 feet to an RRS in the center of Northeast Main Street; thence South 79 degrees 28 minutes 27 seconds East 208.60 feet; thence South 10 degrees 31 minutes 33 seconds West 2,335.65 feet; thence North 83 degrees 34 minutes 21 seconds East 83.51 feet; thence North 85 degrees 08 minutes 21 seconds East 140.60 feet; thence South 04 degrees 51 minutes 39 seconds East 230 feet to an RRS in the center of Bonnettsville Road (SR 1233); thence South 07 degrees 46 minutes 39 seconds East 408.02 feet; thence South 82 degrees 41 minutes 21 seconds West 425.03 feet; thence South 10 degrees 31 minutes 33 seconds West 1,133.62 feet; thence North 83 degrees 10 minutes 33 seconds East 197.14 feet; thence North 88 degrees 22 minutes 33 seconds East 122.95 feet; thence South 86 degrees 13 minutes 27 seconds East 116.38 feet; thence South 84 degrees 03 minutes 27 seconds East 898.39 feet; thence South 81 degrees 05 minutes 27 seconds East 121.48 feet; thence South 74 degrees 08 minutes 27 seconds East 128.85 feet; thence South 67 degrees 46 minutes 27 seconds East 121.26 feet; thence South 63 degrees 51 minutes 56 seconds East 700.09 feet; thence South 26 degrees 08 minutes 04 seconds West 230 feet to a stake in the center of Laurel Lake Road as it passes over a 2-72 " CMP Culverts; thence South 16 degrees 02 minutes 04 seconds West 183.73 feet; thence South 43 degrees 07 minutes 25 seconds West 218.21 feet; thence South 10 degrees 51 minutes 25 seconds West 164.11 feet; thence South 31 degrees 11 minutes 25 seconds West 199.65 feet; thence North 57 degrees 35 minutes 35 seconds West 478.00 feet to an EIP; thence North 32 degrees 24 minutes 25 seconds East 174.99 feet to an EIP; thence North 32 degrees 24 minutes 25 seconds East 25.13 feet to an EIP; thence North 32 degrees 24 minutes 25 seconds East 66 feet; thence North 63 degrees 51 minutes 56 seconds West 225.61 feet; thence North 67 degrees 46 minutes 27 seconds West 62.03 feet; thence North 74 degrees 08 minutes 27 seconds West 52.06 feet; thence North 81 degrees 05 minutes 27 seconds West 64.31 feet; thence North 84 degrees 03 minutes 27 seconds West 876.61 feet; thence North 05 degrees 56 minutes 33 seconds East 199.85 feet; thence North 86 degrees 13 minutes 27 seconds West 81.98 feet; thence South 88 degrees 22 minutes 33 seconds West 80.37 feet; thence South 83 degrees 10 minutes 33 seconds West 319.97 feet; thence South 10 degrees 31 minutes 33 seconds West 845.89 feet to an IPS; thence North 79 degrees 43 minutes 02 seconds West 36.99 feet to an EIR; thence South 26 degrees 28 minutes 47 seconds West 53.15 feet to an EIR; thence South 26 degrees 38 minutes 01 seconds West 38.62 feet to an EIR; thence South 46 degrees 53 minutes 32 seconds West 73.80 feet to an EIR; thence South 61 degrees 32 minutes 42 seconds West 80.73 feet to an EIR; thence North 59 degrees 39 minutes 13 seconds West 28.58 feet to an EIR; thence North 53 degrees 50 minutes 45 seconds West 67.19 feet to an EIR; thence South 31 degrees 59 minutes 33 seconds West 392.66 feet to an IPS; thence North 79 degrees 28 minutes 27 seconds West 1,357.52 feet; thence South 03 degrees 02 minutes 27 seconds West 215.16 feet; thence South 00 degrees 27 minutes 33 seconds East 1,327.49 feet; thence North 89 degrees 32 minutes 27 seconds East 170 feet; thence South 00 degrees 27 minutes 33 seconds East 295 feet; thence South 89 degrees 32 minutes 27 seconds West 170 feet; thence South 00 degrees 27 minutes 33 seconds East 738.43 feet; thence South 89 degrees 32 minutes 27 seconds West 230 feet to an RRS in the centerline of

South Main Street (NC Hwy 242); thence South 89 degrees 32 minutes 27 seconds West 230 feet; thence North 00 degrees 27 minutes 33 seconds West 2,375 feet; thence North 03 degrees 02 minutes 27 seconds East 289.62 feet to the Point of Beginning. This being the REVISIONS TO TOWN LIMITS OF THE TOWN OF SALEMBURG, all as shown on a map entitled, "COMPOSITE MAP FOR TOWN OF SALEMBURG, SAMPSON COUNTY, NORTH CAROLINA, REVISIONS TO TOWN LIMITS", dated January 12, 2005, prepared by George Finch/Boney and Associates, P. A., 309 North Boylan Avenue, Raleigh, North Carolina 27603, reference to which is made for the purpose of incorporating the same herein."

SECTION 2. The territory described in Section 1 of this act is within the boundaries of the Honeycutts Fire District.

SECTION 3. Any and all official votes, acts, and actions of any member of the Board of Commissioners of the Town of Salemburg, prior to the enactment of this act, who has resided or who resides in any of the territory described in Section 1 of this act are hereby ratified, validated, and confirmed.

SECTION 4. All prior elections heretofore in which the qualified voters of the Town of Salemburg participated are validated, and the current Board of Commissioners are properly and legally acting as the Board of Commissioners of the Town.

SECTION 5. Any and all official acts, actions, expenditures, and levies of taxes or assessments by the Town of Salemburg prior to the enactment of this act, with respect to or affecting territories and properties described in Section 1 of this act are ratified, validated, and confirmed.

SECTION 6. Immediately upon this act becoming law, the Town Clerk shall cause an accurate map of the corporate limits to be filed in the offices of the Secretary of State, the Sampson County Register of Deeds, and the Sampson County Board of Elections. The Town Clerk shall cause to be placed on the face of the map the following certification, dated and signed by the Clerk, with the blanks filled in as appropriate: "The corporate limits of the Town of Salemburg shown in this map are as established by Act of the North Carolina General Assembly ratified on the ____ day of _____, 2005, as Session Law 2005-___." Immediately upon any subsequent alterations of the corporate limits, the appropriate filing of maps and ordinances shall be made, as required by general law.

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

SENATE BILL 206:
Salemburg Boundary Validation

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 7, 2005
Introduced by:	Sen. Albertson	**Summary by:**	Cindy Avrette
Version:	Second Edition		Committee Counsel

SUMMARY: Senate Bill 206 clarifies the corporate limits of the Town of Salemburg and validates elections and acts of the Town.

BILL ANALYSIS: Senate Bill 206 clarifies the exact location of the boundaries of the corporate limits of the Town of Salemburg based on a recent survey. The bill also validates and confirms any and all official votes, acts, and actions of any member of the Board of Commissioners of the Town who resides in the territory identified in the act as well as validates prior elections and levies of taxes or assessments.

The bill requires the Town Clerk to file a map of the corporate limits with the Secretary of State, the Sampson County Register of Deeds, and the Sampson County Board of Elections.

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

Trina Griffin, counsel to the Senate Finance Committee, substantially contributed to this summary.

S0206e2-SMRB

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

SB 206 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE CORPORATE LIMITS OF THE TOWN OF SALEMBURG AND TO VALIDATE ELECTIONS AND ACTS OF THE TOWN.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 16

EDITION No. _____

H. B. No. 892

DATE 6/7/05

S. B. No. _____

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

COMMITTEE SUBSTITUTE _____

Rep.) ~~Lewis~~ Lewis
)
Sen.)

1 moves to amend the bill on page 2, line 17-18

2 ( ) WHICH CHANGES THE TITLE

3 by by rewriting the sentence

4 beginning on line 17 to

5 read: "The signed form shall be

6 made available to law

7 enforcement personnel upon

8 request".

9

10

11

12

13

14

15

16

17

18

19

SIGNED Lewis

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

North Carolina General Assembly

House Committee on Finance

Minutes

~

June 7, 2005

The House Committee on Finance met on Tuesday, June 7, 2005 at 2:30 pm in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Luebke, McComas and Wainwright; Vice-Chairs Daughtridge, Hill, Weiss, and Womble; Representatives Blackwood, Blust, Bordsen, Capps, Carney, Faison, Folwell, Glazier, Hackney, Harrell, Holliman, Jones, Lewis, McGee, Rayfield, Underhill, Walend, and Wiley; and Ex-Officio members Representatives Culpepper and Cunningham. Also present were Sergeant-at-Arms Jonathan Calloway, Bill Freeman, Fred Hines, Dusty Rhodes, Bill Sullivan, and James Worth. Staff persons present included Cindy Avrette, Rodney Bizzell, Gerry Cohen, David Crotts, Brenna Erford, Canaan Huie, Linda Millsaps and Martha Walston. The Visitor Registration Sheet is attached and incorporated into these minutes as **attachment 1**.

Chairman Luebke called the meeting to order at 2:52 pm and recognized the eleven (11) pages present: (1) Ward Collins of Macon County, sponsored by Representative Haire; (2) Lindsey Garrison of Scotland County, sponsored by Representative Yongue; (3) Emily Helm of Guilford County, sponsored by Representative Jeffus; (4) Chris Hall of Robeson County, sponsored by Speaker Black; (5) Amelia Muse of Durham County, sponsored by Representative Hackney; (6) Carrie Neal of New Hanover County, sponsored by Representative McComas; (7) Michael Pell of Alamance County, sponsored by Representative Allred; (8) Scott Poseil of Wake County, sponsored by Representative Yongue; (9) Linzy Shout of Davidson County, sponsored by Representative Holliman; (10) Eric Spitler of Wake County, sponsored by Representative Eddins; and (11) Rob Williams of Johnston County, sponsored by Representative Daughtry

The bill under the Committee's consideration was **HB 1630 – 2005 CONTINUING BUDGET AUTHORITY/REVENUE** (see **attachment 2**). Chairman Luebke first recognized Representative Alexander who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion passed. Chairman Luebke recognized Gerry Cohen of Bill Drafting to give an overall explanation of the first section of the bill, which pertained to a continuing resolution of the current budget. The continuing resolution section allows for spending at current levels if the current budget is not passed by the end of the fiscal year (June 30, 2005). Chairman Luebke then recognized Cindy Avrette who explained each of the revenue provisions of the bill. Following the bill's explanation, Representative Wainwright was recognized to comment on the bill. He stated that the bill was not a tax increase but simply continued taxes that were already in existence. He further stated that the State needed the revenue provided in the bill to support education, Medicaid, public safety, and economic development. He concluded by stating that North Carolina is one of the fastest growing states in the nation and needs a budget that supports this growth. Chairman Luebke then recognized Representative Alexander who reported that there was a

lot of talk about not supporting the budget by House members, but she was hopeful that members would support the bill, which would provide for the revenue needs of the State. Representative Bordsen was then recognized to send forth a technical amendment (see **attachment 3**), and she moved for its adoption. Seeing no further discussion, Chairman Luebke called the motion to a vote and it carried without objection. Representative Capps was then recognized and stated that the members should have been provided with a projected revenue chart detailing revenue situation in the State without the passage of the bill. Chairman Luebke then recognized Representative Hackney who stated that the revenue provisions of the bill were absolutely necessary in order to provide for students in the university system, state employee pay raises, Medicaid funding, and the State Health Plan. Chairman Luebke then recognized Representative Rayfield who asked for a comparison between the budgets of 2004 and 2005. David Crotts from Research was recognized and reported that revenue collection was $527 million above the projection, but 75-80% of that amount was non-recurring. Representative Womble was then recognized and asked the time span of the continuation of the half-cent sales tax. Representative Wainwright reported that the continuation would only last for 2 more years and would not make the increase permanent, as was proposed in the Senate budget. Chairman Luebke then recognized Representative Faison who asked if there were any new income tax provisions. Chairman Luebke responded by saying that there are no new income taxes, only continuations of existing taxes. Representative Ross was then recognized and asked what items will no longer be taxed under the streamline sales tax provisions of the bill. Chairman Luebke recognized Linda Millsaps from Fiscal Research who read a detailed list of specific items no longer being taxed. Representative McGee was then recognized and requested an explanation on the proposed tax on candy. Chairman Luebke recognized Linda Millsaps once again who stated that candy was currently exempt from sales taxes, but this bill would impose a 7% tax on candy as a part of the Streamlined Sales Tax Provisions. Representative Capps was then recognized and asked about taxes on candy sold from vending machines. Chairman Luebke recognized Andy Sabol from the Department of Revenue who reported that sales taxes on candy sold through vending machines only apply to 50% of the gross receipts. Chairman Luebke then recognized Representative Blust who sent forth an amendment (see **attachment 4**) and moved its adoption. He stated that the amendment changes the title on the bill to a less explicit title that would allow amendments on the House floor. Representative Wainwright was recognized and announced his opposition to the amendment saying that he wants the bill to be transparent so there will be no mistake about the contents of the bill. Chairman Luebke then recognized Representative Blust who requested that the ayes and nays be recorded on the vote for the amendment. Representative Culpepper was then recognized and stated that he opposed the amendment and explained that the title is the way it is because bills addressing tax measures have always included specific language in the title. As there was no further debate, Chairman Luebke called the motion to a vote and directed the Committee Clerk to call the roll (see **attachment 5**). The amendment failed by a vote of 11 ayes and 19 nays. Chairman Luebke then recognized Representative Lewis who sent forth an amendment (**attachment** 6) that exempts candy from the sales tax provision of the bill. Representative Lewis explained that he does not believe that children should have to pay more for candy. He then moved for the amendment's adoption and requested that the ayes and nays be recorded on the vote. Representative Alexander was then recognized and expressed her opposition to the amendment reminding members of the obesity problem in the State, which is directly effected by the consumption of candy by young people. Representative Gibson was then recognized and stated that this amendment would move North Carolina further away from the Streamlined Sales Tax Agreement that the Committee and the General Assembly has been working toward for a number of years. Seeing no further discussion, Chairman Luebke then called the motion to a vote and directed the Committee Clerk to call the roll (see **attachment 7**). The amendment failed by a vote of 11 ayes to 19 nays. Chairman Alexander was then recognized and moved for a favorable report to the proposed committee substitute, incorporating the technical amendment, and an unfavorable report to the original bill. Representative Blust was then recognized to speak against the motion stating

that the Committee should not pass a revenue package and a continuation provision in the same bill. He further reported his belief that the people of North Carolina see a tax extension as a tax increase and cited a recent poll. He continued by stating that the extension of the tax measure is bad policy and the General Assembly needs to address the structural problems within the State budget. Representative Blust also requested a recording of the ayes and nays to the Alexander motion. As there was no further debate, Chairman Luebke then called the motion to a vote and directed the Committee Clerk to call the roll (see **attachment 8**). The motion carried by a vote of 19 ayes to 11 nays.

As there was no further business before the Committee, Chairman Luebke then adjourned the meeting at 4:10 pm.

Respectfully submitted,

Representative Paul Luebke
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. House Bill 1630 (and related materials)
3. Bordsen Amendment on HB 1630 - **ADOPTED**
4. Blust Amendment on HB 1630 - **FAILED**
5. Roll Call Vote on Blust Amendment on HB 1630
6. Lewis Amendment on HB 1630 – **FAILED**
7. Roll Call Vote on Lewis Amendment on HB 1630
8. Roll Vote on Alexander Motion - **PASSED**

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, June 7, 2005**

TIME: **2:30 p.m.**

LOCATION: **Room 544, LOB**

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

HB 1630 – FINANCE LAWS 1 – Rep. Luebke

Respectfully,
Representatives Alexander, Gibson, Howard, Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **2:01 pm** on **June 7, 2005.**

_X_ Principal Clerk
_X_ Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

ATTACHMENT 1

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 7, 2005 (2:30 pm)

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris Valauri	NC Beer
Butch Gunnells	NCSDA
MaryAlice Malone	GA Intern - Rep Justus
Chad Hinton	Civitas Institute
Casandra Skinner	ceps
Johanna Reese	DENR
Deborah Ley	Gov's office
Heather Strickland	Revenue
Karl Knapp	DOR
Warren Plonk	OSBM
	NCRA - NCWA

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 7, 2005 (2:30 pm)

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doug Heron	NC Bar Association
Noah Woods	NCACC
Curtis Woods	Intern for Rep. Sutton
Rebecca Key	intern for Rep. Gibson
Andy Ellen	NCRMP
Doug Thwey	NCPMA
Gary Harris	NC Petroleum Marketers
John Mobley	GOV office
Suzanne Bradley	GOV office
Mason Mansfield	Poyner & Spruill

VISITOR REGISTRATION SHEET

House Finance — 6/7/05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joe McClees	McClees Consulting
Ed Roberson	Commerce, LLC
[illegible]	SBE/DPI
Cerri Sawyer	Rep Glazier
Aaron Chang	Rep. Glazier
Megan Glazier	Rep Glazier
Ryan Dudley	Rep. Glazier
Anna Mitchell	D.O.R.
Andy Sobol	NDOR
Katherine Cadwallader	Rep. Earle
Tara Catherine Dickens	Rep. Coates

VISITOR REGISTRATION SHEET

HOUSE FINANCE — 6/07/05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kristen Shipherd	NCMS
Brian Smith	NCMS
Allison Clipp	NCMS
[illegible]	HMW
DAVID BARNES	Poyner & Spruill
Steve Woodson	NC Farm Bureau
[illegible]	Bode & Assoc
[illegible]	
Pahny Eubank	NC Medical Society
Rebecca Ky	Rep. Gibson - intern
Kathy Hawkins	Progress Energy

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 7, 2005 (2:30 pm)

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Benson	Capitol Group
JE Hobbs	HANC
Amy Hobbs	HANC
[illegible]	FRLTC / APPCNC / MAD
Paula A. Hoch	PPHS / El Pueblo
Cindy Kinsella	Centralina Council of Governments

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H D

HOUSE BILL 1630
PROPOSED COMMITTEE SUBSTITUTE H1630-PCS70513-RBx-21

Short Title: 2005 Continuing Budget Authority/Revenue. (Public)

Sponsors:

Referred to:

May 11, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE DIRECTOR OF THE BUDGET TO CONTINUE EXPENDITURES FOR THE OPERATION OF GOVERNMENT AT THE LEVEL IN EFFECT ON JUNE 30, 2005; EXTENDING THE FINAL MATURITY OF CERTAIN GLOBAL TRANSPARK DEBT FROM JULY 1, 2005, UNTIL JULY 31, 2005; UPDATING THE REFERENCE DATE TO THE INTERNAL REVENUE CODE WITHOUT CONFORMING TO THE DEDUCTION FOR DOMESTIC PRODUCTION ACTIVITIES, STATE AND LOCAL SALES AND USE TAXES, AND CERTAIN INTERNATIONAL SHIPPING ACTIVITIES; EXTENDING THE 8.25% UPPER INDIVIDUAL INCOME TAX BRACKET AS ENACTED IN 2001 FOR THE 2006 AND 2007 TAXABLE YEARS; EXTENDING THE ESTATE TAX UNTIL JANUARY 1, 2010; EXTENDING THE ADDITIONAL ½ CENT STATE SALES AND USE TAX UNTIL JULY 1, 2007; MAKING SALES TAX CHANGES REQUIRED BY THE STREAMLINED SALES TAX AGREEMENT; RETAINING THE USE TAX LINE ON THE INDIVIDUAL INCOME TAX RETURN UNTIL 2010; AND APPLYING THE SALES TAX TO CANDY, WARRANTY SERVICE AGREEMENTS, CABLE SERVICES, VOICE MAIL, AND SATELLITE RADIO.

The General Assembly of North Carolina enacts:

PART I. BUDGET CONTINUATION

SECTION 1. The Director of the Budget may continue to allot funds for expenditure by State departments, institutions, and agencies at a level not to exceed the level of recurring expenditures authorized in S.L. 2004-124.

The Director of the Budget shall not allocate funds for any of the purposes set out in the budget reductions contained in Senate Bill 622, 4th edition, and Senate Bill 622, as it passes the House of Representatives, that are not in controversy.

Vacant positions subject to the proposed budget reductions in either Senate Bill 622, 4th edition, or Senate Bill 622, as it passes the House of Representatives, shall not be filled.

To the extent necessary to implement this authorization, there is appropriated from the appropriate State funds and cash balances, federal receipts, and departmental receipts for the 2005-2006 fiscal year funds necessary to carry out this section.

The appropriations and the authorizations to allocate and spend funds which are set out in this section shall remain in effect until the Current Operations and Capital Improvements Appropriations Act of 2005 becomes law, at which time that Act shall become effective and shall govern appropriations and expenditures. When the Current Operations and Capital Improvements Appropriations Act of 2005 becomes law, the Director of the Budget shall adjust allotments to give effect to that Act from July 1, 2005.

Except as otherwise provided by this act, the limitations and directions for the 2004-2005 fiscal year set out in S.L. 2003-284 and in S.L. 2004-124 remain in effect. Session laws that applied to appropriations to particular agencies or for particular purposes apply to the funds appropriated and authorized for expenditure under this section.

PART II. FEDERAL BLOCK GRANTS

SECTION 2. The Director of the Budget shall continue to allocate federal block grant funds at the levels provided in Sections 5.1 and 5.2 of S.L. 2004-124 and as otherwise provided by law, and appropriations from federal block grants are hereby made.

PART III. NO AUTOMATIC STEP INCREASE FOR STATE AND PUBLIC SCHOOL EMPLOYEES

SECTION 3. State employees subject to G.S. 7A-102(c), 7A-171.1, or 20-187.3 shall not move up on salary schedules or receive automatic increases, including automatic step increases, until authorized by the General Assembly.

Public school employees paid on the teacher salary schedule or the school-based administrator salary schedule shall not move up on salary schedules or receive automatic step increases until authorized by the General Assembly.

PART IV. SALARY-RELATED CONTRIBUTIONS/EMPLOYER

SECTION 4.(a) The State's employer contribution rates budgeted for retirement and related benefits for the 2005-2006 fiscal year shall remain the same as they are on June 30, 2005.

SECTION 4.(b) The State's employer contribution rates established by this section are effective only until this section expires and are subject to revision in the Current Operations and Capital Improvements Appropriations Act of 2005. If the Current Operations and Capital Improvements Appropriations Act of 2005 modifies these rates, the Director of the Budget shall further modify the rates set in that Act for the remainder of the 2005-2006 fiscal year so as to compensate for the different amount

contributed between July 1, 2005, and the date the Current Operations and Capital Improvements Appropriations Act of 2005 becomes law so that the effective rates for the entire year reflect the rates set in the Current Operations and Capital Improvements Appropriations Act of 2005.

PART V. FUNDS SHALL NOT REVERT

SECTION 5.(a) If the provisions of either Senate Bill 622, 4th edition, or Senate Bill 622, as it passes the House of Representatives, or both, direct that funds shall not revert, the funds shall not revert on June 30, 2005. Unless these funds are encumbered on or before June 30, 2005, these funds shall not be expended after June 30, 2005, except as provided by a law enacted after June 30, 2005.

SECTION 5.(b) This section becomes effective June 30, 2005.

PART VI. STATE CONTROLLER SHALL NOT TRANSFER FUNDS ON JUNE 30

SECTION 6.(a) Notwithstanding G.S. 143-15.2 and G.S. 143-15.3A, for the 2004-2005 fiscal year only, funds shall not be reserved to the Repairs and Renovations Reserve Account, and the State Controller shall not transfer funds from the unreserved credit balance to the Repairs and Renovations Reserve Account on June 30, 2005.

SECTION 6.(b) Notwithstanding G.S. 143-15.2 and G.S. 143-15.3, for the 2004-2005 fiscal year only, funds shall not be reserved to the Savings Reserve Account, and the State Controller shall not transfer funds from the unreserved credit balance to the Savings Reserve Account on June 30, 2005.

SECTION 6.(c) This section becomes effective June 30, 2005.

PART VII. MODIFY GLOBAL TRANSPARK DEBT

SECTION 7. G.S. 147-69.2(b)(11) reads as rewritten:

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

...

(11) With respect to assets of the Escheat Fund, obligations of the North Carolina Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed twenty-five million dollars ($25,000,000), that have a final maturity not later than ~~July 1, 2005.~~ July 31, 2005. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from the loss by appropriating to the Escheat Fund funds equivalent to the loss."

PART VIII. INCOME TAX CHANGES.

SECTION 8.1 G.S. 105-228.90(b)(1b) reads as rewritten:

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

...

(1b) Code. – The Internal Revenue Code as enacted as of ~~May 1, 2004~~,January 1, 2005, including any provisions enacted as of that date which become effective either before or after that ~~date.~~date, but not including the amendments made to section 164 of the Code by section 501 of P.L. 108-357."

SECTION 8.2. G.S. 105-130.5(a) reads as rewritten:

"(a) The following additions to federal taxable income shall be made in determining State net income:

...

(16) The amount excluded from gross income under Subchapter R of Chapter 1 of the Code.

(17) The amount excluded from gross income under section 199 of the Code."

SECTION 8.3. Notwithstanding subsection (a) of this section, any amendments to the Internal Revenue Code enacted after May 1, 2004, that increase North Carolina taxable income for the 2004 taxable year become effective for taxable years beginning on or after January 1, 2005.

SECTION 8.4. G.S. 105-228.90(b)(1b), as amended by subsection (a) of this section, reads as rewritten:

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

...

(1b) Code. – The Internal Revenue Code as enacted as of January 1, 2005, including any provisions enacted as of that date which become effective either before or after that ~~date, but not including the amendments made to Section 164 of the Code by Section 501 of P.L. 108-357.~~date."

SECTION 8.5. G.S. 105-134.6(c) reads as rewritten:

"(c) Additions. – The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

...

(3) Any amount deducted from gross income under section 164 of the Code as state, local, or foreign income tax or as state or local general sales tax to the extent that the taxpayer's total itemized deductions deducted under the Code for the taxable year exceed the standard deduction allowable to the taxpayer under the Code reduced by the amount the taxpayer is required to add to taxable income under subdivision (4) of this subsection.

....

(9) The amount excluded from gross income under section 199 of the Code."

SECTION 8.6. Notwithstanding any other provision of law, a taxpayer whose federal taxable income for 2004 is reduced due to a charitable contribution of cash made in January 2005 for Indian Ocean tsunami relief efforts in accordance with P.L. 109-1 is not required to add back the amount of the deduction related to that contribution in determining North Carolina taxable income for 2004.

SECTION 8.7. The prefatory language of Section 39.1 of S.L. 2003-284 reads as rewritten:

"**SECTION 39.1.** Effective for taxable years beginning on or after ~~January 1, 2006,~~ January 1, 2008, G.S. 105-134.2(a) reads as rewritten:"

SECTION 8.8. Sections 8.4 and 8.5 of this Part become effective for taxable years beginning on or after January 1, 2005. The remainder of this Part is effective when it becomes law.

PART IX. ESTATE TAX CHANGES.

SECTION 9.1. Section 30C.3(b) of S.L. 2002-126, as amended by Section 37A.4 of S.L. 2003-284 and Section 1 of S.L. 2004-170, reads as rewritten:

"**SECTION 30C.3.(b)** This section is effective on and after January 1, 2002, and applies to the estates of decedents dying on or after that date. ~~This section and Section 37A.5 of S.L. 2003-284 are repealed effective for the estates of decedents dying on or after July 1, 2005.~~"

SECTION 9.2. Section 4(b) of S.L. 2004-170 is repealed.

SECTION 9.3. This Part is effective when it becomes law.

PART X. SALES TAX CHANGES.

SECTION 10.1 Section 34.13(c) of S.L. 2001-424, as amended by Section 38.1 of S.L. 2003-284, reads as rewritten:

"**SECTION 34.13.(c)** This section becomes effective October 16, 2001, and applies to sales made on or after that date. This section is repealed effective for sales made on or after ~~July 1, 2005.~~ July 1, 2007. This section does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this section before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal."

SECTION 10.2. Subdivisions (4a) and (4b) of G.S. 105-164.3 are recodified as subdivisions (4b) and (4c) respectively.

SECTION 10.3. G.S. 105-164.3 reads as rewritten:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(1a) Cable service. – The one-way transmission to subscribers of video programming or another programming service and any subscriber interaction required to select or use the service.

...

(4a) Combined general rate. – The State's general rate of tax set in G.S. 105-164.4(a) plus the sum of the rates of the local sales and use taxes authorized by Subchapter VIII of this Chapter for every county in this State.

...

(4d) Computer supply. – An item that is considered a 'school computer supply' under the Streamlined Agreement.

...

(10) Food. – Substances that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. The substances may be in liquid, concentrated, solid, frozen, dried, or dehydrated form. The term does not include an alcoholic beverage, as defined in G.S. 105-113.68, or a tobacco ~~products,~~ product, as defined in G.S. 105-113.4.

...

(37a) Satellite digital audio radio service. – A radio communication service in which audio programming is digitally transmitted by satellite to an earth-based receiver, whether directly or via a repeater station.

(37b) School supply. – An item that is commonly used by a student in the course of study and is considered a 'school supply', a 'school art supply', or 'school instructional material' under the Streamlined Agreement.

...

(45a) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement adopted November 12, 2002, as amended on November 19, 2003, November 16, 2004, and April 16, 2005."

SECTION 10.4. G.S. 105-164.4(a), as amended by Section 10.1 of this Part, reads as rewritten:

"(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four and one-half percent (4.5%).

...

(1b) The rate of three percent (3%) applies to the sales price of each ~~aircraft, boat, railway car, or locomotive~~ aircraft or boat sold at retail, including all accessories attached to the item when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars ($1,500) per article.

~~(1c) The rate of one percent (1%) applies to the sales price of the following articles:~~

~~a. Horses or mules by whomsoever sold.~~

~~b. Semen to be used in the artificial insemination of animals.~~

~~c. Sales of fuel, other than electricity, to farmers to be used by them for any farm purposes other than preparing food, heating~~

~~dwellings, and other household purposes. The quantity of fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the one percent (1%) rate of tax imposed by this subdivision.~~

~~d. Sales of fuel, other than electricity, to manufacturing industries and manufacturing plants for use in connection with the operation of such industries and plants other than sales of fuels to be used for residential heating purposes. The quantity of fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the rate of tax provided in this subdivision.~~

~~e. Sales of fuel, other than electricity, to commercial laundries or to pressing and dry cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.~~

~~f. Sales to freezer locker plants of wrapping paper, cartons and supplies consumed directly in the operation of such plant.~~

~~(1d) The rate of one percent (1%) applies to the sales price of the articles listed in G.S. 105-164.4A. The maximum tax is eighty dollars ($80.00) per article. As used in G.S. 105-164.4A and G.S. 105-187.51, the term "accessories" does not include electricity.~~

~~a. through k. Recodified as § 105-164.4A by Session Laws 1999-360, s. 3(a), effective August 4, 1999.~~

~~(1e) The rate of three percent (3%) applies to the sales price of each mobile classroom or mobile office sold at retail, including all accessories attached to the mobile classroom or mobile office when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars ($1,500) per article. Each section of a mobile classroom or mobile office that is transported separately to the site where it is to be placed is a separate article.~~

...

(4c) The ~~rate of six percent (6%)~~combined general rate applies to the gross receipts derived from providing telecommunications service. A person who provides telecommunications service is considered a retailer under this Article. Telecommunications service is taxed in accordance with G.S. 105-164.4C.

...

(6) The ~~rate of five percent (5%)~~combined general rate combined general rate applies to the gross receipts derived from providing ~~direct to home satellite service to subscribers in this State.~~any of the following broadcast services to a subscriber in this State. A person engaged in the business of providing ~~direct to home satellite service~~any of these services is considered a retailer under this ~~Article.~~Article:

a. Direct-to-home satellite service.
b. Cable service.
c. Satellite digital audio radio service. For service received by a mobile or portable station, the service is sourced to the subscriber's business or home address.

(7) The ~~rate of six percent (6%)~~combined general rate applies to the sales price of spirituous liquor other than mixed beverages. As used in this subdivision, the terms 'spirituous liquor' and 'mixed beverage' have the meanings provided in G.S. 18B-101.

...

(9) The general rate of tax applies to the sales price of a warranty agreement, a maintenance agreement, a repair contract, or a similar service agreement or contract by which the seller agrees to maintain or repair tangible personal property. A person who sells a service agreement or contract is considered a retailer under this Article."

SECTION 10.5. G.S. 105-164.4A is repealed.

SECTION 10.6. G.S. 105-164.4C(b)(2) reads as rewritten:

"(2) Charges for directory assistance, directory listing that is not yellow-page classified listing, call forwarding, call waiting, three-way calling, caller ID, voice mail, and other similar services."

SECTION 10.7. G.S. 105-164.4C(c)(11) is repealed.

SECTION 10.8. G.S. 105-164.6 reads as rewritten:

"**§ 105-164.6. ~~Imposition of~~Complementary use tax.**

(a) Tax. – An excise tax ~~at the following percentage rates is imposed on the storage, use, or consumption in this State of tangible personal property purchased inside or outside the State for storage, use, or consumption in the State:~~at the applicable rate set in G.S. 105-164.4 is imposed on the items listed below. The applicable rate is the rate and maximum tax, if any, that would apply to the sale of the item.

(1) ~~At the applicable percentage rate of the purchase price of each item or article of tangible personal property that is stored, used, or consumed in this State. The applicable percentage rate is the rate and the maximum tax, if any, that applies to a sale of the property that is stored, used, or consumed.~~Tangible personal property purchased inside or outside this State for storage, use, or consumption in this State. This subdivision includes property that becomes part of a building or another structure.

(2) ~~At the applicable percentage rate of the monthly lease or rental price paid, contracted, or agreed to be paid by the lessee or renter to the owner of tangible personal property that is stored, used, or consumed in this State. The applicable percentage rate is the rate and the maximum tax, if any, that applies to a lease or rental of the property that is stored, used, or consumed.~~Tangible personal property leased or rented inside or outside this State for storage, use, or consumption in this State.

(3) Services sourced to this State.

(b) ~~An excise tax at the general rate of tax set in G.S. 105-164.4 is imposed on the purchase price of tangible personal property purchased inside or outside the State that~~Liability. – The tax imposed by this section is payable by the person who purchases, leases, or rents tangible personal property or who purchases a service. If the property purchased becomes a part of a building or other structure in the ~~State. The purchaser of the property is liable for the tax. If the purchaser is a contractor, the contractor and owner are jointly and severally liable for the tax; if~~State and the purchaser is a ~~subcontractor, the subcontractor and contractor~~contractor or subcontractor, the contractor, the subcontractor, and the owner of the building are jointly and severally liable for the tax. The liability of ~~an owner or a contractor~~a contractor, a subcontractor, or an owner who did not purchase the property is satisfied ~~if the purchaser delivers to the owner or contractor before final settlement between them~~by receipt of an affidavit from the purchaser certifying that the tax has been paid.

(c) ~~Where a retail sales tax has already been paid with respect to tangible personal property in this State by the purchaser thereof, the tax shall be credited upon the tax imposed by this Part. Where a retail sales and use tax is due and has been paid with respect to tangible personal property in another state by the purchaser for storage, use or consumption in this State, the tax shall be credited upon the tax imposed by this Part.~~Credit. – A credit is allowed against the tax imposed by this section for the following:

(1) The amount of sales or use tax paid on the item to this State. Payment of sales or use tax to this State on an item by a retailer extinguishes the liability of a purchaser for the tax imposed under this section.

(2) The amount of sales tax paid on the item to another State. If the amount of tax paid to ~~another~~the other state is less than the amount of tax imposed by this ~~Part, the purchaser shall pay to the Secretary an amount sufficient to make the tax paid to the other state and this State equal to the amount imposed by this Part. The Secretary of Revenue shall require such proof of payment of tax to another state as he deems necessary. No credit shall be given under this subsection for sales or use taxes paid in another state if that~~section, the difference is payable to this State. The credit allowed by this subdivision does not apply to tax paid to a state that does not grant a similar credit for sales or use taxes paid in North Carolina.

~~(d) Every person storing, using or otherwise consuming in this State tangible personal property purchased or received at retail either within or without this State shall be liable for the tax imposed by this Article and the liability shall not be extinguished until the tax has been paid to this State. Provided, however, that a receipt from a registered retailer engaged in business in this State given to the purchaser in accordance with the provisions of this Article shall be prima facie sufficient to relieve the purchaser from liability for the tax to which such receipt may refer and the liability of the purchaser shall be extinguished upon payment of the tax by any retailer from whom he has purchased the property.~~

~~(e) Except as provided herein the tax so levied is and shall be in addition to all other taxes whether levied in the form of excise, license, privilege or other taxes.~~

(f) Registration. – Before a person may engage in business in this State selling or delivering tangible personal property for storage, use, or consumption in this State, the person must obtain a certificate of registration from the Department. To obtain a certificate of registration, a person must register with the Department.

The holder of the certificate of registration must pay the tax levied under this Article. A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer becomes void if, for a period of 18 months, the retailer files no returns or files returns showing no sales."

SECTION 10.9. G.S. 105-164.13 reads as rewritten:

"**§ 105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property and services are specifically exempted from the tax imposed by this Article:

...

(1) ~~Commercial fertilizer, lime, land plaster, plastic mulch, plant bed covers, and seeds~~Any of the following items sold to a farmer for ~~agricultural purposes.~~use by the farmer in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals. A 'farmer' includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758.

a. Commercial fertilizer, lime, land plaster, plastic mulch, plant bed covers, and seeds.

b. Farm machinery, attachment and repair parts for farm machinery, and lubricants applied to farm machinery. The term 'machinery' includes implements that have moving parts or are operated or drawn by an animal. The term does not include implements operated wholly by hand or motor vehicles required to be registered under Chapter 20 of the General Statutes.

c. A horse or mule.

d. Fuel other than electricity.

(1a) A container sold to a farmer, as defined in subdivision (1) of this section, used for a purpose set out in that subdivision or in packaging and transporting the farmer's product for sale.

...

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

a. Remedies, vaccines, medications, litter materials, and feeds for animals.

b. Rodenticides, insecticides, herbicides, fungicides, and pesticides.
c. Defoliants for use on cotton or other crops.
d. Plant growth inhibitors, regulators, or stimulators, including systemic and contact or other sucker control agents for tobacco and other crops.
e. Semen.

...

(4c) Any of the ~~following:~~following items concerning the housing, raising, or feeding of animals:
a. Commercially manufactured facilities to be used for commercial purposes for housing, raising, or feeding animals or for housing equipment necessary for these commercial activities.
b. Building materials, supplies, fixtures, and equipment that become a part of and are used in the construction, repair, or improvement of an enclosure or a structure specifically designed, constructed, and used for housing, raising, or feeding animals or for housing equipment necessary for one of these commercial activities.
c. Commercially manufactured equipment, and parts and accessories for the equipment, used in a facility that is exempt from tax under this subdivision or in an enclosure or a structure whose building materials are exempt from tax under this subdivision.

(4d) Any of the following tobacco items:
a. The lease or rental of tobacco sheets used in handling tobacco in the warehouse and transporting tobacco to and from the warehouse.
b. A metal flue sold for use in curing tobacco, whether the flue is attached to a handfired furnace or used in connection with a mechanical burner.
c. A bulk tobacco barn or rack, parts and accessories attached to the tobacco barn or rack, and any similar apparatus, part, or accessory used to cure or dry tobacco or another crop.

(4e) A grain, feed, or soybean storage facility, and parts and accessories attached to the facility.

...

(5a) Mill ~~machinery and~~ machinery, mill machinery parts and ~~accessories~~ accessories, and manufacturing fuel that are subject to tax under Article 5F of this Chapter.

(5b) Sales to a telephone company regularly engaged in providing telephone service to subscribers on a commercial basis of central

office equipment, switchboard equipment, private branch exchange equipment, and parts and accessories for the equipment

(5c) Sales of towers, broadcasting equipment, or parts and accessories for the equipment to a radio or television company regulated by the Federal Communications Commission or to a cable service provider.

...

(10) Sales of the following to commercial laundries or to pressing and dry cleaning ~~establishments of articles~~establishments:

a. Articles or materials used for the identification of garments being laundered or dry cleaned, wrapping paper, bags, hangers, starch, soaps, detergents, cleaning fluids and other compounds or chemicals applied directly to the garments in the direct performance of the laundering or the pressing and cleaning service.

b. Laundry and dry-cleaning machinery, parts and accessories attached to the machinery, and lubricants applied to the machinery.

c. Fuel, other than electricity, used in the direct performance of the laundering or the pressing and cleaning service.

(10a) Sales of the following to a major recycling ~~facility of (i) lubricants~~facility:

a. Lubricants and other additives for motor vehicles or machinery and equipment used at the ~~facility and (ii) materials,~~facility.

b. Materials, supplies, parts, and accessories, other than machinery and equipment, that are not capitalized by the taxpayer and are used or consumed in the manufacturing and material handling processes at the facility.

~~(10b)~~ c. ~~Sales to a major recycling facility of electricity~~Electricity used at the facility.

d. Equipment that is subject to tax under Article 5F of this Chapter.

...

~~(18) Funeral expenses, including coffins and caskets, not to exceed one thousand five hundred dollars ($1,500). All other funeral expenses, including gross receipts for services rendered, shall be taxable at the general rate of tax set in G.S. 105-164.4. However, "services rendered" shall not include those services which have been taxed pursuant to G.S. 105-164.4(4), or to those services performed by any beautician, cosmetologist, hairdresser or barber employed by or at the specific direction of the family or personal representative of a deceased; and "funeral expenses" and "services rendered" shall not include death certificates procured by or at the specific direction of the family or personal representative of a deceased. Where coffins, caskets or vaults~~

~~are purchased direct and a separate charge is paid for services, the provisions of this subdivision shall apply to the total for both.~~

...

(45) Sales of the following items to an interstate passenger air carrier ~~or an interstate air courier~~ for use at its ~~hub: aircraft lubricants, aircraft repair parts, and aircraft accessories.~~hub:

a. Aircraft lubricants, aircraft repair parts, and aircraft accessories.

b. Aircraft simulators for flight crew training.

...

(45b) Sales of the following items to an interstate air courier for use at its hub:

a. Aircraft lubricants, aircraft repair parts, and aircraft accessories.

b. Materials handling equipment, racking systems, and related parts and accessories for the storage or handling and movement of tangible personal property at an airport or in a warehouse or distribution facility.

...

(54) Tangible personal property sold to a seller of a service agreement subject to tax under G.S. 105-164.4(a)(9) and attached or applied to the item agreed to be serviced as part of its maintenance or repair."

SECTION 10.10. G.S. 105-164.13B(a) reads as rewritten:

"(a) State Exemption. – Food is exempt from the taxes imposed by this Article unless the food is included in one of the subdivisions in this subsection. The following food items are subject to tax:

~~(1) Alcoholic beverages, as defined in G.S. 105-113.68.~~

(2) Dietary supplements.

(3) Food sold through a vending machine.

(4) Prepared food.

(5) Soft drinks.

(6) Repealed.

(7) Candy."

SECTION 10.11. G.S. 105-164.13C(a) reads as rewritten:

"(a) The taxes imposed by this Article do not apply to the following items of tangible personal property if sold between 12:01A.M. on the first Friday of August and 11:59 P.M. the following Sunday:

(1) Clothing with a sales price of one hundred dollars ($100.00) or less per item.

(2) School supplies with a sales price of one hundred dollars ($100.00) or less per item.

(3) Computers with a sales price of three thousand five hundred dollars ($3,500) or less per item.

(3a) Computer supplies with a sales price of two hundred fifty dollars ($250.00) or less per item.

(4) Sport or recreational equipment with a sales price of fifty dollars ($50.00) or less per item."

SECTION 10.12. G.S. 105-164.14(a) reads as rewritten:

"(a) Interstate Carriers. – An interstate carrier is allowed a refund, in accordance with this section, of part of the sales and use taxes paid by it on the purchase in this State of railway cars and locomotives, and fuel, lubricants, repair parts, and accessories ~~purchased in this State~~ for a motor vehicle, railroad car, locomotive, or airplane the carrier operates. An 'interstate carrier' is a person who is engaged in transporting persons or property in interstate commerce for compensation. The Secretary shall prescribe the periods of time, whether monthly, quarterly, semiannually, or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following these periods, an application for refund may be made.

An applicant for refund shall furnish the following information and any proof of the information required by the Secretary:

(1) A list identifying the railway cars, locomotives, fuel, lubricants, repair parts, and accessories purchased by the applicant inside or outside this State during the refund period.

(2) The purchase price of the items listed in subdivision (1) of this subsection.

(3) The sales and use taxes paid in this State on the listed items.

(4) The number of miles the applicant's motor vehicles, railroad cars, locomotives, and airplanes were operated both inside and outside this State during the refund period.

(5) Any other information required by the Secretary.

For each applicant, the Secretary shall compute the amount to be refunded as follows. First, the Secretary shall determine the ratio of the number of miles the applicant operated its motor vehicles, railroad cars, locomotives, and airplanes in this State during the refund period to the number of miles it operated them both inside and outside this State during the refund period. Second, the Secretary shall determine the applicant's proportional liability for the refund period by multiplying this mileage ratio by the purchase price of the items identified in subdivision (1) of this subsection and then multiplying the resulting product by the tax rate that would have applied to the items if they had all been purchased in this State. Third, the Secretary shall refund to each applicant the excess of the amount of sales and use taxes the applicant paid in this State during the refund period on these items over the applicant's proportional liability for the refund period."

SECTION 10.13. Part 4 of Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.15A. Effective date of rate changes for services.**

The effective date of a rate change for a service taxable under this Article is administered as follows:

(1) For a rate increase, the new rate applies to the first billing period that starts on or after the effective date.

(2) For a rate decrease, the new rate applies to bills rendered on or after the effective date."

SECTION 10.14. Part 4 of Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.21B. Credit for local cable television franchise taxes.**

A cable service provider is allowed a credit against the tax imposed by G.S. 105-164.4(a)(6) for the amount of local franchise tax payable under G.S. 153A-154 and G.S. 160A-214 on its gross receipts for that service. To comply with G.S. 105-164.4(a)(6) and apply the credit allowed under this section, a cable service provider may collect tax from its subscribers at the rate set in G.S. 105-164.4(a)(6) less the rate of the local franchise tax payable on its gross receipts for that service."

SECTION 10.15. G.S. 105-164.28 reads as rewritten:

"**§ 105-164.28. Certificate of resale.**

(a) Seller's Responsibility. – A seller who accepts a certificate of resale from a purchaser of tangible personal property has the burden of proving that the sale was not a retail sale unless all of the following conditions are met:

(1) For a sale made in person, the certificate is signed by the ~~purchaser,~~ purchaser and states the purchaser's name, address, ~~and~~ registration number, and ~~describes the type of tangible personal property generally sold by the purchaser in the regular course of business.~~type of business.

(2) For a sale made in person, the ~~purchaser is engaged in the business of selling~~ tangible personal property ~~of the type sold.~~sold is the type of property typically sold by the type of business stated on the certificate.

(3) For a sale made over the Internet or by other remote means, ~~the sales tax registration number given by the purchaser matches the number on the Department's registry.~~the seller obtains the purchaser's name, address, registration number, and type of business and maintains this information in a retrievable format in its records.

(b) ~~Liabilities.~~ Purchaser's Liability. – A purchaser who does not resell property purchased under a certificate of resale is liable for any tax subsequently determined to be due on the sale. ~~A seller of property sold under a certificate of resale is jointly liable with the purchaser of the property for any tax subsequently determined to be due on the sale only if the Secretary proves that the sale was a retail sale.~~"

SECTION 10.16. G.S. 105-164.42B(1) reads as rewritten:

"**§ 105-164.42B. Definitions.**

The following definitions apply in this Part:

(1) Agreement. – ~~The~~ Streamlined ~~Sales and Use Tax Agreement.~~Agreement, as defined in G.S. 105-164.3.

...."

SECTION 10.17. Part 7A of Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.42K. Registration and effect of registration.**

Registration under the Agreement satisfies the registration requirements under this Article. A seller who registers under the Agreement within 12 months after the State becomes a member of the Agreement and who meets the following conditions is not subject to assessment for sales tax for any period before the effective date of the seller's registration:

(1) The seller was not registered with the State during the 12-month period before the effective date of this State's participation in the Agreement.

(2) When the seller registered, the seller had not received a letter from the Department notifying the seller of an audit.

(3) The seller continues to be registered under the Agreement and to remit tax to the State for at least 36 months."

SECTION 10.18. G.S. 105-164.43 reads as rewritten:

"**§ 105-164.43. Secretary to make regulations.**

Subject to the provisions of G.S. 105-262 the Secretary shall from time to time promulgate such rules and regulations not inconsistent with this Article for making returns and for the ascertainment, assessment, and collection of the tax imposed hereunder as he may deem necessary to enforce its provisions, and upon request shall furnish any taxpayer with a copy of such rules and regulations. All provisions with respect to reviews and appeals from the Secretary's decisions as provided by G.S. 105-241.2, 105-241.3 and 105-241.4 shall be applicable to this section.

Subject to the provisions of Article 7A of this Chapter, the Secretary may develop databases that provide information as to the boundaries of taxing jurisdictions and the tax rates applicable to those taxing jurisdictions. A seller that relies on the information provided in these databases is not liable for underpayments of tax attributable to erroneous information provided by the Secretary in those databases."

SECTION 10.19. G.S. 105-164.44F(a) reads as rewritten:

"(a) Amount. – The Secretary must distribute to the cities part of the taxes imposed by G.S. 105-164.4(a) (4c) on telecommunications service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is eighteen and ~~twenty-six hundredths percent (18.26%)~~three one-hundredths percent (18.03%) of the net proceeds of the taxes collected during the quarter, minus two million six hundred twenty thousand nine hundred forty-eight dollars ($2,620,948). This deduction is one-fourth of the annual amount by which the distribution to cities of the gross receipts franchise tax on telephone companies, imposed by former G.S. 105-120, was required to be reduced beginning in fiscal year 1995-96 as a result of the 'freeze deduction.' The Secretary must distribute the specified percentage of the proceeds, less the 'freeze deduction' among the cities in accordance with this section."

SECTION 10.20. The title of Article 5F of Chapter 105 of the General Statutes reads as rewritten:

"Article 5F.

Mill ~~Machinery.~~Machinery, Manufacturing Fuel, and Recycling Equipment."

SECTION 10.21. Article 5F of Chapter 105 of the General Statutes is amended by adding new sections to read:

"**§ 105-187.51A. Tax imposed on manufacturing fuel.**

A privilege tax is imposed on a manufacturing industry or plant that purchases fuel to operate the industry or plant. The tax is one percent (1%) of the sales price of the fuel. The tax does not apply to electricity or piped natural gas.

"**§ 105-187.51B. Tax imposed on recycling equipment.**

(a) Tax. – A privilege tax is imposed on a major recycling facility that purchases any of the following tangible personal property for use in connection with the facility:

(1) Cranes, structural steel crane support systems, and foundations related to the cranes and support systems.

(2) Port and dock facilities.

(3) Rail equipment.

(4) Material handling equipment.

(b) Rate. – The tax is one percent (1%) of the sales price of the tangible personal property. The maximum tax is eighty dollars ($80.00) per article."

SECTION 10.22. G.S. 105-187.52 reads as rewritten:

"**§ 105-187.52. Administration.**

The privilege ~~tax this Article imposes on a person listed in G.S. 105-187.51 is an additional~~taxes imposed by this Article are in addition to the State use tax. Except as otherwise provided in this Article, the collection and administration of ~~this tax~~these taxes is the same as the State use tax imposed by Article 5 of this Chapter."

SECTION 10.23. G.S. 105-467(a) is amended by adding a new subdivision to read:

"(a) Sales Tax. – The sales tax that may be imposed under this Article is limited to a tax at the rate of one percent (1%) of the transactions listed in this subsection. The sales tax authorized by this Article does not apply to sales that are taxable by the State under G.S. 105-164.4 but are not specifically included in this subsection.

...

(7) The sales price of a service agreement or contract subject to the general rate of tax under G.S. 105-164.4(a)(9)."

SECTION 10.24. Section 18 of S.L. 2000-120, as amended by Section 44.1 of S.L. 2003-284, reads as rewritten:

"**Section 18.** Section 7 of this act becomes effective January 1, 2001. Sections 10 and 11 of this act become effective for taxable years beginning on or after January 1, ~~2005.~~2010. The remainder of this act is effective when it becomes law."

SECTION 10.25. G.S. 105-151.21(b) reads as rewritten:

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

(1) Farm machinery. – Machinery ~~subject to~~ exempt from State sales tax ~~at the rate of one percent (1%)~~ under G.S. ~~105-164.4A.~~105-164.13(4e).

(2) Property taxes. – The principal amount of taxes levied and assessed by a taxing unit under Subchapter II of this Chapter. The term does not include costs, penalties, interest, or other charges that may be added to the principal amount.

(3) Taxing unit. – Defined in G.S. 105-273."

SECTION 10.26. Subdivision (b)(5) of Section 5 of Part IV of Chapter 908 of the 1983 Session Laws, as amended by Chapter 821 of the 1989 Session Laws and S.L. 2001-347, reads as rewritten:

"(b) Definitions. The definitions in G.S. 105-164.3 apply to this Part insofar as they are not inconsistent with the provisions of this Part. In addition, the following definitions apply in this Part:

...

(5) Prepared Food and Beverages. – The term ~~has the same meaning as the term "prepared food" in G.S. 105-164.3.~~includes the following:

a. Prepared food, as defined in G.S. 105-164.3.

b. An alcoholic beverage, as defined in G.S. 18B-101, that meets at least one of the conditions of prepared food under G.S. 105-164.3."

SECTION 10.27. Subdivision (a)(2) of Section 2 of Chapter 413 of the 1993 Session Laws, as amended by S.L. 2001-347, reads as rewritten:

"Sec. 2. Definitions; Sales and Use Tax Statutes. – (a) The definitions in G.S. 105-164.3 apply to this act to the extent they are not inconsistent with the provisions of this act. In addition, the following definitions apply in this act:

...

(2) Prepared food and beverages. – The term ~~has the same meaning as the term "prepared food" in G.S. 105-164.3.~~includes the following:

a. Prepared food, as defined in G.S. 105-164.3.

b. An alcoholic beverage, as defined in G.S. 18B-101, that meets at least one of the conditions of prepared food under G.S. 105-164.3."

SECTION 10.28. Section 2 of Chapter 449 of the 1985 Session Laws, as amended by Chapter 826 of the 1985 Session Laws, Chapter 177 of the 1991 Session Laws, and S.L. 2001-347, reads as rewritten:

"Sec. 2. Definitions. The definitions in G.S. 105-164.3 apply in this act. In addition, the following definitions apply in this act.

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax.

(2) Prepared food and beverages. – The term ~~has the same meaning as the term "prepared food" in G.S. 105-164.3.~~includes the following:

a. Prepared food, as defined in G.S. 105-164.3.

b. An alcoholic beverage, as defined in G.S. 18B-101, that meets at least one of the conditions of prepared food under G.S. 105-164.3."

SECTION 10.29. Subsection (b) of Section 1 of Chapter 449 of the 1993 Session Laws, as amended by S.L. 2001-347, reads as rewritten:

"(b) Definitions; Sales and Use Tax Statutes. – The definitions in G.S. 105-164.3 apply to this section to the extent they are not inconsistent with the provisions of this section. The provisions of Article 5 and Article 9 of Chapter 105 of the General Statutes

apply to this section to the extent they are not inconsistent with the provisions of this section.~~In addition,~~ For the purposes of this section, the term 'prepared food and beverages' ~~has the same meaning as the term "prepared food" in G.S. 105-164.3.~~ includes the following:

(1) Prepared food, as defined in G.S. 105-164.3.

(2) An alcoholic beverage, as defined in G.S. 18B-101, that meets at least one of the conditions of prepared food under G.S. 105-164.3.

~~The provisions of Article 5 and Article 9 of Chapter 105 of the General Statutes apply to this section to the extent they are not inconsistent with the provisions of this section.~~"

SECTION 10.30. Subdivision (3) of Section 2 of Chapter 594 of the 1991 Session Laws, as amended by S.L. 2001-347, reads as rewritten:

"Sec. 2. Definitions. The definitions in G.S. 105-164.3 apply to this act to the extent they are not inconsistent with the provisions of this act. The following definitions also apply in this act:

...

(3) Prepared food and beverage. ~~–~~ The term ~~has the same meaning as the term "prepared food" in G.S. 105-164.3.~~ includes the following:

a. Prepared food, as defined in G.S. 105-164.3.

b. An alcoholic beverage, as defined in G.S. 18B-101, that meets at least one of the conditions of prepared food under G.S. 105-164.3."

SECTION 10.31. Section 3.1 of S.L. 2001-347, as amended by Section 13 of S.L. 2003-416, reads as rewritten:

"**SECTION 3.1.** Part 1 of this act is effective when it becomes ~~law and expires January 1, 2006, unless one of the following occurs: (i) 15 states have adopted the Streamlined Sales and Use Tax Agreement, or (ii) states representing a combined resident population equal to at least ten percent (10%) of the national resident population, as determined by the 2000 federal decennial census, have adopted the Agreement.~~ law."

SECTION 10.32. Notwithstanding G.S. 105-164.44F, as amended by Section 10.19 of this Part, the amount the Secretary must distribute to the cities is eighteen and twenty-six hundredths percent (18.26%) of the net proceeds of the sales tax imposed on telecommunications service under G.S. 105-164.4(a)(4c) collected for the months of July 2005 and August 2005 and eighteen and three one-hundredths percent (18.03%) of the net proceeds of the tax collected for the month of September 2005.

SECTION 10.33. Sections 10.1, 10.2, 10.24, 10.32, and 10.33 of this Part are effective when they become law. The changes made by Section 10.3 of this Part to G.S. 105-164.3(4d) and (37b), the changes made by Section 10.4 of this Part to G.S. 105-164.4(1c), (1d), and (1e), all of the changes made by Section 10.9 of this Part except the addition of subdivision (54), and Sections 10.5, 10.9, 10.11, 10.17, 10.18, 10.20, 10.21, and 10.22 become effective January 1, 2006. Section 10.25 is effective for taxable years beginning on or after January 1, 2006. The remainder of this Part becomes effective September 1, 2005. Section 10.19 of this Part applies to distributions

to cities of the net proceeds of the sales tax imposed on telecommunications service under G.S. 105-164.4(a)(4c) collected for calendar quarters that begin on or after October 1, 2005.

PART XI. EFFECTIVE DATE

SECTION 11. Parts I through VI of this act become effective June 30, 2005, and expire thirty days after they become law. Except as otherwise provided, the remainder of this act is effective when it becomes law.

PCS FOR HB 1630:
2005 CONTINUING BUDGET AUTHORITY/REVENUE.
TAX PROVISIONS

Part 8: Income Tax Changes

- Conforms State income tax law to recent federal changes, with the following exceptions:
  - Does not create a tonnage tax in lieu of an income tax on qualifying shipping activities.
  - Does not allow the deduction for income attributable to domestic production activities.
  - Does not allow the deduction for sales and use tax paid in lieu of state income tax paid.
- Extends the 8.25% individual upper income tax bracket for two years.

Part 9: Estate Tax Changes

- Ties the repeal of the State estate tax to the repeal of the federal estate tax, scheduled to become effective in 2010. The State also continues to conform to the increased exclusion amounts.
- The amount of the State estate tax remains as the amount of the state death tax credit allowed under the Code in 2001.

Part 10: Sales Tax Changes

- The Streamlined Sales & Use Tax Agreement contains the uniformity and simplification provisions developed by the SSTP. The Agreement becomes effective when at least 10 states representing 20% of the population of all states with a sales tax are in compliance with the provisions of the Agreement. As of the end of April, 14 states representing 24% of the population have petitioned for membership. NC is one of those states. For NC to remain in compliance with the Agreement, it must make the changes recommended in this part of the bill.
- Eliminates caps and thresholds and imposes a uniform State rate. To conform to this requirement, the bill eliminates the 1% and the 1%, $80-cap tax rate by exempting some items from tax and fully taxing others. It also provides that the combined general rate of tax applies to telecommunications, satellite TV, and spirituous liquor. These items are currently taxed at 5% or 6%, as opposed to the combined general rate of 7%. The rate changes for items currently taxed at 1% or 1%, $80-cap become effective January 1, 2005; the remaining changes become effective September 1, 2005.
- Adopts the Agreement's uniform definitions, clarifies the effective dates for rate increases and decreases, and conforms to the amnesty requirements of the Agreement. The definition changes regarding cable service, combined general rate, food, satellite

digital audio radio service, and Streamlined Agreement become effective September 1, 2005; the remaining changes become effective January 1, 2006.

- Retains the use tax line item on the individual income tax return for an additional five years. Effective when it becomes law.
- Makes the additional ½ cent State sales tax rate permanent at 4.5%, effective when it becomes law.
- The remaining sales tax changes become effective September 1, 2005:
    - Taxes cable television at the same rate as satellite television, with a credit allowed for any local franchise taxes paid.
    - Taxes satellite radio the same as satellite television.
    - Imposes the State and local sales tax on candy and on service contracts in which the seller agrees to maintain or repair tangible personal property.
    - Provides that voice mail is included as part of the gross receipts of telecommunication services.

Summary of PCS for HB 1630:

2005 CONTINUING BUDGET AUTHORITY/REVENUE

PART I. BUDGET CONTINUATION

Section 1 of the bill provides for the continuation of State government spending by State agencies, departments, and institutions at the levels established for the 2004-2005 fiscal year in S.L. 2004-124. Further, the Director of the Budget is directed not to allocate funds for any of the purposes set out in the budget reductions contained in Senate Bill 622, 4th edition, and Senate Bill 622, as it passes the House of Representatives, that are not in controversy. Section 1 freezes all vacant positions. The continuing budget authority remains in effect until the Current Operations and Capital Improvements Appropriations Act of 2005 becomes law. At that point, the Appropriations Act will govern appropriations and expenditures and the Director of the Budget must adjust allotments to give effect to that Act from July 1, 2005.

PART II. FEDERAL BLOCK GRANTS

Section 2 provides for the continued appropriation and allocation of federal block grant funds at the levels provided in Sections 5.1 and 5.2 of S.L. 2004-124.

PART III. NO AUTOMATIC STEP INCREASE FOR STATE AND PUBLIC SCHOOL EMPLOYEES

Section 3 suspends certain automatic statutory step increases until action by the General Assembly. Thus, magistrates, assistant and deputy clerks of superior court, and members of the Highway Patrol will not advance on salary schedules or receive automatic increases, under G.S. 7A-102(c), 7A-171.1, or 20-187.3, respectively. In addition, public school employees paid on the teacher salary schedule or the school-based administrator salary schedule will not advance on salary schedules or receive automatic step increases.

PART IV. SALARY-RELATED CONTRIBUTIONS/EMPLOYER

Section 4 maintains the State's employer retirement contribution rates at the same amount as they are on June 30, 2005, with those rates effective only until the section expires. If the Appropriations Act modifies the rates, the Director of the Budget is directed to further modify the rates set in that Act for the remainder of the 2005-2006 fiscal year to compensate for the different amount contributed between July 1, 2005, and the Appropriations Act becomes law. This will allow the effective rates for the entire year to reflect the rates set in the Appropriations Act.

PART V. FUNDS SHALL NOT REVERT

Section 5 states that if the provisions of either Senate Bill 622, 4th edition, or Senate Bill 622, as it passes the House of Representatives, or both, direct that funds shall not revert, the funds shall not revert on June 30, 2005. Unless the funds are encumbered on or before June 30, 2005, the funds shall not be expended after June 30, 2005, except as provided by a law enacted after June 30, 2005.

PART VI. STATE CONTROLLER SHALL NOT TRANSFER FUNDS ON JUNE 30

Section 6 provides that, notwithstanding G.S. 143-15.2 and G.S. 143-15.3A, for the 2004-2005 fiscal year only, funds shall not be reserved to the Repairs and Renovations Reserve Account, and the State Controller shall not transfer funds from the unreserved credit balance to the Repairs and Renovations Reserve Account on June 30, 2005. In addition, notwithstanding G.S. 143-15.2 and G.S. 143-15.3, for the 2004-2005 fiscal year only, funds shall not be reserved to the Savings Reserve Account, and the State Controller shall not transfer funds from the unreserved credit balance to the Savings Reserve Account on June 30, 2005.

PART VII. MODIFY GLOBAL TRANSPARK DEBT

Section 7 amends G.S. 147-69.2(b)(11) to extend from July 1, 2005, until July 31, the maturity date of certain debt of the Global Transpark Authority.

Part VIII. Income Tax Changes

Part VIII does two things:

- It updates the reference date to the Internal Revenue Code.
- It extends the 8.25% upper individual income tax bracket as enacted in 2001 for the 2006 and 2007 taxable years.

IRC Update:

North Carolina's tax law tracks many provisions of the federal Internal Revenue Code, by reference to the Code.[1] The General Assembly determines each year whether to update its reference to the Internal Revenue Code.[2] Updating the Internal

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[1] North Carolina first began referencing the Internal Revenue Code in 1967, the year it changed its taxation of corporate income to a percentage of federal taxable income.

[2] The North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Article V, Section 2(1) of the Constitution provides in pertinent part that the "power of taxation ... shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a "statute which adopts by

Revenue Code reference makes recent amendments to the Code applicable to the State to the extent that State law tracks federal law. The General Assembly's decision whether to conform to federal changes is based on the fiscal, practical, and policy implications of the federal changes and is normally enacted in the following year, rather than in the same year the federal changes are made. Under current North Carolina law, the reference date to the Code is May 1, 2004.

Sections 8.1 through 8.6 would change the reference date to January 1, 2005. Changing the reference date to January 1, 2005, would incorporate federal changes made in the Working Families Tax Relief Act of 2004 (P.L. 108-311) and the American Jobs Creation Act of 2004 (P.L. 108-357). In addition, in early 2005 Congress enacted an act to enhance the tax benefit for certain charitable contributions made in January 2005 for tsunami relief (P.L. 109-1). That act did not amend the Code, but rather used uncodified language to bring about that result. This bill would conform to that legislation as well. A detailed summary of these federal tax law changes is attached.

The bill does not conform to three aspects of the federal tax law changes:

- It does not create a tonnage tax in lieu of an income tax on qualifying shipping activities. – The AJCA provides that a corporation can elect to be subject to a tonnage tax rather than an income tax on its qualified shipping activities. The tonnage tax is based on the taxpayer's "notional shipping income." Notional shipping income is determined by reference to a monetary rate per ton shipped. The rate is 40 cents per 100 tons per day for the first 25,000 tons shipped per vessel and 20 cents per 100 tons per day for the amount shipped in excess of 25,000 tons per vessel. Once notional shipping income has been determined, tax is computed on that amount at the rate of 35%. In exchange for electing to be subject to the tonnage tax, the taxpayer may exclude from its gross income any amount resulting from its qualifying shipping activities. Conforming to this exclusion would result in income from shipping activities being excluded from taxation in North Carolina. In effect, it would result in a loss of tax revenues at the State level without a corresponding loss at the federal level. In order to maintain this revenue source, this bill requires the taxpayer to add back the amounts deducted from gross income because of this new provision.

- It does not create a deduction for income attributable to domestic production activities. The AJCA phases out the exclusion for extraterritorial income: 20% in 2005, 40% in 2006; eliminated in 2007. Congress created a new deduction for domestic production activities to replace the ETI. "Domestic production activities" is defined fairly broadly. For taxable years beginning in 2009, the amount of the deduction is equal to nine percent (9%) of the lesser of the domestic production activities income of the taxpayer or taxable income without

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reference future amendments to the Internal Revenue Code would ... be invalidated as an unconstitutional delegation of legislative power."

regard to the deduction. This deduction will be phased in over several years beginning in 2005. For the 2005 and 2006 taxable years the deduction will be limited to three percent (3%): this amount will grow to six percent (6%) for the 2007 and 2008 taxable years. In order to maintain this revenue source, this bill require the taxpayer to add back the amounts deducted from gross income because of this new provision.

- It does not allow a deduction of state and local sales taxes in lieu of a deduction for state income taxes. The AJCA allows taxpayers to deduct state and local sales taxes in lieu of deducting state and local income taxes. This federal provision is of particular benefit to taxpayers who reside in states that do not impose a personal income tax. For most North Carolina taxpayers, the greater benefit would come from deducting state income taxes rather than from deducting state and local sales taxes.

The Governor recommended conforming to the federal tax law changes, with the exception of these three items. Senate Bill 622 also conforms to the federal tax law changes, with the exception of these three items.

Extend 8.25% Upper Individual Income Tax Bracket for Two Years:
Section 8.7 extends the 8.25% upper-income individual income tax rate for two more taxable years: 2006 and 2007. The Governor recommended phasing this tax rate down over a two-year period. In Senate Bill 622, the Senate reduces the rate to 8% for taxable years beginning on or after January 1, 2006 and eliminates the bracket for taxable years beginning on or after January 1, 2007.

In 2001, the General Assembly added a new tax bracket that imposed an additional one-half percent income tax (a total rate of 8.25%) on certain North Carolina taxable income for three years. The change was estimated to affect approximately 2% of North Carolina taxpayers. In 2003, the General Assembly extended the tax rate for two more years. This bill retains the upper bracket for one additional year, but reduces the rate from 8.5% to 8%. The bracket would be eliminated in 2007.

Under prior North Carolina law, tax was imposed at the following rates on individuals' North Carolina taxable income:

Tax Rate	Married filing jointly	Heads of household	Single filers	Married filing separately
6.0%	Up to $21,250	Up to $17,000	Up to $12,750	Up to $10,625
7.0%	Over $21,250 and up to $100,000	Over $17,000 and up to $80,000	Over $12,750 and up to $60,000	Over $10,625 and up to $50,000
7.75%	Over $100,000	Over $80,000	Over $60,000	Over $50,000

The 2001 law created a fourth tax bracket for North Carolina taxable income as follows. This bill extends the fourth tax bracket of 8.25% for another two years: 2006- and 2007.

Tax Rate	Married filing jointly	Heads of household	Single filers	Married filing separately
8.25%	Over $200,000	Over $160,000	Over $120,000	Over $100,000

PART IX: ESTATE TAX CHANGES

Part IX ties the repeal of the State estate tax to the repeal of the federal estate tax, scheduled to become effective for deaths occurring on or after January 1, 2010. The State continues to conform to the increasing federal exclusion amounts.[3] The amount of the State estate tax remains at the amount of the state death tax credit allowed under the Code in 2001. The Governor and the Senate, in Senate Bill 622, also recommended continuing the State estate tax.

North Carolina repealed its inheritance tax in 1998, effective for deaths occurring on or after January 1, 1999. It replaced the inheritance tax with an estate tax that was equivalent to the federal state death tax credit allowed on a federal estate tax return. This type of state estate tax was known as a "pick-up" tax because it picked up for the state the amount of federal estate tax that would otherwise be paid to the federal government. In 2001, Congress increased the exclusion amount for the federal estate tax and phased out the state death tax credit over four years by reducing it 25% in 2002, 50% in 2003, and 75% in 2004, and by repealing it entirely in 2005.

In 2002, the General Assembly enacted legislation not to conform to the phase-out of the state death tax credit. In other words, North Carolina began tying the amount of the State estate tax owed to the federal credit as it existed in 2001 rather than as it currently exists. The 2002 legislation was set to sunset for estates of decedents dying on or after January 1, 2004. S.L. 2003-284 extended the sunset to July 1, 2005, meaning that the estate tax would continue to be based on the federal credit as it existed in 2001. This bill would remove the sunset. The result of the removal of the sunset is that so long as there is a federal estate tax, there will be a North Carolina estate tax. The amount of the State estate tax will be equal to the amount of the federal state death tax credit, as it existed in 2001.

PART X. SALES TAX CHANGES

Part X makes the following sales tax changes:

- It extends the ½ cent additional State sales and use tax until July 1, 2007.

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[3] North Carolina conforms to the federal exemption amounts: 100% exemption for property passing to surviving spouse; $1.5 million exemption for other estates. Under current federal law, this exemption amount rises to $2 million in 2006, $3.5 million by 2009, and the tax is fully repealed in 2010.

- It makes the sales and use tax changes necessary to conform to the Streamlined Sales and Use Tax Agreement.
- It applies the general rate of tax to candy, cable service, satellite radio service, warranty service agreements, and voice mail.

Streamlined Sales Tax Changes

The Streamlined Sales Tax Project is an effort by states, with input from local governments and the private sector, to simplify and modernize sales and use tax collection and administration. The Project began in March 2000 and has the goal of achieving sufficient simplification and uniformity to encourage sellers without nexus in states to voluntarily collect use tax in participating states. In November 2002, the implementing states approved the Streamlined Sales and Use Tax Agreement. The Agreement contains the uniformity and simplification provisions developed by the Project. The Agreement becomes effective when at least 10 states representing 20% of the population of all states with a sales tax are in compliance with the provisions of the Agreement. As of April, 14 states representing 24% of the population have petitioned for membership, signifying that their individual state laws conform to the uniform provisions of the Agreement. North Carolina is one of those states.

Over the past several years, the Revenue Laws Study Committee has recommended, and the General Assembly has enacted, changes to North Carolina's sales tax laws to bring it into compliance with the Agreement. This part of the bill contains the changes North Carolina needs to make this year to remain in compliance with the agreement. The Governor also recommended conformity to the Streamlined Sales Tax Agreement.

Part X makes the necessary changes to the sales and use tax laws to conform them to the Streamlined Sales and Use Tax Agreement.

Subsection	Explanation
10.2	Technical change.
10.3	Defines the term 'combined general rate' to be the State's general rate of tax plus the sum of the rates of the local sales and use taxes. Defines the term 'Streamlined Agreement.' Effective September 1, 2005.
10.3, 10.10, 10.25 through 10.31	Conforms the definition of food to the Streamlined Agreement by removing 'alcoholic beverage' from the definition of food; makes a conforming change to the exemption of food from the State sales tax base; makes conforming changes to the local meals tax statutes. These changes become effective September 1, 2005.
10.2, 10.11	States may allow sales tax holidays, but the items included in the holiday must be defined terms under the Streamlined Agreement. Section 10.2 defines the terms 'computer supplies' and 'school

	supplies' to conform to the defined terms in the Streamlined Agreement. The proposal defines the term 'school supplies' to mean the all-inclusive list of items defined as 'school supplies', 'school art supplies', and 'school instructional material' under the Streamlined Agreement. It also defines the term 'Streamlined Agreement' as the Streamlined Sales and Use Tax Agreement, adopted November 12, 2002, as amended November 16, 2003, and November 19, 2004. Section 10.11 amends the sales tax holiday statute to include the defined terms. The primary difference between the current law and the proposed law is the inclusion of computer supplies in the sales tax holiday. Computer supplies include computer storage media, printers, printer supplies, hand-held electronic schedulers, and personal digital assistants. The State's sales tax holiday included most of these items prior to August of 2004. The General Assembly changed the law in 2003 to except these items from the holiday in 2004, in conformity with the Streamlined Agreement. This subsection, based upon amendments to the Streamlined Agreement in November of 2004, expands the holiday to include these items once again so long as the sales price does not exceed $250 per item. These changes become effective January 1, 2006.
10.4 10.5 10.9 10.12 10.19 10.20 10.21 10.22 10.25	To conform to the Agreement, states must have one rate with no caps or thresholds. Section 10.4 revises the taxation of those items that had a lower rate, a cap, or a threshold by either exempting the item from tax or taxing the item at the combined general rate of tax. A detailed chart showing the changes is attached. Generally, the section makes the following changes: • Taxes telecommunications service at the combined general rate (7%) – current rate is 6%. Effective September 1, 2005. • Taxes satellite television at the combined general rate – currently taxed at 5%. Effective September 1,2005. • Taxes spirituous liquor at the combined general rate – currently taxed at 6%. Effective September 1, 2005. • Exempts items sold to farmers for use by the farmer; central office equipment sold to telephone companies; broadcasting equipment sold to radio or television stations; sales of fuel and machinery sold to commercial laundries; and certain sales to an interstate air courier for use at it hub. Effective January 1, 2005. • Taxes railway cars and locomotives, but allows refunds Effective September 1, 2005. • Imposes a privilege tax of 1% on manufacturing fuel and recycling equipment. Effective January 1, 2006. • Exempts funeral services and taxes tangible personal property.

	Effective September 1, 2005.
10.15	Conforms the statutory language to the information actually requested on a certificate of resale. Effective September 1, 2005.
10.13	Clarifies the effective dates for rate increases and decreases. Effective September 1, 2005.
10.17	Provides an amnesty provision, as required by the Agreement, for sellers who register with the State within 12 months after the State becomes a member of the Agreement. Effective September 1, 2005.
10.18	Clarifies that a seller who relies on information provided by the Secretary of Revenue concerning the boundaries of taxing jurisdictions and the tax rates applicable to those jurisdictions is not liable for any underpayments of tax attributable to erroneous information provided by the Secretary.
10.24	Retains the use tax line item on the individual income tax return for an additional five years. The law would otherwise sunset for the 2005 taxable year. The use tax is owed by the consumer and unlike sales tax, it must be remitted to the State by the consumer. To simplify use tax collection, the General Assembly established an annual filing period in 1997 for the payment of use taxes owed by consumers on mail-order and other out-of-state purchases. In 1999, it simplified use tax collection by providing that the use tax will be paid on taxpayers' income tax returns. In 2000, the General Assembly sunset this provision in anticipation that use tax collection would be handled by retailers by 2003 as a result of the Streamlined Sales Tax Agreement. The 2003 sunset date was overly optimistic. The General Assembly extended the sunset to 2005 in S.L. 2003-284. This subsection extends it for five more years. Effective when it becomes law.

Other Sales Tax Changes

Part X also makes the following changes to the State's sales and use tax laws:

- Extends the additional ½¢ State sales tax rate at 4.5% until July 1, 2007, effective when it becomes law. The General Assembly increased the State sales tax rate by ½ % in S.L. 2001-424 from 4% to 4.5%. This increase was to sunset July 1, 2003. S.L. 2003-284 extended the sunset for two years, July 1, 2005. This section would extend the sunset for two more years. Before 2001, the State sales tax rate had last been increased in 1991 from 3% to 4%. The Governor recommended removal of the sunset on the ½% additional State sales tax and the Senate passed his recommendation in Senate Bill 622.
- Conforms the sales tax treatment of cable service and satellite digital audio radio service to the sales tax treatment of direct to home satellite service. Direct to

home satellite service is subject to a combined general rate of tax, 7%. Cable service is currently subject to a 5% local franchise tax[4]. Section 10.14 provides a credit for a cable service retailer equal to the local cable television franchise taxes paid. Effective September 1, 2005. The Governor also recommended taxing cable and satellite television services the same.

- It imposes the State and local sales and use taxes on candy and on service contracts in which the seller agrees to maintain or repair tangible personal property. The Governor Commission to Modernize State Finances recommended that the State begin taxing services. Prior to 2003, candy was subject to State and local sales tax. S.L. 2003-284 taxed soft drinks but exempted candy from sales tax. This section would tax candy as well as soft drinks. Effective September 1, 2005. The Governor recommended taxing candy at the combined general rate of tax. The Senate also imposed the sales tax on candy and service contracts in Senate Bill 622.
- Provides that voicemail is included as part of the gross receipts of telecommunications service since other similar services are subject to the tax; caller ID, call forwarding, call waiting, etc. The Senate also included this change in Senate Bill 622. Effective September 1, 2005.

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[4] G.S. 160A-214; G.S. 153A-154.

Explanation of Federal Tax Law Changes made in the:

Working Families Tax Relief Act of 2004 (P.L. 108-311)
American Jobs Creation Act of 2004 (P.L. 108-357
An act to enhance the tax benefit for certain charitable contributions made in January 2005 for tsunami relief (P.L. 109-1).

Working Families Tax Relief Act (WFTRA) of 2004 (P.L. 108-311)

The Working Families Tax Relief Act of 2004 was signed into law by President Bush on October 4, 2004. Despite its title, the act provides tax benefits for businesses as well as individuals and families. The following features of the act are important for State tax purposes:

- *Creation of a more uniform definition of "child" throughout the Code starting with the 2005 taxable year.* At the federal level, the definition of "child" is important in five areas: the dependency exemption, the child credit, the earned income credit, the dependent care credit, and head of household filing status. WFTRA creates a uniform definition of "child" that applies to each of these areas. Under the new definition, a child is a qualifying child if the child satisfies three separate conditions. First, the child must have the same principal place of abode as the taxpayer for more than one half the tax year (residency test). Temporary absences due to special circumstances are not included. Second, the child must be the child, stepchild, sibling, stepsibling, or a descendant of any of these relations of the taxpayer (relationship test). Third, the child must satisfy an age condition to be deemed a qualifying child. In general, a child must be under age 19, or under age 24 if a full-time student, to be a qualifying child. However, lower age limits were retained for the dependent care credit (under 13 years of age unless disabled) and the child tax credit (under 17 years of age). For State tax purposes, the changes are important in so far as they relate to the dependency exemption, the child tax credit, and head of household filing status. The new definition of qualifying child for the dependency exemption may result in a change of status of some children – where the new law has a residency test, the old law had a support test (the one claiming the child had to provide at least 50% of the child's support). For the federal child tax credit, some taxpayers may become eligible to claim the credit due to the elimination of some restrictions related to foster children. This is important because eligibility for the State child tax credit is dependent on the taxpayer's eligibility for the federal credit. In general, the uniform definition should not affect head of household filing status.
- *Extension of the above-the-line deduction for educators.* Under previous law, an eligible educator was allowed an above-the-line deduction of up to $250 for amounts paid by the teacher for books or supplies used in the classroom.

This provision was set to expire with the 2003 taxable year. WFTRA extended this provision for the 2004 and 2005 taxable years.

- *Extension of elective expensing of qualified environmental remediation expenditures.* Under previous law, a taxpayer could elect to treat qualified environmental remediation expenditures that would normally be charged to a capital account and depreciated over time as deductible in the current year. To be deductible currently, the expenditure must be paid or incurred with the abatement or control of hazardous substances at a qualified contaminated site. This provision would have expired with the 2003 tax year. WFTRA extended this provision for the 2004 and 2005 taxable years.
- *Extension of enhanced deduction for qualified computer contributions.* Under previous law, corporations were allowed an enhanced charitable contribution deduction for contributions of computer technology or equipment to schools or public libraries that would use the computer equipment for educational purposes. This provision would have expired with the 2003 tax year. WFTRA extended this provision for the 2004 and 2005 taxable years.
- *Elimination of the phase down of the deduction for qualified clean fuel property.* Under previous law, a taxpayer was allowed a specified deduction for clean fuel vehicles or refueling property placed into service before January 1, 2007. The amount of that deduction was to be reduced by 25% in 2004, 50% in 2005, and 75% in 2006, and was to be completely phased out in 2007. WFTRA eliminated the phase down in the 2004 and 2005 taxable years. Without further action, the phase down will resume at 75% in 2006.
- *Extension of Archer Medical Savings Accounts (MSAs).* Archer MSAs were designed to give small employers, their employees, and self-employed individuals a way of creating tax-deferred savings to offset qualifying medical expenses. The program was designed to be limited in scope: no new Archer MSAs could be set up after a certain threshold had been met or after the end of 2003. WFTRA extends the period in which new Archer MSAs may be created until the end of 2005.

American Jobs Creation Act (AJCA) of 2004 (P.L. 108-357)

The American Jobs Creation Act of 2004 was signed into law by President Bush on October 22, 2004. The bill makes many substantial changes in many different areas of tax law. The more significant changes for State tax purposes are listed below.

- *Repeal of the exclusion for extraterritorial income (ETI)/deduction for qualified domestic production income.* Under previous law, U.S. exporters were eligible for an exclusion from gross income for qualifying extraterritorial income. In 2000, the World Trade Organization declared this exclusion an illegal trade subsidy. Congress did not take action regarding this finding until the European Union began placing sanctions on U.S. exports. At the time Congress acted those sanctions were at 12% and were rising by one percentage point per month. This exclusion will be

phased out over several years. The ETI exclusion will be reduced by 20% in 2005 and by 40% in 2006. The ETI exclusion will be eliminated altogether beginning in 2007. Based on Congress's enactment of this law, the EU has indicated it will drop sanctions on U.S. imports beginning January 1, 2005.

In part to replace the ETI exclusion, Congress created a new deduction for domestic production activities. "Domestic production activities" is defined fairly broadly and includes a) the sale, lease, or license of property manufactured or produced by the taxpayer in significant part in the United States, b) the sale, lease, or license of United States produced motion pictures and video tapes, c) the sale of electricity, natural gas, or potable water within the United States, d) construction activities performed in the United States, e) engineering or architectural services performed in the United States for construction projects occurring in the United States. For taxable years beginning in 2009, the amount of the deduction is equal to nine percent (9%) of the lesser of the domestic production activities income of the taxpayer or taxable income without regard to the deduction. This deduction will be phased in over several years beginning in 2005. For the 2005 and 2006 taxable years the deduction will be limited to three percent (3%): this amount will grow to six percent (6%) for the 2007 and 2008 taxable years.

- *Extension of 179 expensing limit increase/revisions regarding SUVs.* Section 179 of the Code allows a taxpayer to treat the cost of certain property as an expense which is not chargeable to a capital account. This allows the taxpayer to take a deduction for the property in the year in which it is placed into service rather than depreciating the property over a number of years. In 2003, Congress increased the amount that could be expensed under Section 179 of the Code from twenty-five thousand dollars ($25,000) to one hundred thousand dollars ($100,000).[5] The federal change was originally set to expire after the 2005 taxable year. The AJCA extends this provision through the 2007 taxable year.

  One frequent complaint about the federal provision was that it allowed expensing of costs associated with the purchase of a sports utility vehicle by a small business. General rules relating to the depreciation of motor vehicles did not apply to many large SUVs because those rules applied only to vehicles weighing 6,000 pounds or less. The effect of this provision was to allow an immediate write-off for the purchase price of a large SUV, but to require more gradual depreciation for the purchase of most other passenger vehicles. Taxpayers thus had a greater incentive to purchase a large SUV. The AJCA limits the amount of that may be expensed under Section 179 with respect to a vehicle weighing less than 14,000 pounds to twenty-five thousand dollars

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[5] The General Assembly conformed to this federal change as part of the 2003 Budget Act (S.L. 2003-284).

($25,000)[6]. The federal legislation made this change effective when it become law, October 22, 2004.

- *Establishment of 15-year straight line cost recovery for qualified leasehold improvements and qualified restaurant property..* The AJCA provides for 15-year straight-line depreciation for qualified leasehold improvements to nonresidential real property placed into service after the date of enactment (October 22, 2004) and prior to January 1, 2006. A qualified leasehold improvement is an improvement made to the interior of a building by either the lessor or lessee and placed in service more than three years after the building is placed in service. Under prior law, a qualified leasehold improvement was depreciated using straight-line depreciation over a 39-year period – the same period as for depreciation of nonresidential property in general.

  A similar depreciation schedule is put into place for qualified restaurant property placed into service after the date of enactment (October 22, 2004) and prior to January 1, 2006. In order to qualify as "qualified restaurant property", the property must be a building improvement placed in service more than three years after the building is placed in service and the restaurant must use more than half of the square footage of the building.

  If the leasehold improvement or restaurant property contains tangible personal property that may be segregated from the cost of other improvements and that tangible personal property has a shorter depreciation period, then the taxpayer may depreciate that property separately using the shorter period.

- *Modification of deduction for charitable contribution of used motor vehicles.* The AJCA limits the amount of the deduction for contributions of motor vehicles to charity. Vehicle donation programs have become popular in recent years. Generally, the taxpayer who has donated the motor vehicle has claimed a deduction for the full "blue book" value of the vehicle. The new law will limit the amount of the deduction based on how the donee organization uses the vehicle. If the charitable organization sells the vehicle without using it in any significant way, the amount of the deduction cannot exceed the gross proceeds of the sale. If the charity retains the vehicle for its own use, the taxpayer must receive an acknowledgment from the charity as to the value of the vehicle. The deduction may not exceed the acknowledged value of the vehicle to the charity. These changes become effective with the 2005 taxable year.

- *Establishment of an above-the-line deduction for certain attorney fees and court costs.* The AJCA allows an individual taxpayer an above-the-line deduction (i.e. from gross

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[6] There are some exceptions to this rule for certain vehicles. These exceptions were put in place to ensure that the legislation would apply only to SUV and not other types of heavy motor vehicles (such as delivery trucks) that have a weight greater than 6,000 pounds but less than 14,000 pounds.

income) for attorney fees and court costs associated with certain civil rights actions, claims against the government, and Medicare fraud claims. Under previous law, these costs were deductible only as an itemized deduction, meaning that they were deductible only if the taxpayer itemized deductions and only to the extent aggregate itemized deductions exceeded 2% of the taxpayer's adjusted gross income. This provision became effective when the legislation became law, October 22, 2004.

- *Modification of deduction for automobile expenses of United States Postal Service employees.* The AJCA allows United States Postal Service employees who deliver and collect mail on rural routes and receive qualified reimbursements of automobile expenses involving these duties to deduct their actual automobile expenses that exceed the reimbursement amount. This is an itemized deduction and therefore may be claimed only to the extent aggregate deductions exceed 2% of the taxpayer's adjusted gross income. Under previous law, the deduction could not exceed the amount of the qualified reimbursements, regardless of actual expenditures. As under previous law, reimbursements in excess of the amount of actual expenditures do not have to be included in gross income.

- *Exclusion of National Health Service Corps Loan Program repayments from gross income and from employment taxes.* The National Health Service Corps is an agency housed within the U.S. Department of Health and Human Services and has as its mission improving the health of the nation's underserved populations. Under the National Health Service Corps Loan Repayment Program, participants in the program may receive up to $25,000 per year for two years to pay off qualified educational loans. The loan repayment is in addition to any salary the participant receives from the employing community site. Under previous law, the amount of loan repayment was included in taxable income and was also subject to employment taxes (i.e. FICA). Under the AJCA, these loan repayments are to be excluded from both gross income and from employment taxes. This provision became effective with the 2004 taxable year.

- *Creation of a deduction for start-up costs and amendments to the expensing schedule for such costs.* Under the AJCA, a taxpayer may take a deduction of up to $5,000 for start-up and organization expenses. However, the amount of the deduction is reduced by the amount by which those expenses exceed $50,000. Any expenses in excess of $5,000 must be amortized over a 15-year period. Under previous law, no current expensing was allowed, the full amount of the start-up and organizational expenses would be amortized over 5 years. This provision is effective for expenses that occur on or after the date the legislation became effective, October 22, 2004.

- *Modification regarding the treatment of gain on the sale of a principal residence when the residence was acquired in a like-kind exchange.* Under current law, a taxpayer is allowed to exclude up to $250,000 of gain from the sale of a residence ($500,000 if a married couple filing jointly) if the taxpayer owned and used the residence as a

principal residence for at least 2 of the last 5 years. The AJCA makes a change to this provision when the home was acquired as part of a like-kind exchange.[7] Under the AJCA, a residence received in a like-kind exchange must be owned by the taxpayer for at least five years and must be used as a principal residence of the taxpayer for at least two of the last five years in order to qualify for the exclusion from gross income of the gain on the sale of the residence. This provision became effective for residences sold on or after the date the legislation was enacted, October 22, 2004.

- *Establishment of deduction of State sales and use taxes in lieu of deduction for State income taxes.* The AJCA allows taxpayers to deduct state and local sales taxes in lieu of deducting state and local income taxes. This provision became effective with the 2004 taxable year and is set to expire for taxes beginning in 2006 and thereafter. Taxpayers that elect to deduct state and local sales taxes instead of state and local income taxes will have two options for determining the deductible amount: a) they may accumulate receipts for the actual amount of sales and use tax paid, or b) they may refer to tables prepared by the Secretary of the Treasury which estimate the amount of taxes paid based on average consumption and other factors.

  This federal provision is of particular benefit to taxpayers who reside in states that do not impose a personal income tax. For most North Carolina taxpayers, the greater benefit would come from deducting state income taxes rather than from deducting state and local sales taxes. Some exceptions to this general statement would include the following:

  - Nonresidents or part-year residents who reside in a state that does not impose an income tax and who have relatively low income tax liability in North Carolina or other states.
  - Taxpayers who may have a low tax liability due to eligibility for a significant amount of tax credits.
  - North Carolina residents for whom a large portion of income is not subject to taxation. This class of taxpayers would include many government retirees whose government pensions are not subject to State income tax under the decisions in *Bailey* and the related cases and whose Social Security payments are not subject to State income tax under G.S. 105-134.6.

  North Carolina law currently requires taxpayers to add back the amount of the deduction allowed under the Code for state, local, and foreign income taxes. In order to treat the deduction for state and local sales taxes equivalent to the deduction for state, local, and foreign income taxes, the General Assembly should require the add back of the deduction for state and local sales taxes if it

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7 A like-kind exchange is an exchange of property held for productive use in a trade or business or for investment for similar property. Unless cash is received as part of the trade, the exchange is not a taxable event.

decides to conform to the federal change. This is problematic, however, given that the federal legislation is effective for the 2004 taxable year and the General Assembly cannot conform to the federal legislation and require the add back unless it acts before the end of the year. Although the practical effect of conforming to the change and requiring the add back is the same as not conforming to the change at all, a court could find that requiring an add back would in effect be a retroactive tax increase. Therefore, this bill does not conform to the change allowing a deduction of state and local sales taxes in the 2004 taxable year, but does conform to that change and require an add back beginning with the 2005 taxable year. This can be seen in subsections (a), (d), and (e) of this Part.

An Act to accelerate the income tax benefits for charitable cash contributions for the relief of victims of the Indian Ocean tsunami (P.L. 109-1).

On December 26, 2004, a large earthquake centered in the Indian Ocean unleashed a catastrophic tsunami that resulted in widespread devastation in 11 countries in South Asia, Southeast Asia, and Africa. The disaster is estimated to have caused billions of dollars in damages and produced a death toll in excess of 160,000.

On January 6, 2005, the first act of the 109 Congress was to approve accelerated tax benefits for charitable cash contributions for the relief of victims of the Indian Ocean tsunami. President Bush signed the act into law the following day. The act allows a taxpayer to treat a cash contribution for tsunami relief efforts made in January 2005 to be treated as if it were made on December 31, 2004. Thus, the taxpayer would be able to take a deduction in the 2004 taxable year rather than the 2005 taxable year. In order to qualify for the accelerated benefit, the contribution must be cash. Donations of property or cash substitutes, such as marketable securities, are not eligible for the accelerated benefits. In addition, the contribution must be specifically designated to be for tsunami relief. A contribution that is made to charitable organization that is assisting in relief efforts but that is not specifically designated to relief efforts is not eligible for the accelerated benefits. For example, a donation to the Red Cross would be eligible for the accelerated benefit only if the donation were specifically designated for tsunami relief efforts; a general donation to the Red Cross would not be eligible for the accelerated benefit. Subsection (e) of this part contains special language to ensure that North Carolina conforms to this federal act.

HB 1630
Continuing Resolution
Finance Items

HB 1630 Continuing Resolution Finance Items			
		Fiscal Impact ($Mil.)	
	Effective Date	2005-06	2006-07
General Fund			
Continue 1/2 Cent Sales Tax for Two Years	7/1/2005	413.4	458.7
Streamlined Sales Tax and Related Changes	9/1/2005 & 1/1/2006	61.7	89.5
Extend Estate Tax Sunset	7/1/2005	30.6	121.6
Apply Sales Tax to Service Contracts & Warranties	9/1/2005	10.1	16.8
IRC Update - Partial Conformance	1/1/2005	(8.0)	(10.7)
Use Tax Line on Income Tax Form (no additional liab.)	1/1/2005	3.2	3.2
Extend 8.25% Individual Income Tax Rate for two years	1/1/2006	40.2	91.7
Apply Sales Tax to Candy (now exempt)	9/1/2005	11.0	15.8
TOTAL		**562.2**	**786.6**

Streamlined Sales Tax Compliance Items in SB 1630

Current Sales Tax Rate	G.S. 105-	Application	Conflicts with Streamlined?	Proposed Solution	Fiscal Effect on State Revenues ($ millions)
2%, $300 cap	164.4(a)(1a)	Manufactured homes	No. Item exempt from base and rate requirements.	None needed	No impact
3%, $1,500 cap	164.4(a)(1b)	Aircraft, boat, railway car, or locomotive	Yes for railway cars and locomotives. No for aircraft and boats because these items are exempt from base and rate requirements.	Follow Florida and tax railway cars and locomotives at general rate but give proportional refund to interstate carrier. Do not change taxation of boats or aircraft.	NC is not a major rail transportation state with regard to basing of equipment; any fiscal effect would be minimal.
1%	164.4(a)(1c)a.	Horses and mules	Yes	Exempt if sold to a farmer for agricultural purposes and tax otherwise	$2 million loss would occur if these items currently taxed at 1% rate were exempt; current tax collections of individual items are not separately identifiable; limited taxetion of horses, mules, animal semen, and items sold to freezer locker plants would produce minimal revenue.
1%	164.4(a)(1c)b.	Animal semen	Yes	Exempt if sold for use in agricultural purposes and tax otherwise	
1%	164.4(a)(1c)c.	Fuel, other than electricity, sold to farmers for farm purposes	Yes	Exempt	
1%	164.4(a)(1c)e.	Fuel, other than electricity, sold to laundries and dry cleaners	Yes	Exempt	
1%	164.4(a)(1c)f.	Wrapping paper, cartons, and supplies sold to freezer locker plants	Yes	Tax	
1%	164.4(a)(1c)d.	Fuel, other than electricity, sold to manufacturers	Yes	Exempt from sales tax and impose comparable excise tax under Article 5F. Manufacturing machinery is already subject to tax under this Article.	No impact
1%, $80 cap	164.4(a)(1d) and 164.4A(2) (Expires 1/1/06, when 187.51 takes effect)	Mill machinery and mill machinery parts or accessories	No, eff. 1/1/06; maintains rate and cap through device of separate tax	None needed, but change effective date of separate tax to 10/01/05.	No impact
1%, $80 cap	164.4(a)(1d) and 164.4A(3)	Central office equipment, switchboard, private branch exchange equipment, and software sold to telephone companies	Yes	Exempt equipment but tax the prewritten software. Custom software is already exempt.	$2 million loss; the loss for each item cannot be separately estimated; limited taxation of software would produce minimal revenue.
1%, $80 cap	164.4(a)(1d) and 164.4A(4)	Laundry and dry cleaning machinery and parts and accessories for the machinery	Yes	Exempt	
1%, $80 cap	164.4(a)(1d) and 164.4A(6)	Towers and broadcasting equipment and parts and accessories for the equipment sold to commercial radio and TV companies regulated by the FCC	Yes	Exempt	
1%, $80 cap	164.4(a)(1d) and 164.4A(11)	Equipment for the storage, handling, or moving of tangible personal property sold to an air courier for use at its hub	Yes	Exempt	

Streamlined Sales Tax Compliance Items in SB 1630

Current Sales Tax Rate	G.S. 105-	Application	Conflicts with Streamlined?	Proposed Solution	Fiscal Effect on State Revenues ($ millions)
1%, $80 cap	164.4(a)(1d) and 164.4A(12)	Aircraft simulators sold to an interstate passenger air carrier or interstate air courier for flight crew training at its hub	Yes	Exempt for air carriers; taxable for air couriers.	Minimal impact. This type of transaction is thought to be irregular and infrequent.
1%, $80 cap	164.4(a)(1d) and 164.4A(10)	Crane equipment, port and dock facilities, rail equipment, and material handling equipment sold to a major recycling facility	Yes	Move to separate excise tax with manufacturing equipment	No impact
1%, $80 cap	164.4(a)(1d) and 164.4A(5)	Freezer locker plant machinery and parts and accessories for the machinery	Yes	Tax	Undetermined gain; current tax collections of freezer locker plant machinery, parts, and accessories are not separately identifiable.
1%, $80 cap	164.4(a)(1d) and 164.4A(1)	Farm machinery and parts and accessories for the machinery	Yes	Exempt	$3.1 million loss. The loss for each type of item cannot be separately estimated using collections data.
1%, $80 cap	164.4(a)(1d) and 164.4A(7)	Bulk tobacco barns and racks and parts and accessories to the barns and racks	Yes	Exempt	
1%, $80 cap	164.4(a)(1d) and 164.4A(8)	Grain, feed, or soybean storage facilities and parts and accessories to the facilities	Yes	Exempt	
1%, $80 cap	164.4(a)(1d) and 164.4A(9)	Farm containers for use in planting, harvesting, marketing, packaging, or transporting farm products	Yes	Exempt	
3%, $1,500 cap	164.4(a)(1e)	Mobile classroom or mobile office	Yes	Exempt mobile classrooms by preserving exemption in 164.13(41) and refund for nonprofit educational institution and tax mobile offices.	State: 4.5% rate: $ .3 million gain 4% rate: $ .2 million gain Local: $ .5 million gain
2.83%	164.4(a)(1f)	Electricity sold to farmers and dry cleaners	No	Do not change	
0.17%	164.4(a)(1h)	Electricity sold to manufacturers that use over 900,000 megawatt hours a year	No	Do not change	
3%	164.4(a)(4a)	Electricity not taxed at a lower rate	No	Do not change	
6%	164.4(a)(4c)	Telecommunications service	Yes	Tax at combined state and local rate	7% rate: $51.7 million State gain; $10.3 Local gain 6.5% rate: $26.3 million State gain; $4.7 million Local gain [municipalities receive 18.03% share]
No tax currently	164.4C	Voicemail	No	Apply tax equally to similar telecom services; call forwarding, three-way calling similar ancillary services are taxable.	Application of tax to voicemail service would generate minimal gain.
5%	164.4(a)(6)	Direct-to-home satellite service	Yes	Tax at combined state and local rate.	7% rate: $10.5 million; 6.5% rate: $7.9 million
5% in some circum-stances	164.4(a)(6)	Direct-to-home satellite statute not limited to video, but is limited to a premises (as opposed to a vehicle)	No	Apply tax uniformly to all satellite audio.	Based on available current sales activity, application of tax to satellite audio would generate minimal gain.

Streamlined Sales Tax Compliance Items in SB 1630					
Current Sales Tax Rate	**G.S. 105-**	**Application**	**Conflicts with Streamlined?**	**Proposed Solution**	**Fiscal Effect on State Revenues ($ millions)**
Not applicable. Now subject to local franchise tax but no State or local sales tax		Cable service	No	Apply tax equally to competing products; give credit for local franchise tax	Taxing cable service at a combined rate: 7% rate = $26.1 million gain; 6.5% = $19.6 million [assumes that local providers are allowed a 5% credit for locally paid taxes]
6%	164.4(a)(7)	Spirituous liquor	Yes	Tax at combined state and local rate	7% rate: $4.6 million; 6.5% rate: $2.3 million
2.50%	164.4(a)(8)	Modular homes	No	None required	
$1,500 threshold	164.13(18)	Funeral expenses	Yes	Tax tangible property, such as caskets and monuments, and exempt funeral services	State: 4.5% rate: $ 2.7 million gain 4% rate: $1.1 million gain Local: $ 1.5 million gain
terms undefined	164.13C(a)	Sales tax holiday	Yes	Comply with common definition of computer supply and school supply.	Minimal change

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 1630 A BILL TO BE ENTITLED AN ACT AFFECTING STATE FINANCE LAWS.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 3

EDITION No. _____

H. B. No. 1630

S. B. No. _____

COMMITTEE SUBSTITUTE ✓

DATE 6/7/05

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

Rep.)
) _____
Sen.)

1 moves to amend the bill on page 4, line 16 and lines 22-23
2 ( ) WHICH CHANGES THE TITLE of this act
3 by substituting the phrase "Section 8.4" for
4 the phrase "subsection (a) of this section."
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SIGNED Alice L Bordeaux

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 4

EDITION No. _____

H. B. No. 1630 (PCS)

DATE 6/7/05

S. B. No. _____

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

COMMITTEE SUBSTITUTE _____

Rep.) Blust

Sen.)

1

moves to amend the bill on page _____, line ~~S.B. 31~~ lines 2-18

( ) WHICH CHANGES THE TITLE

by rewriting those lines to read:

"AN ACT RELATING TO CONTINUATION OF THE STATE BUDGET AND MAKING REVENUE LAW CHANGES."

(Yes)
(No)

SIGNED John M. Blust

ADOPTED _____ FAILED ✓ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

ROLL CALL VOTE

ATTACHMENT 5

11 YES | 19 NO | = 30 (TOTAL) | FAILS | Date: 6-7-2005 | HB# 1630 | SB# | Amendment # Blust

HOUSE STANDING COMMITTEE ON FINANCE

MEMBER (last name)	YES	NO
Blackwood	X	
Blust	X	
Bordsen		X
Capps	X	
Carney		X
Daughtridge	X	
Dockham		
Faison		X
Folwell	X	
Glazier		X
Hackney		X
Harrell		X
Hill		X
Holliman		X
Jones		X
Lewis	X	
McGee	X	
Rayfield	X	
Ross		X
Underhill		X
Vinson		
Walend	X	
Weiss		X
Wiley	X	
Womble		X

MEMBER (last name)	YES	NO
Ex officio Members		
Culpepper		X
Cunningham		X
Eddins		
Co-Chairs		
Alexander		X
Gibson		X
Howard		
Luebke		X
McComas	X	
Wainwright		X

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 6

EDITION No. _____

H. B. No. 1630-PCS70513-RBx-21 DATE 6/7/05

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

COMMITTEE SUBSTITUTE _____

(Rep.) Lewis

Sen.)

moves to amend the bill on page 1, line 17

(✓) WHICH CHANGES THE TITLE

by deleting "CANOY,"

and on page 13, line ~~3~~ 31, by deleting that line;

and on page 13, line 30, by inserting quotation marks at the end of that line.

SIGNED Lewis

ADOPTED _____ FAILED ✓ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

ROLL CALL VOTE

ATTACHMENT 7

11 YES | 19 NO = 30 (TOTAL) | FAILS | Date: 6-7-2005 | HB# 1630 | SB# | Amendment # Lewis

HOUSE STANDING COMMITTEE ON FINANCE

MEMBER (last name)	YES	NO
Blackwood	X	
Blust	X	
Bordsen		X
Capps	X	
Carney		X
Daughtridge	X	
Dockham		
Faison		X
Folwell	X	
Glazier		X
Hackney		X
Harrell		X
Hill		X
Holliman		X
Jones		X
Lewis	X	
McGee	X	
Rayfield	X	
Ross		X
Underhill		X
Vinson		
Walend	X	
Weiss		X
Wiley	X	
Womble		X

MEMBER (last name)	YES	NO
Ex officio Members		
Culpepper		X
Cunningham		X
Eddins		
Co-Chairs		
Alexander		X
Gibson		X
Howard		
Luebke		X
McComas	X	
Wainwright		X

ATTACHMENT 8

ROLL CALL VOTE

19 YES | 11 NO = 30 (TOTAL) | PASSES | Date: 6-7-2005 | HB# 1630 | SB# _____ | Amendment # _____

HOUSE STANDING COMMITTEE ON FINANCE

MEMBER (last name)	YES	NO
Blackwood		X
Blust		X
Bordsen	X	
Capps		X
Carney	X	
Daughtridge		X
Dockham		
Faison	X	
Folwell		X
Glazier	X	
Hackney	X	
Harrell	X	
Hill	X	
Holliman	X	
Jones	X	
Lewis		X
McGee		X
Rayfield		X
Ross	X	
Underhill	X	
Vinson		
Walend		X
Weiss	X	
Wiley		X
Womble	X	

MEMBER (last name)	YES	NO
Ex officio Members		
Culpepper	X	
Cunningham	X	
Eddins		
Co-Chairs		
Alexander	X	
Gibson	X	
Howard		
Luebke	X	
McComas		X
Wainwright	X	

North Carolina General Assembly

House Committee on Finance

Minutes

~

June 13, 2005

The House Committee on Finance met on Monday, June 13, 2005 immediately upon the adjournment of the House session in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, Luebke, and McComas; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives Blackwood, Blust, Bordsen, Capps, Carney, Dockham, Faison, Folwell, Glazier, Hackney, Harrell, Holliman, Jones, Lewis, McGee, Rayfield, Underhill, Vinson, Walend, and Wiley. The Ex-Officio members present were Representatives Culpepper, Cunningham, and Eddins. Also present were Sergeant-at-Arms Jay Callaway, Fred Hines, Dusty Rhodes, Walter Spell, and James Womack. Staff persons present included Cindy Avrette, Rodney Bizzell, Erika Churchill, Gerry Cohen, David Crotts, Brenna Erford, Ashley Huffstetler, Canaan Huie, Linda Millsaps, and Martha Walston. The Visitor Registration Sheets are attached and incorporated into these minutes as **attachment 1**.

Chairwoman Alexander called the meeting to order at 9:07 pm. The sole bill under the Committee's consideration was **SB 622 – 2005 APPROPRIATIONS ACT** (see **attachment 2**). Chairwoman Alexander first recognized Representative Luebke who moved for the adoption of the proposed committee substitute for the Committee's consideration. Representative Blust stated his objection to the motion but was ruled out of order by the Chair, and the motion was adopted. The Chair then recognized Representative Gibson who offered a brief explanation of the bill and then deferred to Cindy Avrette with Research for further detail. Referring to the bill analysis, Ms. Avrette stated that the PCS for SB 622 makes the following tax law changes:

- It increases the excise tax on cigarettes 25¢ from 5¢ a pack to 30¢ a pack. It also increases the excise tax on all other tobacco products except cigars from 2% of the cost price to 6%, effective July 1, 2005.
- It equalizes the privilege tax on entertainment by taxing movies and live entertainment at the same rate as video rentals, cable TV, and satellite TV, effective September 1, 2005.
- It equalizes the gross premiums tax on insurance companies by taxing HMOs at the same 1.9% rate as other insurers, effective for taxable years beginning on or after January 1, 2006.
- It provides a refundable tax credit for qualifying expenses of a production company, effective for taxable years beginning on or after January 1, 2005.
- It provides a tax credit to a small business that provides health insurance to all of its full-time employees, effective for taxable years beginning on or after January 1, 2006.
- It also increases various fees as requested by the House Appropriation Subcommittees.

Following this explanation, Chairwoman Alexander opened the floor to questions. Representative Blackwood was recognized first and asked what a "proprietary school" was. Staff was recognized and explained that a proprietary school is a "for profit" educational institution, which usually specializes in technical education programs. Representative Holliman was recognized next and spoke to the small business health insurance tax credit contained in the bill. He stated that the State had done little in recent years to assist small businesses and the tax credit contained in the bill was step in the right direction. Representative Faison was then recognized and, stating his concerns on the bill, requested the ayes and nays pursuant to House Rule 24 on any vote on SB 622. Chairwoman Alexander ruled this request out of order. Representative Capps was recognized next and asked about the increased fees requested by the Department of Transportation. He specifically asked if the increased fees would to support highway construction and maintenance or to the General Fund. Bob Weiss with Fiscal Research was recognized to respond to the question and stated that the increased fees would go mostly toward highway maintenance alone. Representative Gibson was also recognized and reminded the members that these fee increases were requested by the Department of Transportation. Representative Capps was again recognized and asked how much it would cost to renew one's tag on a license plate if this bill was passed. Cindy Avrette with Research was recognized to respond and stated that the fee would increase from $20 to $28 for a standard plate.

Representative Howard was then recognized by the Chair and stated her intention to send forth an amendment. Representative Howard explained that her amendment would dedicate the revenues generated by the 25-cent cigarette tax increase to offset the counties'-share of non-federally covered Medicaid costs. She then attempted to officially send forth her amendment and moved its adoption. However, Chairwoman Alexander then informed the Committee that there would be no amendments entertained or votes taken on the bill, and that the purpose of the meeting was for discussion only.

Chairwoman Alexander then recognized Representative Daughtridge who spoke in opposition to the cigarette tax increase contained in the bill. At great length, he stated his concerns on the matter and informed the other members of the committee the detrimental effects this increase could have on tax revenues and the State's economy. He stated that while it sounds good to place "sin" taxes on cigarettes and other tobacco products, in actuality it isn't. He further stated that currently North Carolina has the lowest tobacco tax on the eastern seaboard, and, as a result, enjoys the tax revenues from a great number of out-of-state residents traveling through the state who stop to purchase cigarettes. He stated that by raising the cigarette tax, North Carolina would lose this advantage and estimated that the State stood to lose over $100 million annually in tax revenues. Chairwoman Alexander then recognized Representatives Gibson and Luebke who rebutted Representative Daughtridge's assertions. Representative Gibson stated his belief that the numbers quoted by Representative Daughtridge were drawn on very large assumptions and were suspect. Representative Luebke concurred and also stated that Representative Daughtridge failed to factor in the costs of tobacco related healthcare to the State in his analysis. Representative Luebke further stated that even if the cigarette tax in North Carolina is increased to 25-cents per pack, the state will still have one of the lowest in the nation, since the nationwide average cigarette tax now stands at 85-cents.

Representative McGee was then recognized for the final question of the meeting. He asked how much revenue the bill before the Committee would generate in total in the first year (2005-2006). Linda Millsaps with Fiscal Research was recognized to respond and stated that, in total, the bill would generate approximately $290 million in FY 2005-2006.

Seeing no further questions from the members, Chairwoman Alexander then adjourned the meeting at 9:44 pm.

Respectfully submitted,

Representative Martha Alexander
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Visitor Registration Sheet
2. Senate Bill 622 (and related materials)

ATTACHMENT 1

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 13, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
CONRAD L. FULKERSON	NC ACADEMY OF FAMILY PHYSICIANS.
Kim Hargett	Rep. Gibson
Cecil Bell	NCAE
Andy Ellen	NCRMA
Gregg Thompson	NPIB
Lynette Lu	AHA
Ellie Caldwell	NC Hospitals' Assn.
Paul Meyer	NCACC
Pam Seabrano	NC Alliance
[illegible]	NCRA
Kathleen Edwards	UNC-CH Legis. Reporting Service

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 13, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ken McHan	D.O.R.
Dick Carlton	atty.
Alice Garland	NCDOC
Jim Ayscue	SBE/DOT
[illegible]	[illegible]
Tony Adams	NCOAA
[illegible]	JD, M, PA
[illegible]	Poyner & Spruill
[illegible]	Bore & Assoc
Michael Shannon	Carlton
Lou Wilson	NCALTCF

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 13, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ed Regan	NCRGEA
[signature]	NCPC / FB.
Lee Hole	NCCH
Gene Ainsworth	Winston-Salem
DAVID BARNES	Poyner + Spruill
[signature]	G.S.K.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 622

Appropriations/Base Budget Committee Substitute Adopted 5/3/05
Pensions & Retirement and Aging Committee Substitute Adopted 5/3/05
Fourth Edition Engrossed 5/5/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S622-PCS35239-LYxf-21

Short Title: 2005 Appropriations Act. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO INCREASE FEES FOR LICENSING OF PROPRIETARY SCHOOLS AS RECOMMENDED BY THE STATE BOARD OF COMMUNITY COLLEGES; TO EXPAND THE EXPRESS REVIEW PROGRAM UNDER THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES STATEWIDE; TO INCREASE THE CHARGE FOR APPELLATE DIVISION REPORTS TO THE ACTUAL COST; TO ALLOW FOR THE ESTABLISHMENT OF TOLLWAYS ON FEDERALLY FUNDED HIGHWAYS DESIGNATED AS INTERSTATES; TO INCREASE COURT COSTS IN CRIMINAL ACTIONS FOR THE BENEFIT OF THE SUPPLEMENTAL PENSION BENEFITS FOR SHERIFFS; TO PERMANENTLY INCREASE THE EXCISE TAX ON CIGARETTES BY TWENTY-FIVE CENTS A PACK BEGINNING JULY 1, 2005; TO PERMANENTLY INCREASE THE EXCISE TAX RATE ON TOBACCO PRODUCTS OTHER THAN CIGARETTES AND CIGARS TO SIX PERCENT BEGINNING JULY 1, 2005; TO EQUALIZE THE GROSS PREMIUMS TAX RATES BY SETTING THE RATE FOR HEALTH MAINTENANCE ORGANIZATIONS AT ONE AND NINE-TENTHS PERCENT BEGINNING JANUARY 1, 2006; TO PROVIDE A TAX CREDIT EQUAL TO FIFTEEN PERCENT OF QUALIFYING EXPENSES FOR CERTAIN FILM PRODUCTIONS OCCURRING IN THIS STATE; TO PROVIDE FOR A TAX CREDIT OF UP TO FOUR HUNDRED DOLLARS PER EMPLOYEE FOR SMALL BUSINESSES WHO PROVIDE HEALTH INSURANCE COVERAGE FOR THEIR EMPLOYEES; TO SET THE INSURANCE REGULATORY CHARGE AT FIVE AND FIVE-TENTHS PERCENT; TO SET THE REGULATORY FEE FOR UTILITIES COMMISSION AT TWELVE

HUNDREDTHS PERCENT; TO SET THE NEWBORN SCREENING FEE AT FOURTEEN DOLLARS; TO SET NUMEROUS FEES IN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF FACILITY SERVICES; TO INCREASE VARIOUS AGRICULTURAL FEES; TO INCREASE THE CAP FOR CAMA PERMIT FEES TO EIGHT HUNDRED DOLLARS; TO INCREASE GENERAL COURT OF JUSTICE FEES FOR CRIMINAL CASES BY NINE DOLLARS AND FIFTY CENTS; TO INCREASE GENERAL COURT OF JUSTICE FEES FOR CIVIL CASES BY TEN DOLLARS; TO INCREASE THE MAXIMUM COURT FEE FOR THE ADMINISTRATION OF ESTATES AND TRUSTS TO SIX THOUSAND DOLLARS; TO INCREASE THE FEE FOR EXPUNCTION TO ONE HUNDRED TWENTY-FIVE DOLLARS; TO INCREASE THE FEES FOR ELECTRONIC MONITORING; TO INCREASE THE COURT COSTS FOR FAILURE TO WEAR A SEAT BELT TO SEVENTY-FIVE DOLLARS; TO INCREASE BUTNER PROPERTY TAXES TO A RATE OF TWENTY-FIVE CENTS PER ONE HUNDRED DOLLARS VALUATION; TO SET FEES FOR THE POLICE INFORMATION NETWORK; TO INCREASE VARIOUS DEPARTMENT OF TRANSPORTATION FEES; AND TO ALLOW THE INDUSTRIAL COMMISSION TO ESTABLISH FEES BY RULE.

The General Assembly of North Carolina enacts:

PARTS I THROUGH VII. RESERVED

PART VIII. COMMUNITY COLLEGES

Requested by: Representatives Jeffus, Tolson, Yongue

IMPLEMENT PROPRIETARY SCHOOLS LICENSING FEE INCREASE

SECTION 8.14. The State Board of Community Colleges may implement an increase in fees for licensing of proprietary schools in accordance with the following fee schedule adopted by the State Board of Community Colleges on November 18, 2004:

Initial License Fee	$2,500
License Renewal Fee	$1,250 plus $50.00 per program
Program Addition Fee	$200.00
Single Course Addition Fee	$200.00
Relocation/Site Visit Fee	$400.00
Remote Site Initial Fee	$1,000
Remote Site Renewal Fee	$750.00
Site Assessment	$200.00

PARTS IX THROUGH XI. RESERVED

PART XII. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Requested by: Representatives Hunter, Warren

EXPAND EXPRESS REVIEW PROGRAM STATEWIDE

SECTION 12.2.(a) Part 1 of Article 7 of Chapter 143B of the General Statutes is amended by adding two new sections to read:

"**§ 143B-279.13. Express permit and certification reviews.**

(a) The Department of Environment and Natural Resources shall develop an express review program to provide express permit and certification reviews in all of its regional offices. Participation in the express review program is voluntary, and the program is to become supported by the fees determined pursuant to subsection (b) of this section. The Department of Environment and Natural Resources shall determine the project applications to review under the express review program from those who request to participate in the program. The express review program may be applied to any one or all of the permits, approvals, or certifications in the following programs: the erosion and sedimentation control program, the coastal management program, and the water quality programs, including water quality certifications and stormwater management. The express review program shall focus on the following permits or certifications:

(1) Stormwater permits under Part 1 of Article 21 of Chapter 143 of the General Statutes.

(2) Stream origination certifications under Article 21 of Chapter 143 of the General Statutes.

(3) Water quality certification under Article 21 of Chapter 143 of the General Statutes.

(4) Erosion and sedimentation control permits under Article 4 of Chapter 113A of the General Statutes.

(5) Permits under the Coastal Area Management Act (CAMA), Part 4 of Article 7 of Chapter 113A of the General Statutes.

(b) The Department of Environment and Natural Resources may determine the fees for express application review under the express review program. Notwithstanding G.S. 143-215.3D, the maximum permit application fee to be charged under subsection (a) of this section for the express review of a project application requiring all of the permits under subdivisions (1) through (5) of subsection (a) of this section shall not exceed five thousand five hundred dollars ($5,500). Notwithstanding G.S. 143-215.3D, the maximum permit application fee to be charged for the express review of a project application requiring all of the permits under subdivisions (1) through (4) of subsection (a) of this section shall not exceed four thousand five hundred dollars ($4,500). Notwithstanding G.S. 143-215.3D, the maximum permit application fee charged for the express review of a project application for any other combination of permits under subdivisions (1) through (5) of subsection (a) of this section shall not exceed four thousand dollars ($4,000). Express review of a project application involving additional permits or certifications issued by the Department of Environment and Natural Resources other than those under subdivisions (1) through (5) of subsection (a) of this

section may be allowed by the Department, and, notwithstanding G.S. 143-215.3D or any other statute or rule that sets a permit fee, the maximum permit application fee charged for the express review of a project application shall not exceed four thousand dollars ($4,000), plus one hundred fifty percent (150%) of the fee that would otherwise apply by statute or rule for that particular permit or certification. Additional fees, not to exceed fifty percent (50%) of the original permit application fee under this section, may be charged for subsequent reviews due to the insufficiency of the permit applications. The Department of Environment and Natural Resources may establish the procedure by which the amount of the fees under this subsection is determined, and the fees and procedures are not rules under G.S. 150B-2(8a) for the express review program under this section.

(c) No later than March 1 of each year, the Department of Environment and Natural Resources shall report to the Fiscal Research Division and the Environmental Review Commission its findings on the success of the program under this section and any other findings or recommendations, including any legislative proposals that it deems pertinent.

"**§ 143B-279.14. Express Review Fund.**

The Express Review Fund is created as a special nonreverting fund. All fees collected under G.S. 143B-279.13 shall be credited to the Express Review Fund. The Express Review Fund shall be used for the costs of implementing the express review program under G.S. 143B-279.13 and the costs of administering the program, including the salaries and support of the program's staff. If the express review program is abolished, the funds in the Express Review Fund shall be credited to the General Fund."

SECTION 12.2.(b) The Department of Environment and Natural Resources shall expand to a statewide program that operates in each regional office of the Department the Express Review Pilot Program established by Section 11.4A of S.L. 2003-284 and expanded by Section 12.9 of S.L. 2004-124, and the provisions of G.S. 143B-279.13, as enacted by subsection (a) of this section, shall apply to this statewide program.

SECTION 12.2.(c) The Department of Environment and Natural Resources shall establish and support 12 additional positions to administer the statewide express review program under G.S. 143B-279.13, as enacted by subsection (a) of this section. Up to seven hundred thirty-six thousand six hundred twenty-nine dollars ($736,629) for the 2005-2006 fiscal year and up to six hundred seventy-one thousand four hundred nine dollars ($671,409) for the 2006-2007 fiscal year shall be allocated from the Express Review Fund created in G.S. 143B-279.14, as enacted by subsection (a) of this section, to establish and support these 12 positions.

SECTION 12.2.(d) The Department of Environment and Natural Resources shall continue and support the four positions established under Section 12.9(c) of S.L. 2004-124 to administer the statewide express review program under G.S. 143B-279.13, as enacted by subsection (a) of this section. Up to two hundred twenty-three thousand eight hundred three dollars ($223,803) for the 2005-2006 fiscal year and up to two hundred twenty-three thousand eight hundred three dollars ($223,803) for the 2006-2007 fiscal year shall be allocated from the Express Review Fund created in

G.S. 143B-279.14, as enacted by subsection (a) of this section, to continue and support these four positions.

PART XIII. RESERVED

PART XIV. JUDICIAL DEPARTMENT

Requested by: Representatives Kiser, Haire

INCREASE CHARGES FOR APPELLATE DIVISION REPORTS TO ACTUAL COST

SECTION 14.7. The Judicial Department shall charge the full cost of production for all copies of the appellate division reports that are sold.

PARTS XV THROUGH XXVII. RESERVED

PART XXVIII. DEPARTMENT OF TRANSPORTATION

Requested by: Representatives Cole, Coates

ESTABLISHING TOLLWAYS ON FEDERALLY FUNDED HIGHWAYS DESIGNATED AS INTERSTATES

SECTION 28.21.(a) The North Carolina Department of Transportation shall apply to the United States Department of Transportation for a permit to allow tolling on established interstate highways in North Carolina.

SECTION 28.21.(b) Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-89.198. Authority to toll existing interstate highways.**

Notwithstanding any other provision of this Article, the Authority may collect tolls on any existing interstate highway for which the United States Department of Transportation has granted permission by permit, or any other lawful means, to do so. The revenue generated from the collected tolls shall be used by the Authority to repair and maintain the interstate on which the tolls were collected. These revenues shall not be used to repair, maintain, or upgrade any State primary or secondary road adjacent to or connected with the interstate highways."

PART XXIX. SALARIES AND EMPLOYEE BENEFITS

Requested by: Representatives Crawford, Clary, Earle, Nye, Owens, Sherrill, Michaux

INCREASE BENEFIT/SHERIFFS' SUPPLEMENTAL PENSION FUND

SECTION 29.30.(b) G.S. 7A-304(a)(3a) reads as rewritten:

"(3a) For the supplemental pension benefits of sheriffs, the sum of ~~seventy-five cents (75¢)~~ one dollar and twenty-five cents ($1.25) to be remitted to the Department of Justice and administered under the provisions of Article 12G of Chapter 143 of the General Statutes."

PARTS XXX THROUGH XXXIII. RESERVED

PART XXXIV. TOBACCO TAX RATE CHANGES

Requested by: Representatives Alexander, Gibson, Luebke, Wainwright

TOBACCO TAX RATE CHANGES

SECTION 34.1.(a) G.S. 105-113.5 reads as rewritten:

"**§ 105-113.5. Tax on cigarettes.**

A tax is levied on the sale or possession for sale in this State, by a distributor, of all cigarettes at the rate of ~~two and one-half mills~~ one and one-half cents (1.50¢) per individual cigarette."

SECTION 34.1.(b) G.S. 105-113.35(a) reads as rewritten:

"(a) Tax. – An excise tax is levied on tobacco products other than cigarettes ~~at the rate of two percent (2%) of the cost price of the products.~~as specified in this section. This tax does not apply to ~~the following:~~

~~(1)~~ ~~A~~a tobacco product sold outside the ~~State.~~

~~(2)~~ ~~A~~State, a tobacco product sold to the federal ~~government.~~

~~(3)~~ ~~A~~government, or a sample tobacco product distributed without charge. The rate of tax is as follows:

(1) Two percent (2%) of the cost price of cigars.

(2) Six percent (6%) of the cost price of tobacco products other than cigarettes and cigars."

SECTION 34.1.(c) This section becomes effective July 1, 2005.

PARTS XXXV THROUGH XXXVII. RESERVED

PART XXXVIII. CORPORATE, EXCISE, AND INSURANCE TAX CHANGES

SECTION 38.1. Reserved.

SECTION 38.2. Reserved.

Requested by: Representatives Alexander, Gibson, Luebke, Wainwright

EQUALIZE TAX ON ENTERTAINMENT

SECTION 38.3.(a) G.S. 105-37.1 reads as rewritten:

"**§ 105-37.1. ~~Dances, athletic events, shows, exhibitions, and other entertainments.~~Privilege tax on entertainment.**

(a) Scope. – A privilege tax is imposed on the gross receipts of a person who is engaged in any of the following:

(1) Giving, offering, or managing a dance or an athletic contest for which an admission fee in excess of fifty cents (50¢) is charged.

(2) Giving, offering, or managing a form of amusement or entertainment that is not taxed by another provision of this Article and for which an admission fee is charged.

(3) Exhibiting a performance, show, or exhibition, such as a circus or dog show, that is not taxed by another provision of this Article.

(4) Operating a motion picture show for which an admission is charged.

(b) Rate and Payment. – The ~~rate of the privilege tax is three percent (3%) of~~ combined general rate applies to the gross receipts from the activities described in subsection (a) of this section. The tax is due when a return is due. A return is due by the 10th day after the end of each month and covers the gross receipts received during the previous month. The term 'combined general rate' has the same meaning as defined in G.S. 105-164.3.

(c) Advance Report. – A person who owns or controls a performance, show, or exhibition subject to the tax imposed by this section and who plans to bring the performance to this State from outside the State must file a statement with the Secretary that lists the dates, times, and places of the performance, show, or exhibition. The statement must be filed no less than five days before the first performance, show, or exhibition in this State.

(d) Local Taxes. – Cities may levy a license tax on a person taxed under subdivision (a)(1) or (a)(2) of this section; however, the tax may not exceed twenty-five dollars ($25.00). Cities may levy a license tax on a person taxed under subdivision (a)(3) of this section; however, the tax may not exceed twenty-five dollars ($25.00) for each day or part of a day the performance, show, or exhibition is given at each location.

Counties may not levy a license tax on a person taxed under subdivision ~~(a)(1) or (a)(2)~~(a)(1), (a)(2), or (a)(4) of this section. Counties may levy a license tax on a person taxed under subdivision (a)(3) to the same extent as a city."

SECTION 38.3.(b) G.S. 105-38.1 is repealed.

SECTION 38.3.(c) Subdivisions (4a) and (4b) of G.S. 105-164.3 are recodified as subdivisions (4b) and (4c) respectively.

SECTION 38.3.(d) G.S. 105-164.3 is amended by adding a new subdivision to read:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(4a) Combined general rate. – The State's general rate of tax set in G.S. 105-164.4(a) plus the sum of the rates of the local sales and use taxes authorized by Subchapter VIII of this Chapter for every county in this State."

SECTION 38.3.(e) This section does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.

SECTION 38.3.(f) This section becomes effective September 1, 2005, and applies to tickets sold on or after that date.

Requested by: Representatives Alexander, Gibson, Luebke, Wainwright

EQUALIZE GROSS PREMIUMS TAX

SECTION 38.4.(a) G.S. 105-228.5(d)(6) is repealed.

SECTION 38.4.(b) G.S. 58-6-25(a) reads as rewritten:

"(a) Charge Levied. – There is levied on each insurance company an annual charge for the purposes stated in subsection (d) of this section. The charge levied in this section is in addition to all other fees and taxes. The percentage rate of the charge is established pursuant to subsection (b) of this ~~section. For each insurance company that is not a health maintenance organization, the rate~~ section and is applied to the company's premium tax liability for the taxable year. ~~For health maintenance organizations, the rate is applied to a premium tax liability for the taxable year calculated as if the corporation or organization were paying tax at the rate in G.S. 105-228.5(d)(2).~~ In determining an insurance company's premium tax liability for a taxable year, the following shall be disregarded:

(1) Additional taxes imposed by G.S. 105-228.8.

(2) The additional local fire and lightning tax imposed by G.S. 105-228.5(d)(4).

(3) Any tax credits for guaranty or solvency fund assessments under G.S. 105-228.5A or G.S. 97-133(a).

(4) Any tax credits allowed under Chapter 105 of the General Statutes other than tax payments made by or on behalf of the taxpayer."

SECTION 38.4.(c) Notwithstanding the provisions of G.S. 105-228.5(f), the following provisions apply to health maintenance organizations for the 2006 and 2007 taxable years in lieu of the provisions of G.S. 105-228.5(f):

Health maintenance organizations that are subject to the tax imposed by G.S. 105-228.5 and have an estimated premium tax liability for the taxable year, not including the additional local fire and lightning tax, of ten thousand dollars ($10,000) or more for business done in North Carolina shall remit three estimated tax payments: the first estimated payment is due on or before April 15 and must be equal to at least forty-five percent (45%) of the taxpayer's estimated premium tax liability for the taxable year; the second estimated payment is due on or before June 15 and must be equal to at least forty-five percent (45%) of the taxpayer's estimated premium tax liability for the taxable year; and the third payment is due on or before October 15 and must be equal to at least ten percent (10%) of the taxpayer's estimated premium tax liability for the taxable year. The taxpayer must remit the balance by the following March 15 in the same manner provided in G.S. 105-228.5(e) for annual returns.

An underpayment of an estimated payment required by this subsection bears interest at the rate established under G.S. 105-241.1(i). Any overpayment bears interest as provided in G.S. 105-266(b) and, together with the interest, must be credited to the taxpayer and applied against the taxes imposed upon the company under G.S. 105-228.5.

The penalties provided in Article 9 of Chapter 105 of the General Statutes apply to the estimated tax payments required by this subsection.

SECTION 38.4.(d) This section is effective for taxable years beginning on or after January 1, 2006.

PART XXXIX. TAX INCENTIVES

Requested by: Representatives Alexander, Gibson, Luebke, Wainwright

FILM INDUSTRY JOBS INCENTIVES

SECTION 39.1.(a) Part 1 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-130.47. Credit for qualifying expenses of a production company.**

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

(1) Highly compensated individual. – An individual who receives compensation in excess of one million dollars ($1,000,000) with respect to a single production.

(2) Qualifying expenses. – The sum of the total amount spent in this State for the following by a production company in connection with a production:

a. Goods and services purchased by the production company.

b. Compensation and wages paid by the production company, other than amounts paid to a highly compensated individual, on which the production company remitted withholding payments to the Department of Revenue under Article 4A of this Chapter.

(3) Production company. – Defined in G.S. 105-164.3.

(b) Credit. – A taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars ($250,000) with respect to a production is allowed a credit against the taxes imposed by this Part equal to fifteen percent (15%) of the production company's qualifying expenses that have been certified as required in subsection (c) of this section. For the purposes of this section, in the case of an episodic television series, an entire season of episodes is one production. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year.

(c) Certification. – In order to be eligible for a credit under this section, a taxpayer must submit a detailed accounting of its qualifying expenses to the North Carolina Film Office of the Department of Commerce. The North Carolina Film Office, with the assistance of the regional film commission for the location of the production, must make a written certification of the amount of the qualifying expenses.

(d) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming the credit allowed by this section. If a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, the credit allowed under this section does not affect the entity's payment of tax on behalf of its owners.

(e) Return. – A taxpayer may claim the credit allowed by this section on a return filed for the taxable year in which the production activities are completed. The return

must state the name of the production, a description of the production, and the certification from the North Carolina Film Office of the qualifying expenses for which the credit is claimed.

(f) Credit Refundable. – If the credit allowed by this section exceeds the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

(g) Limitation. – No credit is allowed under this section for any production that satisfies one of the following conditions:

(1) It is political advertising.

(2) It is a television production of a news program or sporting event.

(3) It contains material that is obscene, as defined in G.S. 14-190.1.

(h) Substantiation. – A taxpayer allowed a credit under this section must maintain and make available for inspection any information or records required by the Secretary of Revenue or the regional film commissions. The taxpayer has the burden of proving eligibility for a credit and the amount of the credit.

(i) Report. – The Department of Revenue must publish by May 1 of each year the following information, itemized by taxpayer for the 12-month period ending the preceding April 1:

(1) The location of sites used in a production for which a credit was claimed.

(2) The qualifying expenses for which a credit was claimed, classified by whether the expenses were for goods, services, or compensation paid by the production company.

(3) The number of people employed in the State with respect to credits claimed.

(4) The total cost to the General Fund of the credits claimed.

(j) Sunset. – This section is repealed for qualifying expenses occurring on or after January 1, 2010."

SECTION 39.1.(b) Part 2 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-151.29. Credit for qualifying expenses of a production company.**

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

(1) Highly compensated individual. – An individual who receives compensation in excess of one million dollars ($1,000,000) with respect to a single production.

(2) Qualifying expenses. – The sum of the total amount spent in this State for the following by a production company in connection with a production:

a. Goods and services purchased by the production company.

b. Compensation and wages paid by the production company, other than amounts paid to a highly compensated individual, on

which the production company remitted withholding payments to the Department of Revenue under Article 4A of this Chapter.

(3) Production company. – Defined in G.S. 105-164.3.

(b) Credit. – A taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars ($250,000) with respect to a production is allowed a credit against the taxes imposed by this Part equal to fifteen percent (15%) of the production company's qualifying expenses that have been certified as required in subsection (c) of this section. For the purposes of this section, in the case of an episodic television series, an entire season of episodes is one production. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year.

(c) Certification. – In order to be eligible for a credit under this section, a taxpayer must submit a detailed accounting of its qualifying expenses to the North Carolina Film Office of the Department of Commerce. The North Carolina Film Office, with the assistance of the regional film commission for the location of the production, must make a written certification of the amount of the qualifying expenses.

(d) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming the credit allowed by this section. If a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, the credit allowed under this section does not affect the entity's payment of tax on behalf of its owners.

(e) Return. – A taxpayer may claim the credit allowed by this section on a return filed for the taxable year in which the production activities are completed. The return must state the name of the production, a description of the production, and the certification from the North Carolina Film Office of the qualifying expenses for which the credit is claimed.

(f) Credit Refundable. – If the credit allowed by this section exceeds the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

(g) Limitation. – No credit is allowed under this section for any production that satisfies one of the following conditions:

(1) It is political advertising.

(2) It is a television production of a news program or sporting event.

(3) It contains material that is obscene, as defined in G.S. 14-190.1.

(h) Substantiation. – A taxpayer allowed a credit under this section must maintain and make available for inspection any information or records required by the Secretary of Revenue or the regional film commissions. The taxpayer has the burden of proving eligibility for a credit and the amount of the credit.

(i) Report. – The Department of Revenue must publish by May 1 of each year the following information, itemized by taxpayer for the 12-month period ending the preceding April 1:

(1) The location of sites used in a production for which a credit was claimed.

(2) The qualifying expenses for which a credit was claimed, classified by whether the expenses were for goods, services, or compensation paid by the production company.

(3) The number of people employed in the State with respect to credits claimed.

(4) The total cost to the General Fund of the credits claimed.

(j) Sunset. – This section is repealed for qualifying expenses occurring on or after January 1, 2010."

SECTION 39.1.(c) G.S. 105-259(b), as amended by Section 30.1 of this act, is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

(33) To exchange information concerning a tax credit claimed under G.S. 105-130.47 or G.S. 105-151.29 with the North Carolina Film Office of the Department of Commerce and with the regional film commissions."

SECTION 39.1.(d) G.S. 143B-434.4 is repealed.

SECTION 39.1.(e) This section is effective for taxable years beginning on or after January 1, 2005.

Requested by: Representatives Alexander, Gibson, Luebke, Wainwright

SMALL BUSINESS HEALTH INSURANCE TAX CREDIT

SECTION 39.2.(a) Article 3B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.16E. Credit for small business employee health benefits.**

(a) Credit. – A small business that provides health benefits for all of its eligible employees during the taxable year is allowed a credit to offset its costs in providing health benefits for its eligible employees. For the purposes of this subsection, a taxpayer provides health benefits if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

The credit is equal to a dollar amount per eligible employee, not to exceed the taxpayer's costs of providing health benefits for its eligible employees during the taxable year. For each eligible employee for whom the taxpayer provides health benefits, the amount is four hundred dollars ($400.00).

(b) Allocation. – If the taxpayer is an individual who is a nonresident or a part-year resident, the taxpayer must reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. If the taxpayer is not an individual and is required to apportion its multistate business income to this State, the taxpayer must reduce the amount of the credit by multiplying it by the apportionment fraction used to apportion its business income to this State.

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

(1) Eligible employee. – Defined in G.S. 58-50-110.

(2) Small business. – A taxpayer that employs no more than 25 eligible employees throughout the taxable year.

(d) No Double Benefit. – A taxpayer may not claim a credit under this section for costs for which it claimed a deduction under the Code. A taxpayer that claims a credit provided under this section must adjust taxable income as provided in G.S. 105-130.5(a)(16) or G.S. 105-134.6(c)(9), as applicable.

(e) Sunset. – This section expires for taxable years beginning on or after January 1, 2010."

SECTION 39.2.(b) G.S. 105-129.15A is repealed.

SECTION 39.2.(c) G.S. 105-129.16 is repealed.

SECTION 39.2.(d) G.S. 105-129.16A is amended by adding a new subsection to read:

"(e) Sunset. – This section is repealed for renewable energy property placed in service on or after January 1, 2006."

SECTION 39.2.(e) G.S. 105-129.16C is amended by adding a new subsection to read:

"(d) Sunset. – This section is repealed for taxable years beginning on or after January 1, 2006."

SECTION 39.2.(f) G.S. 105-130.5(a) is amended by adding a new subdivision to read:

"(a) The following additions to federal taxable income shall be made in determining State net income:

...

(16) To the extent not included in federal taxable income, the costs of providing employee health benefits for which the taxpayer claims a credit under G.S. 105-129.16E."

SECTION 39.2.(g) G.S. 105-134.6(c) is amended by adding a new subdivision to read:

"(c) Additions. – The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

...

(9) The costs of providing employee health benefits for which the taxpayer claims a credit under G.S. 105-129.16E."

SECTION 39.2.(h) Subsections (a), (f), and (g) of this section are effective for taxable years beginning on or after January 1, 2006. The remainder of this section is effective when it becomes law.

PART XL. SET RATES FOR INSURANCE REGULATORY CHARGE AND PUBLIC UTILITIES FEES

Requested by: Representatives Alexander, Gibson, Luebke, Wainwright

INSURANCE REGULATORY CHARGE

SECTION 40.1.(a) The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is five and one-half percent (5.5%) for the 2005 calendar year.

SECTION 40.1.(b) This section is effective when it becomes law.

Requested by: Representatives Alexander, Gibson, Luebke, Wainwright

REGULATORY FEE FOR UTILITIES COMMISSION

SECTION 40.2.(a) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is twelve-hundredths of one percent (0.12%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 2005.

SECTION 40.2.(b) The electric membership corporation regulatory fee imposed under G.S. 62-302(b1) for the 2005-2006 fiscal year is two hundred thousand dollars ($200,000).

SECTION 40.2.(c) This section becomes effective July 1, 2005.

PART XLI. HEALTH AND HUMAN SERVICES FEES

Requested by: Representatives Barnhart, Insko

NEWBORN SCREENING FEE

SECTION 41.1. G.S. 130A-125(c) reads as rewritten:

"(c) ~~The Department may impose a fee for a laboratory test performed pursuant to this section by the State Public Health Laboratory. A fee for a test must be based on the actual cost of performing the test.~~ A fee of fourteen dollars ($14.00) applies to a laboratory test performed by the State Public Health Laboratory performed pursuant to this section. Fees collected shall remain in the Department to be used to offset the cost of the Newborn Screening Program."

Requested by: Representatives Insko, Barnhart

DIVISION OF FACILITY SERVICES FEES

SECTION 41.2.(a) G.S. 131D-2(b)(1) reads as rewritten:

"(b) Licensure; inspections. –

(1) The Department of Health and Human Services shall inspect and license, under rules adopted by the Medical Care Commission, all adult care homes for persons who are aged or mentally or physically

disabled except those exempt in subsection (c) of this section. Licenses issued under the authority of this section shall be valid for one year from the date of issuance unless revoked earlier by the Secretary for failure to comply with any part of this section or any rules adopted hereunder. Licenses shall be renewed annually upon filing and the Department's approval of the renewal application. The Department shall charge each adult care home with six or fewer beds a nonrefundable annual license fee in the amount of ~~one hundred twenty-five dollars ($125.00).~~ two hundred fifty dollars ($250.00).The Department shall charge each adult care home with more than six beds a nonrefundable annual license fee in the amount of ~~one hundred seventy-five dollars ($175.00)~~ three hundred fifty dollars ($350.00) plus a nonrefundable annual per-bed fee of ~~six dollars and twenty-five cents ($6.25).~~twelve dollars and fifty cents ($12.50). A license shall not be renewed if outstanding fees, fines, and penalties imposed by the State against the home have not been paid. Fines and penalties for which an appeal is pending are exempt from consideration. The renewal application shall contain all necessary and reasonable information that the Department may by rule require. Except as otherwise provided in this subdivision, the Department may amend a license by reducing it from a full license to a provisional license for a period of not more than 90 days whenever the Department finds that:

a. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles;
b. There is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and
c. There is a reasonable probability that the licensee will be able thereafter to remain in compliance with the licensure rules for the foreseeable future.

The Department may extend a provisional license for not more than one additional 90-day period upon finding that the licensee has made substantial progress toward remedying the licensure deficiencies that caused the license to be reduced to provisional status.

The Department may revoke a license whenever:

a. The Department finds that:
    1. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles; and
    2. It is not reasonably probable that the licensee can remedy the licensure deficiencies within a reasonable length of time; or

b. The Department finds that:
   1. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles; and
   2. Although the licensee may be able to remedy the deficiencies within a reasonable time, it is not reasonably probable that the licensee will be able to remain in compliance with licensure rules for the foreseeable future; or

c. The Department finds that the licensee has failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles, and the failure to comply endangered the health, safety, or welfare of the patients in the facility.

The Department may also issue a provisional license to a facility, pursuant to rules adopted by the Medical Care Commission, for substantial failure to comply with the provisions of this section or rules adopted pursuant to this section. Any facility wishing to contest the issuance of a provisional license shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails written notice of the issuance of the provisional license."

SECTION 41.2.(b) G.S. 131E-77(d) reads as rewritten:

"(d) Upon receipt of an application for a license, the Department shall issue a license if it finds that the applicant complies with the provisions of this Article and the rules of the Commission. The Department shall renew each license in accordance with the rules of the Commission. The Department shall charge the applicant a nonrefundable annual base license fee plus a nonrefundable annual per-bed fee as follows:

Facility Type	**Number of Beds**	**Base Fee**	**Per-Bed Fee**
General Acute Hospitals:	1-49 beds	~~$125.00~~250.00	~~$6.25~~12.50
	50-99 beds	~~$175.00~~350.00	~~$6.25~~12.50
	100-199 beds	~~$225.00~~450.00	~~$6.25~~12.50
	200-399 beds	~~$275.00~~550.00	~~$6.25~~12.50
	400-699 beds	~~$375.00~~750.00	~~$6.25~~12.50
	700+ beds	~~$475.00~~950.00	~~$6.25~~12.50
Other Hospitals:		~~$250.00~~500.00	~~$6.25~~12.50"

SECTION 41.2(c) G.S. 131E-102(b) reads as rewritten:

"(b) Applications shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated under this Part. The Department shall charge the applicant a nonrefundable annual license fee in the amount of ~~two hundred twenty-five dollars ($225.00)~~ four hundred fifty dollars ($450.00) plus a nonrefundable annual per-bed fee of ~~six dollars and twenty-five cents ($6.25).~~twelve dollars and fifty cents ($12.50)."

SECTION 41.2(d) G.S. 131E-138(c) reads as rewritten:

"(c) An application for a license shall be available from the Department, and each application filed with the Department shall contain all information requested by the Department. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated by the Commission under this Part. The Department shall charge the applicant a nonrefundable annual license fee in the amount of ~~one hundred seventy-five dollars ($175.00).~~three hundred fifty dollars ($350.00)."

SECTION 41.2(e) G.S. 131E-147(b) reads as rewritten:

"(b) Applications shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated by the Commission under this Part. The Department shall charge the applicant a nonrefundable annual base license fee in the amount of ~~three hundred fifty dollars ($350.00)~~ seven hundred dollars ($700.00) plus a nonrefundable annual per-operating room fee in the amount of ~~twenty-five dollars ($25.00).~~fifty dollars ($50.00)."

SECTION 41.2(f) G.S. 131E-167(a) reads as rewritten:

"(a) Applications for certification shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A certificate shall be granted to the applicant for a period not to exceed one year upon a determination by the Department that the applicant has substantially complied with the provisions of this Article and the rules promulgated by the Department under this Article. The Department shall charge the applicant a nonrefundable annual certification fee in the amount of ~~one hundred twenty-five dollars ($125.00).~~two hundred fifty dollars ($250.00)."

SECTION 41.2(g) G.S. 131E-269 reads as rewritten:

"**§ 131E-269. Authorization to charge fee for certification of facilities suitable to perform abortions.**

The Department of Health and Human Services shall charge each hospital or clinic certified by the Department as a facility suitable for the performance of abortions, as authorized under G.S. 14-45.1, a nonrefundable annual certification fee in the amount of ~~three hundred fifty dollars ($350.00).~~seven hundred dollars ($700.00)."

SECTION 41.2(h) G.S. 122C-23(h) reads as rewritten:

"(h) The Department shall charge facilities licensed under this Chapter that have licensed beds a nonrefundable annual base license fee plus a nonrefundable annual per-bed fee as follows:

Type of Facility	Number of Beds	Base Fee	Per-Bed Fee
Facilities (non-ICF/MR):	6 or fewer beds	~~$125.00~~250.00	$0
	More than 6 beds	~~$175.00~~350.00	~~$6.25~~12.50
ICF/MR Only:	6 or fewer beds	~~$325.00~~650.00	$0
	More than 6 beds	~~$325.00~~650.00	~~$6.25~~12.50"

SECTION 41.2(i) G.S. 131E-138.1 reads as rewritten:

"**§ 131E-138.1. Licensure fees for nursing beds and adult care home beds in continuing care retirement communities.**

The Department shall charge continuing care retirement communities licensed under Article 64 of Chapter 58 of the General Statutes that have nursing home beds or adult care home beds licensed by the Department a nonrefundable annual base license fee in the amount of ~~two hundred twenty-five dollars ($225.00)~~four hundred fifty dollars ($450.00) plus a nonrefundable annual per-bed fee in the amount of ~~six dollars and twenty-five cents ($6.25).~~twelve dollars and fifty cents ($12.50)."

SECTION 41.2(j) G.S. 131E-267 reads as rewritten:

"**§ 131E-267. Fees for departmental review of health care facility construction projects.**

The Department of Health and Human Services shall charge a fee for the review of each health care facility construction project to ensure that project plans and construction are in compliance with State law. The fee shall be charged on a one-time, per-project basis, as follows, and shall not exceed twelve thousand five hundred dollars ($12,500) for any single project:

Institutional Project	Project Fee
Hospitals	~~$150.00 plus $0.10/square foot of project space~~
	$300.00 plus $0.20/square foot of project space
Nursing Homes	~~$125.00 plus $0.08/square foot of project space~~
	$250.00 plus $0.16/square foot of project space
Ambulatory Surgical Facility	~~$100.00 plus $0.08/square foot of project space~~
	$200.00 plus $0.16/square foot of project space
Psychiatric Hospital	~~$100.00 plus $0.08/square foot of project space~~
	$200.00 plus $0.16/square foot of project space
Adult Care Home ~~more than 7 beds~~	~~$87.00 plus $0.05/square foot of project space~~
7 or more beds	$175.00 plus $0.10/square foot of project space

Residential Project	Project Fee
Family Care Homes	~~$87.00~~ 175.00 flat fee
ICF/MR Group Homes	~~$137.00~~275.00 flat fee
Group Homes: 1-3 beds	~~$50.00~~ 100.00 flat fee
Group Homes: 4-6 beds	~~$87.00~~ 175.00 flat fee
Group Homes: 7-9 beds	~~$112.00~~225.00 flat fee

Other residential: More than 9 beds ~~$112.00~~225.00 plus ~~$0.038~~/0.075/square foot of project space."

SECTION 41.2.(k) This section becomes effective October 1, 2005.

PART XLII. NATURAL AND ECONOMIC RESOURCES FEES

Requested by: Representatives Hunter, Warren

INCREASE VARIOUS AGRICULTURAL FEES

SECTION 42.1.(a) G.S. 106-284.34(c) reads as rewritten:

"(c) No person shall distribute in this State a commercial feed, except a customer-formula feed, which has not been registered pursuant to the provisions of this section. The application for registration shall be submitted in the manner prescribed by the Commissioner. Upon approval by the Commissioner or his duly designated agent the registration shall be issued to the applicant. All registrations expire on the thirty-first day of December of each year. An annual registration fee of ~~three dollars ($3.00)~~ up to five dollars ($5.00) for each commercial feed other than canned pet food shall accompany each request for registration. An annual registration fee of ~~ten dollars ($10.00)~~ up to twelve dollars ($12.00) for each canned pet food shall accompany each request for registration."

SECTION 42.1.(b) G.S. 106-284.40(b)(4) reads as rewritten:

"(4) In the case of a commercial feed other than canned pet food which is distributed in the State only in packages of five pounds or less, an annual registration fee of ~~thirty dollars ($30.00)~~ up to forty dollars ($40.00) shall be paid in lieu of the inspection fee specified above."

SECTION 42.1.(c) G.S. 106-277.28(3) reads as rewritten:

"(3) Each seed dealer or grower who has seed, whether originated or labeled by the dealer or grower, that is offered for sale in this State shall report the quantity of seed offered for sale and pay an inspection fee of ~~two cents (2¢)~~ up to four cents (4¢) for each container of seeds weighing 10 pounds or more. Seed shall be subject to the inspection fee and reporting requirements only once in any 12-month period. This fee does not apply to seed grown by a farmer and offered for sale by the farmer at the farm where the seed was grown."

SECTION 42.1.(d) The Board of Agriculture shall charge no more than the following fees for agronomic services:

Test/Service		Fee
(1)	Routine nematode samples	$ 3.00
(2)	Routine waste samples	$ 5.00
(3)	Research soil and nematode samples	$12.00
(4)	Research plant, waste, and solution samples	$12.00
(5)	Nonresident nematode samples	$14.00
(6)	Nonresident plant, waste, and solution samples	$26.00
(7)	Special services for plant, waste, and solution samples:	
	a. Heavy metals-soils	$25.00

b.	Nitrates-soils	$ 5.00
c.	Waste-heavy metals	$10.00
d.	Waste-N breakout	$10.00
e.	Waste-liming equivalent	$10.00
f.	Plant-chloride	$ 5.00
g.	Plant-molybdenum	$ 5.00
h.	Plant-petiole nitrates	$ 5.00.

SECTION 42.1.(e) The Board of Agriculture shall charge no more than the following fees for animal disease diagnostic tests and services:

Test/Service		Fee
(1)	Histopath	$30.00
(2)	Professional services-EIA	$ 6.00
(3)	Professional services-blood pour-off fees	$ 1.00
(4)	Vacuum tube handling fee	$ 0.04.

SECTION 42.1.(f) G.S. 81A-52 reads as rewritten:

"**§ 81A-52. License.**

All public weighmasters shall be licensed. Any person not less than 18 years of age who wishes to be a public weighmaster shall apply to the Department on a form provided by the Department. The Board may adopt rules for determining the qualifications of the applicant for a license. Public weighmasters shall be licensed for a period of one year beginning the first day of July and ending on the thirtieth day of June, and a fee of ~~twelve dollars ($12.00)~~ up to nineteen dollars ($19.00) shall be paid for each person licensed at the time of the filing of the application."

SECTION 42.1.(g) G.S. 81A-72 reads as rewritten:

"**§ 81A-72. Registration; certificate of registration; annual renewal.**

The Commissioner or his authorized agent shall register any person who has complied with the requirements of this Article by making a record of receipt of application, and the issuing of a certificate or card of registration to applicant, whereupon the applicant becomes a registered scale technician and shall be known thereafter as such. Such registration shall be in effect from date of registration until July 1 next and shall be renewed on the first day of July of each year thereafter. A fee of up to twenty dollars ($20.00) shall accompany each application for registration and each annual registration renewal."

SECTION 42.1.(h) G.S. 81A-11 is repealed.

SECTION 42.1.(i) Chapter 81A of the General Statutes is amended by adding the following new section to read:

"**§ 81A-12. Fee schedule.**

(a) The following maximum fees apply to all weights that are tested and certified to meet tolerances less stringent than the American Society for Testing and Materials (ASTM) Standard E617 Class 4. This includes the National Institutes of Standards and Technology (NIST) Class F tolerance. If the weight error exceeds three-fourths of the applicable tolerance, adjustment may be required at an additional fee equal to the normal fee. No extra fee shall be charged for the normal adjustment of a weight cart. Even if weights are rejected or condemned, fees shall be assessed for the test performed.

Customary	Fee/Unit	Metric	Maximum Fee/Unit
0-10 lb	$ 5.00	0-5 kg	$ 5.00
11-100 lb	$ 10.00	6-50 kg	$ 10.00
101-1000 lb	$ 20.00	51-500 kg	$ 20.00
1001-2500 lb	$ 30.00	501-1000 kg	$ 30.00
2501-6000 lb	$ 50.00	1001-2500 kg	$ 50.00
Weight Carts up to 6000 lb	$125.00 (includes adjustment)		

(b) The following maximum fees apply to all weights that are tested and certified to meet ASTM Standard E617 Class 4 or the International Organization of Legal Metrology (IOLM) R111 Class F2 tolerances. If the weight error exceeds three-fourths of the applicable tolerance, adjustment may be required at an additional fee equal to the normal fee. Even if weights are rejected or condemned, fees shall be assessed for the test performed.

Customary	Fee/Unit	Metric	Maximum Fee/Unit
0-10 lb	$ 10.00	0-5 kg	$ 10.00
11-100 lb	$ 20.00	6-50 kg	$ 20.00
101-1000 lb	$ 40.00	51-500 kg	$ 40.00
1001-2500 lb	$ 60.00	501-1000 kg	$ 60.00
2501-6000 lb	$100.00	1001-2500 kg	$100.00

(c) The following maximum fees apply to all weights that are calibrated. Calibration means determining actual mass and conventional mass values with an assigned uncertainty specific to the test. If necessary and considered feasible by the metrologist, adjustments to ASTM Class 1, 2, or 3 tolerances or IOLM Class E2, F1, or F2 tolerances may be made for an additional fee of two times the normal fee. Adjustments to weights of this group shall require a minimum of 10 days for weights to return to environmental equilibrium before a final calibration value can be assigned. Even if weights are rejected or condemned, fees shall be assessed for the test performed.

Customary	Fee/Unit	Metric	Maximum Fee/Unit
0-20 lb	$ 20.00	0-10 kg	$ 20.00
21-50 lb	$ 40.00	11-30 kg	$ 40.00
51-1000 lb	$ 70.00	31-500 kg	$ 70.00
1001-2500 lb	$130.00	501-1000 kg	$130.00
2501-6000 lb	$200.00	1001-2500 kg	$200.00

(d) The following maximum fees apply to all weights that are calibrated using NIST weighing designs. These weights are tested in groups (typically either a 1, 2, 3, 5 series or a 1, 2, 2, 5 series) and are subject to the minimum per series fee shown. The best uncertainty possible from the North Carolina Standards Laboratory shall be assigned to the mass values of the weights. If necessary and considered feasible by the metrologist, adjustments to ASTM Class 0, 1, 2, or 3 tolerances or IOLM Class E1, E2, F1, or F2 tolerances may be made for an additional fee of two times the normal fee. Adjustments to weights of this group shall require a minimum of 10 days for weights to return to environmental equilibrium before a final calibration value can be assigned.

Weight Range	Maximum Fee/Unit or Series

0-1 kg	$30.00 each, with a minimum charge of $90 (3 weights) per series
2-30 kg	$50.00 each, with a minimum charge of $150 (3 weights) per series
0-2 lb	$30.00 each, with a minimum charge of $90 (3 weights) per series
3-50 lb	$50.00 each, with a minimum charge of $150 (3 weights) per series

(e) The following maximum fees apply to volumetric standard calibration.

Provers or Test Measures Tested By The Volume Transfer Method

Customary	Fee/Test Point	Metric	Fee/Test Point
0-5 gal	Up to $30.00	0-20 liters	Up to $30.00
Over 5 gal	Add up to $0.40 per each additional gallon	Over 20 liters	Add up to $0.10 per each additional liter

Volumetric Flasks, Graduates, Provers, Slicker Plate Standards, or Test Measures Tested By the Gravimetric Calibration Method

Customary	Fee/Test Point	Metric	Fee/Test Point
0-100 gal set-up fee	Up to $50.00	0-500 liters set-up fee	Up to $50.00
Calibration Fee	Add up to $2.00 per gallon	Calibration Fee	Add up to $0.50 per liter

Small Volume Provers (SVPs) Tested By The Gravimetric Calibration Method

Customary	Fee/Test Point	Metric	Fee/Test Point
0-100 gal set-up fee	Up to $ 100.00	0-500 liters set-up fee	Up to $100.00
Calibration Fee	Add up to $2.00 per gallon	Calibration Fee	Add up to $0.50 per liter

(f) The following maximum fees apply to tape measures and rigid rules.

Set-Up Fee	Up to $ 40.00 per instrument
Calibration Fee	Up to $10.00 calibration interval

(g) The following maximum fees apply to liquid-in-glass and electronic thermometers.

Set-Up Fee	Up to $40.00/instrument
Calibration Fee	Up to $20.00/calibration point
Resistance Thermometry Coefficient Calculation and Report	Up to $100.00/ instrument

(h) Any special tests or weight cleaning shall be billed at the rate of up to seventy dollars ($70.00) per hour prorated to the nearest tenth of an hour, with a minimum charge of thirty-five dollars ($35.00).

(i) A minimum charge of twenty-five dollars ($25.00) per invoice shall apply.

(j) If travel is required in connection with the performance of any of these services, the Department shall be reimbursed at the rates provided in G.S. 138-6.

(k) The Department may refuse to accept for testing any weight or measure the Department deems unsuited for its intended use.

(l) The fee for tests performed on weights or measures that will be used primarily outside of the State of North Carolina shall be twice the amounts set forth in this section."

SECTION 42.2. Reserved.

Requested by: Representatives Hunter, Warren

INCREASE CAP FOR CAMA PERMIT FEES

SECTION 42.3.(a) G.S. 113A-119.1(a) reads as rewritten:

"(a) The Commission shall have the power to establish a graduated fee schedule for the processing of applications for permits, renewals of permits, modifications of permits, or transfers of permits issued pursuant to this Article. In determining the fee schedule, the Commission shall consider the administrative and personnel costs incurred by the Department for processing the applications, related compliance activities, and the complexity of the development sought to be undertaken for which a permit is required under this Article. The fee to be charged for processing an application may not exceed ~~four hundred dollars ($400.00).~~ eight hundred dollars ($800.00). The total funds collected from fees authorized by the Commission pursuant to this section in any fiscal year shall not exceed thirty-three and one-third percent (33 1/3%) of the total personnel and administrative costs incurred by the Department for permit processing and compliance programs within the Division of Coastal ~~Area~~ Management."

SECTION 42.3.(b) The Coastal Resources Commission may adopt temporary rules to implement this section.

PART XLIII. JUSTICE AND PUBLIC SAFETY FEES

Requested by: Representatives Haire, Kiser

GENERAL COURT OF JUSTICE FEE INCREASES

SECTION 43.1.(a) G.S. 7A-304(a)(4) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

...

(4) For support of the General Court of Justice, the sum of ~~seventy-six dollars ($76.00)~~ eighty-five dollars and fifty cents ($85.50) in the district court, including cases before a magistrate, and the sum of ~~eighty-three dollars ($83.00)~~ ninety-two dollars and fifty cents ($92.50) in the superior court, to be remitted to the State Treasurer. For a person convicted of a felony in superior court who has made a first appearance in district court, both the district court and superior court fees shall be assessed. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents ($.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19."

SECTION 43.1.(b) G.S. 7A-305(a)(2) reads as rewritten:

"(a) In every civil action in the superior or district court, except for actions brought under Chapter 50B of the General Statutes, the following costs shall be assessed:

...

(2) For support of the General Court of Justice, the sum of ~~sixty-nine dollars ($69.00)~~ seventy-nine dollars ($79.00) in the superior court, and the sum of ~~fifty-four dollars ($54.00)~~ sixty-four dollars ($64.00) in the district court except that if the case is assigned to a magistrate the sum shall be ~~forty-three dollars ($43.00).~~ fifty-three dollars ($53.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents ($.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19."

SECTION 43.1.(c) G.S. 7A-306(a)(2) reads as rewritten:

"(a) In every special proceeding in the superior court, the following costs shall be assessed:

...

(2) For support of the General Court of Justice the sum of ~~thirty dollars ($30.00).~~ forty dollars ($40.00). In addition, in proceedings involving land, except boundary disputes, if the fair market value of the land involved is over one hundred dollars ($100.00), there shall be an additional sum of thirty cents (30¢) per one hundred dollars ($100.00) of value, or major fraction thereof, not to exceed a maximum additional sum of two hundred dollars ($200.00). Fair market value is determined by the sale price if there is a sale, the appraiser's valuation if there is no sale, or the appraised value from the property tax records if there is neither a sale nor an appraiser's valuation. Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each ~~thirty-dollar ($30.00)~~ forty-dollar ($40.00) General Court of Justice fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4."

SECTION 43.1.(d) G.S. 7A-307(a)(2) and (2a) read as rewritten:

"(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, in trust proceedings under G.S. 36A-23.1, and in collections of personal property by affidavit, the following costs shall be assessed:

...

(2) For support of the General Court of Justice, the sum of ~~thirty dollars ($30.00),~~ forty dollars ($40.00), plus an additional forty cents (40¢) per one hundred dollars ($100.00), or major fraction thereof, of the

gross estate, not to exceed ~~three thousand dollars ($3,000).~~ six thousand dollars ($6,000). Gross estate shall include the fair market value of all personalty when received, and all proceeds from the sale of realty coming into the hands of the fiduciary, but shall not include the value of realty. In collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall be fifteen dollars ($15.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each ~~thirty-dollar ($30.00)~~ forty-dollar ($40.00) General Court of Justice fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4.

(2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of the gross estate, not to exceed ~~three thousand dollars ($3,000),~~ six thousand dollars ($6,000), shall not be assessed on personalty received by a trust under a will when the estate of the decedent was administered under Chapters 28 or 28A of the General Statutes. Instead, a fee of twenty dollars ($20.00) shall be assessed on the filing of each annual and final account."

SECTION 43.1.(e) G.S. 15A-145(e) reads as rewritten:

"(e) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of ~~sixty-five dollars ($65.00)~~ one hundred twenty-five dollars ($125.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 43.1.(f) G.S. 15A-1343(b1)(3c) reads as rewritten:

"(b1) Special Conditions. – In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

...

(3c) Remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising

agency to monitor the offender's compliance with the condition ~~electronically.~~electronically and to pay a fee for the device as specified in subsection (c2) of this section."

SECTION 43.1.(g) G.S. 20-135.2A(e) reads as rewritten:

"(e) Any driver or passenger who fails to wear a seat belt as required by this section shall have committed an infraction and shall pay a penalty of twenty-five dollars ($25.00) plus court costs in the sum of ~~fifty dollars ($50.00).~~ seventy-five dollars ($75.00). Court costs assessed under this section are for the support of the General Court of Justice and shall be remitted to the State Treasurer. Conviction of an infraction under this section has no other consequence."

Requested by: Representatives Haire, Kiser

DEVICE FEE FOR HOUSE ARREST WITH ELECTRONIC MONITORING

SECTION 43.2. G.S. 15A-1343 is amended by adding a new section to read:

"(c2) Electronic Monitoring Device Fee. – Any person placed on house arrest with electronic monitoring under subsection (b1) of this section shall pay a fee of ninety dollars ($90.00) for the electronic monitoring device. The court may exempt a person from paying the fee only for good cause and upon motion of the person placed on house arrest with electronic monitoring. The court may require that the fee be paid in advance or in a lump sum or sums, and a probation officer may require payment by those methods if the officer is authorized by subsection (g) of this section to determine the payment schedule. The fee must be paid to the clerk of court for the county in which the judgment was entered or the deferred prosecution agreement was filed. Fees collected under this subsection shall be transmitted to the State for deposit into the State's General Fund."

Requested by: Representatives Haire, Kiser

INCREASE BUTNER TAXES

SECTION 43.3.(a) Section 1 of Chapter 830 of the 1983 Session Laws reads as rewritten:

"Section 1. (a) The territorial jurisdiction of the Butner Police and Fire Protection District shall include: (i) any property formerly a part of the original Camp Butner reservation, including both those areas currently owned and occupied by the State and its agencies and those which may have been leased or otherwise disposed of by the State; (ii) the Lyons Station Sanitary District; and (iii) that part of Granville County adjoining the Butner reservation and the Lyons Station Sanitary District situated north and west of the intersection of Rural Paved Roads 1103 and 1106 and bounded by those roads and the boundaries of said reservation and said sanitary district.

(b) The territorial jurisdiction set forth in subsection (a) of this section shall constitute the Butner Fire and Police Protection District. The tax collectors of Durham and Granville Counties shall annually collect ~~beginning with fiscal year 1983-84~~ a tax of ~~twenty cents (20¢)~~ twenty-five cents (25¢) per one hundred dollars ($100.00) valuation of all real and personal property in the portions of said district in their

respective counties from year to year which tax shall be collected as county taxes are collected and shall remit the same to the State Treasurer for deposit in the General Fund."

SECTION 43.3.(b) This section is effective for taxes imposed for taxable years beginning on or after July 1, 2005.

Requested by: Representatives Haire, Kiser

FEE FOR POLICE INFORMATION NETWORK

SECTION 43.4.(a) G.S. 114-10.1 reads as rewritten:

"**§ 114-10.1. Police Information Network.**

(a) The Division of Criminal Statistics is authorized to establish, devise, maintain and operate, under the control and supervision of the Attorney General, a system for receiving and disseminating to participating agencies information collected, maintained and correlated under authority of G.S. 114-10 of this Article. The system shall be known as the Police Information Network.

(b) The Attorney General is authorized to cooperate with the Division of Motor Vehicles, Department of Administration, Department of Correction and other State, local and federal agencies and organizations in carrying out the purpose and intent of this section, and to utilize, in cooperation with other State agencies and to the extent as may be practical, computers and related equipment as may be operated by other State agencies.

(c) The Attorney General, after consultation with participating agencies, shall adopt rules and regulations governing the organization and administration of the Police Information Network, including rules and regulations governing the types of information relating to the administration of criminal justice to be entered into the system, and who shall have access to such information. The rules and regulations governing access to the Police Information Network shall not prohibit an attorney who has entered a criminal proceeding in accordance with G.S. 15A-141 from obtaining information relevant to that criminal proceeding. The rules and regulations governing access to the Police Information Network shall not prohibit an attorney who represents a person in adjudicatory or dispositional proceedings for an infraction from obtaining the person's driving record or criminal history.

(d) The Attorney General may impose an initial set up fee of two thousand six hundred fifty dollars ($2,650) for agencies to participate in the Police Information Network. This one-time fee shall be used to offset the cost of the router and data circuit needed to access the Network.

The Attorney General may also impose monthly fees on participating agencies. The monthly fees collected under this subsection shall be used to offset the cost of operating and maintaining the Police Information Network

(1) The Attorney General may impose a monthly circuit fee on agencies that access the Police Information Network through a circuit maintained and operated by the Department of Justice. The amount of the monthly fee is three hundred dollars ($300.00) plus an additional fee amount for each device linked to the Network. The additional fee

amount varies depending upon the type of device. For every desktop device after the first seven desktop devices, the additional monthly fee is twenty-five dollars ($25.00) per device. For a mobile device, the additional monthly fee is six dollars ($6.00) per device.

(2) The Attorney General may impose a monthly device fee on agencies that access the Police Information Network through some other approved means. The amount of the monthly device fee varies depending upon the type of device. For a desktop device, the monthly fee is twenty-five dollars ($25.00) per device. For a mobile device, the fee is six dollars ($6.00) per device."

SECTION 43.4.(b) G.S. 114-10.1(d), as enacted by this section, reads as rewritten:

"(d) The Attorney General may impose an initial set up fee of two thousand six hundred fifty dollars ($2,650) for agencies to participate in the Police Information Network. This one-time fee shall be used to offset the cost of the router and data circuit needed to access the Network.

The Attorney General may also impose monthly fees on participating agencies. The monthly fees collected under this subsection shall be used to offset the cost of operating and maintaining the Police Information Network

(1) The Attorney General may impose a monthly circuit fee on agencies that access the Police Information Network through a circuit maintained and operated by the Department of Justice. The amount of the monthly fee is three hundred dollars ($300.00) plus an additional fee amount for each device linked to the Network. The additional fee amount varies depending upon the type of device. For a desktop device after the first seven desktop devices, the additional monthly fee is twenty-five dollars ($25.00) per device. For a mobile device, the additional monthly fee is ~~six dollars ($6.00)~~ twelve dollars ($12.00) per device.

(2) The Attorney General may impose a monthly device fee on agencies that access the Police Information Network through some other approved means. The amount of the monthly device fee varies depending upon the type of device. For a desktop device, the monthly fee is twenty-five dollars ($25.00) per device. For a mobile device, the fee is ~~six dollars ($6.00)~~ twelve dollars ($12.00) per device."

SECTION 43.4.(c) Subsection (b) of this section becomes effective January 1, 2006. The remainder of this section is effective when it becomes law.

PART XLIV. DEPARTMENT OF TRANSPORTATION FEE CHANGES

Requested by: Representatives Coates, Cole

DOT FEE INCREASES

SECTION 44.1.(a) G.S. 20-7 reads as rewritten:

"§ 20-7. Issuance and renewal of drivers licenses.

...

(i) Fees. – The fee for a regular drivers license is the amount set in the following table multiplied by the number of years in the period for which the license is issued:

Class of Regular License	Fee For Each Year
Class A	~~$4.30~~ $4.00
Class B	~~4.30~~ 4.00
Class C	~~3.05~~ 4.00

The fee for a motorcycle endorsement is one dollar and seventy-five cents ($1.75) for each year of the period for which the endorsement is issued. The appropriate fee shall be paid before a person receives a regular drivers license or an endorsement.

(i1) Restoration Fee. – Any person whose drivers license has been revoked pursuant to the provisions of this Chapter, other than G.S. 20-17(2), shall pay a restoration fee of ~~twenty-five dollars ($25.00).~~ fifty dollars ($50.00). A person whose drivers license has been revoked under G.S. 20-17(2) shall pay a restoration fee of ~~fifty dollars ($50.00)~~ seventy-five dollars ($75.00) until the end of the fiscal year in which the cumulative total amount of fees deposited under this subsection in the General Fund exceeds ten million dollars ($10,000,000), and shall pay a restoration fee of ~~twenty-five dollars ($25.00)~~ fifty dollars ($50.00) thereafter. The fee shall be paid to the Division prior to the issuance to such person of a new drivers license or the restoration of the drivers license. The restoration fee shall be paid to the Division in addition to any and all fees which may be provided by law. This restoration fee shall not be required from any licensee whose license was revoked or voluntarily surrendered for medical or health reasons whether or not a medical evaluation was conducted pursuant to this Chapter. The ~~twenty-five dollar ($25.00) fee, and the first twenty-five dollars ($25.00) of the fifty-dollar ($50.00) fee,~~ fifty-dollar ($50.00) fee, and the first fifty dollars ($50.00) of the seventy-five-dollar ($75.00) fee, shall be deposited in the Highway Fund. The remaining twenty-five dollars ($25.00) of ~~the fifty-dollar ($50.00) fee~~ the seventy-five-dollar ($75.00) fee shall be deposited in the General Fund of the State. The Office of State Budget and Management shall certify to the Department of Transportation and the General Assembly when the cumulative total amount of fees deposited in the General Fund under this subsection exceeds ten million dollars ($10,000,000), and shall annually report to the General Assembly the amount of fees deposited in the General Fund under this subsection.

It is the intent of the General Assembly to annually appropriate the funds deposited in the General Fund under this subsection to the Board of Governors of The University of North Carolina to be used for the Center for Alcohol Studies Endowment at The University of North Carolina at Chapel Hill, but not to exceed this cumulative total of ten million dollars ($10,000,000).

...

(l) Learner's Permit. – A person who is at least 18 years old may obtain a learner's permit. A learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle while in possession of the permit. A learner's permit is valid

for a period of 18 months after it is issued. The fee for a learner's permit is ~~ten dollars ($10.00).~~ fifteen dollars ($15.00). A learner's permit may be renewed, or a second learner's permit may be issued, for an additional period of 18 months. The permit holder must, while operating a motor vehicle over the highways, be accompanied by a person who is licensed to operate the motor vehicle being driven and is seated beside the permit holder."

SECTION 44.1.(b) G.S. 20-11(j) reads as rewritten:

"(j) Duration and Fee. – A limited learner's permit expires on the eighteenth birthday of the permit holder. A limited provisional license expires on the eighteenth birthday of the license holder. A limited learner's permit or limited provisional license issued under this section that expires on a weekend or State holiday shall remain valid through the fifth regular State business day following the date of expiration. A full provisional license expires on the date set under G.S. 20-7(f). The fee for a limited learner's permit or a limited provisional license is ~~ten dollars ($10.00).~~ fifteen dollars ($15.00). The fee for a full provisional license is the amount set under G.S. 20-7(i)."

SECTION 44.1.(c) G.S. 20-14 reads as rewritten:

"**§ 20-14. Duplicate licenses.**

A person may obtain a duplicate of a license issued by the Division by paying a fee of ten dollars ~~and five cents ($10.05)~~ ($10.00) and giving the Division satisfactory proof that any of the following has occurred:

(1) The person's license has been lost or destroyed.
(2) It is necessary to change the name or address on the license.
(3) Because of age, the person is entitled to a license with a different color photographic background or a different color border.
(4) The Division revoked the person's license, the revocation period has expired, and the period for which the license was issued has not expired."

SECTION 44.1.(d) G.S. 20-16(e) reads as rewritten:

"(e) The Division may conduct driver improvement clinics for the benefit of those who have been convicted of one or more violations of this Chapter. Each driver attending a driver improvement clinic shall pay a fee of ~~twenty-five dollars ($25.00).~~ fifty dollars ($50.00)."

SECTION 44.1.(e) G.S. 20-26(c) reads as rewritten:

"(c) The Division shall furnish copies of license records required to be kept by subsection (a) of this section in accordance with G.S. 20-43.1 to other persons for uses other than official upon prepayment of the following fees:

(1) Limited extract copy of license record, for period up to three years ..... ~~$5.00~~ $8.00
(2) Complete extract copy of license record..... ~~5.00~~ 8.00
(3) Certified true copy of complete license record..... ~~7.00.~~ 11.00.

All fees received by the Division under this subsection shall be credited to the Highway Fund."

SECTION 44.1.(f) G.S. 20-37.15(a1) reads as rewritten:

"(a1) The application must be accompanied by a nonrefundable application fee of ~~twenty dollars ($20.00).~~ thirty dollars ($30.00). This fee does not apply in any of the following circumstances:

(1) When an individual surrenders a commercial driver learner's permit issued by the Division when submitting the application.

(2) When the application is to renew a commercial drivers license issued by the Division.

This fee shall entitle the applicant to three attempts to pass the written knowledge test without payment of a new fee. No application fee shall be charged to an applicant eligible for a waiver under G.S. 20-37.13(c)."

SECTION 44.1.(g) G.S. 20-37.16(d) reads as rewritten:

"(d) The fee for a Class A, B, or C commercial drivers license is ~~ten dollars ($10.00)~~ fifteen dollars ($15.00) for each year of the period for which the license is issued. The fee for each endorsement is ~~one dollar and twenty-five cents ($1.25)~~ three dollars ($3.00) for each year of the period for which the endorsement is issued. The fees required under this section do not apply to employees of the Driver License Section of the Division who are designated by the Commissioner."

SECTION 44.1.(h) G.S. 20-42(b) reads as rewritten:

"(b) The Commissioner and officers of the Division designated by the Commissioner may prepare under the seal of the Division and deliver upon request a certified copy of any document of the Division for a fee. The fee for a document, other than an accident report under G.S. 20-166.1, is ~~five dollars ($5.00).~~ ten dollars ($10.00). The fee for an accident report is ~~four dollars ($4.00).~~ five dollars ($5.00). A certified copy shall be admissible in any proceeding in any court in like manner as the original thereof, without further certification. The certification fee does not apply to a document furnished for official use to a judicial official or to an official of the federal government, a state government, or a local government."

SECTION 44.1.(i) G.S. 20-50(b) reads as rewritten:

"(b) The Division may issue a temporary license plate for a vehicle. A temporary license plate is valid for the period set by the Division. The period may not be less than 10 days nor more than 60 days.

A person may obtain a temporary license plate for a vehicle by filing an application with the Division and paying the required fee. An application must be filed on a form provided by the Division.

The fee for a temporary license plate that is valid for 10 days is ~~three dollars ($3.00).~~ five dollars ($5.00). The fee for a temporary license plate that is valid for more than 10 days is the amount that would be required with an application for a license plate for the vehicle. If a person obtains for a vehicle a temporary license plate that is valid for more than 10 days and files an application for a license plate for that vehicle before the temporary license plate expires, the person is not required to pay the fee that would otherwise be required for the license plate.

A temporary license plate is subject to the following limitations and conditions:

(1) It may be issued only upon proper proof that the applicant has met the applicable financial responsibility requirements.

(2) It expires on midnight of the day set for expiration.
(3) It may be used only on the vehicle for which issued and may not be transferred, loaned, or assigned to another.
(4) If it is lost or stolen, the person who applied for it must notify the Division.
(5) It may not be issued by a dealer.
(6) The provisions of G.S. 20-63, 20-71, 20-110 and 20-111 that apply to license plates apply to temporary license plates insofar as possible."

SECTION 44.1.(j) G.S. 20-73(c) reads as rewritten:

"(c) Penalties. – A person to whom a vehicle is transferred who fails to apply for a certificate of title within the required time is subject to a civil penalty of ~~ten dollars ($10.00)~~ fifteen dollars ($15.00) and is guilty of a Class 2 misdemeanor. A person who undertakes to apply for a certificate of title on behalf of another person and who fails to apply for a title within the required time is subject to a civil penalty of ~~ten dollars ($10.00)~~ fifteen dollars ($15.00). When a person to whom a vehicle is transferred fails to obtain a title within the required time because a person who undertook to apply for the certificate of title did not do so within the required time, the Division may impose a civil penalty only on the person who undertook to apply for the title. Civil penalties collected under this subsection shall be credited to the Highway Fund."

SECTION 44.1.(k) G.S. 20-85(a) reads as rewritten:

"(a) The following fees are imposed concerning a certificate of title, a registration card, or a registration plate for a motor vehicle. These fees are payable to the Division and are in addition to the tax imposed by Article 5A of Chapter 105 of the General Statutes.

(1) Each application for certificate of title ..... ~~$35.00~~$39.00
(2) Each application for duplicate or corrected certificate of title ..... ~~10.00~~14.00
(3) Each application of repossessor for certificate of title..... ~~10.00~~14.00
(4) Each transfer of registration..... ~~10.00~~15.00
(5) Each set of replacement registration plates..... ~~10.00~~15.00
(6) Each application for duplicate registration card ..... ~~10.00~~15.00
(7) Each application for recording supplementary lien ..... ~~10.00~~14.00
(8) Each application for removing a lien from a certificate of title ..... ~~10.00~~14.00
(9) Each application for certificate of title for a motor vehicle transferred to a manufacturer, as defined in G.S. 20-286, or a motor vehicle retailer for the purpose of resale ..... ~~10.00~~14.00
(10) Each application for a salvage certificate of title made by an insurer ..... ~~10.00~~15.00
(11) Each set of replacement Stock Car Racing Theme plates issued under G.S. 20-79.4 ..... 25.00."

SECTION 44.1.(l) G.S. 20-85.1 reads as rewritten:

"§ 20-85.1. Registration by mail; one-day title service; fees.

(a) The owner of a vehicle registered in North Carolina may renew that vehicle registration by mail. A postage and handling fee of one dollar ($1.00) per vehicle to be registered shall be charged for this service.

(b) The Commissioner and the employees of the Division designated by the Commissioner may prepare and deliver upon request a certificate of title, charging a fee of ~~fifty dollars ($50.00)~~ seventy-five dollars ($75.00) for one-day title service, in lieu of the title fee required by G.S. 20-85(a). The fee for one-day title service must be paid by cash or by certified check.

(c) The fee collected under subsection (a) shall be credited to the Highway Fund. The fee collected under subsection (b) shall be credited to the Highway Trust Fund."

SECTION 44.1.(m) G.S. 20-87 reads as rewritten:

"**§ 20-87. Passenger vehicle registration fees.**

These shall be paid to the Division annually, as of the first day of January, for the registration and licensing of passenger vehicles, fees according to the following classifications and schedules:

(1) For-Hire Passenger Vehicles. – The fee for a passenger vehicle that is operated for compensation and has a capacity of 15 passengers or less is seventy-eight dollars ($78.00). The fee for a passenger vehicle that is operated for compensation and has a capacity of more than 15 passengers is one dollar and forty cents ($1.40) per hundred pounds of empty weight of the vehicle.

(2) U-Drive-It Vehicles. – U-drive-it vehicles shall pay the following tax:

Motorcycles:	1-passenger capacity	$18.00
	2-passenger capacity	22.00
	3-passenger capacity	26.00
Automobiles:	15 or fewer passengers	~~$41.00~~$51.00
Buses:	16 or more passengers	~~$1.40~~ $2.00 per hundred pounds of empty weight
Trucks under 7,000 pounds that do not haul products for hire:	4,000 pounds	$41.50
	5,000 pounds	$51.00
	6,000 pounds	$61.00.

(3) Repealed by Session Laws 1981, c. 976, s. 3.

(4) Limousine Vehicles. – For-hire passenger vehicles on call or demand which do not solicit passengers indiscriminately for hire between points along streets or highways, shall be taxed at the same rate as for-hire passenger vehicles under G.S. 20-87(1) but shall be issued appropriate registration plates to distinguish such vehicles from taxicabs.

(5) Private Passenger Vehicles. – There shall be paid to the Division annually, as of the first day of January, for the registration and licensing of private passenger vehicles, fees according to the following classifications and schedules:

Private passenger vehicles of not more than fifteen passengers ..... ~~$20.00~~ $28.00

Private passenger vehicles over fifteen passengers ..... ~~23.00~~ 31.00

Provided, that a fee of only one dollar ($1.00) shall be charged for any vehicle given by the federal government to any veteran on account of any disability suffered during war so long as such vehicle is owned by the original donee or other veteran entitled to receive such gift under Title 38, section 252, United States Code Annotated.

(6) Private Motorcycles. – The base fee on private passenger motorcycles shall be ~~nine dollars ($9.00);~~ fifteen dollars ($15.00); except that when a motorcycle is equipped with an additional form of device designed to transport persons or property, the base fee shall be ~~sixteen dollars ($16.00).~~ twenty-two dollars ($22.00). An additional fee of three dollars ($3.00) is imposed on each private motorcycle registered under this subdivision in addition to the base fee. The revenue from the additional fee, in addition to any other funds appropriated for this purpose, shall be used to fund the Motorcycle Safety Instruction Program created in G.S. 115D-72.

(7) Dealer License Plates. – The fee for a dealer license plate is the regular fee for each of the first five plates issued to the same dealer and is one-half the regular fee for each additional dealer license plate issued to the same dealer. The "regular fee" is the fee set in subdivision (5) of this section for a private passenger motor vehicle of not more than 15 passengers.

(8) Driveaway Companies. – Any person engaged in the business of driving new motor vehicles from the place of manufacture to the place of sale in this State for compensation shall pay a fee of one-half of the amount that would otherwise be payable under this section for each set of plates.

(9) House Trailers. – In lieu of other registration and license fees levied on house trailers under this section or G.S. 20-88, the registration and license fee on house trailers shall be ~~seven dollars ($7.00)~~ eleven dollars ($11.00) for the license year or any portion thereof.

(10) Special Mobile Equipment. – The fee for special mobile equipment for the license year or any part of the license year is two times the fee in subdivision (5) for a private passenger motor vehicle of not more than 15 passengers.

(11) Any vehicle fee determined under this section according to the weight of the vehicle shall be increased by the sum of three dollars ($3.00) to arrive at the total fee.

(12) Low-Speed Vehicles. – The fee for a low-speed vehicle is the same as the fee for private passengers vehicles of not more than 15 passengers."

SECTION 44.1.(n) G.S. 20-88 reads as rewritten:

"**§ 20-88. Property-hauling vehicles.**

(a) Determination of Weight. – For the purpose of licensing, the weight of self-propelled property-carrying vehicles shall be the empty weight and heaviest load to be transported, as declared by the owner or operator; provided, that any determination of weight shall be made only in units of 1,000 pounds or major fraction thereof, weights of over 500 pounds counted as 1,000 and weights of 500 pounds or less disregarded. The declared gross weight of self-propelled property-carrying vehicles operated in conjunction with trailers or semitrailers shall include the empty weight of the vehicles to be operated in the combination and the heaviest load to be transported by such combination at any time during the registration period, except that the gross weight of a trailer or semitrailer is not required to be included when the operation is to be in conjunction with a self-propelled property-carrying vehicle which is licensed for 6,000 pounds or less gross weight and the gross weight of such combination does not exceed 9,000 pounds, except wreckers as defined under G.S. 20-4.01(50). Those property-hauling vehicles registered for 4,000 pounds shall be permitted a tolerance of 500 pounds above the weight permitted under the table of weights and rates appearing in subsection (b) of this section.

(b) The following fees are imposed on the annual registration of self-propelled property-hauling vehicles; the fees are based on the type of vehicle and its weight:

SCHEDULE OF WEIGHTS AND RATES

Rates Per Hundred Pound Gross Weight	Farmer Rate
Not over 4,000 pounds	~~$0.23~~ $0.29
4,001 to 9,000 pounds inclusive	~~.29~~ .40
9,001 to 13,000 pounds inclusive	~~.37~~ .50
13,001 to 17,000 pounds inclusive	~~.51~~ .68
Over 17,000 pounds	~~.58~~ .77

Rates Per Hundred Pound Gross Weight	General Rate
Not over 4,000 pounds	~~$0.46~~ $0.59
4,001 to 9,000 pounds inclusive	~~.63~~ .81
9,001 to 13,000 pounds inclusive	~~.78~~ 1.00
13,001 to 17,000 pounds inclusive	~~1.06~~ 1.36
Over 17,000 pounds	~~1.20~~ 1.54

(1) The minimum fee for a vehicle licensed under this subsection is ~~seventeen dollars and fifty cents ($17.50)~~ twenty-four dollars ($24.00)

at the farmer rate and ~~twenty-one dollars and fifty cents ($21.50)~~ twenty-eight dollars ($28.00) at the general rate.

(2) The term "farmer" as used in this subsection means any person engaged in the raising and growing of farm products on a farm in North Carolina not less than 10 acres in area, and who does not engage in the business of buying products for resale.

(3) License plates issued at the farmer rate shall be placed upon trucks and truck-tractors that are operated exclusively in the carrying or transportation of applicant's farm products, raised or produced on his farm, and farm supplies and not operated in hauling for hire.

(4) "Farm products" means any food crop, livestock, poultry, dairy products, flower bulbs, or other nursery products and other agricultural products designed to be used for food purposes, including in the term "farm products" also cotton, tobacco, logs, bark, pulpwood, tannic acid wood and other forest products grown, produced, or processed by the farmer.

(5) The Division shall issue necessary rules and regulations providing for the recall, transfer, exchange or cancellation of "farmer" plates, when vehicle bearing such plates shall be sold or transferred.

(5a) Notwithstanding any other provision of this Chapter, license plates issued pursuant to this subsection at the farmer rate may be purchased for any three-month period at one fourth of the annual fee.

(6) There shall be paid to the Division annually as of the first of January, the following fees for "wreckers" as defined under G.S. 20-4.01(50): a wrecker fully equipped weighing 7,000 pounds or less, seventy-five dollars ($75.00); wreckers weighing in excess of 7,000 pounds shall pay one hundred forty-eight dollars ($148.00). Fees to be prorated quarterly. Provided, further, that nothing herein shall prohibit a licensed dealer from using a dealer's license plate to tow a vehicle for a customer.

(c) The fee for a semitrailer or trailer is ~~ten dollars ($10.00)~~ nineteen dollars ($19.00) for each year or part of a year. The fee is payable on or before January 1 of each year. Upon the application of the owner of a semitrailer or trailer, the Division may issue a multiyear plate and registration card for the semitrailer or trailer for a fee of seventy-five dollars ($75.00). A multiyear plate and registration card for a semitrailer or trailer are valid until the owner transfers the semitrailer or trailer to another person or surrenders the plate and registration card to the Division. A multiyear plate may not be transferred to another vehicle.

The Division shall issue a multiyear semitrailer or trailer plate in a different color than an annual semitrailer or trailer plate and shall include the word "multiyear" on the plate. The Division may not issue a multiyear plate for a house trailer.

(d) Rates on trucks, trailers and semitrailers wholly or partially equipped with solid tires shall be double the above schedule.

(e) Repealed by Session Laws 1981, c. 976, s. 6.

(f) Repealed by Session Laws 1995, c. 163, s. 6.
(g) Repealed by Session Laws 1969, c. 600, s. 17.
(h) Repealed by Session Laws 1979, c. 419.
(i) Any vehicle fee determined under this section according to the weight of the vehicle shall be increased by the sum of three dollars ($3.00) to arrive at the total fee.
(j) No heavy vehicle subject to the use tax imposed by Section 4481 of the Internal Revenue Code of 1954 (26 U.S.C. 4481) may be registered or licensed pursuant to G.S. 20-88 without proof of payment of the use tax imposed by that law. The proof of payment shall be on a form prescribed by the United States Secretary of Treasury pursuant to the provisions of 23 U.S.C. 141(d).
(k) A person may not drive a vehicle on a highway if the vehicle's gross weight exceeds its declared gross weight. A vehicle driven in violation of this subsection is subject to the axle-group weight penalties set in G.S. 20-118(e). The penalties apply to the amount by which the vehicle's gross weight exceeds its declared weight.
(l) The Division shall issue permanent truck and truck-tractor plates to Class A and Class B Motor Vehicles and shall include the word "permanent" on the plate. The permanent registration plates issued pursuant to this section shall be subject to annual registration fees set in this section. The Division shall issue the necessary rules providing for the recall, transfer, exchange, or cancellation of permanent plates issued pursuant to this section."

SECTION 44.1.(o) G.S. 20-289 reads as rewritten:

"**§ 20-289. License fees.**

(a) The license fee for each fiscal year, or part thereof, shall be as follows:
(1) For motor vehicle dealers, distributors, distributor branches, and wholesalers, ~~fifty dollars ($50.00)~~ seventy dollars ($70.00) for each place of business.
(2) For manufacturers, ~~one hundred dollars ($100.00),~~ one hundred fifty dollars ($150.00) and for each factory branch in this State, ~~seventy dollars ($70.00).~~one hundred dollars ($100.00).
(3) For motor vehicle sales representatives, ~~ten dollars ($10.00).~~fifteen dollars ($15.00).
(4) For factory representatives, or distributor representatives, ~~ten dollars ($10.00).~~fifteen dollars ($15.00).
(5) Repealed by Session Laws 1991, c. 662, s. 4.

(b) The fees collected under this section shall be credited to the Highway Fund. These fees are in addition to all other taxes and fees."

SECTION 44.1.(p) G.S. 20-385 reads as rewritten:

"**§ 20-385. Fee schedule.**

(a) Amounts. –

(1) Verification by a for-hire motor carrier of insurance for each for-hire motor vehicle operated in this State	$ 1.00
(2) Application by an intrastate motor carrier for a certificate of exemption	~~25.00~~ 45.00

(3)	Certification by an interstate motor carrier that it is not regulated by the United States Department of Transportation	~~25.00~~ 45.00
(4)	Application by an interstate motor carrier for an emergency permit	~~10.00.~~18.00.

(b) Reciprocal Agreements. – The fee set in subdivision (a)(1) of this section does not apply to the verification of insurance by an interstate motor carrier regulated by the United States Department of Transportation if the Division had a reciprocal agreement on November 15, 1991, with another state by which no fee is imposed. The Division had reciprocal agreements as of that date with the following states: California, Delaware, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, Pennsylvania, Texas, and Vermont."

SECTION 44.1.(q) Section 5(c) of S.L. 2004-189 reads as rewritten:

"**SECTION 5.(c)** The Division of Motor Vehicles shall retain a portion of ~~the proceeds~~five cents ($0.05) collected for the issuance of each ~~of the increase in~~ drivers license and duplicate license ~~fees enacted in this Section~~ to offset the actual cost of developing and maintaining the online Organ Donor Internet site established pursuant to Section 1 of this act. ~~Proceeds remaining after deduction of amounts for development and maintenance costs~~The remainder of the five cents ($0.05) shall be credited to the License to Give Trust Fund established under G.S. 20-7.4 and shall be used for the purposes authorized under G.S. 20-7.4 and G.S. 20-7.5."

SECTION 44.1.(r) G.S. 20-291 reads as rewritten:

"**§ 20-291. Representatives to carry license and display it on request; license to name employer.**

Every person to whom a sales representative, factory representative, or distributor representative license is issued shall carry the license when engaged in business, and shall display it upon request. The license shall state the name of the representative's employer. If the representative changes employers, the representative shall immediately apply to the Division for a license that states the name of the representative's new employer. The fee for issuing a license stating the name of a new employer is ~~one-half the fee set in G.S. 20-289 for an annual license.~~ ten dollars ($10.00)."

SECTION 44.1.(s) This section becomes effective October 1, 2005, and applies to fees collected on or after that date.

PART XLV. INDUSTRIAL COMMISSION FEES

Requested by: Representatives Hunter, Warren

INDUSTRIAL COMMISSION FEES

SECTION 45.1.(a) G.S. 97-73 reads as rewritten:

"**§ 97-73. ~~Expenses of making examinations.~~Fees.**

(a) The Industrial Commission ~~shall~~ may establish by rule a schedule of fees for examinations ~~conducted and~~ conducted, reports ~~made pursuant to G.S. 97-61.1 through 97-61.6 and 97-67 through 97-71.~~ made, documents filed, and agreements reviewed

under this Article. The fees shall be collected in accordance with rules adopted by the Industrial Commission.

(b), (c) Repealed by Session Laws 2003-284, s. 10.33(d), effective July 1, 2003."

SECTION 45.1.(b) This section is effective when it becomes law.

PART XLVI. MISCELLANEOUS PROVISIONS

Requested by: Representatives Alexander, Gibson, Luebke, Wainwright

EFFECTIVE DATE

SECTION 46.6. Except as otherwise provided, this act becomes effective July 1, 2005.

SENATE BILL 622:
2005 Appropriations Act

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 13, 2005
Introduced by:	Sen. Garrou	**Summary by:**	Cindy Avrette
Version:	PCS to Fourth Edition S622-CSLYxf-21		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 622 makes the following tax law changes:***

- ***It increases the excise tax on cigarettes 25¢ from 5¢ a pack to 30¢ a pack. It also increases the excise tax on all other tobacco products except cigars from 2% of the cost price to 6%, effective July 1, 2005.***
- ***It equalizes the privilege tax on entertainment by taxing movies and live entertainment at the same rate as video rentals, cable TV, and satellite TV[1], effective September 1, 2005.***
- ***It equalizes the gross premiums tax on insurance companies by taxing HMOs at the same 1.9% rate as other insurers, effective for taxable years beginning on or after January 1, 2006.***
- ***It provides a refundable tax credit for qualifying expenses of a production company, effective for taxable years beginning on or after January 1, 2005.***
- ***It provides a tax credit to a small business that provides health insurance to all of its full-time employees, effective for taxable years beginning on or after January 1, 2006.***

It also increases various fees as requested by the House Appropriation Subcommittees.

BILL ANALYSIS OF TAX AND FEE PROVISIONS:

Part 8: Community Colleges

- G.S. 115D-92 allows the community colleges to establish fees for licensing proprietary schools. Fees collected go into a special fund called the Commercial Education Fund. The fees are used to support the licensure function in the System Office, but are not sufficient to cover the actual costs incurred. The State Board of Community Colleges adopted a proposed fee schedule at its November 18, 2004, meeting. The System Office asked for an increase in the fees through the regular rule making process; however, it was unable to consult with the Joint Legislative Commission on Governmental Operations about the fee increase before the 2005 Legislative Session began. The System Office would like to implement the new fees beginning with the next school year. To accommodate this need, the fee amounts have been specifically set forth in this bill. There is no impact to the General Fund budget.

Part 34: Tobacco Tax Rate Changes

- Increases the tax on cigarettes by 25 cents for a total tax of 30 cents, effective July 1, 2005.
- Increases the tax on all other tobacco products, except cigars, from 2% of cost price to 6% of cost price, effective July 1, 2005.

[1] The Senate tax package (contained in SB 622, 4th Edition) and the House proposal in HB 1630 would tax cable TV and satellite TV at the combined State and local sales and use tax rate.

Part 38: Corporate, Excise, and Insurance Tax Changes

- Equalizes the gross receipts privilege tax on entertainment by taxing all forms of entertainment at a rate that equals the combined State and local sales and use tax rate, effective September 1, 2005. Currently, movies are taxed at 1% and live entertainment is taxed at 3%. Video rentals are taxed at the combined State and local sales tax rate and both the Senate in SB 622 and the House in HB 1630 have proposed taxing cable and satellite TV at the combined State and local sales tax rate.
- Equalizes the gross premiums tax on insurance companies by taxing HMOs at the same rate as other insurers. HMOs are currently taxed at 1%; this bill would tax HMOs at 1.9%, effective for taxable years beginning on or after January 1, 2006. The bill also provides for an estimated payment of the gross premiums tax by HMOs for the 2006 and 2007 calendar years.

Part 39: Tax Incentives

- Effective January 1, 2005, provides a refundable income tax credit equal to 15% of the qualifying expenses totaling at least $250,000 spent by a production company in connection with a production that is NOT political advertising, is NOT a news program or sporting event, and does NOT contain obscene material. The incentive is targeted at feature films and TV episodes. The credit sunsets January 1, 2010.
- Effective January 1, 2006, provides a tax credit to a small business that provides health insurance to all of its full-time employees. The amount of the credit would be $400 per each eligible employee for whom the taxpayer provides health insurance benefits. A small business is defined to be a taxpayer that employs no more than 25 employees throughout the taxable year. The credit would be in lieu of any expense deduction the taxpayer claimed on its income tax return for the health insurance costs. The credit sunsets January 1, 2010.

Part 40: Set Rates for Insurance Regulatory Charge and Public Utilities Fees

- Sets insurance regulatory charge at 5.5%, an increase of .5%.
- Retains the current rate for the public utility regulatory fee of 0.12% for each public utility's jurisdictional revenues and $200,000 for the electric membership corporation.

Part 41: Health and Human Services Fees

- Sets the newborn screening fee at $14. The current fee amount is $10. The increased fee amount will allow the program to become receipt-supported.
- Increases the annual license or certification fees for adult care homes; hospitals; nursing homes; home care agencies; ambulatory surgical facilities; cardiac rehabilitation certification programs; hospitals or clinics certified to perform abortions; facilities for the mentally ill, the developmentally disabled, and substance abusers; and nursing beds and adult care home beds in continuing care retirement facilities. The General Assembly established these fees in 2003. This bill would essentially double the fee amounts.

Parts 12 and 42: NER Fees

- **Part 12** expands the express permit and certification review program statewide.
- **Part 42** increases various agricultural fees.
- **Part 42** increases the cap for CAMA permit fees from $400 to $800.

Parts 14, 29, and 43: Justice and Public Safety Fees

- **Part 14** authorizes the Judicial Department to charge the full cost of production for all copies of the appellate division reports that are sold.

- **Part 29** increases the costs in criminal actions by increasing the amount collected and remitted for the supplemental pension benefits of sheriffs from 75¢ to $1.25.
- **Part 43** increases the criminal court of justice fee by $9.50; increases civil court of justice fees by $10; increases the cap on probate fees from $3,000 to $6,000; and increases the court cost for a seat belt violation from $50 to $75.
- **Part 43** imposes a $90 fee on electronic monitoring devices used for house arrests.
- **Part 43** increases the property tax rate for Butner from 20¢ to 25¢.
- **Part 43** codifies the current fee schedule for participation in the Police Information Network and, effective January 1, 2006, increases the monthly fee assessed for mobile terminals from $6 to $12.

Parts 28 and 44: Department of Transportation

- **Part 28** directs the Department of Transportation to apply to the United States Department of Transportation for a permit to allow tolling on established interstate highways in North Carolina and allows the Department to collect tolls on those interstate highways for which it has received permission to establish tolls.
- **Part 44** increases various fees payable to the Department of Transportation.

Part 45: Industrial Commission Fees

- Authorizes the Industrial Commission to adopt a fee for reviewing Form 21 agreements

S0622e4-SMRB-CSRB

June 13, 2005

Major DOT Fee Increases in House Version of SB622
(NOTE: The House version is virtually identical to SB 622. Two small changes are noted below.)

The DOT fee changes in SB622 would raise revenues to the Highway Fund and Highway Trust Fund, on an annual basis, as follows:

Highway Fund	$141.0 million	($106 million first year)
Highway Trust Fund	$ 17.8 million	($ 13 million first year)
Total	$158.8 million	($119 million first year)

(The revenues shown are annualized. The revenues in FY06 would be lower by 25% than those shown as the increases would not be implemented until October 1, 2005.)

Major Changes in Fees Going to the Highway Fund (Annual Basis)

Driver License Fees

Copies of Driver License Records — $23.7 million
Increases about 60%; last fee change 1991

Operator Licenses – Class C *(most common)* — $ 5.1
Increase 31% to $4 per year; last fee change 2004

Restoration Fee *(after license revocation)* — $ 3.0
Increase 100% from $25 to $50; last fee change 1981

Commercial Operators Licenses and Endorsements — $ 2.8
Increase from $10 to $15/year for license; $1.25 to $3/year for endorsements; last fee change 1995

Staggered Registration — $63.0
Mostly automobiles and light trucks; automobile registration (tag) fees would go from $20 to $28, or 40%; last increase 1983

Truck Licenses — $22.0
Property-hauling vehicles; fees are based on weight; Increases of about 26-38%; last (significant) increase 1981

International Registration Plan — $15.8
Generally trucks used in interstate commerce; fees are apportioned among the member states; same increases as for truck licenses

Major Changes in Fees Going to the Highway Trust Fund (Annual Basis)

Certificate of Title $11.7

Increase to $40; fee set at $35 in 1989 and increased By $1 in 2004

Registration Fees $ 5.0

Miscellaneous fees set in 1989 at $10 are increased to $15; instant title fee increased from $50 to $75

Changes from SB622

Section 44.1(q) is a technical correction to pick up a Session Law that was missed in the Senate Bill.

Section 44.1(r) changes the fee for a sales, factory, or distributor representative who changes employers and must get a new license from DMV. The fee in current law is $5 (one half of the $10.00 original license); in SB 622 it is $7.50 (one half of the new $15.00 fee for the original license); in the House version it is $10.00. No significant change in revenues is expected.

DOT Fee Changes in SB622

Description	G.S. Ref.	Last Fee Change	Fee Amount		% Increase	New Fee Amount		% Increase	Revenues FY04	Annual Increase
Driver's License Fees										
Chauffeurs License-Class A&B	20-7 (l)	11/2004	$4.30	per year	7%	$ 4.00			$ 129,004	$ (9,000)
Operators License-Class C	20-7 (l)	11/2004	$3.05	per year	31%	$ 4.00			$ 16,291,746	$ 5,074,478
Duplicate License	20-14	11/2004	$10.05		0%	$ 10.00			$ 5,735,130	$ (28,533)
Learners Permit (Incl CDL Permit)	20-7(l) & 20-37.13	8/1/1991	$10.00		50%	$ 15.00			$ 1,796,750	$ 898,375
Restoration Fee (inc 1/2 of DWI)	20-7(i1)	7/1/1981	$25.00		100%	$ 50.00			$ 3,031,478	$ 3,031,478
Special ID Card (same as duplicate)	20-14 20-37.7(d)	8/1/1991	$10.00		50%	$ 15.00			$ 2,284,250	$ 1,142,125
Record Fee (MVR)	20-26(c)	8/1/1991	$5/$7		60%	$8/$11			$ 39,467,378	$ 23,680,427
Drivers Improvement Clinic	20-16(e)	10/1/1982	$25		100%	$ 50.00			$ 86,678	$ 86,678
Commercial Application	20-37.15(a1)	9/1/1990	$20		50%	$ 30.00			$ 706,743	$ 353,372
Commercial License, Class A, B, C	20-37.16(d)	1/1/1995	$10/year		50%	$ 15.00			$ 2,963,866	$ 1,481,933
Commercial Endorsement	20-37.16(d)	1/1/1995	$1.25/year		140%	$ 3.00			$ 960,707	$ 1,344,990
Provisional License (Limited)	20-11(j)		$10		50%	$ 15.00			$ 1,148,184	$ 574,092
Staggered Registration									$ 157,378,509	**$ 62,951,404**
Automobile	20-87	9/1/1983	$20.00		40%	$ 28.00				
Trucks 4,000 lbs. & less	20-88(b)(1)	9/1/1983	$21.50		30%	$ 28.00				
Motorcycle	20-87(6)	9/1/1983	$9.00		67%	$ 15.00				
Trailer-Boat-Utility-Semi	20-88(c)	9/1/1983	$10.00		90%	$ 19.00				
Trailer-House	20-87(9)	10/1/1989	$7.00		57%	$ 11.00				
Temporary Plate (10 day)	20.50 (b)	10/1/1989	$3.00		67%	$ 5.00				
U-Drive It - 15 Passengers or fewer	20-87(1)	9/1/1983	$41.00		24%	$ 51.00				
Buses		9/1/1983	$23.00		43%	$ 33.00				
Misc. Registration Fees									$ 2,787,378	**$ 1,839,669**
Salvage Titles	20-85 (a)	8/15/1989	$10		50%	$ 15.00				
Late Penalty Fee	20-73©	8/1/1991	$10		50%	$ 15.00				
Certification Fee	20-42(b)	8/1/1991	$5		100%	$ 10.00				
Truck License	20-88	7/1/1981							$ 66,816,761	**$ 22,049,531**
			Farmer	Other	%Inc. Fmr	Farmer	Other	%Inc. Other		
4,000 lbs. and less			$0.23	$0.46	26%	$ 0.29	$ 0.59	28%		
4,001 - 9,000 lbs.		10/1/1993	$0.29	$0.63	38%	$ 0.40	$ 0.81	29%		
9,001 - 13,000 lbs.		10/1/1993	$0.37	$0.78	35%	$ 0.50	$ 1.00	28%		
13,001 - 17,000 lbs.		10/1/1993	$0.51	$1.06	33%	$ 0.68	$ 1.36	28%		
Over 17,000 lbs.		10/1/1993	$0.58	$1.20	33%	$ 0.77	$ 1.54	28%		
Lien Recording Fee (License & Theft)	20-77	7/1/1991	$10		50%	$ 15.00			$ 228,420	$ 114,210

DOT Fee Changes in SB622

Description	G.S. Ref.	Last Fee Change	Fee Amount		% Increase	New Fee Amount		% Increase	Revenues FY04	Annual Increase
International Registration Plan	20-86.1	7/1/1981	Farmer	Other	%Inc. Fmr	Farmer	Other	%Inc. Other	$ 47,623,500	$ 15,715,755
			$0.23	$0.46	26%	$ 0.29	$ 0.59	28%		
			$0.29	$0.63	38%	$ 0.40	$ 0.81	29%		
			$0.37	$0.78	35%	$ 0.50	$ 1.00	28%		
			$0.51	$1.06	33%	$ 0.68	$ 1.36	28%		
			$0.58	$1.20	33%	$ 0.77	$ 1.54	28%		
Dealer and Manufacturers License Fees	20-289								$ 1,071,555	$ 478,985
Distributors		7/1/1992	$50		40%	$ 70.00				
Wholesalers		7/1/1992	$50		40%	$ 70.00				
Manufacturers		7/1/1992	$100		50%	$ 150.00				
Factory Branch		7/1/1992	$70		43%	$ 100.00				
Factory and Distributor Rep		7/1/1992	$10		50%	$ 15.00				
Salesman		7/1/1992	$10		50%	$ 15.00				
Dealers		7/1/1992	$50		40%	$ 70.00				
Motor Carrier Fees	20-385	10/10/1983								
Registration of Exempt Operations			$25		80%	$ 45.00			$ 418,144	**$ 167,258**
Certificate of Exemption			$25		80%	$ 45.00				
Emergency Permit			$10		80%	$ 18.00				
Title Fees (Highway Trust Fund)										
Certificate of Title	*20-85*	*8/15/1989*	*$35*		*14%*	*$ 40.00*			*$ 83,715,429*	*$ 11,720,160*
Lien Recording or Removal Fee (HTF)	*20-85*	*8/15/1989*	*$10*		*50%*	*$ 15.00*			*$ 2,141,361*	*$ 1,070,681*
Registration Fees (Highway Trust Fund)									*$ 10,067,099*	*$ 5,033,549*
Duplicate/Corrected Title	*20-85*	*8/15/1989*	*$10*		*50%*	*$ 15.00*				
Repossessor Title	*20-85*	*8/15/1989*	*$10*		*50%*	*$ 15.00*				
Transfer of Registration Plate	*20-85*	*8/15/1989*	*$10*		*50%*	*$ 15.00*				
Replacement of Registration Plate	*20-85*	*8/15/1989*	*$10*		*50%*	*$ 15.00*				
Duplicate Registration Card	*20-85*	*8/15/1989*	*$10*		*50%*	*$ 15.00*				
Manufacturer of Dealer Title	*20-85*	*8/15/1989*	*$10*		*50%*	*$ 15.00*				
Instant Title	*20-85.1(b)*	*8/15/1989*	*$50*		*50%*	*$ 75.00*				
Special Identification Card (11-15)	20-37.7	8/1/1991	$10		50%	$ 15.00			$ 137,790	$ 68,895
Sale of Collision Reports	20-42	7/1/1981	$4		25%	$ 5.00			$ 18,195	$ 4,549
									$ 447,006,055	$ 158,845,060

Note: Fees that go to the Highway Trust Fund are shown in italics.

Highway Fund	**$ 351,082,166**	**$ 141,020,670**
Highway Trust Fund	***$ 95,923,889***	***$ 17,824,390***

Note: Fee changes would be effective 10/1/05. The Annual Increase for FY06 would be 75% of the totals shown.

Fees

Fees that Affect the General Fund

Section	Fee	Description	2005-06	2006-07	Same as Senate?
14.7	Increase Charges for Appellate Division Reports to Actual Cost	As noted in the title.	0.12	0.12	Yes
43.1	General Court of Justice Fee Increases	Increases several court related fees.	20.40	20.40	Yes
43.2	Devise Fee for House Arrest	Establishes a flat fee of $90 to be paid by offenders sentenced to Electronic House Arrest.	0.12	0.12	Yes
43.2	Increase Butner Taxes	Increases property tax public safety surcharge rate from 20 cents to 25 cents per $100.	0.16	.0.16	Yes

Fees with Corresponding Cuts

Section	Fee	Description	2005-06	2006-07	Same as Senate?
41.1	Newborn Screening Fee	Sets the fee at $14.00 and makes the program self sustaining.	0.37	0.37	Yes
41.2	Division of Facility Services - DHHS	Increases several fees related to the Division.	1.80	1.80	New
42.1	Increase Various Agricultural Fees	related fees. Sets a maximum amount to charge for various fees. Differs from the Senate Budget by allowing the Department of Agriculture flexibility in setting the amount of fees they can	0.64	0.64	Similar
42.3	Increase Cap for CAMA Permit Fees	Increases the cap from $400 to $800	0.30	0.40	New
43.4	Fee for Police Information Network (PIN)	Increases the monthly fee for law enforcement agencies accessing the PIN via a mobile data terminal from $6 to $12 per devise. Effective January 1, 2006.	0.33	0.65	Yes

Other Fees

Section	Fee	Description	2005-06	2006-07	Same as Senate?
8.14	Proprietary Schools Licensing Fee	Authorizes Fee Schedule Adopted by Community College System. Funds are placed in a non-reverting special fund.	0.08	0.08	New
28.21	Establish Tollways	Allows collection of tolls on NC interstates if allowed by federal government.	n/a	n/a	New
40.1	Set Insurance Regulatory Charge	Sets rate at 5.5%	22.90		Yes
40.2	Set Regulatory Fee for Utilities Commission	Sets rate at 0.12%	Same as previous		Yes
44	DOT Fee Increases	Makes numerous fee increases. (See additional chart).	106.0 (HF) 13.0 (HTF)	144.6 (HF) 18.3 (HTF)	Similar
45.1	Industrial Commission Fees	Allows the Industrial Commission to establish a new fee for required Form 21 Agreements. Sets the new fee at $100. Funds will be used to create receipt supported positions.	0.80	0.80	Yes

Other Issues

Section	Fee	Description	2005-06	2006-07	Same as Senate?
12	Expand Express Program Review Statewide	Codifies fees for express review of certain environmental permit applications.	0.54	0.72	Yes
29.3	Increase court costs earmarked for Sheriff's supplemental pension fund	This language expends funds raised elsewhere in the bill.			Yes

SB 622- 2005 Appropriations Act - PCS

Taxes				
Section	**Proposal**	**Effective**	**2005-06**	**2006-07**
34.1	Tobacco Tax Rate Changes - Increases tax on cigarettes to 30 cents, increases tax on OTP (except cigars) to 6%.	7/1/2005	142.0	165.0
38.3	Equalize Tax on Entertainment - from 3% and 1% to 7% Gross Recp.	9/1/2005	18.0	30.0
38.4	Equalize Gross Premiums Tax - Increase tax on HMOs to 1.9%	1/1/2006	14.3	14.3
39.1	Film Industry Job Incentives	1/1/2005	(6.0)	(6.0)
39.2	Small Business Health Insurance Credit	1/1/2006	(17.7)	(39.8)
	SUBTOTAL		150.6	163.5
	Additional GF Fee Revenue (see page 2)		20.8	20.8
	TOTAL		171.4	184.3

Division of Facility Services

Licensure and Construction Fees

LICENSURE FEES	Current Fees		*Proposed Fees*	
Facility Type	Base Fee	Additional Fee*	*Base Fee*	*Additional Fee**
General Acute Hospitals				
1 - 49 beds	$ 125	$ 6.25	*$ 250*	*$ 12.50*
50 - 99 beds	$ 175	$ 6.25	*$ 350*	*$ 12.50*
100 - 199 beds	$ 225	$ 6.25	*$ 450*	*$ 12.50*
200 - 399 beds	$ 275	$ 6.25	*$ 550*	*$ 12.50*
400 - 699 beds	$ 375	$ 6.25	*$ 750*	*$ 12.50*
700 + beds	$ 475	$ 6.25	*$ 950*	*$ 12.50*
Other Hospitals**	$ 250	$ 6.25	*$ 500*	*$ 12.50*
Abortion Clinics	$ 350	$ 0.00	*$ 700*	*$ 0.00*
Adult Care Homes ≤ 6 Beds	$ 125	$ 0.00	*$ 250*	*$ 0.00*
Adult Care Homes > 6 Beds	$ 175	$ 6.25	*$ 350*	*$ 12.50*
Ambulatory Surgery Facilities	$ 350	$ 25.00	*$ 700*	*$ 50.00*
Cardiac Rehabilitation Facilities	$ 125	$ 0.00	*$ 250*	*$ 0.00*
Continuing Care Retirement Communities	$ 225	$ 6.25	*$ 450*	*$ 12.50*
Home Health Agencies (Medicare-certified)	$ 175	$ 0.00	*$ 350*	*$ 0.00*
Licensed-Only Home Care Agencies (non-Medicare certified)	$ 175	$ 0.00	*$ 350*	*$ 0.00*
Mental Health Facilities (Excluding ICF-MR) ≤ 6 Beds	$ 125	$ 0.00	*$ 250*	*$ 0.00*
Mental Health Facilities (ICF-MR Only) ≤ 6 Beds	$ 325	$ 0.00	*$ 650*	*$ 0.00*
Mental Health Facilities (Excluding ICF-MR) > 6 Beds	$ 175	$ 6.25	*$ 350*	*$ 12.50*
Mental Health Facilities (ICF-MR Only) > 6 Beds	$ 325	$ 6.25	*$ 650*	*$ 12.50*
Nursing Homes	$ 225	$ 6.25	*$ 450*	*$ 12.50*

* The additional fee that will be based on the number of beds, offices or rooms.

**"Other hospitals" excludes all State-owned facilities which are exempt from licensure.

Division of Facility Services
Licensure and Construction Fees

CONSTRUCTION PROJECT REVIEW FEES	Current Fees		*Proposed Fees*	
Facility Type	Base Fee	Additional Fee per Square Foot	*Base Fee*	*Additional Fee per Square Foot*
Hospitals	$ 150	$ 0.10	*$ 300*	*$ 0.20*
Nursing Homes	$ 125	$ 0.08	*$ 250*	*$ 0.16*
Ambulatory Surgical Facilities	$ 100	$ 0.08	*$ 200*	*$ 0.16*
Psyciatric Hospitals	$ 100	$ 0.08	*$ 200*	*$ 0.16*
Adult Care Homes (7+ Beds)	$ 87	$ 0.05	*$ 175*	*$ 0.10*
Family Care Homes (1-6 Beds)	$ 87	$ 0.00	*$ 175*	*$ 0.00*
ICF/MR Group Homes	$ 137	$ 0.00	*$ 275*	*$ 0.00*
Group Homes (1-3 Beds)	$ 50	$ 0.00	*$ 100*	*$ 0.00*
Group Homes (4-6 Beds)	$ 87	$ 0.00	*$ 175*	*$ 0.00*
Group Homes (7-9 Beds)	$ 112	$ 0.00	*$ 225*	*$ 0.00*
Group Homes (>9 Beds)	$ 112	$ 0.038	*$ 225*	*$ 0.075*

SENATE BILL 622:
2005 Appropriations Act

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 13, 2005
Introduced by:	Sen. Garrou	**Summary by:**	Cindy Avrette
Version:	PCS to Fourth Edition S622-CSLYxf-21		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 622 makes the following tax law changes:***

- ***It increases the excise tax on cigarettes 25¢ from 5¢ a pack to 30¢ a pack. It also increases the excise tax on all other tobacco products except cigars from 2% of the cost price to 6%, effective July 1, 2005.***
- ***It equalizes the privilege tax on entertainment by taxing movies and live entertainment at the same rate as video rentals, cable TV, and satellite TV[1], effective September 1, 2005.***
- ***It equalizes the gross premiums tax on insurance companies by taxing HMOs at the same 1.9% rate as other insurers, effective for taxable years beginning on or after January 1, 2006.***
- ***It provides a refundable tax credit for qualifying expenses of a production company, effective for taxable years beginning on or after January 1, 2005.***
- ***It provides a tax credit to a small business that provides health insurance to all of its full-time employees, effective for taxable years beginning on or after January 1, 2006.***

It also increases various fees as requested by the House Appropriation Subcommittees.

BILL ANALYSIS OF TAX AND FEE PROVISIONS:

Part 8: Community Colleges

- G.S. 115D-92 allows the community colleges to establish fees for licensing proprietary schools. Fees collected go into a special fund called the Commercial Education Fund. The fees are used to support the licensure function in the System Office, but are not sufficient to cover the actual costs incurred. The State Board of Community Colleges adopted a proposed fee schedule at its November 18, 2004, meeting. The System Office asked for an increase in the fees through the regular rule making process; however, it was unable to consult[2] with the Joint Legislative Commission on Governmental Operations about the fee increase before the 2005 Legislative Session began. The System Office would like to implement the new fees beginning with the next school year. To accommodate this need, the fee amounts have been specifically set forth in this bill. There is no impact to the General Fund budget.

Part 34: Tobacco Tax Rate Changes

- Increases the tax on cigarettes by 25¢ for a total tax of 30¢, effective July 1, 2005. The General Assembly last increased the cigarette tax in 1991 from 2¢ a pack to 5¢ a pack. The Governor recommended increasing the tax on cigarettes over a two-year period from 5¢ a pack to 45¢ a pack. The Senate proposes increasing the tax to 40¢ a pack.

[1] The Senate tax package (contained in SB 622, 4th Edition) and the House proposal in HB 1630 would tax cable TV and satellite TV at the combined State and local sales and use tax rate.

[2] G.S. 12-3.1.

- Increases the tax on all other tobacco products except cigars from 2% of cost price to 6% of cost price, effective July 1, 2005. The excise tax on cigars will remain at 2% of its cost price. The General Assembly first imposed a tax on OTP in 1991 at the rate of 2%. The Governor recommended a proportionate increase in the OTP tax rate. The Senate proposes an increase in the tax on all OTP from 2% to 4%.

Part 38: Corporate, Excise, and Insurance Tax Changes

- Equalizes the gross receipts privilege tax on entertainment by taxing all forms of entertainment at a rate that equals the combined State and local sales and use tax rate, effective September 1, 2005. Currently, movies are taxed at 1% and live entertainment is taxed at 3%. Video rentals are taxed at the combined State and local sales tax rate and both the Senate in SB 622 and the House in HB 1630 have proposed taxing cable and satellite TV at the combined State and local sales tax rate. The Governor recommended taxing entertainment at the combined general rate of tax. The Senate did not include a similar provision in its proposed tax package. The State's current taxation of entertainment varies depending upon the type of entertainment. In 2001, the General Assembly began equalizing the tax treatment of entertainment by taxing cable TV and satellite TV at the same rate of 5%. In the Senate tax package (SB 622, 4th Edition) and in House Bill 1630, both houses have proposed increasing the tax on these two forms of entertainment to the combined State and local sales and use tax rate. This bill would tax live entertainment and movies at the same rate as other forms of entertainment.

- Equalizes the gross premiums tax on insurance companies by taxing HMOs at the same rate as other insurers. HMOs are currently taxed at 1%; this bill would tax HMOs at 1.9%, effective for taxable years beginning on or after January 1, 2006. Prior to 2001, HMOs did not pay a gross premiums tax.[3] In 2001, the General Assembly enacted legislation subjecting all insurance carriers to the gross premiums tax in lieu of the State's corporate income and franchise tax. However, the rate continued to vary depending upon the type of insurer. The 2001 legislation taxed HMOs and Article 65 corporations, such as Blue Cross/Blue Shield and Delta Dental Corporation, at the same rate of 1%. Effective January 1, 2004, the General Assembly increased the gross premiums tax on Article 65 corporations from 1% to 1.9%.[4] This bill would increase the rate on HMOs to 1.9% also. This part also provides that for the 2006 and 2007 tax years only, HMOs will make the following estimated payments of the tax: 45% on April 15, 45% on June 15, and 10% on October 15 with true-up the following March 15. For subsequent tax years, the general law on installment payments of gross premiums tax will apply. This change accelerates the timing of the tax payment to move the revenue gain to an earlier fiscal year.

Part 39: Tax Incentives

- Section 39.1 replaces the current film industry development grant program[5] with a refundable income tax credit equal to 15% of the qualifying expenses of a production company that equal or

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[3] Prior to 2001 HMOs were subject to corporate income and franchise tax. Companies that pay a gross premiums tax are exempt from State corporate income and franchise tax.

[4] The 2003 legislation provided a conditional sunset of the increased tax rate. It requires the Commissioner of Insurance to make a certification to the Department of Revenue and the Revisor of Statutes when there are no longer any medical service corporations that offer anything other than dental service plans. Beginning with the first taxable year after that certification is made, the 2003 legislation increasing the tax will expire and the gross premiums tax rate applied to medical service corporations will revert to 1%. The effect of this provision would be to reduce the rate on medical service corporations if Blue Cross/Blue Shield completes its conversion to for-profit status. In July 2003, Blue Cross/Blue Shield announced its intention not to pursue conversion at this time.

[5] Section 39.1(d) repeals G.S. 143B-434.4. The General Assembly has not appropriated money to this account for the past couple of years.

exceed $250,000 spent by a production company in connection with a production. The incentive is targeted at feature films and episodic television series. The credit is effective for taxable years beginning on or after January 1, 2005, and it expires for qualifying expenses occurring on or after January 1, 2010. The Governor recommended some incentive for sales tax paid on movie equipment purchases. The Senate tax package contained a similar tax credit: the Senate proposal provided that qualifying expenses must equal or exceed $1,000,000 and its proposal would not apply to commercial advertising.

A production company is a person engaged in the business of making original motion picture, television, or radio images for theatrical, commercial, advertising, or education purposes. However, for the purposes of this credit, the production may not be political advertising, it may not be a television production of a news program or sporting event, and it may not contain material that is obscene.[6]

To receive the credit, a taxpayer must submit a detail accounting of its qualifying expenses to the North Carolina Film Office of the Department of Commerce. The Film Office, with the assistance of the regional film commission for the location of the production, must certify the amount of the qualifying expenses.[7] Qualifying expenses are the total amount spent in North Carolina for:

- Goods and services purchased by a production company in connection with a production.
- Compensation and wages paid by a production company on which it remitted withholding payments to the Department of Revenue. Any amounts paid to an individual in excess of $1,000,000 with respect to a single production cannot be included as a qualifying expense.

In the case of an episodic television series, an entire season of episodes is considered one production. The taxpayer must maintain and make available for inspection any information or records required by the Secretary of Revenue r the regional film commissions. The taxpayer has the burden of proving eligibility for the credit and the amount of the credit.

The amount of the credit is 15% of the production company's qualifying expenses. The credit may be claimed for the taxable year in which the production activities are completed. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year. If the credit exceeds the amount of tax imposed for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. A pass-through entity is considered a taxpayer for purposes of claiming this credit; therefore, it does not distribute the credit among its owners.

The Department of Revenue must publish by May 1 of each year the following information, itemized by taxpayer for the 12-month period ending the preceding April 1:

- The location of the sites used in a production for which a credit was claimed.
- The qualifying expenses for which a credit was claimed, classified by whether the expenses were for goods, services, or compensation.
- The number of people employed in the State with respect to the credits claimed.
- The total cost to the General Fund of the credits claimed.

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[6] G.S. 14-190.1 defines 'obscene material' as material that meets all of the following conditions: the material depicts or describes in a patently offensive way sexual conduct; the average person applying contemporary community standards relating to the depiction or description of sexual matters would find that the material taken as a whole appeals to the prurient interest in sex; the material lacks serious literary, artistic, political, or scientific value; and the material as used is not protected or privileged under the Constitution of the United States or the Constitution of North Carolina.

[7] Subsection 39.1(c) amends the tax secrecy statutes to allow the exchange of information concerning the credit with the NC Film Office of the Department of Commerce and the regional film commissions.

- Section 39.2 provides a tax credit to a small business that provides health insurance to all of its full-time employees. The amount of the credit would be $400 per each eligible employee for whom the taxpayer provides health insurance benefits. A small business is defined to be a taxpayer that employs no more than 25 employees throughout the taxable year. The credit would be in lieu of any expense deduction the taxpayer claimed on its income tax return for the health insurance costs. The credit is effective for taxable years beginning on or after January 1, 2006, and it expires for taxable years beginning on or after January 1, 2010. This section is very similar to House Bill 20. Neither the Governor nor the Senate proposed such a credit in their tax packages.

  The General Assembly has enacted legislation over the past several years to encourage small businesses to provide health insurance benefits to their employees. In 1991, the General Assembly enacted the 'Small Employer Group Health Insurance Reform Act' to promote the availability of accident and health insurance coverage, to prevent abusive rating practices, and to develop standard and basic health care plan coverage. The General Assembly also made the provision of health insurance a requirement of eligibility for both the Bill Lee Act credits and grants awarded under the Job Development Investment Grant Program. In 2003, the General Assembly established the North Carolina Health Insurance Innovations Commission to address the availability and affordability of adequate health insurance coverage for small business owners and employees.

  Under the Internal Revenue Code, an employer may deduct premiums paid for health insurance cost of its employees as a business expense. According to data from the 2001 Medical Expenditure Panel Survey from the Agency for Healthcare Research and Quality, U.S. Department of Health and Human Services, 31% of employees employed by firms with 25 or fewer employees are covered by employer-sponsored plans. For 2001, the average employer's costs of providing this coverage ranged from $3,024 to $4,971 per year, depending on the number of family members covered. Data for 1998-2002 from the Department of Insurance indicates that the average annual cost is rising at double-digit rates.

  This section creates a new tax credit for a taxpayer that employs no more than 25 full-time employees and pays at least 50% of the premiums for health insurance coverage for those employees. The health insurance benefits offered to those employees must equal or exceed the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee. The credit amount is equal to $400 per eligible employee, not to exceed the taxpayer's cost of providing the health insurance benefits. The taxpayer may use the credit against either its income tax or its franchise tax liability. The credit may not exceed 50% of the taxpayer's tax liability. Any unused portions of the credit may be carried forward for five years.

Part 40: Set Rates for Insurance Regulatory Charge and Public Utilities Fees

- Sets insurance regulatory charge at 5.5% for the 2005 calendar year, an increase of .5%. The insurance regulatory charge was first enacted in 1991 to defray the State's cost of regulating the insurance industry. The charge is a percentage of each insurance company's gross premiums tax liability. The insurance regulatory charge is imposed on insurance companies that pay the gross premiums tax and, beginning in 2000, on health maintenance organizations and medical service corporations. Insurance companies and medical service corporations pay a 1.9% gross premium tax rate.[8] For health maintenance organizations, the charge is levied on each organization's hypothetical gross premiums tax liability determined at the 1.9% gross premiums tax rate applied to its premiums

[8] The premium tax rate for medical service corporations was increased from 1% to 1.9%, effective January 1, 2004. (S.L. 2003-284)

base. The hypothetical calculation is necessary because health maintenance organizations pay premiums tax at the lower rate of 1%.[9]

- Sets the rate for the public utility regulatory fee for the 2005-2006 fiscal year at 0.12%. The rate has remained the same for the past two years. The rate for this fee must be set each year by the General Assembly. The utility regulatory fee is a tax that was first imposed in 1989. The proceeds of the fee are credited to the Utilities Commission and Public Staff Fund and used to defray the State's cost in regulating public utilities. The regulatory fee is imposed on all utilities that are subject to regulation by the North Carolina Utilities Commission. The fee is a percentage of the utility's North Carolina jurisdictional revenues. In general, jurisdictional revenue is derived from providing utility service in North Carolina.

  In addition to funding the State's cost in regulating public utilities, the money in the Utilities Commission and Public Staff Fund is currently used to finance the work of the Study Commission on the Future of Electric Service in North Carolina. The General Assembly established the Commission in 1997 to examine the cost, adequacy, availability, and pricing of electric service in North Carolina to determine whether legislation is necessary to assure an adequate and reliable source of electricity and economical, fair, and equitable rates for all consumers of electricity in North Carolina. Section 14.10 of S.L. 2000-67, the Current Operations and Capital Improvements Appropriations Act of 2000, extended the life of the Study Commission and its funding from the Utilities Commission and Public Staff Fund through June 30, 2006.

  This Part also sets at $200,000 for the 2005-2006 fiscal year the annual public utility regulatory fee imposed on electric membership corporations whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale. The new rate is the same as the rate in effect for the preceding four fiscal years. The proceeds of the fee are credited to the Utilities Commission and Public Staff Fund and used to defray the State's cost in regulating electric membership corporations.

  The 1999 General Assembly enacted S.L. 1999-180, which authorized electric membership corporations to form subsidiary corporations that may provide energy services and products, telecommunications services and products, and water and wastewater collection and treatment. The subsidiary must fully compensate the electric membership corporation for its use of the corporation's personnel, services, equipment, and property. The Utilities Commission is charged with regulating this aspect of the subsidiary's business and, to pay for this regulation, S.L. 1999-180 levied a flat-rate regulatory fee to be paid annually by the North Carolina Electric Membership Corporation. The General Assembly must establish the fee amount each year. The North Carolina Electric Membership Corporation is the only electric membership corporation whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale as provided in G.S. 117-16. It is a "generation and supply cooperative" owned by its members. Its members are all but one of the existing North Carolina electric membership corporations, which are "distribution cooperatives." Thus, the fee imposed on the North Carolina Electric Membership Cooperation will be passed on to its member electric membership corporations.

Part 41: Health and Human Services Fees

- Sets the newborn screening fee at $14. The current fee amount is $10. The increased fee amount will allow the program to become receipt-supported.
- Increases the annual license or certification fees for adult care homes; hospitals; nursing homes; home care agencies; ambulatory surgical facilities; cardiac rehabilitation certification programs; hospitals or clinics certified to perform abortions; facilities for the mentally ill, the developmentally disabled, and

[9] Section 38.4 of this bill would tax HMOs at the same 1.9% rate as other insurers.

substance abusers; and nursing beds and adult care home beds in continuing care retirement facilities. The General Assembly established these fees in 2003. This bill would essentially double the fee amounts.

Parts 12 and 42: NER Fees

- **Part 12** expands the express permit and certification review program statewide.
- **Part 42** increases various agricultural fees.
- **Part 42** increases the cap for CAMA permit fees from $400 to $800.

Parts 14, 29, and 43: Justice and Public Safety Fees

- **Part 14** authorizes the Judicial Department to charge the full cost of production for all copies of the appellate division reports that are sold.
- **Part 29** increases the costs in criminal actions by increasing the amount collected and remitted for the supplemental pension benefits of sheriffs from 75¢ to $1.25.
- **Part 43** increases the criminal court of justice fees by $9.50[10]; it increases the civil court of justice fees by $10; increases the cap on probate fees from $3,000 to $6,000; and increases the court cost for a seat belt violation from $50 to $75.
- **Part 43** imposes a $90 fee on electronic monitoring devices used for house arrests.
- **Part 43** increases the property tax rate for Butner from 20¢ to 25¢.
- **Part 43** codifies the current fee schedule for participation in the Police Information Network and, effective January 1, 2006, increases the monthly fee assessed for mobile terminals from $6 to $12.

Parts 28 and 44: Department of Transportation

- **Part 28** directs the Department of Transportation to apply to the United States Department of Transportation for a permit to allow tolling on established interstate highways in North Carolina and allows the Department to collect tolls on those interstate highways for which it has received permission to establish tolls.
- **Part 44** increases various fees payable to the Department of Transportation.

Part 45: Industrial Commission Fees

- Authorizes the Industrial Commission to adopt a fee for reviewing Form 21 agreements.

S0622e4-SMRB-CSRB

[10] The total increase of the criminal court of justice fee is $10 because Part 29 increases the costs of criminal court by 50¢; this 50¢ must be used to fund the supplemental pension benefits of sheriffs under Article 12G of Chapter 143 of the General Statutes.

North Carolina General Assembly

House Committee on Finance

Minutes

~

June 14, 2005

The House Committee on Finance met on Tuesday, June 14, 2005 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, Luebke, McComas and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Blust, Bordsen, Capps, Carney, Dockham, England, Faison, Fisher, Folwell, Glazier, Goforth, Hackney, Harrell, Holliman, Insko, Jones, Lewis, Lucas, McGee, Rayfield, Underhill, Vinson, Walend, and Wiley. The Ex-Officio members present were Representatives Culpepper and Cunningham. Also present were Sergeant-at-Arms Bill Freeman, Fred Hines, Dusty Rhodes, Bill Sullivan, and Walter Spell. Staff persons present included Cindy Avrette, Rodney Bizzell, Erika Churchill, Gerry Cohen, David Crotts, Brenna Erford, Ashley Huffstetler, Canaan Huie, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Wainwright called the meeting to order at 8:31 am and recognized the eight (8) pages present: (1) Cliff Collins of Yadkin County, sponsored by Representative Holmes; (2) Chris Daniels of Wake County, sponsored by Representative Martin; (3) Cameron Eckard of Caldwell County, sponsored by Representative Starnes; (4) Griffin Gough of Forsyth County, sponsored by Representative Folwell; (5) Kyle Hawk of Caldwell County, sponsored by Representative Starnes; (6) Anna King of Bladen County, sponsored by Representative Nye; (7) Nathan Nye of Bladen County, sponsored by Representative Nye; and (8) Mat Skinner of Wake County, sponsored by Representative Martin.

The first bill under the Committee's consideration was **HB 650 – BUSINESS COURT CASES / FEE** (see **attachment 3**). Chairman Wainwright first recognized Representative Howard who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Representative Haire then explained that the bill provides for the assignment of special Superior Court judges to hear complex business cases. This bill also raises the fee assessment for cases from $69 to $269. Representative Luebke was then recognized and moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. As there was no further debate, Chairman Wainwright called the motion to a vote and it carried without objection.

The following bill considered by the Committee was **HB 1776 - NC TROUT UNLIMITED PLATE / TROUT STATE FISH** (see **attachment 4**). Chairman Wainwright again recognized Representative Haire who explained that the bill authorizes the Division of Motor Vehicles to develop a special registration plate for NC Trout Unlimited. He also explained that the bill adopts the brook trout as the "official freshwater fish" of the State of North Carolina.

Representative Haire then sent forth an amendment (see **attachment 5**) changing the title of the bill by replacing the word "fish" with the word "trout." After explaining the amendment, Representative Haire moved for the amendment's adoption. Seeing no further discussion, Chairman Wainwright called the motion to a vote and the amendment was adopted by consent. Chairman Wainwright then recognized Representative Glazier who moved that House Bill 1776 be given a favorable report, as amended, by the Committee. As there was no further debate, Chairman Wainwright called the motion to a vote and it carried without objection.

The next bill considered by the Committee was **HB 1635 – AMEND DISPLACED HOMEMAKER LAWS / UP FUND FEES** (see **attachment 6**). Chairman Wainwright first recognized Representative Hill who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Representative Adams was then recognized and explained that the bill amends the laws pertaining to displaced homemakers and increases the amount of money flowing to the North Carolina Fund for Displaced Homemakers by increasing the filing fee for absolute divorce from $90 to $125. Chairman Wainwright then recognized Representative Hackney who asked why the phrase "final" is used to describe action when "absolute divorce" already implies a final action. He then sent forth an amendment (see **attachment 7**) deleting the word "final" where it describes actions of absolute divorce in the bill, and he moved for the amendment's adoption. Seeing no further discussion, Chairman Wainwright called the motion to a vote, and the amendment was adopted. Representative Womble was then recognized and moved for a favorable report to the proposed committee substitute, incorporating the amendment, and an unfavorable report to the original bill. As there was no further debate, Chairman Wainwright called the motion to a vote and it carried without objection.

Chairman Wainwright then recognized Senator Tillman to explain **SB 178 – AMEND CERTAIN LIC. REQS/PLUMB'G/HEAT'G CONTR.** (see **attachment 8**). He explained that the bill would amend the licensing laws for plumbing and heating contractors to allow the licensing examination to be passed in parts. This bill also sets the fee for each exam at $100. Chairman Wainwright then recognized Representative McComas who moved that Senate Bill 178 be given a favorable report by the Committee. Seeing no further discussion, Chairman Wainwright called the motion to a vote and it carried by consent.

The next bill under consideration by the Committee was **SB 685 – REVISE PROFESSIONAL EMPLOYER ORGANIZATION ACT** (see **attachment 9**). Chairman Wainwright recognized Senator Bingham to explain the bill. Senator Bingham stated that the bill makes changes to the Professional Employer Organization Act. He reported that the bill had received a favorable report from the House Insurance and House Appropriation Committees. Chairman Wainwright then recognized Representative Howard who moved that Senate Bill 685 be given a favorable report by the Committee. As there was no further debate, Chairman Wainwright called the motion to a vote and it carried without objection.

The following bill considered by the Committee was **SB 407 – CABARRUS LOCAL ACTS** (see **attachment 10**). Chairman Wainwright first recognized Representative Luebke who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Senator Hartsell was then recognized and explained that the bill authorizes the municipalities located in Cabarrus County to levy a tax of not more than $20 per year upon any vehicle resident in the city or town. The funds generated by the tax in excess of $5 would be placed in a separate fund and used only for transportation uses within the municipality. Following the explanation, Representative McComas was recognized who moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairman Wainwright called the motion to a vote and it carried by consent.

Chairman Wainwright then recognized Senator Dalton to explain **SB 450 – RUTHERFORD AIPORT AUTHORITY LEASES** (see **attachment 11**). He explained that the bill increases the length of time for which the Rutherford Airport Authority may lease real or personal property from 25 to 50 years. Following the explanation, Chairman Wainwright recognized Representative Cunningham who moved that Senate Bill 450 be given a favorable report by the Committee. As there was no further debate, Chairman Wainwright called the motion to a vote and it carried without objection.

The next bill under consideration by the Committee was **SB 682 – ADD AGENCIES TO SET-OFF DEBT COLLECT.** (see **attachment 12**). Chairman Wainwright first recognized Representative Ross who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion passed. Chairman Wainwright then recognized Martha Walston from Fiscal Research who explained that the bill would add public health authorities to the list of agencies authorized under the Setoff Debt Collection Act to collect debts owed to them by obtaining a setoff against a debtor's North Carolina income tax refund. Mrs. Walston explained that the proposed committee substitute incorporates House Bill 272 by adding metropolitan sewerage districts and sanitary districts to the list of agencies with setoff debt collection authority. Chairman Wainwright then again recognized Representative Ross who moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairman Wainwright called the motion to a vote and it carried by consent.

Chairman Wainwright then added to the agenda the final bill heard by the Committee: **SB 622 – 2005 APPROPRIATIONS ACT** (see **attachment 13**). Chairman Wainwright first recognized Representative Carney who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion passed. He then informed the committee members that only substantive debate would be allowed on the bill and that no parliamentary maneuvers by the members would be permissible. Representative Gibson was then recognized and explained the new proposed committee substitute, which makes a few technical changes and omits the provision related to toll-roads that were contained in earlier versions of the bill. Chairman Wainwright then recognized Representative Hackney who stated that the bill provides for the needs of the people of North Carolina. He also highlighted the bill's inclusion of a small business health insurance credit and a modest cigarette tax increase. Representative Hackney then moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. He then called for the previous question. Representative Lewis was then recognized by the Chair for a point of order. He inquired whether the Chair would be entertaining Representative Hackney's call for the previous question even though the Chair had indicated earlier that debate on the bill would be allowed. Chairman Wainwright, however, noted that Representative Hackney's motion was of higher precedent. He then called the motion for the previous question to a vote and it carried by a majority. Chairman Wainwright then immediately called Representative Hackney's motion for a favorable report as to the proposed committee substitute to a vote, and it carried by a majority.

As there was no further business before the Committee, Chairman Wainwright then adjourned the meeting at 9:18 am.

Respectfully submitted,

Representative William Wainwright
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. House Bill 650 (and related materials)
4. House Bill 1776 (and related materials)
5. Haire Amendment on HB 1776 - **ADOPTED**
6. House Bill 1635 (and related materials)
7. Hackney Amendment on HB 1635 - **ADOPTED**
8. Senate Bill 178 (and related materials)
9. Senate Bill 685 (and related materials)
10. Senate Bill 407 (and related materials)
11. Senate Bill 450 (and related materials)
12. Senate Bill 682 (and related materials)
13. Senate Bill 622 (and related materials)
14. House Bill 1051 (and related materials) - (REMOVED FROM CALENDAR)
15. House Bill 1084 (and related materials) - (REMOVED FROM CALENDAR)
16. Senate Bill 386 (and related materials) - (REMOVED FROM CALENDAR)

AGENDA

ATTACHMENT 1

House Finance Committee

June 14, 2005
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Wainwright

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard

Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order

Introduction of Pages

Bills:

HB 650 **BUSINESS COURT CASES/FEE** *Reps. Haire & Glazier*

HB 1051 **MACON-JACKSON REGIONAL AIRPORT AUTHORITY** *Reps. Haire & West*

HB 1084 **EXPUNGE NONVIOLENT FELONIES/YOUNG OFFENDERS** *Rep. Bordsen*

HB 1635 **AMEND DISPLACED HOMEMAKER LAWS/UP FUND FEES** *Reps. Adams & Wainwright*

HB 1776 **NC TROUT UNLIMITED PLATE/TROUT STATE FISH** *Rep. Haire*

SB 178 **AMEND CERTAIN LIC. REQS/PLUMB'G/HEAT'G CONTR.** *Sen. Tillman*

SB 407 **CABARRUS MUNICIPAL VEHICLE REGISTRATION** *Sen. Hartsell*

SB 450 **RUTHERFORD AIRPORT AUTHORITY LEASES** *Sen. Dalton*

SB 682 **PUBLIC HEALTH AUTHORITY SET-OFF DEBT COLLECT** *Sen. Holloman*

SB 685 **REVISE PROFESSIONAL EMPLOYER ORGANIZATION ACT** *Sen. Bingham*

Adjournment

CORRECTED NOTICE #2:
SB 685 – ADDED

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, June 14, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 650 – BUSINESS COURT CASES/FEE – Reps. Haire & Glazier

HB 1051 – MACON-JACKSON REGIONAL AIRPORT AUTHORITY – Reps. Haire & West

HB 1084 – EXPUNGE NONVIOLENT FELONIES/YOUNG OFFENDERS – Rep. Bordsen

HB 1635 – AMEND DISPLACED HOMEMAKER LAWS/UP FUND FEES – Reps. Adams & Wainwright

HB 1776 – NC TROUT UNLIMITED PLATE/TROUT STATE FISH – Rep. Haire

SB 178 – AMEND CERTAIN LIC. REQS/PLUMB'G/HEAT'G CONTR. – Sen. Tillman

SB 407 – CABARRUS MUNICIPAL VEHICLE REGISTRATION – Sen. Hartsell

SB 450 – RUTHERFORD AIRPORT AUTHORITY LEASES – Sen. Dalton

SB 682 – PUBLIC HEALTH AUTHORITY SET-OFF DEBT COLLECT – Sen. Holloman

SB 685 – REVISE PROFESSIONAL EMPLOYER ORGANIZATION ACT – Sen. Bingham

Respectfully,
Representatives Alexander, Gibson, Howard,
Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **12:55 p.m.** on **June 13, 2005.**

X Principal Clerk
X Reading Clerk - House Chamber
Jason A. Cannon (Committee Clerk)

CORRECTED NOTICE:
SB 386 – REMOVED

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, June 14, 2005**

TIME: **8:30 a.m.**

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HB 1051 – MACON-JACKSON REGIONAL AIRPORT AUTHORITY – Reps. Haire & West

[redacted]084 – EXPUNGE NONVIOLENT FELONIES/YOUNG OFFENDERS – Rep. Bordsen

HB 1635 – AMEND DISPLACED HOMEMAKER LAWS/UP FUND FEES – Reps. Adams & Wainwright

HB 1776 – NC TROUT UNLIMITED PLATE/TROUT STATE FISH – Rep. Haire

SB 178 – AMEND CERTAIN LIC. REQS/PLUMB'G/HEAT'G CONTR. – Sen. Tillman

~~**SB 386 – CABARRUS BUILD/DEVELOP/ANNEX CHANGES – Sen. Hartsell**~~

SB 407 – CABARRUS MUNICIPAL VEHICLE REGISTRATION – Sen. Hartsell

SB 450 – RUTHERFORD AIRPORT AUTHORITY LEASES – Sen. Dalton

SB 682 – PUBLIC HEALTH AUTHORITY SET-OFF DEBT COLLECT – Sen. Holloman

Respectfully,
Representatives Alexander, Gibson, Howard,
Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **8:15 a.m.** on **June 9, 2005.**

X Principal Clerk
X Reading Clerk - House Chamber
Jason A. Cannon (Committee Clerk)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, June 14, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

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HB 1051 – MACON-JACKSON REGIONAL AIRPORT AUTHORITY – Reps. Haire & West

HB 1084 – EXPUNGE NONVIOLENT FELONIES/YOUNG OFFENDERS – Rep. Bordsen

HB 1635 – AMEND DISPLACED HOMEMAKER LAWS/UP FUND FEES – Reps. Adams & Wainwright

H 776 – NC TROUT UNLIMITED PLATE/TROUT STATE FISH – Rep. Haire

SB 178 – AMEND CERTAIN LIC. REQS/PLUMB'G/HEAT'G CONTR. – Sen. Tillman

SB 386 – CABARRUS BUILD/DEVELOP/ANNEX CHANGES – Sen. Hartsell

SB 407 – CABARRUS MUNICIPAL VEHICLE REGISTRATION – Sen. Hartsell

SB 450 – RUTHERFORD AIRPORT AUTHORITY LEASES – Sen. Dalton

SB 682 – PUBLIC HEALTH AUTHORITY SET-OFF DEBT COLLECT – Sen. Holloman

Respectfully,
Representatives Alexander, Gibson, Howard,
Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **8:15 a.m.** on **June 9, 2005.**

X Principal Clerk
X Reading Clerk - House Chamber

A. Cannon (Committee Clerk)

CANCELLED

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Thursday, June 9, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 650 – BUSINESS COURT CASES/FEE – Reps. Haire & Glazier

HB 1051 – MACON-JACKSON REGIONAL AIRPORT AUTHORITY – Reps. Haire & West

HB 1084 – EXPUNGE NONVIOLENT FELONIES/YOUNG OFFENDERS – Rep. Bordsen

HB 1635 – AMEND DISPLACED HOMEMAKER LAWS/UP FUND FEES – Reps. Adams & Wainwright

HB 1776 – NC TROUT UNLIMITED PLATE/TROUT STATE FISH – Rep. Haire

SB 178 – AMEND CERTAIN LIC. REQS/PLUMB'G/HEAT'G CONTR. – Sen. Tillman

SB 386 – CABARRUS BUILD/DEVELOP/ANNEX CHANGES – Sen. Hartsell

SB 407 – CABARRUS MUNICIPAL VEHICLE REGISTRATION – Sen. Hartsell

SB 450 – RUTHERFORD AIRPORT AUTHORITY LEASES – Sen. Dalton

SB 682 – PUBLIC HEALTH AUTHORITY SET-OFF DEBT COLLECT – Sen. Holloman

Respectfully,
Representatives Alexander, Gibson, Howard,
Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **11:10 a.m.** on **June 8, 2005.**

_X_ Principal Clerk
_X_ Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Thursday, June 9, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 650 – BUSINESS COURT CASES/FEE – Reps. Haire & Glazier

HB 1051 – MACON-JACKSON REGIONAL AIRPORT AUTHORITY – Reps. Haire & West

HB 1084 – EXPUNGE NONVIOLENT FELONIES/YOUNG OFFENDERS – Rep. Bordsen

HB 1635 – AMEND DISPLACED HOMEMAKER LAWS/UP FUND FEES – Reps. Adams & Wainwright

H[redacted]776 – NC TROUT UNLIMITED PLATE/TROUT STATE FISH – Rep. Haire

SB 178 – AMEND CERTAIN LIC. REQS/PLUMB'G/HEAT'G CONTR. – Sen. Tillman

SB 386 – CABARRUS BUILD/DEVELOP/ANNEX CHANGES – Sen. Hartsell

SB 407 – CABARRUS MUNICIPAL VEHICLE REGISTRATION – Sen. Hartsell

SB 450 – RUTHERFORD AIRPORT AUTHORITY LEASES – Sen. Dalton

SB 682 – PUBLIC HEALTH AUTHORITY SET-OFF DEBT COLLECT – Sen. Holloman

Respectfully,
Representatives Alexander, Gibson, Howard,
Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **11:10 a.m.** on **June 8, 2005.**

X Principal Clerk
X Reading Clerk - House Chamber

J[redacted]A. Cannon (Committee Clerk)

ATTACHMENT 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 14, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Susan Booth	NC School of the Arts Winston-Salem, NC 27127
Sylvia Ray	Women's Center of Fayetteville 230 Ray Street, Fay NC 2830
Debbie Gulbranson	Meck. Co. Women's Commission 700 N. Tryon St. Charlotte NC 28202
John Dunn	Pamlico Community College P.O. Box 185 Grantsboro NC 28529
R. Paul Wilms	NCHBA
M. Ackerman	WS/FC Council on the Status of Women
Mark Fountain	Young Moore & Henderson
Camden Bates	Young Moore & Henderson
Keith Gitterbowman	Physician of the Day
Cindy Dick	DJJDP
Henry Hultquist	NCSDA.

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 14, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Katherine Cadwallader	Intern Rep. Earle
Anacatherine Dickens	Rep. Coates
Rebecca Badger	Intern Rep. Wainwright
Ashleigh Taylor	Intern Rep. Wainwright
Ashlee Boyce	Intern (Rep. Coleman)
Russ Dubisky	CCPS
[signature]	SBE/DPI
Karin Baumhover	ASU
Tye Hunter	IDS
James Pearce	P. Wolfe
Paula A. Woolf	El Pueblo/PPHS

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 14, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
LINDA GUNTER	NCAE
John Mobley	GOV ethics
Lucas Huberas	Intern
Rebecca Isaac	NCACC
Ed Regan	NCRGEA
Molly Ryan	NCSBA
Pam Deardorff	NCDST-RSD
Cecil Banks	NCAE
Rebecca Key	intern - Rep. Gibson
CASANDRA STANDER	NCCPS
Henry Jones	Attorney - Raleigh

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 14, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	S.A
DAVID DUNN	UNC Charlotte
	DOA - YAIO
	Capitol Group
Kim Hargett	Rep. Gibson
BENJAMIN STAPLES	NAMI NC
FRED WADDELL	ESUCP NC
Gary Harris	NCPMA
Johanna Reese	DENR
	NCATL
	NCATL

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 14, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stella McKenney	NC. DHHS
Tracy Little	NC DOC
Shirley J. Linn	Charlotte, NC
[illegible]	NCRA - KEWU
Jill Hinton Keel	Autism Soc. of NC / C2001
Robert Wilson	S.O.S
VL Clark	Intern - WReiss

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Felecia Berkley	NCWWI
Jane Patterson	e-nc Authority
Ed TURLINGTON	BPM HL
Cass Ann	BPM HL
Teresa Pell	NC Council for Women / DV Commission
Marian Ackerman	NS/FC Council for Women
Stephanie Dorko	Charlotte Chamber
DAVID BARNES	Poyner + Spruill
John [illegible]	NCFPC
McKinley Wooten Jr	NC Dept of Admin
Barbara Conley	RSCOR
Sandy Sands	WCSR
[illegible] Lake	DUHS
[illegible] Joyce	NCASA
[illegible] Harris	PSF of NC
[illegible]	[illegible]
Deborah Knight	Displaced Homemakers Coordinator, Pitt Comm.
Lisa Lane	Displaced Home Maker
[illegible]	Smith Anderson
[illegible]	[illegible]
Peg Dorer	Conference of DAs
Brandy Byrum	NC Child Advocacy Institute
BRIAN LEWIS	Covenant w/ NC's Children
Anne Y Bowen	American Cancer Society
Colleen Kochanek	Holt Ark
Kevin [illegible]	VNC
[illegible]	[illegible]
Fred Bone	Bone & Assoc

VISITOR REGISTRAT)N SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Alice Garland	NCDOT
Eva DuBuisson	Nelson Mullins
Jami Fitzgerald	NCFPC
Moore Manchester	Pryor & Johnson
Martha Ann McKennett	Cardinias Hendrickson Sup
[illegible]	NCDOT
Betty Warren	BPC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 650*

Committee Substitute Favorable 3/28/05

PROPOSED COMMITTEE SUBSTITUTE H650-CSMB-23 [v.2]

6/10/2005 4:17:12 PM

Short Title: Business Court Cases/Fee. (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE ASSIGNMENT OF SPECIAL SUPERIOR COURT JUDGES TO HEAR COMPLEX BUSINESS CASES, TO AUTHORIZE A LARGER FEE FOR COMPLEX BUSINESS CASES, AND TO CHANGE THE DATE DISTRICT COURT JUDGES TAKE OFFICE.

The General Assembly of North Carolina enacts:

PART I. BUSINESS COURT JUDGES AND FEES.

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

"**§ 7A-45.3. Superior court judges designated for complex business cases.**

The Chief Justice may exercise the authority under rules of practice prescribed pursuant to G.S. 7A-34 to designate one or more of the special superior court judges authorized by G.S. 7A-45.1 to hear and decide complex business cases as prescribed by the rules of practice."

SECTION 2. G.S. 7A-305(a) reads as rewritten:

"(a) In every civil action in the superior or district court, except for actions brought under Chapter 50B of the General Statutes, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of twelve dollars ($12.00) in cases heard before a magistrate, and the sum of sixteen dollars ($16.00) in district and superior court, to be remitted to the county in which the judgment is rendered, except that in all cases in which the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used in the same manner, for

the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice, the sum of sixty-nine dollars ($69.00) in the superior ~~court,~~court, except that if a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3, an additional two hundred dollars ($200.00) shall be paid upon its assignment, and the sum of fifty-four dollars ($54.00) in the district court except that if the case is assigned to a magistrate the sum shall be forty-three dollars ($43.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents ($.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19."

PART II. DISTRICT COURT JUDGE TERM.

SECTION 3. G.S. 7A-140 reads as rewritten:

"**§ 7A-140. Number; election; term; qualification; oath.**

There shall be at least one district judge for each district. Each district judge shall be elected by the qualified voters of the district court district in which he or she is to serve at the time of the election for members of the General Assembly. The number of judges for each district shall be determined by the General Assembly. Each judge shall be a resident of the district for which elected, and shall serve a term of four years, beginning on the first ~~Monday in December~~day in January next ~~following his~~after election.

Each district judge shall devote his or her full time to the duties of ~~his~~the office. He or she shall not practice law during ~~his~~the term, nor shall he or she during such term be the partner or associate of any person engaged in the practice of law.

Before entering upon his or her duties, each district judge, in addition to other oaths prescribed by law, shall take the oath of office prescribed for a judge of the General Court of Justice."

SECTION 4. The table entries in G.S. 163-1 for the Justices and Judges read as rewritten:

"OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
. . . . .			
Justices and Judges of the Appellate Division	State	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Eight years, from first day of January next after election
Judges of the	Superior	At the regular	Eight years,

superior courts	Court District	election for members of the General Assembly immediately preceding the termination of each regular term	from first day of January next after election
Judges of the district courts	District court district	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first ~~Monday in December next~~ day in January next after election

....."

PART III. EFFECTIVE DATES.

SECTION 5. Sections 1 and 2 of this act become effective January 1, 2006, and apply to fees assessed or collected on or after that date. Sections 3 and 4 of this act are effective when they become law. Judges elected in 2006 and thereafter take office accordingly, and as provided by Section 10 of Article VI of the North Carolina Constitution and G.S. 128-7, those in office on the first Monday in December of 2006 or 2008 shall continue until their successors terms begin and are duly qualified.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 650*

Committee Substitute Favorable 3/28/05

Short Title: Business Court Cases/Fee. (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE ASSIGNMENT OF SPECIAL SUPERIOR COURT JUDGES TO HEAR COMPLEX BUSINESS CASES AND TO AUTHORIZE A LARGER FEE FOR THOSE CASES.

The General Assembly of North Carolina enacts:

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

"**§ 7A-45.3. Superior court judges designated for complex business cases.**

The Chief Justice may exercise the authority under rules of practice prescribed pursuant to G.S. 7A-34 to designate one or more of the special superior court judges authorized by G.S. 7A-45.1 to hear and decide complex business cases as prescribed by the rules of practice."

SECTION 2. G.S. 7A-305(a) reads as rewritten:

"(a) In every civil action in the superior or district court, except for actions brought under Chapter 50B of the General Statutes, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of twelve dollars ($12.00) in cases heard before a magistrate, and the sum of sixteen dollars ($16.00) in district and superior court, to be remitted to the county in which the judgment is rendered, except that in all cases in which the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice, the sum of sixty-nine dollars ($69.00) in the superior ~~court,~~court, except that if a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3, an additional two hundred dollars ($200.00) shall

be paid upon its assignment, and the sum of fifty-four dollars ($54.00) in the district court except that if the case is assigned to a magistrate the sum shall be forty-three dollars ($43.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents ($.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19. The additional two hundred dollars ($200.00) for cases assigned to a special superior court judge as a complex business case shall be deposited into a special fund, held in the State Treasurer's office, to defray the costs of operating the business court. Interest earned on the fund shall remain in the fund."

SECTION 3. This act becomes effective January 1, 2006, and applies to fees assessed or collected on or after that date.

House Bill 650:
Business Court Cases/Fee.

BILL ANALYSIS

Committee: House Finance
Date: June 14, 2005
Version: PCS for 2nd Edition (H650-CSMB-23)

Sponsors: Reps. Haire and Glazier
Analysis by: Ashley Huffstetler*, Staff Attorney

SUMMARY: ***The PCS to the 2nd Edition of House Bill 650 authorizes the Chief Justice of the North Carolina Supreme Court to assign special superior court judges to hear complex business cases. It also increases the filing fee for those cases from $69 to $269. Additionally, Part II of the bill provides that district court judges are to assume office on the first day of January following their election.***

CURRENT LAW:

Part I.

The North Carolina Business Court is a specialized forum of the North Carolina State Courts' trial division. A senior resident superior court judge, chief district court judge, or presiding superior court judge may recommend to the Chief Justice that a case be designated as a complex business case. The Chief Justice may designate any case as complex business and assign the case to a superior court judge who oversees resolution of all matters in the case through trial.

The term "complex business case" is not defined by rule or statute, but one of the key factors in assessing whether a case should be designated as a complex business case is whether the outcome will have implications for business and industry beyond the conflicts of the parties to the litigation. If a written decision on disposition of the case would provide predictability for others in the same business or industry in making their business decisions, the case will more likely be considered for designation.

At present, there is only one judge and one geographic location for the court. The Chief Justice's Commission on the Future of the North Carolina Business Court has recommended that, in order to meet the challenges of an increasing caseload and to remain competitive in attracting new business, the court should, among other things, be expanded into both Wake and Mecklenburg Counties as well as make technological and administrative improvements.

Part II.

Under existing law, district court judges begin their terms on the first Monday in December following election. Superior court judges begin their terms on the first day in January following their election.

BILL ANALYSIS: House Bill 650 does several things.

Part I.

- ***Assignment of Special Judges.*** –The bill provides that the Chief Justice may designate one or more special superior court judges authorized by G.S. 7A-45.1 to hear complex business cases. "Special judges" under G.S. 7A-45.1 are judges appointed by the Governor who are not resident judges of any particular district, but serve around the State as needed. At present, there are 12 such special judges. This provision tightens the language of Rule 2.2 to both reflect the current, accepted understanding of Rule 2.2 and to explicitly confirm, by statute, the concept of special business court judges deciding cases in the business court.
- ***Increased Filing Fee.*** – It increases the filing fee for complex business cases to $269 from the current $69. This is an additional $200 fee for cases referred to business court. The purpose of the fee is to fund both

geographic expansion and technological advancements for the business court. The bill was amended in Judiciary IV to clarify that the additional fee would not be paid until the case was actually assigned to a business court. **The PCS for the 2nd Edition removes the provision that the additional filing fee would go into a special fund. Rather, the money will be remitted to the State Treasurer.**

Part II.

Part II of the bill provides that the terms for district court judges begin on the first day in January following an election. The purpose of this provision is to allow judges more time to transition and/or close their existing legal practices before assuming judicial duties. Superior court judges already begin their terms on January 1st.

*Trina Griffin prepared the summary for the 1st Edition heard in House Judiciary IV.

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 13, 2005

TO: House Finance Committee

FROM: Douglas Holbrook
Fiscal Research Division

RE: PCS for House Bill 650 (Second Edition)

FISCAL IMPACT

	Yes (x)	No ( )	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:	$2,300	$4,600	$4,600	$4,600	$4,600
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Administrative Office of the Courts.

EFFECTIVE DATE: January 1, 2006

BILL SUMMARY:

The PCS to the 2nd Edition of House Bill 650 authorizes the Chief Justice of the North Carolina Supreme Court to assign special superior court judges to hear complex business cases, which is a recommendation of the Chief Justice's Commission on the Future of the North Carolina Business Court. It also increases the filing fee for those cases from $69 to $269. The bill would become effective January 1, 2006, and apply to fees assessed or collected on or after that date.

ASSUMPTIONS AND METHODOLOGY:
While the number of cases that meet the standard of complexity for a Business Court referral is unpredictable, during the last two fiscal years, 23 cases have been referred each year. Assuming the same level of utilization and availability of Business Court resources, this bill would generate $4,600 in additional General Fund availability each year. The cost to implement a Business Court program for a full year is over $100,000.

SOURCES OF DATA: Business Court program staff

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

HB 650 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE ASSIGNMENT OF SPECIAL SUPERIOR COURT JUDGES TO HEAR COMPLEX BUSINESS CASES AND TO AUTHORIZE A LARGER FEE FOR THOSE CASES.

☒ With a favorable report as to the committee substitute bill 2, which changes the title, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1776

Committee Substitute Favorable 6/1/05

Short Title: NC Trout Unlimited Plate/Trout State Fish. (Public)

Sponsors:

Referred to:

May 12, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE A NORTH CAROLINA TROUT UNLIMITED SPECIAL REGISTRATION PLATE AND TO ADOPT THE BROOK TROUT AS THE OFFICIAL FRESHWATER FISH OF THE STATE OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-63(b) reads as rewritten:

"(b) Every license plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued, the name of the State of North Carolina, which may be abbreviated, and the year number for which it is issued or the date of expiration. A plate issued for a commercial vehicle, as defined in G.S. 20-4.2(1), and weighing 26,001 pounds or more, must bear the word "commercial", unless the plate is a special registration plate authorized in G.S. 20-79.4 or the commercial vehicle is a trailer or is licensed for 6,000 pounds or less. The plate issued for vehicles licensed for 7,000 pounds through 26,000 pounds must bear the word "weighted".

Except as otherwise provided in this subsection, a registration plate issued by the Division for a private passenger vehicle or for a private hauler vehicle licensed for 6,000 pounds or less shall be a "First in Flight" plate. A "First in Flight" plate shall have the words "First in Flight" printed at the top of the plate above all other letters and numerals. The background of the plate shall depict the Wright Brothers biplane flying over Kitty Hawk Beach, with the plane flying slightly upward and to the right. The following special registration plates do not have to be a "First in Flight" plate. The design of the plates that are not "First in Flight" plates must be approved by the Division and the State Highway Patrol for clarity and ease of identification.

(1) Friends of the Great Smoky Mountains National Park.
(2) Rocky Mountain Elk Foundation.
(3) Blue Ridge Parkway Foundation.
(4) Friends of the Appalachian Trail.
(5) NC Coastal Federation.

(6) In God We Trust.
(7) Stock Car Racing Theme.
(8) NC Trout Unlimited."

SECTION 2. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(b) Types. – The Division shall issue the following types of special registration plates:

...

(28p) NC Trout Unlimited. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase 'Back the Brookie' and an image that depicts a North Carolina brook trout."

SECTION 3. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. – Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates, including additional Congressional Medal of Honor, 100% Disabled Veteran, and Ex-Prisoner of War plates, are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Crystal Coast	$30.00
El Pueblo	$30.00
Historical Attraction	$30.00
HOMES4NC	$30.00
In God We Trust	$30.00
North Carolina 4-H Development Fund	$30.00
Personalized	$30.00
State Attraction	$30.00
Buffalo Soldiers	$25.00
Collegiate Insignia	$25.00
Goodness Grows	$25.00
High School Insignia	$25.00
Kids First	$25.00
Olympic Games	$25.00
NC Agribusiness	$25.00
NC Coastal Federation	$25.00
Nurses	$25.00
(Effective until June 30, 2006) Rocky Mountain Elk Foundation	$25.00
Special Olympics	$25.00
Surveyor Plate	$25.00
The V Foundation for Cancer Research Division	$25.00
University Health Systems of Eastern Carolina	$25.00
Animal Lovers	$20.00

Audubon North Carolina	$20.00
Be Active NC	$20.00
Daughters of the American Revolution	$20.00
Ducks Unlimited	$20.00
(Effective until June 30, 2006) First in Forestry	$30.00
Harley Owners' Group	$20.00
Litter Prevention	$20.00
March of Dimes	$20.00
NC Trout Unlimited	$20.00
Omega Psi Phi Fraternity	$20.00
Save the Sea Turtles	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
Soil and Water Conservation	$20.00
Special Forces Association	$20.00
Support Public Schools	$20.00
Wildlife Resources	$20.00
Zeta Phi Beta Sorority	$20.00
Active Member of the National Guard	None
100% Disabled Veteran	None
Ex-Prisoner of War	None
Legion of Valor	None
Purple Heart Recipient	None
Silver Star Recipient	None
All Other Special Plates	$10.00."

SECTION 4. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. – The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, and the Parks and Recreation Trust Fund, which is established under G.S. 113-44.15, as follows:

Special Plate	SRPA	CCAPA	NHTF	PRTF
Animal Lovers	$10	$10	0	0
Audubon North Carolina	$10	$10	0	0
Be Active NC	$10	$10	0	0
Buffalo Soldiers	$10	$15	0	0
Crystal Coast	$10	$20	0	0
Daughters of the American Revolution	$10	$10	0	0
Ducks Unlimited	$10	$10	0	0
El Pueblo	$10	$20	0	0
First in Forestry	$10	$10	$10	0

Goodness Grows	$10	$15	0	0
(Effective until June 30, 2006) Harley Owners' Group	$10	$10	0	0
High School Insignia	$10	$15	0	0
Historical Attraction	$10	$20	0	0
HOMES4NC	$10	$20	0	0
In God We Trust	$10	$20	0	0
In-State Collegiate Insignia	$10	$15	0	0
Kids First	$10	$15	0	0
Litter Prevention	$10	$10	0	0
March of Dimes	$10	$10	0	0
NC Agribusiness	$10	$15	0	0
NC Coastal Federation	$10	$15	0	0
NC 4-H Development Fund	$10	$20	0	0
NC Trout Unlimited	$10	$10	0	0
Nurses	$10	$15	0	0
Olympic Games	$10	$15	0	0
Omega Psi Phi Fraternity	$10	$10	0	0
Out-of-state Collegiate Insignia	10	0	$15	0
Personalized	$10	0	$15	$5
(Effective until June 30, 2006) Rocky Mountain Elk Foundation	$10	$15	0	0
Save the Sea Turtles	$10	$10	0	0
Scenic Rivers	$10	$10	0	0
School Technology	$10	$10	0	0
Soil and Water Conservation	$10	$10	0	0
Special Forces Association	$10	$10	0	0
Special Olympics	$10	$15	0	0
State Attraction	$10	$20	0	0
Stock Car Racing Theme	$10	$20	0	0
Support Public Schools	$10	$10	0	0
Surveyor Plate	$10	$15	0	0
The V Foundation for Cancer Research	$10	$15	0	0
University Health Systems of Eastern Carolina	$10	$15	0	0
Wildlife Resources	$10	$10	0	0
Zeta Phi Beta Sorority	$10	$10	0	0
All other Special Plates	$10	0	0	0."

SECTION 5. G.S. 20-81.12 is amended by adding a new subsection to read:

"(b39) NC Trout Unlimited. – The Division must receive 300 or more applications for an NC Trout Unlimited plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account

derived from the sale of NC Trout Unlimited plates to North Carolina Trout Unlimited for its programs."

SECTION 6. Chapter 145 of the General Statutes is amended by adding a new section to read:

"**§ 145-22. State freshwater fish.**

The brook trout (Salvelinus fontinalis) is adopted as the official freshwater fish of the State of North Carolina."

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

HOUSE BILL 1776:
NC Trout Unlimited Plate/Trout State Fish

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 14, 2005
Introduced by:	Rep. Haire	**Summary by:**	Cindy Avrette
Version:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 1776 authorizes the Division of Motor Vehicles to develop a special registration plate for NC Trout Unlimited and also adopts the brook trout as the official freshwater fish of the State of North Carolina.***

CURRENT LAW:

Special Registration Plates

The Division of Motor Vehicles is authorized to issue more than 100 special license plates. As a general rule, the fee for a special registration plate is the regular vehicle registration fee plus a $10 special registration plate fee. The $10 special registration plate fee is credited to the Special Registration Plate Account. The cost of some special plates includes a fee in addition to the $10 special registration plate fee. In those instances, the first $10 goes to the special registration plate fund and the remainder is transferred quarterly to designated beneficiaries of the additional fee amount.

State Symbols and Other Official Adoptions

North Carolina currently has the State symbols and official adoptions listed below:

§ 145-2. State bird.
§ 145-3. State tree.
§ 145-4. State shell.
§ 145-5. State mammal.
§ 145-6. State saltwater fish.
§ 145-7. State insect.
§ 145-8. State stone.
§ 145-9. State reptile.
§ 145-10. State rock.
§ 145-10.1. State beverage.
§ 145-11. State historical boat.
§ 145-12. State language.
§ 145-13. The State dog.
§ 145-14. The State Military Academy.
§ 145-15. State tartan.
§ 145-16. State Watermelon Festivals.
§ 145-17. State vegetable.
§ 145-18. State fruit and State berries.
§ 145-19. State International Festival.
§ 145-20. State wildflower.
§ 145-21. State Aviation Hall of Fame and Museum and State Museum of Aviation.

The General Assembly has also considered the following adoptions during the 2005 Session: the Lexington Barbecue Festival as the official food festival, the Venus Flytrap as the official carnivorous plant, the Cougar as the State cat, the Seagrove area as the State Traditional Pottery Birthplace, and the Fraser Fir as the official Christmas tree.

BILL ANALYSIS: House Bill 1776 authorizes the Division of Motor Vehicles to issue a special registration plate for NC Trout Unlimited and to adopt the brook trout as the official freshwater fish of the State.

Special Registration Plate

Sections 1-5 of the bill pertain to the special registration plate for NC Trout Unlimited.

- Section 1 provides that the special plate does not have to be a 'First in Flight' plate. However, current law (G.S. 20-63(b)) does require the design of plates that are not 'First in Flight' plates to be approved by the Division and the State Highway Patrol for clarity and ease of identification.

- Section 2 provides that the NC Trout Unlimited Plate would be issuable to the registered owner of a motor vehicle. The plate shall bear the phrase "Back the Brookie" and an image that depicts a North Carolina Brook Trout.
- Sections 3 and 4 pertain to the fees and distribution of fees associated with the plate. The additional fee for the plate will be $20.00 with $10.00 being distributed to the Special Registration Plate Account (SRPA) and $10.00 being distributed to the Collegiate and Cultural Attraction Plate Account (CCAPA).
- Section 5 requires 300 or more applications for the plate prior to development and specifies that the additional revenue derived from the sale of the plate shall be transferred quarterly to North Carolina Trout Unlimited for its programs.

Official Designation
Section 6 amends Chapter 145 to adopt the brook trout as the official freshwater fish of the State of North Carolina. The scientific name of the brook trout is 'Salvelinus fontinalis'.

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

BACKGROUND:

Trout Unlimited
The mission of Trout Unlimited is to conserve, protect and restore North America's trout and salmon fisheries and their watersheds. Trout Unlimited has a conservation campaign for the brook trout. Through the Back the Brookie campaign, Trout Unlimited is working toward long-term protection and restoration of the brook trout.

Brook Trout
In North Carolina, brook trout (Salvelinus fontinalis) are generally small ranging in size up to eight (8) inches, seldom more then 12 inches. The color of a fish can vary depending on the surrounding habitat. The back and upper sides of the brook trout's body are typically olive-green with mottled, dark green wavy markings that extend onto the dorsal and caudal fins. The lower sides are lighter with yellow spots interspersed with fewer spots of bright red surrounded by blue. The lower fins are orange with a narrow black band next to a white band that borders the forward edge. The belly and lower fins become a bright red-orange in spawning fish. In North Carolina, brook trout spawning begins in September and continues through November. Fertilized eggs are covered with gravel and hatch in the early spring. Brook trout are most abundant in isolated, high-altitude headwater streams and brooks where the water is free of pollution and rich in oxygen. [1]

Theresa Matula,, counsel to the House State Government Committee, substantially contributed to this summary.

H1776e2-SMRB

[1]Information on the brook trout is from A Guide to Fly Fishing in North Carolina Mountain Trout Streams, FlyFishingnc.com

ATTACHMENT 5

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1776

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

H1776-ARB-21 [v.1]

Date June 14 ,2005

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

Representative Luebke

moves to amend the bill on page 1, line 5, and on page 5, lines 5 and 6, by deleting the word "fish" each time it appears and substituting the word "trout".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

HB 1776 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE A NORTH CAROLINA TROUT UNLIMITED SPECIAL REGISTRATION PLATE AND TO ADOPT THE BROOK TROUT AS THE OFFICIAL FRESHWATER FISH OF THE STATE OF NORTH CAROLINA.

☒ With a favorable report, as amended.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H D

HOUSE BILL 1635
PROPOSED COMMITTEE SUBSTITUTE H1635-CSMB-22 [v.4]

6/9/2005 10:27:35 AM

Short Title: Amend Displaced Homemaker Laws/Up Fund Fees. (Public)

Sponsors:

Referred to:

May 11, 2005

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS PERTAINING TO DISPLACED HOMEMAKERS AND INCREASING THE FEE WHICH FUNDS THE NORTH CAROLINA FUND FOR DISPLACED HOMEMAKERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-394.4 reads as rewritten:

"**§ 143B-394.4. Definitions.**

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

(1) "Center" means any multi-purpose ~~service~~ facility ~~for~~or program serving displaced ~~homemakers established pursuant to this Part;~~homemakers.

(2) "Council" means the North Carolina Council for ~~Women;~~Women.

(3) "Department" means the Department of ~~Administration;~~Administration.

(4) "Displaced homemaker" means an individual who:

a. Has worked in his or her own household ~~for at least five years and during which period~~and has provided unpaid household services; and

b. Is unable to secure gainful employment due to the lack of required ~~training~~ training, age, or experience; or is unemployed, or underemployed; and

c. Has been dependent on the income of another household member but is no longer adequately supported by that income, or is receiving support ~~from a spouse~~ but is within two years of losing ~~such~~ the support, or has been supported by public assistance as the parent of minor children ~~but~~ and is no longer ~~eligible, or is within two years of losing such eligibility.~~eligible."

SECTION 2. G.S. 143B-394.5 reads as rewritten:

"**§ 143B-394.5. Establishment of center; location.**

The Council shall establish or contract for the establishment of a pilot center for displaced homemakers. ~~In determining where to locate the center, the Council shall consider, with respect to each proposed location, the probable number of displaced homemakers in the area and the availability of resources for training and education.~~"

SECTION 3. Part 10B of Article 9 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-394.5A. Location of displaced homemaker centers; grant criteria.**

(a) The Council shall consider the location of displaced homemaker centers based on the probable number of displaced homemakers in an area, the availability of resources for training and education, and viable living wage job opportunities.

(b) The Council shall make grants to displaced homemaker centers in accordance with this section and G.S. 143B-394.10. The Council shall establish criteria, including a baseline cost of basic center operations, to determine grant award categories. The grant criteria shall incorporate displaced homemaker program operational costs based on the location, program delivery capacities, and the probable number of displaced homemakers served in an area."

SECTION 4. G.S. 143B-394.10 reads as rewritten:

"**§ 143B-394.10. North Carolina Fund for Displaced Homemakers.**

(a) There is established in the Department of Administration the North Carolina Fund for Displaced Homemakers. The Fund shall be administered by the North Carolina Council for Women in accordance with Article 1 of Chapter 143 of the General Statutes and shall be used to make grants to ~~programs~~up to 35 centers for displaced homemakers. The Council shall make quarterly grants to ~~each~~ no more than 35 eligible ~~program.~~centers. Grants shall be awarded according to criteria established by the ~~Council.~~Council pursuant to G.S. 143B-394.4(4) and G.S. 143B-394.5A. ~~No more than ten percent (10%) of these funds shall be used for administrative costs by the Council.~~The Council shall use no more than ten percent (10%) of these funds for administrative costs. ~~In order to~~ To be eligible to receive grant funds under this section, a displaced homemaker ~~program~~center shall fulfill all of the criteria established by the ~~Council.~~Council and shall have been operational for at least two years. The Council shall report annually to the Joint Legislative Commission on Governmental Operations on the revenues credited to the Fund, the programs receiving grants from the Fund, the success of those programs, and the costs associated with administering the Fund.

(b) The Department, upon recommendations by the Council, shall adopt rules to implement the North Carolina Fund for Displaced Homemakers."

SECTION 5. G.S. 7A-305(a2) reads as rewritten:

"(a2) In every final action for absolute divorce filed in the district court, a cost of ~~twenty dollars ($20.00)~~fifty-five dollars ($55.00) shall be assessed against the person filing the divorce action. Costs collected by the clerk pursuant to this subsection shall be remitted to the State Treasurer for deposit to the North Carolina Fund for Displaced Homemakers established under G.S. 143B-394.10. Costs assessed under this subsection shall be in addition to any other costs assessed under this section."

SECTION 6. Section 5 of this act becomes effective October 1, 2005, and applies to final actions for absolute divorce filed on or after that date. The remainder of this act becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1635

Short Title:	Amend Displaced Homemaker Laws/Up Fund Fees.	(Public)
Sponsors:	Representatives Adams, Wainwright (Primary Sponsors); Insko and Weiss.	
Referred to:	Finance.	

May 11, 2005

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS PERTAINING TO DISPLACED HOMEMAKERS AND INCREASING THE FEE WHICH FUNDS THE NORTH CAROLINA WOMENWORK FUND FOR DISPLACED HOMEMAKERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-394.4(4) reads as rewritten:

"As used in this Part, unless the context otherwise requires:

...

(4) "Displaced homemaker" means an individual who:

a. Has worked in his or her own household ~~for at least five years and during which period~~and has provided unpaid household services; and

b. Is unable to secure gainful employment due to the lack of required ~~training~~training, age, or experience; or is unemployed, or underemployed; and

c. Has been dependent on the income of another household member but is no longer adequately supported by that income, or is receiving support ~~from a spouse~~ but is within two years of losing ~~such~~ the support, or has been supported by public assistance as the parent of minor children ~~but~~ and is no longer ~~eligible, or is within two years of losing such eligibility.~~eligible."

SECTION 2. G.S. 143B-394.5 is repealed.

SECTION 3. Part 10B of Article 9 of Chapter 143B of the General Statutes is amended by adding the following new section to read:

"**§ 143B-394.5A. Location of displaced homemaker programs; grant criteria.**

(a) The Council shall consider the location of displaced homemaker programs based on the probable number of displaced homemakers in an area, the availability of resources for training and education, and viable living wage job opportunities.

(b) The Council shall establish a baseline cost of basic program operations criteria to determine grant award categories. The grant criteria shall incorporate displaced homemaker program operational costs based on the location, program delivery capacities, and the probable number of displaced homemakers served in an area."

SECTION 4. G.S. 143B-394.10 reads as rewritten:

"**§ 143B-394.10. North Carolina WomenWork Fund for Displaced Homemakers.**

(a) There is established in the Department of Administration the North Carolina WomenWork Fund for Displaced Homemakers. The Fund shall be administered by the North Carolina Council for Women in accordance with Article 1 of Chapter 143 of the General Statutes and shall be used to make grants to 35-50 programs specifically for displaced homemakers. The Council shall make ~~quarterly~~ grants to ~~each~~ no more than 50 eligible ~~program.~~programs. Grants shall be awarded according to criteria established by the ~~Council.~~Council pursuant to G.S. 143B-394.4(4) and G.S. 143B-394.5A. ~~No more than ten percent (10%) of these funds shall be used for administrative costs by the Council.~~The Council shall use no more than twenty percent (20%) of these funds for administrative costs. In order to be eligible to receive grant funds under this section, a displaced homemaker program shall fulfill all of the criteria established by the Council. ~~The Council shall report annually to the Joint Legislative Commission on Governmental Operations on the revenues credited to the Fund, the programs receiving grants from the Fund, the success of those programs, and the costs associated with administering the Fund.~~The Council shall award grants to displaced homemaker programs in existence a minimum of two years.

(b) The Department, upon recommendations by the Council, shall adopt rules to implement the North Carolina WomenWork Fund for Displaced Homemakers."

SECTION 5. G.S. 7A-305(a2) reads as rewritten:

"(a2) In every final action for absolute divorce filed in the district court, a cost of ~~twenty dollars ($20.00)~~fifty dollars ($50.00) shall be assessed against the person filing the divorce action. Costs collected by the clerk pursuant to this subsection shall be remitted to the State Treasurer for deposit to the North Carolina WomenWork Fund for Displaced Homemakers established under G.S. 143B-394.10. Costs assessed under this subsection shall be in addition to any other costs assessed under this section."

SECTION 6. Section 5 of this act becomes effective October 1, 2005, and applies to final actions for absolute divorce filed on or after that date. The remainder of this act becomes effective October 1, 2005.

House Bill 1635:
Amend Displaced Homemaker Laws/Up Fund Fees

BILL ANALYSIS

Committee: House Finance
Date: June 14, 2005
Version: PCS for 1st Edition

Sponsor: Representative Adams
Analysis by: Ashley Huffstetler*
Staff Attorney

SUMMARY: ***The PCS for House Bill 1635 amends the laws pertaining to displaced homemakers and increases the amount of money flowing to the North Carolina Fund for Displaced Homemakers by increasing the filing fee for absolute divorce from $90.00 to $125.00.***

CURRENT LAW: Part 10B of Chapter 143 sets out the definition of a displaced homemaker. A displaced homemaker is an individual who (1) has worked in his or her household for at least five years and has provided unpaid household services, (2) is unable to secure employment due to lack of training or experience, (3) and is unemployed or underemployed, and has been dependent on the income of another, but no longer has access to that income or is within two years of losing support or eligibility for public assistance. The statute directs the North Carolina Council for Women to establish a pilot center or centers for displaced homemakers and dictates the types of services to be provided. The law was amended in 1998 to establish the NC Fund for Displaced Homemakers, which makes grants to programs for displaced homemakers.

BACKGROUND: The North Carolina Council for Women is an advocacy agency housed in the Department of Administration. In 1979, the Council began assisting displaced homemakers, and, in 1993, it received the first state funding for the displaced homemaker pilot project. The NC Council for Women and Domestic Violence Commission website lists over 30 agencies or organizations that were part of the displaced homemaker state-funded program in 2003-2004.

BILL ANALYSIS: Section 1 of the PCS to House Bill 1635 amends the definitions in 143B-394.4 of "center" and "displaced homemaker." Displaced homemakers are no longer required to work in the home a minimum of five years to be eligible for services.

Section 2 amends provisions relating to the establishment of a pilot program, by deleting the factors to be considered in determining where to locate a center.

Section 3 adds a new section that details factors the Council must consider in establishing new programs and the grant criteria for funding new or existing programs.

Section 4 amends the provisions of the North Carolina Fund for Displaced Homemakers by capping the number of grants to be provided at 35 and changing the term "program" to "center" to conform to other language in this Part. It also requires organizations be operable for at least two years to be eligible for the grant.

Section 5 increases the filing fee for absolute divorce in GS 7A-305(a2) from $20 to $55, which continues to be remitted to NC Fund for Displaced Homemakers. This raises the total filing fee for divorce from $90 to $125.

PCS CHANGES: The PCS makes several significant changes to the original version of the bill. It reinstates a repealed provision concerning the pilot programs, as the repeal was determined to be unnecessary. It caps the number of grants at 35, whereas the original bill allowed between 35 and 50 grants to be made. It also increases the filing fee from $50 to $55. It amends the title and deletes language changing the program to Women Work, in an effort to keep the legislation gender neutral. The PCS also decreases the amount to be used for administrative costs from 20% to the original 10% of funds and reinstates the provision that the grants be made on a quarterly basis. It also adds back in the requirement that the Council report annually to the General Assembly on its progress. Finally, the PCS makes grammatical, stylistic, and technical changes to the original bill.

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 9, 2005

TO: Representative Adams

FROM: Brenna Erford
Fiscal Research Division

RE: House Bill 1635 (Proposed Committee Substitute)

FISCAL IMPACT

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

($ in millions)

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund			**No Impact to General Fund**		
NC Fund for Displaced Homemakers	**$1.1**	**$1.5**	**$1.5**	**$1.5**	**$1.5**
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Council for Women

EFFECTIVE DATE: Section 5 is effective October 1, 2005 and applies to all divorce filings on or after that date.

BILL SUMMARY: The PCS for House Bill 1635 amends the laws pertaining to displaced homemakers and increases the amount of money flowing to the North Carolina Fund for Displaced Homemakers by increasing the filing fee for absolute divorce from $90.00 to $125.00.

ASSUMPTIONS AND METHODOLOGY: The Administrative Office of the Courts provided staff with the following data on the number of divorce filings in North Carolina from 2002-2004.

Number of divorce filings in NC, 2002-04			
	2002	2003	2004
# of divorce filings in NC	43,861	42,623	42,547

Although the overall number of filings has decreased slightly during those years, this projection assumes the number of filings remains at the 2004 level. With the fee set at $55 (a $35 increase over the current $20), the price of filing for divorce will rise from $90 to $125. The table below shows the total projected revenue from this increase.

Projected increase in revenue					
	2005-06	2006-07	2007-08	2008-09	2009-2010
# of divorce filings	31,910	42,547	42,547	42,547	42,547
Fee increase	$35	$35	$35	$35	$35
Total fee revenue	**$1,116,850**	**$1,489,145**	**$1,489,145**	**$1,489,145**	**$ 1,489,145**

The 2005-06 number has been adjusted to account for the effective date of this legislation. The projection assumes the number of divorce filings is equally distributed throughout a given calendar year.

House Bill 1635 caps the amount of funds available for administrative costs to 10% of total funds collected. Pursuant to this requirement, $111,685 would be available for administrative costs in 2005-06, and $148,915 per year starting in 2006-07 continuing through 2009-10. This leaves a total of $1.0 million for grants in 2005-06 and $1.3 million per year from 2006-07 through 2009-2010.

Funds would be distributed to Displaced Homemaker Programs via a competitive grant process administered by the North Carolina Council for Women/Domestic Violence Commission. The following displaced homemaker programs received funding from the N.C. Council for Women in 2004-05:

Women's Resource Center of Alamance Co.
Options to Domestic Violence/Sexual Assault, Inc. (Beaufort Co.)
YWCA of Asheville (Buncombe Co.)
Catawba Valley Community College
REACH, Inc. (Task Force on Family Violence) (Cherokee Co.)
Cleveland County Abuse Prevention Council, Inc. (Cleveland Co.)
Southeastern Community College (Columbus Co.)
Coastal Women's Shelter (Craven Co.)
Women's Center of Fayetteville (Cumberland Co.)
Outer Banks Hotline, Inc. (Dare Co.)
Winston-Salem/Forsyth Council on the Status of Women (Forsyth Co.)
NC Cooperative Extension Service of Gates County (Gates Co.)
Women's Resource Center of Greensboro (Guilford Co.)
Roanoke-Chowan S.A.F.E. (Hertford Co.)
REACH of Jackson County, Inc. (Jackson Co.)
Harbor, Inc. (Johnston Co.)

Haven in Lee County, Inc. (Lee Co.)
REACH of Macon County, Inc. (Macon Co.)
Mecklenburg County Women's Commission (Mecklenburg Co.)
Single Women in Mission, Inc. (Nash Co.)
YWCA of the Lower Cape Fear (New Hanover Co.)
The Women's Center (Orange Co.)
Pamlico Community College (Pamlico Co.)
Albemarle Hopeline (Pasquotank Co.)
New Directions /Family Violence Program (Pitt)
Women Folk Unlimited, Inc. (Richmond)
Help, Inc. (Rockingham Co.)
Family Resources of Rutherford County, Inc. (Rutherford Co.)
U CARE, Inc. (Sampson Co.)
Swain/Qualla SAFE, Inc. (Swain Co.)
The Lighthouse of Wayne Co. (Wayne Co.)
SAFE, Inc. (Wilkes Co.)
Wesley Shelter, Inc. (Wilson Co.)
Women Work Network (Statewide)

Displaced homemaker funding commenced in 1993 as a result of a legislative initiative between the N.C. Council for Women and N.C. Women Work! (formerly known as the N.C. Displaced Homemaker Network). The current $20 divorce filing fee for these programs resulted from a 1997 bill that became effective in 1998.

Services provided by displaced homemaker programs include job counseling programs specifically designed for displaced homemakers entering the job market; job training and placement services; health education and counseling services with respect to general preventative care; financial management services including but not limited to insurance, taxes, estate and probate matters, mortgages, and loans; and educational services including information on available secondary and post-secondary educational programs beneficial to displaced homemakers as well as information services regarding employment, education, health, public assistance, and unemployment assistance.

SOURCES OF DATA: North Carolina Administrative Office of the Courts, N.C. Council for Women

TECHNICAL CONSIDERATIONS: None

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 7

EDITION No. PCS to 1st Edition

H. B. No. 1635 DATE 6/14/05

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

COMMITTEE SUBSTITUTE _____

Rep.)
) Hackney
Sen.)

moves to amend the bill on page 2, line 39

( ) WHICH CHANGES THE TITLE

by striking through the word "final"

and on Page 2, line 2

by deleting the word "final"

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 1635 A BILL TO BE ENTITLED AN ACT AMENDING THE LAWS PERTAINING TO DISPLACED HOMEMAKERS AND INCREASING THE FEE WHICH FUNDS THE NORTH CAROLINA WOMENWORK FUND FOR DISPLACED HOMEMAKERS.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 2

SENATE BILL 178
Commerce Committee Substitute Adopted 4/6/05

Short Title: Amend Certain Lic. Reqs/Plumb'g/Heat'g Contr. (Public)

Sponsors:

Referred to:

February 22, 2005

A BILL TO BE ENTITLED

AN ACT AMENDING CERTAIN LAWS RELATING TO LICENSURE REQUIREMENTS FOR PLUMBING AND HEATING CONTRACTORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-21(b)(6) reads as rewritten:

"(b) Classes of Licenses; Eligibility and Examination of Applicant; Necessity for License. –

...

(6) Examinations shall be given at least twice each year, and additional examinations may be given as the Board deems wise and necessary. The examination shall be conducted in two parts to include a business and law portion and a technical portion. Requests for examination applications and information shall be made available online without charge and supplied at no cost to the potential examinee. The Board may offer written examinations or administer examinations by computer within 30 days after approving an application. Applicants shall be permitted to obtain the test score from each part of computerized examinations immediately upon completion of the examination. Upon passing the examination and paying the annual license fee, the applicant shall be issued a license. A person who fails to pass any examination shall not be reexamined until after 90 days from the date the person was last examined. An applicant who fails to pass any examination may take the failed portion within six months of the date approved to take the examination without retaking the portion passed. The Board may require applicants who fail ~~the~~ any part of the examination three times to receive additional education before the applicant is allowed to retake the ~~examination.~~examination or wait one year before retaking any portion of the examination.

...."

SECTION 2. G.S. 87-22 reads as rewritten:

"**§ 87-22. License fee; expiration and renewal; reinstatement.**

All persons, firms, or corporations engaged in the business of either plumbing or heating contracting, or both, shall pay an annual license fee not to exceed one hundred fifty dollars ($150.00). The annual fee for a piping or restricted classification license shall not exceed that for a plumbing or heating license. All persons, firms, or corporations engaged in the business of fire sprinkler contracting shall pay an initial application fee not to exceed seventy-five dollars ($75.00) and an annual license fee not to exceed three hundred dollars ($300.00). In the event the Board refuses to license an applicant, the license fee deposited shall be returned by the Board to the applicant. All licenses shall expire on the last day of December in each year following their issuance or renewal. Persons who obtain a license by passing an examination on or after October 1 of any year may receive a license for the remainder of the year by paying one-half of the usual license fee for that classification of license. It shall be the duty of the secretary and treasurer to send by United States mail or e-mail to every licensee registered with the Board, notice to the licensee's last known address reflected on the records of the Board of the amount of fee required for renewal of license, the notice to be mailed at least one month in advance of the expiration of the license. The Board may require payment of all unpaid annual fees before reissuing a license. In the event of failure on the part of any person, firm or corporation to renew the license certificate annually and pay the required fee during the month of January in each year, the Board shall increase the license fee by twenty-five dollars ($25.00) to cover any additional expense associated with late renewal. The Board shall require reexamination upon failure of a licensee to renew license within three years after expiration. The Board may adopt regulations requiring attendance at programs of continuing education as a condition of license renewal. A licensee employed full time as a local government plumbing, heating, or mechanical inspector and holding qualifications from the Code Officials Qualifications Board may renew the license at a fee not to exceed twenty-five dollars ($25.00)."

SECTION 3. G.S. 87-22.1 reads as rewritten:

"**§ 87-22.1. Examination fees; funds disbursed upon warrant of chairman and secretary-treasurer.**

The Board shall charge a nonrefundable application and examination fee not to exceed one hundred fifty dollars ($150.00) for each ~~examination,~~examination or any part of an examination, and the funds collected shall be disbursed upon warrant of the chairman and secretary-treasurer, to partially defray general expenses of the Board. The application and examination fee shall be retained by the Board whether or not the applicant is granted a license. Until changed by the Board pursuant to rules adopted by the Board, the fee for each examination or any part taken on a particular day shall be one hundred dollars ($100.00)."

SECTION 4. This act becomes effective January 1, 2006.

SENATE BILL 178:
Amend Certain Lic. Reqs/Plumb'g/Heat'g Contr

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 14, 2005
Introduced by:	Sen. Tillman	**Summary by:**	Martha Walston
Version:	Second Edition		Committee Counsel

SUMMARY: The 2nd edition to Senate Bill 178 would amend the licensing laws for plumbing and heating contractors to allow the licensing examination to be passed in parts, to allow a person licensed after October 1 of any year to pay half the usual licensing fee, and to set the fee for each exam at $100.

The current version of the bill was given a favorable report in Senate Commerce on April 6th.

CURRENT LAW: The State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors requires all persons, firms, or corporations engaged in the business of either plumbing or heating contracting, or both, to pay an annual license fee not to exceed $150. Persons, firms, or corporations engaged in the business of fire sprinkler contracting must pay an annual license fee not to exceed $300. Examinations for licensure are given at least twice each year, and additional exams may be given as the Board deems wise and necessary. Upon passing the examination and paying the annual license fee, the applicant is issued a license. The examination for licensure must be all taken at one time and the applicant must pass the entire exam. If the applicant fails to pass the entire exam, the applicant must retake the entire exam. All licensing fees must be paid for the entire year, regardless of the time of year the license is issued. The Board is permitted to charge up to $150 for examination.

BILL ANALYSIS: Section 1 of Senate Bill 178 allows the State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors to conduct the licensing exam in two parts, with one part including business and law, and the other part dealing with technical issues. Requests for exam applications and information will be made available online without charge and supplied at no cost to the potential examinee. Applicants may obtain test scores immediately after completing the exam when the exam is taken by computer. An applicant who fails any portion of the exam may retake the failed portion within six months without having to retake the entire exam. A person who fails the exam three times can take additional education or wait one year before retaking any portion of the exam.

Section 2 of Senate Bill 178 permits a person who obtains a license after passing an exam on or after October 1 of any year to receive a license for the remainder of the year by paying one-half of the usual license fee.

Section 3 allows the board to charge up to $150 for each exam or part of an exam. Until the Board adopts rules to change the fee, the fee for each exam or part of an exam shall be $100.

EFFECTIVE DATE: The bill becomes effective January 1, 2006.

BACKGROUND:

S0178e2-SMLA

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 178 (Second Edition)

SHORT TITLE: Amend Certain Lic. Reqs/Plumb'g/Heat'g Contr.

SPONSOR(S): Senator Tillman

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund	**No Impact to General Fund**				
Licensing Board					
Revenues	$ 32,045	$ 32,635	$ 33,235	$ 33,944	$ 34,665
- testing fees	($ 31,906)	($ 32,496)	($ 33,096)	($ 33,805)	($ 34,526)
Net revenue	**$ 139**	**$ 139**	**$ 139**	**$ 139**	**$ 139**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: State Board of Examiners of Heating, Plumbing, and Fire Sprinkler Contractors.

EFFECTIVE DATE: January 1, 2006

BILL SUMMARY: Under current law, heating, plumbing, and fire sprinkler contractors are required to pass an examination in order to obtain licensure. Section 1 of House Bill 178 allows any applicant who fails one portion of the two-portion exam to retake the failed portion within six months of their initial test date without having to retake the passed portion. The fee for the retake will be the same as the fee for the initial test.

Section 2 permits a person who obtains a license after passing an exam on or after October 1 of any year to receive a license for the remainder of the year by paying one-half the usual license fee ($63).

Section 3 raises the statutory maximum fee for an examination to $150, and sets the fee for examinations at $100 until the State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors adopts rules to change the fee.

ASSUMPTIONS AND METHODOLOGY: This legislation increases the base fee for examinations given by the State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors from $75 to $100 (Section 3). Last year, the State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors administered 961 exams via a private testing company. The board says the number of examinees has stayed flat or decreased slightly in the past few years, but they recommended an assumption of 2% annual growth in the number of examinees for future years. The table below reflects this assumption.

Projected increase in fee revenues from exams (Section 3)					
	2005-06	2006-07	2007-08	2008-09	2009-10
# of exams	980	1000	1020	1040	1061
Increase in exam fee	$25	$25	$25	$25	$25
Total new exam revenue	**$24,506**	**$24,996**	**$25,496**	**$26,005**	**$26,526**

Under current law, an examinee that passes an exam must pay a full year's license fee to obtain a license regardless of how many days are remaining in the calendar year. In Section 2, examinees that take the test between October 1 and December 31 of a given year are given the option of obtaining a license through the end of the calendar year for half the price of a full year's licensure. The board currently charges $125 per license. The table below details the board's expectations regarding how many examinees will choose this option rather than waiting until January 1 of the following year to obtain their license.

Projected revenues from 1/2-year license provision (Section 2)	
Average # of exams taken between Oct. 1 and Dec. 31	43
# of examinees who obtained licensure at full price	13
# of examinees who elected to seek licensure on Jan.1	30
Projected # of those examinees expected to pay 1/2 year fee *instead* of waiting until Jan. 1	15
Fee for 1-year license	$125
1/2 fee for Oct. 1 - Dec. 31 license	$63
Total projected revenue from 1/2 year licenses	$1,764
Projected revenue loss from 13 full-year licenses	$1,625
Net revenue increase	**$139**

In Section 1 of the bill, examinees that fail one portion of the two-part exam may retake that portion of the exam without retaking the portion they passed on their first attempt. Out of the 745 who failed the exam last year, the board estimates 72 failed only one portion of the exam. Under this legislation, those 72 people would be eligible to retake the failed portion of the exam although the testing fee would remain

the same. The number of retakes was estimated at 7.5% of all exams given in each year. Estimated revenues from the Section 1 change are detailed below.

Projected increase in fee revenues from retakes (Section 1)					
	2005-06	2006-07	2007-08	2008-09	2009-10
# of retakes	74	75	76	78	80
Fee per retake	$100	$100	$100	$100	$100
Total revenue from retakes	**$7,400**	**$7,500**	**$7,600**	**$7,800**	**$8,000**

The State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors contracts with a private testing firm to administer its examinations. The board remits testing fee revenue collected from license applicants to the private testing company. The only potential increase in board operating funds resulting from this legislation would be revenue resulting from the change in licensing fees. As shown in the last line of the table below, this increase is not significant.

Total projected revenues (by section)					
	2005-06	2006-07	2007-08	2008-09	2009-2010
Revenue increase from Section 1 (retakes)	$7,400	$7,500	$7,600	$7,800	$8,000
Net revenue from Section 2 (license fee)	$ 139	$ 139	$ 139	$ 139	$ 139
Revenue increase from Section 3 (exam fee)	$ 24,506	$ 24,996	$ 25,496	$ 26,005	$ 26,526
Total new revenue (all sections)	**$ 32,045**	**$ 32,635**	**$ 33,235**	**$ 33,944**	**$ 34,665**
Total new revenue from testing	$ 31,906	$ 32,496	$ 33,096	$ 33,805	$ 34,526
Total new revenue from license fees	$ 139	$ 139	$ 139	$ 139	$ 139

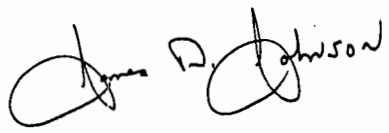
SOURCES OF DATA: State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brenna Erford and Linda Struyk Millsaps

APPROVED BY:James D. Johnson, Director
Fiscal Research Division



DATE: June 10, 2005

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

SB 178 A BILL TO BE ENTITLED AN ACT AMENDING CERTAIN LAWS RELATING TO LICENSURE REQUIREMENTS FOR PLUMBING AND HEATING CONTRACTORS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S **4**

SENATE BILL 685

Commerce Committee Substitute Adopted 3/24/05
House Committee Substitute Favorable 3/30/05
House Committee Substitute #2 Favorable 5/16/05

Short Title: Revise Professional Employer Organization Act. (Public)

Sponsors:

Referred to:

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO REVISE THE PROFESSIONAL EMPLOYER ORGANIZATION ACT BY PROVIDING FOR THE CANCELLATION OF SURETY BONDS UNDER CERTAIN CIRCUMSTANCES, ESTABLISHING THE REQUIREMENTS FOR DE MINIMIS REGISTRATION, PROVIDING THAT APPLICANTS FOR LICENSURE ARE NOT REQUIRED TO PROVIDE EVIDENCE TO THE COMMISSIONER THAT THE WORKERS' COMPENSATION PREMIUM PAID BY THE APPLICANT IS COMMENSURATE WITH EXPOSURE AND ANTICIPATED CLAIM EXPERIENCE FOR ALL EMPLOYEES COVERED UNDER POLICIES IN THE NAME OF THE LICENSEE, REVISING THE LAW GOVERNING EVIDENCE OF FINANCIAL RESPONSIBILITY FOR ORGANIZATIONS APPLYING FOR LICENSURE ON OR BEFORE JULY 1, 2005, PROVIDING FOR CONDITIONAL AUTHORITY FOR A PROFESSIONAL EMPLOYER ORGANIZATION TO OPERATE PENDING CONSIDERATION OF ITS LICENSE APPLICATION UPON A SHOWING OF FINANCIAL STABILITY AND NEED, AND AUTHORIZING THE USE OF FUNDS FROM THE INSURANCE REGULATORY FUND FOR REGULATION OF PROFESSIONAL EMPLOYER ORGANIZATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-89A-50 reads as rewritten:

"**§ 58-89A-50. Surety bond; letter of credit.**

(a) An applicant for licensure shall file with the Commissioner a surety bond in the amount of one hundred thousand dollars ($100,000) in favor of the State of North Carolina.

(b) The surety bond required by this section shall be in a form acceptable to the Commissioner, issued by an insurer authorized by the Commissioner to write surety business in this State, and maintained in force while the license remains in effect or any

obligations or liabilities of the applicant, licensee or PEO previously licensed by this State remain outstanding.

(c) The surety bond required by this section may be exchanged or replaced with another surety bond if (i) the surety bond applies to obligations and liabilities that arose during the period of the original surety bond, (ii) the surety bond ~~that~~ meets the requirements of this ~~section if~~ section, and (iii) 90 days' advance written notice is provided to the Commissioner.

(d) A licensee shall not require a client company to contribute in any manner to the payment of the surety bond required by this section.

(e) Notice of cancellation or nonrenewal of the surety bond required by this section shall be provided to the Commissioner in writing at least 45 days before cancellation or nonrenewal.

(e1) A surety bond may be cancelled by the issuer of the bond with respect to future obligations or liabilities upon proper notice pursuant to this section and without regard to approval or acceptance of the Commissioner.

(f) In lieu of the surety bond required by this section, an applicant may submit to the Commissioner an irrevocable letter of credit in a form acceptable to the Commissioner issued by a financial institution, the deposits of which are insured by the Federal Deposit Insurance Corporation, or may maintain on deposit with the Commissioner an amount equal to the amount required under subsection (a) of this section in cash or in value of securities of the kind specified in ~~G.S. 58-5-20 and subject to the same conditions as the surety bond.~~ G.S. 58-5-20.

(g) This section does not apply to persons who are licensed pursuant to the alternative licensing procedures set forth in ~~G.S. 58-89A-76.~~ G.S. 58-89A-76 or to persons who are de minimis registrants pursuant to G.S. 58-89A-75.

(h) The license of any licensee that fails to provide and maintain a surety bond, letter of credit, cash, or securities pursuant to this section shall be automatically and immediately suspended, and the licensee shall tender its license to the Commissioner within three days of failure to satisfy this requirement."

SECTION 2. G.S. 58-89A-65 reads as rewritten:

"**§ 58-89A-65. Fees.**

(a) Each applicant for a professional employer organization license or ~~limited professional employer organization license~~ de minimis registration shall pay to the Commissioner, before the issuance of the license, a nonrefundable application fee of one thousand dollars ($1,000).

(b) Each licensee shall pay to the Commissioner when filing the information required under G.S. 58-89A-70(d) an annual filing fee of one thousand dollars ($1,000).

(c) Each applicant for alternative licensing under G.S. 58-89A-76 and each applicant for renewal of a license provided under G.S. 58-89A-76 shall pay to the Commissioner, before issuance or renewal of the license, a fee of five hundred dollars ($500.00).

(d) When the Commissioner finds that a licensee has committed an act that is a ground for disciplinary violation under G.S. 58-89A-155 or that a licensee has committed a prohibited act in violation of G.S. 58-89A-170, and such decision becomes

final following the conclusion of all administrative or judicial proceedings, the Commissioner may charge an applicant or licensee reasonable fees to recover the Department's costs associated with investigations, inspections, examinations, and any other administrative or enforcement responsibilities created under this Article.

(e) Fees collected by the Commissioner under this Article shall be deposited in the Insurance Regulatory Fund under G.S. 58-6-25 and shall be used to implement this Article."

SECTION 3. G.S. 58-89A-75 reads as rewritten:

"**§ 58-89A-75. ~~Limited license.~~ De minimis registration.**

~~The Commissioner, by rule, shall provide for the issuance of a limited license to a person who seeks to offer limited professional employer services in this State.~~ A person who seeks to offer limited professional employer services in this State shall be eligible for de minimis registration status upon compliance with this section and may operate as a de minimis registrant in this State upon notification pursuant to this section. A person shall satisfy the requirements for a de minimis registration only if the professional employer organization:

(1) Does not maintain a physical professional employer organization office located in this State;

(2) Does not employ salespersons who reside or direct their sales activities in this State;

(3) Does not employ directly or in common control with another person, as defined in G.S. 58-89A-5(12), more than 50 assigned employees in this State;

(4) Does not advertise through any media outlet physically located in this State;

(5) Is a licensed or registered professional employer organization in at least one other state of the United States; and

(6) Is operated by and under the control of persons of good moral character.

A professional employer organization operating under a de minimis registration shall be subject to all of the responsibilities and authority of a licensee under this Article except for G.S. 58-89A-50, 58-89A-60 and 58-89A-70(c), (d), and (e).

A person seeking de minimis registration status shall notify the Commissioner, on a form prescribed by the Commissioner, attesting that the professional employer organization meets all of the eligibility requirements for de minimis registration status under this section and additionally provide, at a minimum, the following information:

(1) The name of the professional employer organization, the address of its principal office, the name of the contact person, and the taxpayer or employer identification number;

(2) A list by jurisdiction of each name under which the registrant has operated in the preceding five years, including any alternative names, names of predecessors, and, if known, successor business entities;

(3) A list of all officers, directors, and controlling person(s) of the registrant and their biographical information in a form to be determined by the Commissioner; and

(4) The location of the business records of the person.

If the Commissioner finds that the person seeking de minimis registration has not fully met the requirements for de minimis registration, the person shall not be eligible for de minimis registration status, and the Commissioner shall notify the person in writing. Within 30 days after service of the notification, the person may make a written demand upon the Commissioner for a review to determine the reasonableness of the Commissioner's action. The review shall be completed without undue delay, and the person shall be notified promptly in writing as to the outcome of the review. Within 30 days after service of the notification as to the outcome, the person may make a written demand upon the Commissioner for a hearing under Article 3A of Chapter 150B of the General Statutes if the person disagrees with the outcome.

If the Commissioner determines that the notification of eligibility for de minimis registration is incomplete, the Commissioner shall notify the person of the deficiency, and the registrant shall be allowed time, not to exceed 15 days from the date of the notice, to correct the deficiency. Failure of the person to correct the deficiency within the 15-day time period shall result in the de minimis being deemed denied. Except as otherwise provided in this section, a person notified of a deficiency under this section may continue to operate while the deficiency is being corrected unless the Commissioner determines that the person is ineligible for de minimis registration status or is otherwise not authorized to operate in this State.

After a de minimis registrant's initial notification, a de minimis registrant shall annually notify the Commissioner of its continuing eligibility for de minimis registration status no earlier than January 1 and no later than January 15 of each year. The annual notification shall include the attestation of eligibility for de minimis registration and any change in the information previously provided to the Commissioner under this section."

SECTION 4. G.S. 58-89A-110(d) reads as rewritten:

"(d) A license shall not be issued to any professional employer organization unless (i) the organization first files with the Commissioner evidence of workers' compensation coverage for all assigned employees in this State, including those leased from or coemployed with another ~~person, and that the premium paid by the licensee is~~ person, and (ii) the organization certifies to the Commissioner that it has provided its workers' compensation carrier with proper and necessary documentation to allow the carrier to determine and charge a premium that is commensurate with exposure and anticipated claim experience for all employees covered under policies issued by the carrier in the name of the licensee."

SECTION 5. Section 2 of S.L. 2004-162 reads as rewritten:

"**SECTION 2.** The Department of Insurance shall report to the ~~2005~~ 2007 General Assembly on the implementation, administration, and enforcement of Article 89 of Chapter 58 of the General Statutes, as enacted in Section 1 of this act. In its report, the

Department shall recommend any statutory changes required to regulate professional employer organizations and enforce Article 89 of Chapter 58 of the General Statutes."

SECTION 6. Effective March 31, 2005, Section 3 of S.L. 2004-162 reads as rewritten:

"**SECTION 3.** A person registered to engage in and offer professional employer services in this State, pursuant to G.S. 58-89-15, on ~~the last day prior to the effective date of this act~~ December 31, 2004, may continue to operate pending approval of the person's application for a license as long as the application is filed with the Commissioner no later than ~~April 1, 2005.~~ July 1, 2005. If the application for licensure is denied, the person shall cease offering professional employer services in this State. ~~A~~ Except as otherwise provided herein, a person not registered to engage in and offer professional employer services in this State, pursuant to G.S. 58-89-15, on ~~the last day prior to the effective date of this act~~ December 31, 2004, shall not engage in or offer professional employer services in this State until the person has been issued a license under this act.

A person that was not registered to engage in and offer professional employer services in this State, pursuant to G.S. 58-89-15 on December 31, 2004, may engage in and offer professional employer services prior to approval of licensure upon satisfying each of the following conditions:

(1) The person submits with its application an audited GAAP financial statement that has been issued no more than 90 days from the date the application is received by the Commissioner, and the statement is accompanied by an unqualified opinion;

(2) The person is a licensed or registered professional employer organization in good standing in at least one other state of the United States;

(3) The person has a client preexisting December 31, 2004, and that client acquires or adds employees in this State on or before July 1, 2005; and

(4) The person has submitted his or her application for licensure in compliance with the provisions of Article 89A of Chapter 58 of the General Statutes on or before July 1, 2005.

The conditional authority to engage in and offer professional employer services pursuant to this provision shall cease upon the earliest of the following: the granting of a license under Article 89A of Chapter 58 of the General Statutes, the denial of a license under Article 89A of Chapter 58 of the General Statutes, or the failure to satisfy any of the conditions upon which the conditional authority exists.

Notwithstanding any other provision of this act, an audited GAAP financial statement filed with the Commissioner by an applicant for licensure that otherwise meets the requirements of this act shall be accepted by the Commissioner if it has been filed with the Commissioner on or before July 1, 2005, has been issued within the previous 180 days, and covers a fiscal year that ended December 31, 2004, or is otherwise acceptable to the Commissioner."

SECTION 7. G.S. 58-6-25(d) is amended by adding a new subdivision to read:

"(9) Money appropriated to the Department of Insurance for the regulation of the professional employer organization industry pursuant to Article 89A of Chapter 58 of the General Statutes."

SECTION 8. Except as otherwise expressly provided in this act, this act is effective when it becomes law.

SENATE BILL 685:
Revise Professional Employer Organization Act

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 14, 2005
Introduced by:	Sen. Bingham	**Summary by:**	Martha Walston
Version:	Fourth Edition		Committee Counsel

SUMMARY: Senate Bill 685 amends the Professional Employer Organization Act as follows:

- Makes changes to the statute requiring a licensee to file a $100,000 surety bond with the Department of Insurance.
- Changes the name of a limited professional employer organization license to a de minimis registration, and sets out the requirements for de minimis registration.
- Requires a PEO to certify to the Commissioner of Insurance that it has provided its workers' compensation carrier with proper and necessary documentation to allow the carrier to determine and charge a premium commensurate with anticipated claim experience.
- Moves deadline for the Department's reporting to the General Assembly from 2005 to 2007.
- Changes the deadline for filing a license application from April 1, 2005 to July 1, 2005.
- Provides that money from the Insurance Regulatory Fund may be used to reimburse the General Fund for money appropriated to the Department for regulation of PEOs.

Senate Bill 685 has been given a favorable report in four committees: Senate Commerce, Senate Appropriations, House Insurance, and House Appropriations.

The bill is time sensitive because it requires a corporation registered in N.C. to file a license application by July 1, 2005.

BACKGROUND: Article 89A of Chapter 58 of the General Statutes, *the North Carolina Professional Employer Organization Act*, was passed by the General Assembly in 2002 to require registration of professional employer organizations (PEOs) in the State. The registration fee was a one-time fee of $250. The Act was amended in 2004 to require PEOs to be licensed by the Department of Insurance, in addition to the Act's registration requirements. An 11-member council, chaired by the Commissioner of Insurance, advises, consults, and makes recommendations to the Commissioner on the regulation of PEOs.

The existing law requires applicants to pay the following license fees:

Application for PEO license or limited PEO license	$1,000 (nonrefundable)
Annual filing fee	$1,000
Application for alternative licensing and renewal	$500

A "professional employer organization" is defined in Article 89A as "a person that offers professional employer services." Typically, a PEO establishes a contractual relationship with a client company. Under the contract a co-employment relationship is created between the client company, the PEO, and the employees of the client company. The PEO becomes the employer for the client company's employees and assumes the obligations related to human resources, workers' compensation, payroll, labor law compliance, employment taxes, and employment benefits as provided in the contract. The definition of "professional employer services" does not include services that provide temporary employees, independent contractors, and businesses that do personnel placement. Under existing law, PEOs doing business in the State are required to file completed license applications by April 1, 2005. A violation of the Act is punishable by civil penalties and conviction of a Class H felony.

SUMMARY: Current law requires an applicant for licensure to file with the Commissioner of Insurance a surety bond in the amount of $100,000. **Section 1** of the bill amends this law to allow the issuer of the bond to cancel the bond, but only with respect to future obligations or liabilities under the bond. Likewise, a bond may be exchanged or replaced, but only if the new surety bond applies to obligations arising during the period of the original bond. However, a licensee must maintain a bond at all times and failure to do so will result in an automatic and immediate suspension of his or her PEO license.

Section 2 of the bill amends G.S. 58-89A-65 governing PEO licensing application fees to change the name of a limited license to a "de minimis registration." The fees in this statute remain the same.

Section 3 of the bill establishes standards for de minimis registration status. To qualify for de minimis registration, the PEO must:

- Not maintain a physical professional employer organization office in the State.
- Not employ salespersons who reside or direct sales activities in the State.
- Not employ directly or in common control with another person more than 50 assigned employees in the State.
- Not advertise through any media outlet physically located in the State.
- Be a licensed or registered PEO in at least one other state.
- Be operated by and under control of persons of good moral character.

A person seeking de minimis registration status must notify the Commissioner on a prescribed form attesting that the PEO meets all eligibility requirements and provide additional information including the name and address of its principal office, a list by jurisdiction of each name under which the registrant has operated during the preceding five years, a list of all officers directors and controlling persons of the registrant, and the location of the business records of the person.

Section 3 also provides a process by which the Commissioner notifies a person of his or her ineligibility for de minimis registration and a review of the Commissioner's decision. The Commissioner must also notify a registrant of an incomplete registration and must allow a registrant 15 days from notification to correct the deficiency. After approval of a de minimis registration, the registrant must annually notify the Commissioner of its continuing eligibility for de minimis registration status.

Section 4 clarifies G.S. 58-89A-110(d) to require a PEO to certify to the Commissioner that it has provided its workers compensation carrier with all proper and necessary documentation for the carrier to determine and charge a premium commensurate with anticipated claim experience. The PEO does not need to provide evidence of this documentation.

Section 5 changes reporting requirements on the implementation, administration and enforcement of the Act to require the Department to report to the 2007 General Assembly instead of the 2005 Session.

Section 6 changes the deadline for filing a license application. Under current law, a person who registered prior to the Act's effective date of January 1, 2005 may continue to operate pending approval of the person's application for licensure if the license application is filed no later than April 1, 2005.

Effective March 31, 2005, Section 6 moves the deadline to file an application for licensing from April 1, 2005 to July 1, 2005. This section also provides conditions under which a PEO that failed to register on or before December 31, 2004 may offer PEO services pending approval of license application. For this provision to apply, the license application must be submitted on or before July 1, 2005.

In addition, Section 6 provides that for initial license applications received prior to July 1, 2005, the Commissioner must accept a GAAP financial statement prepared within the previous 180 days. The statement must cover a fiscal year ending December 31, 2004 or later.

Section 7 provides that money from the Insurance Regulatory Fund may be used to reimburse the General Fund for money appropriated to the Department for regulation of PEOs. The Senate Budget provides funding for a PEO position to administer and enforce the PEO Act. The same item was included in the version of the subcommittee report that passed out of the House Appropriation Subcommittee on General Government on June 10th.

EFFECTIVE DATE: Section 8 provides that Senate Bill 685 is effective when it becomes law, except as otherwise indicated. (Section 6 becomes effective March 31, 2005.)

S0685e4-SMLA

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒ House Committee Substitute for

SB 685 A BILL TO BE ENTITLED AN ACT TO REVISE THE PROFESSIONAL EMPLOYER ORGANIZATION ACT BY PROVIDING FOR THE CANCELLATION OF SURETY BONDS UNDER CERTAIN CIRCUMSTANCES, ESTABLISHING THE REQUIREMENTS FOR DE MINIMIS REGISTRATION, PROVIDING THAT APPLICANTS FOR LICENSURE ARE NOT REQUIRED TO PROVIDE EVIDENCE TO THE COMMISSIONER THAT THE WORKERS' COMPENSATION PREMIUM PAID BY THE APPLICANT IS COMMENSURATE WITH EXPOSURE AND ANTICIPATED CLAIM EXPERIENCE FOR ALL EMPLOYEES COVERED UNDER POLICIES IN THE NAME OF THE LICENSEE, REVISING THE LAW GOVERNING EVIDENCE OF FINANCIAL RESPONSIBILITY FOR ORGANIZATIONS APPLYING FOR LICENSURE ON OR BEFORE JULY 1, 2005, PROVIDING FOR CONDITIONAL AUTHORITY FOR A PROFESSIONAL EMPLOYER ORGANIZATION TO OPERATE PENDING CONSIDERATION OF ITS LICENSE APPLICATION UPON A SHOWING OF FINANCIAL STABILITY AND NEED, AND AUTHORIZING THE USE OF FUNDS FROM THE INSURANCE REGULATORY FUND FOR REGULATION OF PROFESSIONAL EMPLOYER ORGANIZATIONS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S **D**

SENATE BILL 407

Finance Committee Substitute Adopted 5/12/05

PROPOSED HOUSE COMMITTEE SUBSTITUTE S407-CSST-60 [v.2]

6/13/2005 5:09:06 PM

Short Title: Cabarrus Local Acts. (Local)

Sponsors:

Referred to:

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE AN INCREASE IN THE VEHICLE TAX IN MUNICIPALITIES LOCATED WHOLLY OR PARTLY IN CABARRUS COUNTY AND TO EXTEND A MORATORIUM ON ANNEXATIONS INTO THE COUNTY OF CABARRUS BY MUNICIPALITIES LOCATED PRIMARILY OUTSIDE THE COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 20-97(b) reads as rewritten:

"(b) General Municipal Vehicle Tax. – Cities and towns may levy a tax of not more than ~~five dollars ($5.00)~~ twenty dollars ($20.00) per year upon any vehicle resident in the city or town. The proceeds of the tax may be used for any lawful purpose."

SECTION 1.(b) This section applies only to municipalities located wholly or partially in Cabarrus County. Any funds generated by a tax of over five dollars ($5.00) under this section shall be placed into a separate fund for transportation uses within the municipality and shall not be expended for any other purpose.

SECTION 2. Section 3 of S.L. 2003-326 reads as rewritten:

"**SECTION 3.** Section 1 of this act is effective when it becomes law and expires June 30, ~~2005.~~ 2006. The remainder of this act is effective when it becomes law."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 407

Finance Committee Substitute Adopted 5/12/05

Short Title: Cabarrus Municipal Vehicle Registration. (Local)

Sponsors:

Referred to:

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE AN INCREASE IN THE VEHICLE TAX IN MUNICIPALITIES LOCATED WHOLLY OR PARTLY IN CABARRUS COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-97(b) reads as rewritten:

"(b) General Municipal Vehicle Tax. – Cities and towns may levy a tax of not more than ~~five dollars ($5.00)~~ twenty dollars ($20.00) per year upon any vehicle resident in the city or town. The proceeds of the tax may be used for any lawful purpose."

SECTION 2. This act applies only to municipalities located wholly or partially in Cabarrus County. Any funds generated by a tax of over five dollars ($5.00) under Section 1 of this act shall be placed into a separate fund for transportation uses within the municipality and shall not be expended for any other purpose.

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

SENATE BILL 407: Cabarrus Local Acts.

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 13, 2005
Introduced by:	Sen. Hartsell	**Summary by:**	R. Erika Churchill
Version:	PCS to Second Edition S407-CSST-60		Committee Counsel

SUMMARY: Senate Bill 407 would authorize the municipalities located in Cabarrus County to levy a tax of not more than $20.00 per year upon any vehicle resident in the city or town. The proposed committee substitute would extend until June 30, 2006, the limitations on annexation in Cabarrus County. The proposed committee substitute is effective when it becomes law.

SECTION 1.

Current Law: Cities and towns may levy a tax of not more than $5.00 per year upon any vehicle resident in the city or town. The proceeds of the tax may be used for any lawful purpose. By local acts, the amount of the tax has been increased for several cities and towns. The cities of Durham, Henderson, Oxford, and Winston-Salem[1] and the towns of Ahoskie, Cary, Chapel Hill, Creedmoor, and Hillsborough may levy a tax up to $10. The town of Carrboro[2] and the cities of Gastonia, Kinston, and Raleigh may levy a tax up to $15. The cities of Charlotte and Greenville and the towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill, Murfreesboro, and Pineville may levy a tax up to $20.

Bill Analysis: Senate Bill 407 would authorize the municipalities located in Cabarrus County to levy a tax of up to $20.00 per year upon any vehicle resident[3] in the city or town. With this authority, a city or town may, but is not required to, levy the tax, and the amount of the tax represents the maximum tax that may be levied. The bill requires that any funds generated by the tax in excess of $5.00 be placed in a separate fund and used only for transportation uses within the municipality. The municipalities located wholly or in part in Cabarrus County are: Concord, Harrisburg, Kannapolis (part), Locust (part), and Mount Pleasant.

Background: House Finance gave a favorable report to the following bills earlier this session[4]:

- H464: Authorizes the City of Winston-Salem to levy tax up to $20 per vehicle over a 2 year period.
- H691: Authorizes the Town of Carrboro to levy a $25 vehicle tax.
- H1037: Authorizes the Town of Wrightsville Beach to levy a $15 vehicle tax.

[1] HB 464 would authorize Winston-Salem to increase its tax to $20.

[2] HB 691 would authorize Carrboro to increase its tax to $25.

[3] "A vehicle is 'resident' within a city or town when its owner or operator is a resident thereof and it is garaged therein, if it leaves therefrom and returns thereto in normal day to day operation or if used in common carrier or for hire operations and is based therein. Though a vehicle may be present in a city or town for extended periods of time, such as those of a parent used by a child while attending college, it would not become 'resident' as contemplated by G.S. 20-97(a)." 45 NCAG 185.

[4] The three House bills are in Senate Finance.

SECTION 2.

Current Law. The General Statutes permit municipalities to grow and expand their municipal boundaries through the process of annexation. Prior to annexing an area, the municipality may elect to exercise their extraterritorial jurisdiction (ETJ) over the area. ETJ power is generally exercised over the area one mile from the existing corporate limits, and the exercise of ETJ power permits the municipality to enforce its land use planning tools within the one-mile area outside the corporate limits. In 2003, the General Assembly enacted a local act to alter the general law in Cabarrus County. S.L. 2003-326. According to that act, unless the municipalities entered into an annexation agreement pursuant to Part 6 of Article 4A of Chapter 160A, any municipality located outside of Cabarrus County is prohibiting from exercising the power of annexation inside the borders of Cabarrus County **until July 1, 2005,** in the following areas:

1. The territory west of the Rocky River, and
2. The territory south of Highway 24/27 and east of the Rocky River.

Bill Analysis: The proposed committee substitute would extend the moratorium through **June 30, 2006.**

Background: Similar provisions have been enacted in the past for Currituck County (S.L. 2003-27), Davie County (Chapter 91 of the 1981 Session Laws) and Forsyth County (Chapter 453 of the 1973 Session Laws).

S0407e2-SMST-CSST-60

**Cindy Avrette substantially contributed to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 13, 2005

TO: Senator Hartsell

FROM: Rodney Bizzell
Fiscal Research Division

RE: Senate Bill 407 (Unknown Edition)

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund	* No General Fund Impact *				
Town of Kannapolis:	* See Assumptions and Methodology *				
Town of Concord	* See Assumptions and Methodology *				
Town of Mount Pleasant:	* See Assumptions and Methodology *				
Town of Harrisburg:	* See Assumptions and Methodology *				
Town of Locust:	* See Assumptions and Methodology *				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Towns of Kannapolis, Concord, Mount Pleasant, Harrisburg, and Locust.

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY: Senate Bill 407 would authorize the municipalities located in Cabarrus County to levy a tax of up to $10.00 per year upon any vehicle resident in the city or town. The proposed committee substitute would authorize a tax of up to $20.00 per year. With this authority, a city or town may, but is not required to, levy the tax, and the amount of the tax represents the

maximum tax that may be levied. The bill requires that any funds generated by the tax in excess of $5.00 be placed in a separate fund and used only for transportation uses within the municipality. The municipalities located wholly or in part in Cabarrus County are: Concord, Harrisburg, Kannapolis (part), Locust (part), and Mount Pleasant.

The Second Edition of the bill would extend until June 30, 2006, the limitations on annexation in Cabarrus County.

ASSUMPTIONS AND METHODOLOGY: Currently, cities and towns may levy a tax of not more than $5.00 per year upon vehicles in the city or town. By local acts, the amount of the tax has been increased for several cities and towns. The proceeds of the tax may be used for any lawful purpose. This bill would authorize each municipality in Cabarrus County to levy a fee of up to $20 dollars per vehicle. According to the Cabarrus County Tax Assessor's Office, the following are the numbers of vehicles located in each municipality and the potential additional revenue available for each town if the maximum fee were levied:

Municipality	**Number of Vehicles Registered**	**Potential Additional Revenue**
Concord	53,666	$804,990
Harrisburg	7,291	$109,365
Kannapolis	26,912	$403,680
Locust	2,500	$37,500
Mount Pleasant	1,513	$22,695

SOURCES OF DATA: Cabarrus County Tax Assessor

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

SB 407 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE AN INCREASE IN THE VEHICLE TAX IN MUNICIPALITIES LOCATED WHOLLY OR PARTLY IN CABARRUS COUNTY.

☒ With a favorable report as to House committee substitute bill 1, which changes the title, unfavorable as to Senate committee substitute bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 450

Short Title:	Rutherford Airport Authority Leases.	(Local)
Sponsors:	Senator Dalton.	
Referred to:	Finance.	

March 10, 2005

A BILL TO BE ENTITLED

AN ACT TO ENABLE THE RUTHERFORD AIRPORT AUTHORITY TO LEASE PROPERTY FOR FIFTY YEARS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of S.L. 1971-335 reads as rewritten:

"**Sec. 4.** The Airport Authority shall constitute a body, both corporate and politic, and shall have the following powers and authority:

(1) To purchase, acquire, establish, construct, own, control, lease, equip, improve, maintain, operate and regulate airports or landing fields for the use of airplanes and other aircraft within the limits of the County and for any of such purposes, to purchase, improve, own, hold, lease and/or operate real or personal property.

(2) To borrow money and to issue bonds and to secure the same by mortgages, with the consent of the Rutherford Board of County Commissioners upon any property held or to be held by it.

(3) To sue or be sued in the name of said Airport Authority, to acquire by purchase and to hold lands for the purpose of constructing, maintaining or operating any airport within the limits of said County, and to make such contracts and to hold such personal property as may be necessary for the exercise of the powers of the Airport Authority. The Airport Authority may acquire by purchase, or otherwise, any existing lease, leasehold right or other interest in any existing airport located in the County.

(4) To charge and collect reasonable and adequate fees and rents for the use of the airport property or for services rendered in the operation thereof.

(5) To make all reasonable rules and regulations as it deems necessary for the proper maintenance and operation of the airport and provide penalties for the violation of such rules and regulations; provided, said rules and regulations and schedules of fees be not in conflict with the laws of the State of North Carolina, and the rules and regulations of the Civil Aeronautics Administration of the Federal Government.

(6) To issue revenue bonds or other securities and obligations for the purpose of providing funds for the construction, maintenance, purchase, improvement and

operation of the airports, landing fields or other facilities. The bonds, if and when so issued, shall be denominated "Rutherford Airport Authority Bonds", shall be issued in such form and denomination and shall mature at such time or times, not exceeding fifty (50) years after their date, and shall bear such rate of interest, payable annually or semi-annually, as the Airport Authority may determine. The bonds shall be signed by the chairman of the Airport Authority and the corporate seal affixed or impressed upon each bond, and attested by the secretary of the board. The coupons to be attached to said bonds shall bear the facsimile signature of the chairman of the Airport Authority. Such bonds, notes or securities issued for the purpose, or purposes above set out, may be issued and sold with the approval of the County Commissioners, but the sale shall be made under the supervision, and with the approval of the Local Government Commission.

Bonds and notes issued under this act shall be exempt from all State, Federal, County, or Municipal taxes or assessments, direct or indirect, general or special, and the interest paid on such bonds or notes shall not be subject to taxation as income. The bonds, notes or other securities shall not be obligations of the County of Rutherford, but the Airport Authority is authorized and empowered to pledge the revenues, rents, income and tolls arising out of the use of any airport property or any specific part of said airport property until such time as the sums borrowed therefor are fully amortized and repaid. The bonds or other securities which the Airport may incur shall be issued and incurred upon such other terms, covenants and conditions as the Airport Authority may deem proper.

(7) To sell, or otherwise dispose of, any property, real or personal, belonging to the Airport Authority, but no sale of real property shall be made without the approval of the Board of County Commissioners.

(8) To purchase such insurance as the Airport Authority shall deem necessary.

(9) To invest or reinvest, subject to the approval of the Local Government Commission, any of its funds in either bonds, notes or certificates of indebtedness of the United States of America, or in bonds or notes of any agency or instrumentality of the United States of America, the payment of principal and interest of which is guaranteed by the United States of America, or in bonds or notes of the State of North Carolina, or in bonds of any county, city or town of North Carolina, which have been approved by the Local Government Commission.

(10) To purchase any of its outstanding bonds or notes.

(11) To operate, own, lease, control, regulate or grant to others the right to operate on any airport premises, restaurants, agricultural fair, motion picture shows, and other amusements.

(12) To lease for a term not to exceed ~~twenty-five (25) years,~~ fifty (50) years, and for purposes not inconsistent with the grants and agreements under which the airport is held, real or personal property under the supervision of or administered by the Airport Authority.

(13) To contract with persons, firms or corporations for terms not to exceed twenty-five (25) years, for the operation of airline-scheduled passenger and freight flights, non-scheduled flights, and any other airplane activities not inconsistent with said

grant agreements under which the airport property is held, and to charge and collect reasonable and adequate fees, charges and rents for the use of such property or for services rendered in the operation thereof.

(14) To erect and construct buildings, hangars, shops and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; to lease the same for a term or terms not to exceed ~~twenty-five (25) years;~~ fifty (50) years; to borrow money for use in making or paying for such improvements and facilities, secured by and on the credit only of the lease agreements in respect thereto, to pledge and assign such leases and lease agreements as security for loans herein authorized."

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

SENATE BILL 450:
Rutherford Airport Authority Leases

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 14, 2005
Introduced by:	Sen. Dalton	**Summary by:**	Cindy Avrette
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 450 increases the length of time for which the Rutherford Airport Authority may lease real or personal property from 25 to 50 years. The bill received a favorable report from the Senate Finance Committee on May 12, 2005.

CURRENT LAW: In 1971, the General Assembly authorized Rutherford County to establish an airport authority for the maintenance of airport facilities in the county. Among its powers, the Airport Authority may do the following:

- Lease for a term not to exceed twenty-five (25) years, and for purposes not inconsistent with the grants and agreements under which the airport is held, real or personal property under the supervision of or administered by the Airport Authority.
- Erect and construct buildings, hangars, shops and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; to lease the same for a term or terms not to exceed twenty-five (25) years; to borrow money for use in making or paying for such improvements and facilities, secured by and on the credit only of the lease agreements in respect thereto, to pledge and assign such leases and lease agreements as security for loans herein authorized.

BILL ANALYSIS: Senate Bill 450 would increase the length of time for which the Rutherford Airport Authority may lease real and personal property from 25 to 50 years. It would also increase from 25 to 50 years the time period for leasing buildings, hangars, shops, and other improvements and facilities located on real property owned by the airport.

Currently, the airport owns land that it leases to individuals for the purpose of building hangars. The hangars are owned by the individuals and, as leasehold improvements on the land, must be removed at the end of the lease term. Under current law, the maximum lease term the airport may extend for this purpose is 25 years. The Airport Authority is seeking this legislation so that it may offer longer lease periods. Longer lease periods are likely to result in larger, better quality hangars being built and pilots keeping their airplanes stored there longer, rather than using or building hangars at other airports.

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

Trina Griffin, counsel to Senate Finance Committee, substantially contributed to this summary.

S0450e1-SMRB

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

SB 450 A BILL TO BE ENTITLED AN ACT TO ENABLE THE RUTHERFORD AIRPORT AUTHORITY TO LEASE PROPERTY FOR FIFTY YEARS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 682
Finance Committee Substitute Adopted 3/30/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S682-CSLA-15 [v.3]

6/8/2005 3:05:18 PM

Short Title: Add Agencies to Set-Off Debt Collect. (Public)

Sponsors:

Referred to:

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO EXTEND TO PUBLIC HEALTH AUTHORITIES, SANITARY DISTRICTS, AND METROPOLITAN SEWERAGE DISTRICTS THE SET-OFF DEBT COLLECTION PROCEDURES CURRENTLY AVAILABLE TO COUNTIES AND CITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105A-2(6) reads as rewritten:

"(6) Local agency. – Any of the following:

a. A county, to the extent it is not considered a State agency.

b. A municipality.

c. A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.

d. A regional joint agency created by interlocal agreement under Article 20 of Chapter 160A of the General Statutes between two or more counties, cities, or both.

e. A public health authority created under Part 1B of Article 2 of Chapter 130A of the General Statutes.

f. A metropolitan sewerage district created under Article 5 of Chapter 162A of the General Statutes.

g. A sanitary district created under Part 2 of Article 2 of Chapter 130A of the General Statutes."

SECTION 2. This act becomes effective January 1, 2006, and applies to income tax refunds determined on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 682
Finance Committee Substitute Adopted 3/30/05

Short Title: Public Health Authority Set-Off Debt Collect. (Public)

Sponsors:

Referred to:

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO EXTEND TO PUBLIC HEATH AUTHORITIES THE SET-OFF DEBT COLLECTION PROCEDURES CURRENTLY AVAILABLE TO COUNTIES AND CITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105A-2(6) reads as rewritten:

"(6) Local agency. – Any of the following:

a. A county, to the extent it is not considered a State agency.

b. A municipality.

c. A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.

d. A regional joint agency created by interlocal agreement under Article 20 of Chapter 160A of the General Statutes between two or more counties, cities, or both.

e. A public health authority created under Part 1B of Article 2 of Chapter 130A of the General Statutes."

SECTION 2. This act becomes effective January 1, 2006, and applies to income tax refunds determined on or after that date.

SENATE BILL 682:
Add Agencies to Set-Off Debt Collect.

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Sen. Holloman
Date:	June 14, 2005	**Summary by:**	Martha Walston
Version:	PCS for 2nd Edition S682-CSLA-15		Committee Counsel

SUMMARY: ***Senate Bill 682 would add public health authorities to the list of agencies authorized under the Setoff Debt Collection Act to collect debts owed to them by obtaining a setoff against a debtor's North Carolina income tax refund.***

The proposed committee substitute for Senate Bill 682 incorporates House Bill 272 by adding metropolitan sewerage districts and sanitary districts to the list of agencies. House Bill 272, sponsored by Rep. Lucy Allen and Wilma Sherrill, is currently in House Finance. HB 272 was given a favorable report in House Ways and Means.

The bill would become effective January 1, 2006, and apply to tax refunds determined on or after that date.

CURRENT LAW: The Setoff Debt Collection Act authorizes State and local agencies to collect debts by diverting part or all of an individual's income tax refund to pay a debt the individual owes to a particular agency. Thus, the debt the individual owes the agency is set off against the individual's income tax refund. Before January 1, 2001, the setoff program was open only to State agencies. Now, counties and municipalities participate through a clearinghouse. Because there are so many local agencies, funneling their claims through a clearinghouse avoids an undue administrative burden on the Department of Revenue. A $15.00 collection assistance fee is added to each local agency debt submitted for setoff, which is remitted to the clearinghouse that submitted the debt. The fee does not, however, apply to child support debts. While the use of debt setoff for State agencies is mandatory, usage by local agencies is optional. The Act also only applies to debts that are at least $50 and to a refund that is at least this same amount.

In 2003, the General Assembly added water and sewer authorities to the list of entities eligible to participate in debt setoff. In 2004, regional joint agencies created by interlocal agreement were added. This year, House Bill 272 has been introduced to add metropolitan sewerage districts and sanitary districts. House Bill 272 is currently in House Finance.

BILL ANALYSIS: This bill would allow public health authorities, metropolitan sewerage districts, and sanitary districts to participate under the Setoff Debt Collection Act in the same manner as counties and cities. Like counties and cities, these agencies would be authorized to submit their debts for collection by setoff through a local clearinghouse only after providing the debtor with notice, an opportunity to be heard before the authority, and an appeal process pursuant to the Administrative Procedure Act.

The bill would become effective January 1, 2006, and apply to income tax refunds determined on or after that date.

Public Health Authority

Although a public health authority functions similarly to a county agency, it is a separate legal entity created under G.S. 130A-45.02. A public health authority is created by joint resolution of a county board of commissioners and the local board of health. It functions as a policy-making, rule-making, and adjudicatory body designed to protect and promote the public health. Among its powers, a public health authority may establish a fee schedule for services received from public health facilities. Currently, there is only one public health authority, created under this authorizing legislation, and it is the Hertford County Public Health Authority.

Sanitary District

The Commission for Health Services may create sanitary districts for the purpose of preserving and promoting the public health and welfare. A sanitary district is incorporated if 51% of the freeholders[1] in the proposed district petition the county board of commissioners of the county in which all or the largest portion of the land of the proposed district is located. A sanitary district board has the authority to levy property taxes within the district and apply service charges and rates based on the benefits provided. Sanitary districts that maintain and operate a sewage system may bring suit for overdue sewer charges and disconnect the sewer lines. This remedy is not sufficient when the customer moves out of the district. The charges also become a lien on the property served and the property may be sold.[2]

Metropolitan Sewerage District

Any two or more political subdivisions in one or more counties, or any political subdivision and any unincorporated area within one or more counties, may petition for the creation of a metropolitan sewerage district by filing a resolution with the boards of county commissioners of the county or counties within which the proposed district will lie. A public hearing is then held where the Environmental Commission and board of county commissioners determine whether the creation of the metropolitan sewerage district would preserve and promote the public health and welfare of the area.[3] A sewerage district board has the authority to levy taxes on property within the district and impose charges for the services furnished. The district board may provide methods for collection of charges and measures for enforcement of collection, including penalties and the denial or discontinuance of service.

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[1] A freeholder is a person holding a deed to a tract of land within the district or who has entered into a contract to purchase a tract of land in the district, is making contractual payments, and will receive a deed upon completion of the contractual payments.

[2] G.S. 130A-65

[3] G.S. 162A-66

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 682 (Second Edition)

SHORT TITLE: Public Health Authority Set-Off Debt Collect.

SPONSOR(S): Senator Holloman

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
Dept. of Revenue		* See Assumptions and Methodology *			
Public Health Authorities		* See Assumptions and Methodology *			
Sewerage Districts		* See Assumptions and Methodology *			
Sanitary Districts		* See Assumptions and Methodology *			
Debt Setoff Clearinghouse		* See Assumptions and Methodology *			
EXPENDITURES:					
Dept. of Revenue		* See Assumptions and Methodology *			
Debt Setoff Clearinghouse		* See Assumptions and Methodology *			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue and Public Health Authorities, Metropolitan Sewerage Districts and Sanitary Districts.

EFFECTIVE DATE: January 1, 2006

BILL SUMMARY:

This bill would allow public health authorities, metropolitan sewerage districts, and sanitary districts to participate under the Setoff Debt Collection Act in the same manner as counties and cities. Like counties and cities, these agencies would be authorized to submit their debts for collection by setoff through a local clearinghouse only after providing the debtor with notice, an opportunity to be heard before the authority, and an appeal process pursuant to the Administrative Procedure Act. The bill would become effective January 1, 2006, and apply to income tax refunds determined on or after that date.

ASSUMPTIONS AND METHODOLOGY: This legislation adds public health authorities, metropolitan sewerage districts and sanitary districts to the Setoff Debt Collection Act, under which the Department of Revenue diverts part or all of an individual's income tax refund to pay a debt the individual owes to a State or local agency. Thus, the debt the individual owes the agency is set off against the individual's income tax refund. Before January 1, 2001, the setoff program was open only to State agencies. Now, counties and municipalities participate through a clearinghouse administered by the NC Association of County Commissioners and the NC League of Municipalities to limit the administrative burden on the Department of Revenue.

For each debt collected through the clearinghouse, a $15 fee will be assessed to cover the costs incurred by the clearinghouse, and a separate fee of $5 will be assessed to cover the cost of the Department of Revenue. Therefore, there is no negative fiscal impact associated with this legislation.

SOURCES OF DATA: NC Department of Revenue

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: June 13, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 682 (Second Edition)

SHORT TITLE: Public Health Authority Set-Off Debt Collect.

SPONSOR(S): Senator Holloman

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
Dept. of Revenue		* See Assumptions and Methodology *			
Public Health Authorities		* See Assumptions and Methodology *			
Sewerage Districts		* See Assumptions and Methodology *			
Sanitary Districts		* See Assumptions and Methodology *			
Debt Setoff Clearinghouse		* See Assumptions and Methodology *			
EXPENDITURES:					
Dept. of Revenue		* See Assumptions and Methodology *			
Debt Setoff Clearinghouse		* See Assumptions and Methodology *			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue and Public Health Authorities, Metropolitan Sewerage Districts and Sanitary Districts.

EFFECTIVE DATE: January 1, 2006

BILL SUMMARY:

This bill would allow public health authorities, metropolitan sewerage districts, and sanitary districts to participate under the Setoff Debt Collection Act in the same manner as counties and cities. Like counties and cities, these agencies would be authorized to submit their debts for collection by setoff through a local clearinghouse only after providing the debtor with notice, an opportunity to be heard before the authority, and an appeal process pursuant to the Administrative Procedure Act. The bill would become effective January 1, 2006, and apply to income tax refunds determined on or after that date.

ASSUMPTIONS AND METHODOLOGY: This legislation adds public health authorities, metropolitan sewerage districts and sanitary districts to the Setoff Debt Collection Act, under which the Department of Revenue diverts part or all of an individual's income tax refund to pay a debt the individual owes to a State or local agency. Thus, the debt the individual owes the agency is set off against the individual's income tax refund. Before January 1, 2001, the setoff program was open only to State agencies. Now, counties and municipalities participate through a clearinghouse administered by the NC Association of County Commissioners and the NC League of Municipalities to limit the administrative burden on the Department of Revenue.

For each debt collected through the clearinghouse, a $15 fee will be assessed to cover the costs incurred by the clearinghouse, and a separate fee of $5 will be assessed to cover the cost of the Department of Revenue. Therefore, there is no negative fiscal impact associated with this legislation.

SOURCES OF DATA: NC Department of Revenue

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

Official
Fiscal Research Division
Publication

DATE: June 13, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

SB 682 A BILL TO BE ENTITLED AN ACT TO EXTEND TO PUBLIC HEATH AUTHORITIES THE SET-OFF DEBT COLLECTION PROCEDURES CURRENTLY AVAILABLE TO COUNTIES AND CITIES.

☒ With a favorable report as to House committee substitute bill 1, which changes the title, unfavorable as to Senate committee substitute bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 622

Appropriations/Base Budget Committee Substitute Adopted 5/3/05
Pensions & Retirement and Aging Committee Substitute Adopted 5/3/05
Fourth Edition Engrossed 5/5/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S622-PCS35240-LYxf-23

Short Title: 2005 Appropriations Act. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO INCREASE FEES FOR LICENSING OF PROPRIETARY SCHOOLS AS RECOMMENDED BY THE STATE BOARD OF COMMUNITY COLLEGES; TO EXPAND THE EXPRESS REVIEW PROGRAM UNDER THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES STATEWIDE; TO INCREASE THE CHARGE FOR APPELLATE DIVISION REPORTS TO THE ACTUAL COST; TO INCREASE COURT COSTS IN CRIMINAL ACTIONS FOR THE BENEFIT OF THE SUPPLEMENTAL PENSION BENEFITS FOR SHERIFFS; TO PERMANENTLY INCREASE THE EXCISE TAX ON CIGARETTES BY TWENTY-FIVE CENTS A PACK BEGINNING JULY 1, 2005; TO PERMANENTLY INCREASE THE EXCISE TAX RATE ON TOBACCO PRODUCTS OTHER THAN CIGARETTES AND CIGARS TO SIX PERCENT BEGINNING JULY 1, 2005; TO EQUALIZE THE GROSS PREMIUMS TAX RATES BY SETTING THE RATE FOR HEALTH MAINTENANCE ORGANIZATIONS AT ONE AND NINE-TENTHS PERCENT BEGINNING JANUARY 1, 2006; TO SET THE PRIVILEGE TAX ON ENTERTAINMENTS AND MOVIES AT SEVEN PERCENT; TO PROVIDE A TAX CREDIT EQUAL TO FIFTEEN PERCENT OF QUALIFYING EXPENSES FOR CERTAIN FILM PRODUCTIONS OCCURRING IN THIS STATE; TO PROVIDE FOR A TAX CREDIT OF UP TO FOUR HUNDRED DOLLARS PER EMPLOYEE FOR SMALL BUSINESSES WHO PROVIDE HEALTH INSURANCE COVERAGE FOR THEIR EMPLOYEES; TO SET THE INSURANCE REGULATORY CHARGE AT FIVE AND FIVE-TENTHS PERCENT; TO SET THE REGULATORY FEE FOR UTILITIES COMMISSION AT TWELVE HUNDREDTHS PERCENT; TO SET THE NEWBORN

SCREENING FEE AT FOURTEEN DOLLARS; TO SET NUMEROUS FEES IN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF FACILITY SERVICES; TO INCREASE VARIOUS AGRICULTURAL FEES; TO INCREASE THE CAP FOR CAMA PERMIT FEES TO EIGHT HUNDRED DOLLARS; TO INCREASE GENERAL COURT OF JUSTICE FEES FOR CRIMINAL CASES BY NINE DOLLARS AND FIFTY CENTS; TO INCREASE GENERAL COURT OF JUSTICE FEES FOR CIVIL CASES BY TEN DOLLARS; TO INCREASE THE MAXIMUM COURT FEE FOR THE ADMINISTRATION OF ESTATES AND TRUSTS TO SIX THOUSAND DOLLARS; TO INCREASE THE FEE FOR EXPUNCTION TO ONE HUNDRED TWENTY-FIVE DOLLARS; TO INCREASE THE FEES FOR ELECTRONIC MONITORING; TO INCREASE THE COURT COSTS FOR FAILURE TO WEAR A SEAT BELT TO SEVENTY-FIVE DOLLARS; TO INCREASE BUTNER PROPERTY TAXES TO A RATE OF TWENTY-FIVE CENTS PER ONE HUNDRED DOLLARS VALUATION; TO SET FEES FOR THE POLICE INFORMATION NETWORK; TO INCREASE VARIOUS DEPARTMENT OF TRANSPORTATION FEES; AND TO ALLOW THE INDUSTRIAL COMMISSION TO ESTABLISH FEES BY RULE.

The General Assembly of North Carolina enacts:

PARTS I THROUGH VII. RESERVED

PART VIII. COMMUNITY COLLEGES

Requested by: Representatives Jeffus, Tolson, Yongue

IMPLEMENT PROPRIETARY SCHOOLS LICENSING FEE INCREASE

SECTION 8.14. The State Board of Community Colleges may implement an increase in fees for licensing of proprietary schools in accordance with the following fee schedule adopted by the State Board of Community Colleges on November 18, 2004:

Initial License Fee	$2,500
License Renewal Fee	$1,250 plus $50.00 per program
Program Addition Fee	$200.00
Single Course Addition Fee	$200.00
Relocation/Site Visit Fee	$400.00
Remote Site Initial Fee	$1,000
Remote Site Renewal Fee	$750.00
Site Assessment	$200.00

PARTS IX THROUGH XI. RESERVED

PART XII. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Requested by: Representatives Hunter, Warren

EXPAND EXPRESS REVIEW PROGRAM STATEWIDE

SECTION 12.2.(a) Part 1 of Article 7 of Chapter 143B of the General Statutes is amended by adding two new sections to read:

"**§ 143B-279.13. Express permit and certification reviews.**

(a) The Department of Environment and Natural Resources shall develop an express review program to provide express permit and certification reviews in all of its regional offices. Participation in the express review program is voluntary, and the program is to become supported by the fees determined pursuant to subsection (b) of this section. The Department of Environment and Natural Resources shall determine the project applications to review under the express review program from those who request to participate in the program. The express review program may be applied to any one or all of the permits, approvals, or certifications in the following programs: the erosion and sedimentation control program, the coastal management program, and the water quality programs, including water quality certifications and stormwater management. The express review program shall focus on the following permits or certifications:

(1) Stormwater permits under Part 1 of Article 21 of Chapter 143 of the General Statutes.

(2) Stream origination certifications under Article 21 of Chapter 143 of the General Statutes.

(3) Water quality certification under Article 21 of Chapter 143 of the General Statutes.

(4) Erosion and sedimentation control permits under Article 4 of Chapter 113A of the General Statutes.

(5) Permits under the Coastal Area Management Act (CAMA), Part 4 of Article 7 of Chapter 113A of the General Statutes.

(b) The Department of Environment and Natural Resources may determine the fees for express application review under the express review program. Notwithstanding G.S. 143-215.3D, the maximum permit application fee to be charged under subsection (a) of this section for the express review of a project application requiring all of the permits under subdivisions (1) through (5) of subsection (a) of this section shall not exceed five thousand five hundred dollars ($5,500). Notwithstanding G.S. 143-215.3D, the maximum permit application fee to be charged for the express review of a project application requiring all of the permits under subdivisions (1) through (4) of subsection (a) of this section shall not exceed four thousand five hundred dollars ($4,500). Notwithstanding G.S. 143-215.3D, the maximum permit application fee charged for the express review of a project application for any other combination of permits under subdivisions (1) through (5) of subsection (a) of this section shall not exceed four thousand dollars ($4,000). Express review of a project application involving additional permits or certifications issued by the Department of Environment and Natural Resources other than those under subdivisions (1) through (5) of subsection (a) of this section may be allowed by the Department, and, notwithstanding G.S. 143-215.3D or any other statute or rule that sets a permit fee, the maximum permit application fee

charged for the express review of a project application shall not exceed four thousand dollars ($4,000), plus one hundred fifty percent (150%) of the fee that would otherwise apply by statute or rule for that particular permit or certification. Additional fees, not to exceed fifty percent (50%) of the original permit application fee under this section, may be charged for subsequent reviews due to the insufficiency of the permit applications. The Department of Environment and Natural Resources may establish the procedure by which the amount of the fees under this subsection is determined, and the fees and procedures are not rules under G.S. 150B-2(8a) for the express review program under this section.

(c) No later than March 1 of each year, the Department of Environment and Natural Resources shall report to the Fiscal Research Division and the Environmental Review Commission its findings on the success of the program under this section and any other findings or recommendations, including any legislative proposals that it deems pertinent.

"**§ 143B-279.14. Express Review Fund.**

The Express Review Fund is created as a special nonreverting fund. All fees collected under G.S. 143B-279.13 shall be credited to the Express Review Fund. The Express Review Fund shall be used for the costs of implementing the express review program under G.S. 143B-279.13 and the costs of administering the program, including the salaries and support of the program's staff. If the express review program is abolished, the funds in the Express Review Fund shall be credited to the General Fund."

SECTION 12.2.(b) The Department of Environment and Natural Resources shall expand to a statewide program that operates in each regional office of the Department the Express Review Pilot Program established by Section 11.4A of S.L. 2003-284 and expanded by Section 12.9 of S.L. 2004-124, and the provisions of G.S. 143B-279.13, as enacted by subsection (a) of this section, shall apply to this statewide program.

SECTION 12.2.(c) The Department of Environment and Natural Resources shall establish and support 12 additional positions to administer the statewide express review program under G.S. 143B-279.13, as enacted by subsection (a) of this section. Up to seven hundred thirty-six thousand six hundred twenty-nine dollars ($736,629) for the 2005-2006 fiscal year and up to six hundred seventy-one thousand four hundred nine dollars ($671,409) for the 2006-2007 fiscal year shall be allocated from the Express Review Fund created in G.S. 143B-279.14, as enacted by subsection (a) of this section, to establish and support these 12 positions.

SECTION 12.2.(d) The Department of Environment and Natural Resources shall continue and support the four positions established under Section 12.9(c) of S.L. 2004-124 to administer the statewide express review program under G.S. 143B-279.13, as enacted by subsection (a) of this section. Up to two hundred twenty-three thousand eight hundred three dollars ($223,803) for the 2005-2006 fiscal year and up to two hundred twenty-three thousand eight hundred three dollars ($223,803) for the 2006-2007 fiscal year shall be allocated from the Express Review Fund created in G.S. 143B-279.14, as enacted by subsection (a) of this section, to continue and support these four positions.

PART XIII. RESERVED

PART XIV. JUDICIAL DEPARTMENT

Requested by: Representatives Kiser, Haire

INCREASE CHARGES FOR APPELLATE DIVISION REPORTS TO ACTUAL COST

SECTION 14.7. The Judicial Department shall charge the full cost of production for all copies of the appellate division reports that are sold.

PARTS XV THROUGH XXVIII. RESERVED

PART XXIX. SALARIES AND EMPLOYEE BENEFITS

Requested by: Representatives Crawford, Clary, Earle, Nye, Owens, Sherrill, Michaux

INCREASE BENEFIT/SHERIFFS' SUPPLEMENTAL PENSION FUND

SECTION 29.30.(b) G.S. 7A-304(a)(3a) reads as rewritten:

"(3a) For the supplemental pension benefits of sheriffs, the sum of ~~seventy-five cents (75¢)~~ one dollar and twenty-five cents ($1.25) to be remitted to the Department of Justice and administered under the provisions of Article 12G of Chapter 143 of the General Statutes."

PARTS XXX THROUGH XXXIII. RESERVED

PART XXXIV. TOBACCO TAX RATE CHANGES

Requested by: Representatives Alexander, Gibson, Luebke, Wainwright

TOBACCO TAX RATE CHANGES

SECTION 34.1.(a) G.S. 105-113.5 reads as rewritten:

"**§ 105-113.5. Tax on cigarettes.**

A tax is levied on the sale or possession for sale in this State, by a distributor, of all cigarettes at the rate of ~~two and one-half mills~~ one and one-half cents (1.50¢) per individual cigarette."

SECTION 34.1.(b) G.S. 105-113.35(a) reads as rewritten:

"(a) Tax. – An excise tax is levied on tobacco products other than cigarettes ~~at the rate of two percent (2%) of the cost price of the products.~~as specified in this section. This tax does not apply to ~~the following:~~

~~(1)~~ ~~A~~a tobacco product sold outside the ~~State.~~

~~(2)~~ ~~A~~State, a tobacco product sold to the federal ~~government.~~

~~(3)~~ ~~A~~government, or a sample tobacco product distributed without charge. The rate of tax is as follows:

(1) Two percent (2%) of the cost price of cigars.

(2) Six percent (6%) of the cost price of tobacco products other than cigarettes and cigars."

SECTION 34.1.(c) This section becomes effective July 1, 2005.

PARTS XXXV THROUGH XXXVII. RESERVED

PART XXXVIII. CORPORATE, EXCISE, AND INSURANCE TAX CHANGES

SECTION 38.1. Reserved.

SECTION 38.2. Reserved.

Requested by: Representatives Alexander, Gibson, Luebke, Wainwright

EQUALIZE TAX ON ENTERTAINMENT

SECTION 38.3.(a) G.S. 105-37.1 reads as rewritten:

"**§ 105-37.1.** ~~**Dances, athletic events, shows, exhibitions, and other entertainments.**~~**Privilege tax on entertainment.**

(a) Scope. – A privilege tax is imposed on the gross receipts of a person who is engaged in any of the following:

(1) Giving, offering, or managing a dance or an athletic contest for which an admission fee in excess of fifty cents (50¢) is charged.

(2) Giving, offering, or managing a form of amusement or entertainment that is not taxed by another provision of this Article and for which an admission fee is charged.

(3) Exhibiting a performance, show, or exhibition, such as a circus or dog show, that is not taxed by another provision of this Article.

(4) Operating a motion picture show for which an admission is charged.

(b) Rate and Payment. – The ~~rate of the privilege tax is three percent (3%) of~~ combined general rate applies to the gross receipts from the activities described in subsection (a) of this section. The tax is due when a return is due. A return is due by the 10th day after the end of each month and covers the gross receipts received during the previous month. The term 'combined general rate' has the same meaning as defined in G.S. 105-164.3.

(c) Advance Report. – A person who owns or controls a performance, show, or exhibition subject to the tax imposed by this section and who plans to bring the performance to this State from outside the State must file a statement with the Secretary that lists the dates, times, and places of the performance, show, or exhibition. The statement must be filed no less than five days before the first performance, show, or exhibition in this State.

(d) Local Taxes. – Cities may levy a license tax on a person taxed under subdivision (a)(1) or (a)(2) of this section; however, the tax may not exceed twenty-five dollars ($25.00). Cities may levy a license tax on a person taxed under subdivision (a)(3) of this section; however, the tax may not exceed twenty-five dollars ($25.00) for each day or part of a day the performance, show, or exhibition is given at each location.

Counties may not levy a license tax on a person taxed under subdivision ~~(a)(1) or (a)(2)~~(a)(1), (a)(2), or (a)(4) of this section. Counties may levy a license tax on a person taxed under subdivision (a)(3) to the same extent as a city."

SECTION 38.3.(b) G.S. 105-38.1 is repealed.

SECTION 38.3.(c) Subdivisions (4a) and (4b) of G.S. 105-164.3 are recodified as subdivisions (4b) and (4c) respectively.

SECTION 38.3.(d) G.S. 105-164.3 is amended by adding a new subdivision to read:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(4a) Combined general rate. – The State's general rate of tax set in G.S. 105-164.4(a) plus the sum of the rates of the local sales and use taxes authorized by Subchapter VIII of this Chapter for every county in this State."

SECTION 38.3.(e) This section does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.

SECTION 38.3.(f) This section becomes effective September 1, 2005, and applies to tickets sold on or after that date.

Requested by: Representatives Alexander, Gibson, Luebke, Wainwright

EQUALIZE GROSS PREMIUMS TAX

SECTION 38.4.(a) G.S. 105-228.5(d)(6) is repealed.

SECTION 38.4.(b) G.S. 58-6-25(a) reads as rewritten:

"(a) Charge Levied. – There is levied on each insurance company an annual charge for the purposes stated in subsection (d) of this section. The charge levied in this section is in addition to all other fees and taxes. The percentage rate of the charge is established pursuant to subsection (b) of this ~~section. For each insurance company that is not a health maintenance organization, the rate~~ section and is applied to the company's premium tax liability for the taxable year. ~~For health maintenance organizations, the rate is applied to a premium tax liability for the taxable year calculated as if the corporation or organization were paying tax at the rate in G.S. 105-228.5(d)(2).~~ In determining an insurance company's premium tax liability for a taxable year, the following shall be disregarded:

(1) Additional taxes imposed by G.S. 105-228.8.

(2) The additional local fire and lightning tax imposed by G.S. 105-228.5(d)(4).

(3) Any tax credits for guaranty or solvency fund assessments under G.S. 105-228.5A or G.S. 97-133(a).

(4) Any tax credits allowed under Chapter 105 of the General Statutes other than tax payments made by or on behalf of the taxpayer."

SECTION 38.4.(c) Notwithstanding the provisions of G.S. 105-228.5(f), the following provisions apply to health maintenance organizations for the 2006 and 2007 taxable years in lieu of the provisions of G.S. 105-228.5(f):

Health maintenance organizations that are subject to the tax imposed by G.S. 105-228.5 and have an estimated premium tax liability for the taxable year, not including the additional local fire and lightning tax, of ten thousand dollars ($10,000) or more for business done in North Carolina shall remit three estimated tax payments: the first estimated payment is due on or before April 15 and must be equal to at least forty-five percent (45%) of the taxpayer's estimated premium tax liability for the taxable year; the second estimated payment is due on or before June 15 and must be equal to at least forty-five percent (45%) of the taxpayer's estimated premium tax liability for the taxable year; and the third payment is due on or before October 15 and must be equal to at least ten percent (10%) of the taxpayer's estimated premium tax liability for the taxable year. The taxpayer must remit the balance by the following March 15 in the same manner provided in G.S. 105-228.5(e) for annual returns.

An underpayment of an estimated payment required by this subsection bears interest at the rate established under G.S. 105-241.1(i). Any overpayment bears interest as provided in G.S. 105-266(b) and, together with the interest, must be credited to the taxpayer and applied against the taxes imposed upon the company under G.S. 105-228.5.

The penalties provided in Article 9 of Chapter 105 of the General Statutes apply to the estimated tax payments required by this subsection.

SECTION 38.4.(d) This section is effective for taxable years beginning on or after January 1, 2006.

PART XXXIX. TAX INCENTIVES

Requested by: Representatives Alexander, Gibson, Luebke, Wainwright

FILM INDUSTRY JOBS INCENTIVES

SECTION 39.1.(a) Part 1 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-130.47. Credit for qualifying expenses of a production company.**

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

(1) Highly compensated individual. – An individual who receives compensation in excess of one million dollars ($1,000,000) with respect to a single production.

(2) Qualifying expenses. – The sum of the total amount spent in this State for the following by a production company in connection with a production:

a. Goods and services purchased by the production company.

b. Compensation and wages paid by the production company, other than amounts paid to a highly compensated individual, on which the production company remitted withholding payments to the Department of Revenue under Article 4A of this Chapter.

(3) Production company. – Defined in G.S. 105-164.3.

(b) Credit. – A taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars ($250,000) with respect to a production is allowed a credit against the taxes imposed by this Part equal to fifteen percent (15%) of the production company's qualifying expenses that have been certified as required in subsection (c) of this section. For the purposes of this section, in the case of an episodic television series, an entire season of episodes is one production. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year.

(c) Certification. – In order to be eligible for a credit under this section, a taxpayer must submit a detailed accounting of its qualifying expenses to the North Carolina Film Office of the Department of Commerce. The North Carolina Film Office, with the assistance of the regional film commission for the location of the production, must make a written certification of the amount of the qualifying expenses.

(d) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming the credit allowed by this section. If a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, the credit allowed under this section does not affect the entity's payment of tax on behalf of its owners.

(e) Return. – A taxpayer may claim the credit allowed by this section on a return filed for the taxable year in which the production activities are completed. The return must state the name of the production, a description of the production, and the certification from the North Carolina Film Office of the qualifying expenses for which the credit is claimed.

(f) Credit Refundable. – If the credit allowed by this section exceeds the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

(g) Limitation. – No credit is allowed under this section for any production that satisfies one of the following conditions:

(1) It is political advertising.

(2) It is a television production of a news program or sporting event.

(3) It contains material that is obscene, as defined in G.S. 14-190.1.

(h) Substantiation. – A taxpayer allowed a credit under this section must maintain and make available for inspection any information or records required by the Secretary of Revenue or the regional film commissions. The taxpayer has the burden of proving eligibility for a credit and the amount of the credit.

(i) Report. – The Department of Revenue must publish by May 1 of each year the following information, itemized by taxpayer for the 12-month period ending the preceding April 1:

(1) The location of sites used in a production for which a credit was claimed.

(2) The qualifying expenses for which a credit was claimed, classified by whether the expenses were for goods, services, or compensation paid by the production company.

(3) The number of people employed in the State with respect to credits claimed.

(4) The total cost to the General Fund of the credits claimed.

(j) Sunset. – This section is repealed for qualifying expenses occurring on or after January 1, 2010."

SECTION 39.1.(b) Part 2 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-151.29. Credit for qualifying expenses of a production company.**

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

(1) Highly compensated individual. – An individual who receives compensation in excess of one million dollars ($1,000,000) with respect to a single production.

(2) Qualifying expenses. – The sum of the total amount spent in this State for the following by a production company in connection with a production:

a. Goods and services purchased by the production company.

b. Compensation and wages paid by the production company, other than amounts paid to a highly compensated individual, on which the production company remitted withholding payments to the Department of Revenue under Article 4A of this Chapter.

(3) Production company. – Defined in G.S. 105-164.3.

(b) Credit. – A taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars ($250,000) with respect to a production is allowed a credit against the taxes imposed by this Part equal to fifteen percent (15%) of the production company's qualifying expenses that have been certified as required in subsection (c) of this section. For the purposes of this section, in the case of an episodic television series, an entire season of episodes is one production. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year.

(c) Certification. – In order to be eligible for a credit under this section, a taxpayer must submit a detailed accounting of its qualifying expenses to the North Carolina Film Office of the Department of Commerce. The North Carolina Film Office, with the assistance of the regional film commission for the location of the production, must make a written certification of the amount of the qualifying expenses.

(d) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming the credit allowed by this section. If a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, the credit allowed under this section does not affect the entity's payment of tax on behalf of its owners.

(e) Return. – A taxpayer may claim the credit allowed by this section on a return filed for the taxable year in which the production activities are completed. The return must state the name of the production, a description of the production, and the certification from the North Carolina Film Office of the qualifying expenses for which the credit is claimed.

(f) Credit Refundable. – If the credit allowed by this section exceeds the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

(g) Limitation. – No credit is allowed under this section for any production that satisfies one of the following conditions:

(1) It is political advertising.

(2) It is a television production of a news program or sporting event.

(3) It contains material that is obscene, as defined in G.S. 14-190.1.

(h) Substantiation. – A taxpayer allowed a credit under this section must maintain and make available for inspection any information or records required by the Secretary of Revenue or the regional film commissions. The taxpayer has the burden of proving eligibility for a credit and the amount of the credit.

(i) Report. – The Department of Revenue must publish by May 1 of each year the following information, itemized by taxpayer for the 12-month period ending the preceding April 1:

(1) The location of sites used in a production for which a credit was claimed.

(2) The qualifying expenses for which a credit was claimed, classified by whether the expenses were for goods, services, or compensation paid by the production company.

(3) The number of people employed in the State with respect to credits claimed.

(4) The total cost to the General Fund of the credits claimed.

(j) Sunset. – This section is repealed for qualifying expenses occurring on or after January 1, 2010."

SECTION 39.1.(c) G.S. 105-259(b), as amended by Section 30.1 of this act, is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State

may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

(33) To exchange information concerning a tax credit claimed under G.S. 105-130.47 or G.S. 105-151.29 with the North Carolina Film Office of the Department of Commerce and with the regional film commissions."

SECTION 39.1.(d) G.S. 143B-434.4 is repealed.

SECTION 39.1.(e) This section is effective for taxable years beginning on or after January 1, 2005.

Requested by: Representatives Alexander, Gibson, Luebke, Wainwright

SMALL BUSINESS HEALTH INSURANCE TAX CREDIT

SECTION 39.2.(a) Article 3B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.16E. Credit for small business employee health benefits.**

(a) Credit. – A small business that provides health benefits for all of its eligible employees during the taxable year is allowed a credit to offset its costs in providing health benefits for its eligible employees. For the purposes of this subsection, a taxpayer provides health benefits if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

The credit is equal to a dollar amount per eligible employee, not to exceed the taxpayer's costs of providing health benefits for its eligible employees during the taxable year. For each eligible employee for whom the taxpayer provides health benefits, the amount is four hundred dollars ($400.00).

(b) Allocation. – If the taxpayer is an individual who is a nonresident or a part-year resident, the taxpayer must reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. If the taxpayer is not an individual and is required to apportion its multistate business income to this State, the taxpayer must reduce the amount of the credit by multiplying it by the apportionment fraction used to apportion its business income to this State.

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

(1) Eligible employee. – Defined in G.S. 58-50-110.

(2) Small business. – A taxpayer that employs no more than 25 eligible employees throughout the taxable year.

(d) No Double Benefit. – A taxpayer may not claim a credit under this section for costs for which it claimed a deduction under the Code. A taxpayer that claims a credit provided under this section must adjust taxable income as provided in G.S. 105-130.5(a)(16) or G.S. 105-134.6(c)(9), as applicable.

(e) Sunset. – This section expires for taxable years beginning on or after January 1, 2010."

SECTION 39.2.(b) G.S. 105-129.15A is repealed.

SECTION 39.2.(c) G.S. 105-129.16 is repealed.

SECTION 39.2.(d) G.S. 105-129.16A is amended by adding a new subsection to read:

"(e) Sunset. – This section is repealed for renewable energy property placed in service on or after January 1, 2006."

SECTION 39.2.(e) G.S. 105-129.16C is amended by adding a new subsection to read:

"(d) Sunset. – This section is repealed for taxable years beginning on or after January 1, 2006."

SECTION 39.2.(f) G.S. 105-130.5(a) is amended by adding a new subdivision to read:

"(a) The following additions to federal taxable income shall be made in determining State net income:

...

(16) To the extent not included in federal taxable income, the costs of providing employee health benefits for which the taxpayer claims a credit under G.S. 105-129.16E."

SECTION 39.2.(g) G.S. 105-134.6(c) is amended by adding a new subdivision to read:

"(c) Additions. – The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

...

(9) The costs of providing employee health benefits for which the taxpayer claims a credit under G.S. 105-129.16E."

SECTION 39.2.(h) Subsections (a), (f), and (g) of this section are effective for taxable years beginning on or after January 1, 2006. The remainder of this section is effective when it becomes law.

PART XL. SET RATES FOR INSURANCE REGULATORY CHARGE AND PUBLIC UTILITIES FEES

Requested by: Representatives Alexander, Gibson, Luebke, Wainwright

INSURANCE REGULATORY CHARGE

SECTION 40.1.(a) The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is five and one-half percent (5.5%) for the 2005 calendar year.

SECTION 40.1.(b) This section is effective when it becomes law.

Requested by: Representatives Alexander, Gibson, Luebke, Wainwright

REGULATORY FEE FOR UTILITIES COMMISSION

SECTION 40.2.(a) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is twelve-hundredths of one percent

(0.12%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 2005.

SECTION 40.2.(b) The electric membership corporation regulatory fee imposed under G.S. 62-302(b1) for the 2005-2006 fiscal year is two hundred thousand dollars ($200,000).

SECTION 40.2.(c) This section becomes effective July 1, 2005.

PART XLI. HEALTH AND HUMAN SERVICES FEES

Requested by: Representatives Barnhart, Insko

NEWBORN SCREENING FEE

SECTION 41.1. G.S. 130A-125(c) reads as rewritten:

"(c) ~~The Department may impose a fee for a laboratory test performed pursuant to this section by the State Public Health Laboratory. A fee for a test must be based on the actual cost of performing the test.~~ A fee of fourteen dollars ($14.00) applies to a laboratory test performed by the State Public Health Laboratory performed pursuant to this section. Fees collected shall remain in the Department to be used to offset the cost of the Newborn Screening Program."

Requested by: Representatives Insko, Barnhart

DIVISION OF FACILITY SERVICES FEES

SECTION 41.2.(a) G.S. 131D-2(b)(1) reads as rewritten:

"(b) Licensure; inspections. –

(1) The Department of Health and Human Services shall inspect and license, under rules adopted by the Medical Care Commission, all adult care homes for persons who are aged or mentally or physically disabled except those exempt in subsection (c) of this section. Licenses issued under the authority of this section shall be valid for one year from the date of issuance unless revoked earlier by the Secretary for failure to comply with any part of this section or any rules adopted hereunder. Licenses shall be renewed annually upon filing and the Department's approval of the renewal application. The Department shall charge each adult care home with six or fewer beds a nonrefundable annual license fee in the amount of ~~one hundred twenty-five dollars ($125.00).~~ two hundred fifty dollars ($250.00).The Department shall charge each adult care home with more than six beds a nonrefundable annual license fee in the amount of ~~one hundred seventy-five dollars ($175.00)~~ three hundred fifty dollars ($350.00) plus a nonrefundable annual per-bed fee of ~~six dollars and twenty-five cents ($6.25).~~twelve dollars and fifty cents ($12.50). A license shall not be renewed if outstanding fees, fines, and penalties imposed by the State against the home have not been paid. Fines and penalties for which an appeal is pending are exempt from consideration. The renewal application shall contain all necessary and reasonable

information that the Department may by rule require. Except as otherwise provided in this subdivision, the Department may amend a license by reducing it from a full license to a provisional license for a period of not more than 90 days whenever the Department finds that:

a. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles;

b. There is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and

c. There is a reasonable probability that the licensee will be able thereafter to remain in compliance with the licensure rules for the foreseeable future.

The Department may extend a provisional license for not more than one additional 90-day period upon finding that the licensee has made substantial progress toward remedying the licensure deficiencies that caused the license to be reduced to provisional status.

The Department may revoke a license whenever:

a. The Department finds that:

1. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles; and

2. It is not reasonably probable that the licensee can remedy the licensure deficiencies within a reasonable length of time; or

b. The Department finds that:

1. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles; and

2. Although the licensee may be able to remedy the deficiencies within a reasonable time, it is not reasonably probable that the licensee will be able to remain in compliance with licensure rules for the foreseeable future; or

c. The Department finds that the licensee has failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles, and the failure to comply endangered the health, safety, or welfare of the patients in the facility.

The Department may also issue a provisional license to a facility, pursuant to rules adopted by the Medical Care Commission, for substantial failure to comply with the provisions of this section or rules adopted pursuant to this section. Any facility wishing

to contest the issuance of a provisional license shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails written notice of the issuance of the provisional license."

SECTION 41.2.(b) G.S. 131E-77(d) reads as rewritten:

"(d) Upon receipt of an application for a license, the Department shall issue a license if it finds that the applicant complies with the provisions of this Article and the rules of the Commission. The Department shall renew each license in accordance with the rules of the Commission. The Department shall charge the applicant a nonrefundable annual base license fee plus a nonrefundable annual per-bed fee as follows:

Facility Type	**Number of Beds**	**Base Fee**	**Per-Bed Fee**
General Acute Hospitals:	1-49 beds	~~$125.00~~250.00	~~$6.25~~12.50
	50-99 beds	~~$175.00~~350.00	~~$6.25~~12.50
	100-199 beds	~~$225.00~~450.00	~~$6.25~~12.50
	200-399 beds	~~$275.00~~550.00	~~$6.25~~12.50
	400-699 beds	~~$375.00~~750.00	~~$6.25~~12.50
	700+ beds	~~$475.00~~950.00	~~$6.25~~12.50
Other Hospitals:		~~$250.00~~500.00	~~$6.25~~12.50"

SECTION 41.2(c) G.S. 131E-102(b) reads as rewritten:

"(b) Applications shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated under this Part. The Department shall charge the applicant a nonrefundable annual license fee in the amount of ~~two hundred twenty-five dollars ($225.00)~~ four hundred fifty dollars ($450.00) plus a nonrefundable annual per-bed fee of ~~six dollars and twenty-five cents ($6.25).~~twelve dollars and fifty cents ($12.50)."

SECTION 41.2(d) G.S. 131E-138(c) reads as rewritten:

"(c) An application for a license shall be available from the Department, and each application filed with the Department shall contain all information requested by the Department. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated by the Commission under this Part. The Department shall charge the applicant a nonrefundable annual license fee in the amount of ~~one hundred seventy-five dollars ($175.00).~~three hundred fifty dollars ($350.00)."

SECTION 41.2(e) G.S. 131E-147(b) reads as rewritten:

"(b) Applications shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated by the Commission under this Part. The Department shall charge the applicant a nonrefundable annual base license fee in the amount of ~~three hundred fifty dollars ($350.00)~~ seven hundred dollars ($700.00) plus a nonrefundable annual per-operating room fee in the amount of ~~twenty-five dollars ($25.00).~~fifty dollars ($50.00)."

SECTION 41.2(f) G.S. 131E-167(a) reads as rewritten:

"(a) Applications for certification shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A certificate shall be granted to the applicant for a period not to exceed one year upon a determination by the Department that the applicant has substantially complied with the provisions of this Article and the rules promulgated by the Department under this Article. The Department shall charge the applicant a nonrefundable annual certification fee in the amount of ~~one hundred twenty-five dollars ($125.00).~~two hundred fifty dollars ($250.00)."

SECTION 41.2(g) G.S. 131E-269 reads as rewritten:

"**§ 131E-269. Authorization to charge fee for certification of facilities suitable to perform abortions.**

The Department of Health and Human Services shall charge each hospital or clinic certified by the Department as a facility suitable for the performance of abortions, as authorized under G.S. 14-45.1, a nonrefundable annual certification fee in the amount of ~~three hundred fifty dollars ($350.00).~~seven hundred dollars ($700.00)."

SECTION 41.2(h) G.S. 122C-23(h) reads as rewritten:

"(h) The Department shall charge facilities licensed under this Chapter that have licensed beds a nonrefundable annual base license fee plus a nonrefundable annual per-bed fee as follows:

Type of Facility	**Number of Beds**	**Base Fee**	**Per-Bed Fee**
Facilities (non-ICF/MR):	6 or fewer beds	~~$125.00~~250.00	$0
	More than 6 beds	~~$175.00~~350.00	~~$6.25~~12.50
ICF/MR Only:	6 or fewer beds	~~$325.00~~650.00	$0
	More than 6 beds	~~$325.00~~650.00	~~$6.25~~12.50"

SECTION 41.2(i) G.S. 131E-138.1 reads as rewritten:

"**§ 131E-138.1. Licensure fees for nursing beds and adult care home beds in continuing care retirement communities.**

The Department shall charge continuing care retirement communities licensed under Article 64 of Chapter 58 of the General Statutes that have nursing home beds or adult care home beds licensed by the Department a nonrefundable annual base license fee in the amount of ~~two hundred twenty-five dollars ($225.00)~~four hundred fifty dollars ($450.00) plus a nonrefundable annual per-bed fee in the amount of ~~six dollars and twenty-five cents ($6.25).~~twelve dollars and fifty cents ($12.50)."

SECTION 41.2(j) G.S. 131E-267 reads as rewritten:

"§ 131E-267. Fees for departmental review of health care facility construction projects.

The Department of Health and Human Services shall charge a fee for the review of each health care facility construction project to ensure that project plans and construction are in compliance with State law. The fee shall be charged on a one-time, per-project basis, as follows, and shall not exceed twelve thousand five hundred dollars ($12,500) for any single project:

Institutional Project	Project Fee
Hospitals	~~$150.00 plus $0.10/square foot of project space~~
	$300.00 plus $0.20/square foot of project space
Nursing Homes	~~$125.00 plus $0.08/square foot of project space~~
	$250.00 plus $0.16/square foot of project space
Ambulatory Surgical Facility	~~$100.00 plus $0.08/square foot of project space~~
	$200.00 plus $0.16/square foot of project space
Psychiatric Hospital	~~$100.00 plus $0.08/square foot of project space~~
	$200.00 plus $0.16/square foot of project space
Adult Care Home ~~more than 7 beds~~	~~$87.00 plus $0.05/square foot of project space~~
7 or more beds	$175.00 plus $0.10/square foot of project space

Residential Project	Project Fee
Family Care Homes	~~$87.00~~ 175.00 flat fee
ICF/MR Group Homes	~~$137.00~~275.00 flat fee
Group Homes: 1-3 beds	~~$50.00~~ 100.00 flat fee
Group Homes: 4-6 beds	~~$87.00~~ 175.00 flat fee
Group Homes: 7-9 beds	~~$112.00~~225.00 flat fee
Other residential: More than 9 beds	~~$112.00~~225.00 plus ~~$0.038~~/0.075/square foot of project space."

SECTION 41.2.(k) This section becomes effective October 1, 2005.

PART XLII. NATURAL AND ECONOMIC RESOURCES FEES

Requested by: Representatives Hunter, Warren

INCREASE VARIOUS AGRICULTURAL FEES

SECTION 42.1.(a) G.S. 106-284.34(c) reads as rewritten:

"(c) No person shall distribute in this State a commercial feed, except a customer-formula feed, which has not been registered pursuant to the provisions of this section. The application for registration shall be submitted in the manner prescribed by the Commissioner. Upon approval by the Commissioner or his duly designated agent the registration shall be issued to the applicant. All registrations expire on the thirty-first day of December of each year. An annual registration fee of ~~three dollars ($3.00)~~ up to five dollars ($5.00) for each commercial feed other than canned pet food shall accompany each request for registration. An annual registration fee of ~~ten dollars~~

~~($10.00)~~ up to twelve dollars ($12.00) for each canned pet food shall accompany each request for registration."

SECTION 42.1.(b) G.S. 106-284.40(b)(4) reads as rewritten:

"(4) In the case of a commercial feed other than canned pet food which is distributed in the State only in packages of five pounds or less, an annual registration fee of ~~thirty dollars ($30.00)~~ up to forty dollars ($40.00) shall be paid in lieu of the inspection fee specified above."

SECTION 42.1.(c) G.S. 106-277.28(3) reads as rewritten:

"(3) Each seed dealer or grower who has seed, whether originated or labeled by the dealer or grower, that is offered for sale in this State shall report the quantity of seed offered for sale and pay an inspection fee of ~~two cents (2¢)~~ up to four cents (4¢) for each container of seeds weighing 10 pounds or more. Seed shall be subject to the inspection fee and reporting requirements only once in any 12-month period. This fee does not apply to seed grown by a farmer and offered for sale by the farmer at the farm where the seed was grown."

SECTION 42.1.(d) The Board of Agriculture shall charge no more than the following fees for agronomic services:

Test/Service			Fee
(1)	Routine nematode samples		$ 3.00
(2)	Routine waste samples		$ 5.00
(3)	Research soil and nematode samples		$12.00
(4)	Research plant, waste, and solution samples		$12.00
(5)	Nonresident nematode samples		$14.00
(6)	Nonresident plant, waste, and solution samples		$26.00
(7)	Special services for plant, waste, and solution samples:		
	a.	Heavy metals-soils	$25.00
	b.	Nitrates-soils	$ 5.00
	c.	Waste-heavy metals	$10.00
	d.	Waste-N breakout	$10.00
	e.	Waste-liming equivalent	$10.00
	f.	Plant-chloride	$ 5.00
	g.	Plant-molybdenum	$ 5.00
	h.	Plant-petiole nitrates	$ 5.00.

SECTION 42.1.(e) The Board of Agriculture shall charge no more than the following fees for animal disease diagnostic tests and services:

Test/Service		Fee
(1)	Histopath	$30.00
(2)	Professional services-EIA	$ 6.00
(3)	Professional services-blood pour-off fees	$ 1.00
(4)	Vacuum tube handling fee	$ 0.04.

SECTION 42.1.(f) G.S. 81A-52 reads as rewritten:

"§ 81A-52. License.

All public weighmasters shall be licensed. Any person not less than 18 years of age who wishes to be a public weighmaster shall apply to the Department on a form provided by the Department. The Board may adopt rules for determining the qualifications of the applicant for a license. Public weighmasters shall be licensed for a period of one year beginning the first day of July and ending on the thirtieth day of June, and a fee of ~~twelve dollars ($12.00)~~ up to nineteen dollars ($19.00) shall be paid for each person licensed at the time of the filing of the application."

SECTION 42.1.(g) G.S. 81A-72 reads as rewritten:

"**§ 81A-72. Registration; certificate of registration; annual renewal.**

The Commissioner or his authorized agent shall register any person who has complied with the requirements of this Article by making a record of receipt of application, and the issuing of a certificate or card of registration to applicant, whereupon the applicant becomes a registered scale technician and shall be known thereafter as such. Such registration shall be in effect from date of registration until July 1 next and shall be renewed on the first day of July of each year thereafter. A fee of up to twenty dollars ($20.00) shall accompany each application for registration and each annual registration renewal."

SECTION 42.1.(h) G.S. 81A-11 is repealed.

SECTION 42.1.(i) Chapter 81A of the General Statutes is amended by adding the following new section to read:

"**§ 81A-12. Fee schedule.**

(a) The following maximum fees apply to all weights that are tested and certified to meet tolerances less stringent than the American Society for Testing and Materials (ASTM) Standard E617 Class 4. This includes the National Institutes of Standards and Technology (NIST) Class F tolerance. If the weight error exceeds three-fourths of the applicable tolerance, adjustment may be required at an additional fee equal to the normal fee. No extra fee shall be charged for the normal adjustment of a weight cart. Even if weights are rejected or condemned, fees shall be assessed for the test performed.

Customary	Fee/Unit	Metric	Maximum Fee/Unit
0-10 lb	$ 5.00	0-5 kg	$ 5.00
11-100 lb	$ 10.00	6-50 kg	$ 10.00
101-1000 lb	$ 20.00	51-500 kg	$ 20.00
1001-2500 lb	$ 30.00	501-1000 kg	$ 30.00
2501-6000 lb	$ 50.00	1001-2500 kg	$ 50.00
Weight Carts up to 6000 lb	$125.00 (includes adjustment)		

(b) The following maximum fees apply to all weights that are tested and certified to meet ASTM Standard E617 Class 4 or the International Organization of Legal Metrology (IOLM) R111 Class F2 tolerances. If the weight error exceeds three-fourths of the applicable tolerance, adjustment may be required at an additional fee equal to the normal fee. Even if weights are rejected or condemned, fees shall be assessed for the test performed.

Customary	Fee/Unit	Metric	Maximum Fee/Unit
0-10 lb	$ 10.00	0-5 kg	$ 10.00

11-100 lb	$ 20.00	6-50 kg	$ 20.00
101-1000 lb	$ 40.00	51-500 kg	$ 40.00
1001-2500 lb	$ 60.00	501-1000 kg	$ 60.00
2501-6000 lb	$100.00	1001-2500 kg	$100.00

(c) The following maximum fees apply to all weights that are calibrated. Calibration means determining actual mass and conventional mass values with an assigned uncertainty specific to the test. If necessary and considered feasible by the metrologist, adjustments to ASTM Class 1, 2, or 3 tolerances or IOLM Class E2, F1, or F2 tolerances may be made for an additional fee of two times the normal fee. Adjustments to weights of this group shall require a minimum of 10 days for weights to return to environmental equilibrium before a final calibration value can be assigned. Even if weights are rejected or condemned, fees shall be assessed for the test performed.

Customary	Fee/Unit	Metric	Maximum Fee/Unit
0-20 lb	$ 20.00	0-10 kg	$ 20.00
21-50 lb	$ 40.00	11-30 kg	$ 40.00
51-1000 lb	$ 70.00	31-500 kg	$ 70.00
1001-2500 lb	$130.00	501-1000 kg	$130.00
2501-6000 lb	$200.00	1001-2500 kg	$200.00

(d) The following maximum fees apply to all weights that are calibrated using NIST weighing designs. These weights are tested in groups (typically either a 1, 2, 3, 5 series or a 1, 2, 2, 5 series) and are subject to the minimum per series fee shown. The best uncertainty possible from the North Carolina Standards Laboratory shall be assigned to the mass values of the weights. If necessary and considered feasible by the metrologist, adjustments to ASTM Class 0, 1, 2, or 3 tolerances or IOLM Class E1, E2, F1, or F2 tolerances may be made for an additional fee of two times the normal fee. Adjustments to weights of this group shall require a minimum of 10 days for weights to return to environmental equilibrium before a final calibration value can be assigned.

Weight Range	Maximum Fee/Unit or Series
0-1 kg	$30.00 each, with a minimum charge of $90 (3 weights) per series
2-30 kg	$50.00 each, with a minimum charge of $150 (3 weights) per series
0-2 lb	$30.00 each, with a minimum charge of $90 (3 weights) per series
3-50 lb	$50.00 each, with a minimum charge of $150 (3 weights) per series

(e) The following maximum fees apply to volumetric standard calibration.

Provers or Test Measures Tested By The Volume Transfer Method

Customary	Fee/Test Point	Metric	Fee/Test Point
0-5 gal	Up to $30.00	0-20 liters	Up to $30.00
Over 5 gal	Add up to $0.40 per each additional gallon	Over 20 liters	Add up to $0.10 per each additional liter

Volumetric Flasks, Graduates, Provers, Slicker Plate Standards, or Test Measures Tested By the Gravimetric Calibration Method

Customary	Fee/Test Point	Metric	Fee/Test Point
0-100 gal set-up fee	Up to $50.00	0-500 liters set-up fee	Up to $50.00
Calibration Fee	Add up to $2.00 per gallon	Calibration Fee	Add up to $0.50 per liter

Small Volume Provers (SVPs) Tested By The Gravimetric Calibration Method			
Customary	Fee/Test Point	Metric	Fee/Test Point
0-100 gal set-up fee	Up to $ 100.00	0-500 liters set-up fee	Up to $100.00
Calibration Fee	Add up to $2.00 per gallon	Calibration Fee	Add up to $0.50 per liter

(f) The following maximum fees apply to tape measures and rigid rules.

Set-Up Fee	Up to $ 40.00 per instrument
Calibration Fee	Up to $10.00 calibration interval

(g) The following maximum fees apply to liquid-in-glass and electronic thermometers.

Set-Up Fee	Up to $40.00/instrument
Calibration Fee	Up to $20.00/calibration point
Resistance Thermometry Coefficient Calculation and Report	Up to $100.00/ instrument

(h) Any special tests or weight cleaning shall be billed at the rate of up to seventy dollars ($70.00) per hour prorated to the nearest tenth of an hour, with a minimum charge of thirty-five dollars ($35.00).

(i) A minimum charge of twenty-five dollars ($25.00) per invoice shall apply.

(j) If travel is required in connection with the performance of any of these services, the Department shall be reimbursed at the rates provided in G.S. 138-6.

(k) The Department may refuse to accept for testing any weight or measure the Department deems unsuited for its intended use.

(l) The fee for tests performed on weights or measures that will be used primarily outside of the State of North Carolina shall be twice the amounts set forth in this section."

SECTION 42.2. Reserved.

Requested by: Representatives Hunter, Warren

INCREASE CAP FOR CAMA PERMIT FEES

SECTION 42.3.(a) G.S. 113A-119.1(a) reads as rewritten:

"(a) The Commission shall have the power to establish a graduated fee schedule for the processing of applications for permits, renewals of permits, modifications of permits, or transfers of permits issued pursuant to this Article. In determining the fee schedule, the Commission shall consider the administrative and personnel costs incurred by the Department for processing the applications, related compliance activities, and the complexity of the development sought to be undertaken for which a permit is required under this Article. The fee to be charged for processing an application may not exceed ~~four hundred dollars ($400.00).~~ eight hundred dollars ($800.00). The total funds collected from fees authorized by the Commission pursuant to this section in any fiscal year shall not exceed thirty-three and one-third percent (33 1/3%) of the total personnel and administrative costs incurred by the Department for permit processing and compliance programs within the Division of Coastal ~~Area~~ Management."

SECTION 42.3.(b) The Coastal Resources Commission may adopt temporary rules to implement this section.

PART XLIII. JUSTICE AND PUBLIC SAFETY FEES

Requested by: Representatives Haire, Kiser

GENERAL COURT OF JUSTICE FEE INCREASES

SECTION 43.1.(a) G.S. 7A-304(a)(4) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

...

(4) For support of the General Court of Justice, the sum of ~~seventy-six dollars ($76.00)~~ eighty-five dollars and fifty cents ($85.50) in the district court, including cases before a magistrate, and the sum of ~~eighty-three dollars ($83.00)~~ ninety-two dollars and fifty cents ($92.50) in the superior court, to be remitted to the State Treasurer. For a person convicted of a felony in superior court who has made a first appearance in district court, both the district court and superior court fees shall be assessed. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents ($.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19."

SECTION 43.1.(b) G.S. 7A-305(a)(2) reads as rewritten:

"(a) In every civil action in the superior or district court, except for actions brought under Chapter 50B of the General Statutes, the following costs shall be assessed:

...

(2) For support of the General Court of Justice, the sum of ~~sixty-nine dollars ($69.00)~~ seventy-nine dollars ($79.00) in the superior court, and the sum of ~~fifty-four dollars ($54.00)~~ sixty-four dollars ($64.00) in the district court except that if the case is assigned to a magistrate the sum shall be ~~forty-three dollars ($43.00).~~ fifty-three dollars ($53.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents ($.95) of each fee collected under

this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19."

SECTION 43.1.(c) G.S. 7A-306(a)(2) reads as rewritten:

"(a) In every special proceeding in the superior court, the following costs shall be assessed:

...

(2) For support of the General Court of Justice the sum of ~~thirty dollars ($30.00).~~ forty dollars ($40.00). In addition, in proceedings involving land, except boundary disputes, if the fair market value of the land involved is over one hundred dollars ($100.00), there shall be an additional sum of thirty cents (30¢) per one hundred dollars ($100.00) of value, or major fraction thereof, not to exceed a maximum additional sum of two hundred dollars ($200.00). Fair market value is determined by the sale price if there is a sale, the appraiser's valuation if there is no sale, or the appraised value from the property tax records if there is neither a sale nor an appraiser's valuation. Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each ~~thirty-dollar ($30.00)~~ forty-dollar ($40.00) General Court of Justice fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4."

SECTION 43.1.(d) G.S. 7A-307(a)(2) and (2a) read as rewritten:

"(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, in trust proceedings under G.S. 36A-23.1, and in collections of personal property by affidavit, the following costs shall be assessed:

...

(2) For support of the General Court of Justice, the sum of ~~thirty dollars ($30.00),~~ forty dollars ($40.00), plus an additional forty cents (40¢) per one hundred dollars ($100.00), or major fraction thereof, of the gross estate, not to exceed ~~three thousand dollars ($3,000).~~ six thousand dollars ($6,000). Gross estate shall include the fair market value of all personalty when received, and all proceeds from the sale of realty coming into the hands of the fiduciary, but shall not include the value of realty. In collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall

be fifteen dollars ($15.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each ~~thirty-dollar ($30.00)~~ forty-dollar ($40.00) General Court of Justice fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4.

(2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of the gross estate, not to exceed ~~three thousand dollars ($3,000),~~ six thousand dollars ($6,000), shall not be assessed on personalty received by a trust under a will when the estate of the decedent was administered under Chapters 28 or 28A of the General Statutes. Instead, a fee of twenty dollars ($20.00) shall be assessed on the filing of each annual and final account."

SECTION 43.1.(e) G.S. 15A-145(e) reads as rewritten:

"(e) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of ~~sixty-five dollars ($65.00)~~ one hundred twenty-five dollars ($125.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 43.1.(f) G.S. 15A-1343(b1)(3c) reads as rewritten:

"(b1) Special Conditions. – In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

...

(3c) Remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition ~~electronically.~~electronically and to pay a fee for the device as specified in subsection (c2) of this section."

SECTION 43.1.(g) G.S. 20-135.2A(e) reads as rewritten:

"(e) Any driver or passenger who fails to wear a seat belt as required by this section shall have committed an infraction and shall pay a penalty of twenty-five dollars ($25.00) plus court costs in the sum of ~~fifty dollars ($50.00).~~ seventy-five dollars ($75.00). Court costs assessed under this section are for the support of the General Court of Justice and shall be remitted to the State Treasurer. Conviction of an infraction under this section has no other consequence."

Requested by: Representatives Haire, Kiser

DEVICE FEE FOR HOUSE ARREST WITH ELECTRONIC MONITORING

SECTION 43.2. G.S. 15A-1343 is amended by adding a new section to read:

"(c2) Electronic Monitoring Device Fee. – Any person placed on house arrest with electronic monitoring under subsection (b1) of this section shall pay a fee of ninety dollars ($90.00) for the electronic monitoring device. The court may exempt a person from paying the fee only for good cause and upon motion of the person placed on house arrest with electronic monitoring. The court may require that the fee be paid in advance or in a lump sum or sums, and a probation officer may require payment by those methods if the officer is authorized by subsection (g) of this section to determine the payment schedule. The fee must be paid to the clerk of court for the county in which the judgment was entered or the deferred prosecution agreement was filed. Fees collected under this subsection shall be transmitted to the State for deposit into the State's General Fund."

Requested by: Representatives Haire, Kiser

INCREASE BUTNER TAXES

SECTION 43.3.(a) Section 1 of Chapter 830 of the 1983 Session Laws reads as rewritten:

"Section 1. (a) The territorial jurisdiction of the Butner Police and Fire Protection District shall include: (i) any property formerly a part of the original Camp Butner reservation, including both those areas currently owned and occupied by the State and its agencies and those which may have been leased or otherwise disposed of by the State; (ii) the Lyons Station Sanitary District; and (iii) that part of Granville County adjoining the Butner reservation and the Lyons Station Sanitary District situated north and west of the intersection of Rural Paved Roads 1103 and 1106 and bounded by those roads and the boundaries of said reservation and said sanitary district.

(b) The territorial jurisdiction set forth in subsection (a) of this section shall constitute the Butner Fire and Police Protection District. The tax collectors of Durham and Granville Counties shall annually collect ~~beginning with fiscal year 1983-84~~ a tax of ~~twenty cents (20c)~~ twenty-five cents (25¢) per one hundred dollars ($100.00) valuation of all real and personal property in the portions of said district in their respective counties from year to year which tax shall be collected as county taxes are collected and shall remit the same to the State Treasurer for deposit in the General Fund."

SECTION 43.3.(b) This section is effective for taxes imposed for taxable years beginning on or after July 1, 2005.

Requested by: Representatives Haire, Kiser

FEE FOR POLICE INFORMATION NETWORK

SECTION 43.4.(a) G.S. 114-10.1 reads as rewritten:

"**§ 114-10.1. Police Information Network.**

(a) The Division of Criminal Statistics is authorized to establish, devise, maintain and operate, under the control and supervision of the Attorney General, a system for receiving and disseminating to participating agencies information collected, maintained

and correlated under authority of G.S. 114-10 of this Article. The system shall be known as the Police Information Network.

(b) The Attorney General is authorized to cooperate with the Division of Motor Vehicles, Department of Administration, Department of Correction and other State, local and federal agencies and organizations in carrying out the purpose and intent of this section, and to utilize, in cooperation with other State agencies and to the extent as may be practical, computers and related equipment as may be operated by other State agencies.

(c) The Attorney General, after consultation with participating agencies, shall adopt rules and regulations governing the organization and administration of the Police Information Network, including rules and regulations governing the types of information relating to the administration of criminal justice to be entered into the system, and who shall have access to such information. The rules and regulations governing access to the Police Information Network shall not prohibit an attorney who has entered a criminal proceeding in accordance with G.S. 15A-141 from obtaining information relevant to that criminal proceeding. The rules and regulations governing access to the Police Information Network shall not prohibit an attorney who represents a person in adjudicatory or dispositional proceedings for an infraction from obtaining the person's driving record or criminal history.

(d) The Attorney General may impose an initial set up fee of two thousand six hundred fifty dollars ($2,650) for agencies to participate in the Police Information Network. This one-time fee shall be used to offset the cost of the router and data circuit needed to access the Network.

The Attorney General may also impose monthly fees on participating agencies. The monthly fees collected under this subsection shall be used to offset the cost of operating and maintaining the Police Information Network

(1) The Attorney General may impose a monthly circuit fee on agencies that access the Police Information Network through a circuit maintained and operated by the Department of Justice. The amount of the monthly fee is three hundred dollars ($300.00) plus an additional fee amount for each device linked to the Network. The additional fee amount varies depending upon the type of device. For every desktop device after the first seven desktop devices, the additional monthly fee is twenty-five dollars ($25.00) per device. For a mobile device, the additional monthly fee is six dollars ($6.00) per device.

(2) The Attorney General may impose a monthly device fee on agencies that access the Police Information Network through some other approved means. The amount of the monthly device fee varies depending upon the type of device. For a desktop device, the monthly fee is twenty-five dollars ($25.00) per device. For a mobile device, the fee is six dollars ($6.00) per device."

SECTION 43.4.(b) G.S. 114-10.1(d), as enacted by this section, reads as rewritten:

"(d) The Attorney General may impose an initial set up fee of two thousand six hundred fifty dollars ($2,650) for agencies to participate in the Police Information Network. This one-time fee shall be used to offset the cost of the router and data circuit needed to access the Network.

The Attorney General may also impose monthly fees on participating agencies. The monthly fees collected under this subsection shall be used to offset the cost of operating and maintaining the Police Information Network

(1) The Attorney General may impose a monthly circuit fee on agencies that access the Police Information Network through a circuit maintained and operated by the Department of Justice. The amount of the monthly fee is three hundred dollars ($300.00) plus an additional fee amount for each device linked to the Network. The additional fee amount varies depending upon the type of device. For a desktop device after the first seven desktop devices, the additional monthly fee is twenty-five dollars ($25.00) per device. For a mobile device, the additional monthly fee is ~~six dollars ($6.00)~~ twelve dollars ($12.00) per device.

(2) The Attorney General may impose a monthly device fee on agencies that access the Police Information Network through some other approved means. The amount of the monthly device fee varies depending upon the type of device. For a desktop device, the monthly fee is twenty-five dollars ($25.00) per device. For a mobile device, the fee is ~~six dollars ($6.00)~~ twelve dollars ($12.00) per device."

SECTION 43.4.(c) Subsection (b) of this section becomes effective January 1, 2006. The remainder of this section is effective when it becomes law.

PART XLIV. DEPARTMENT OF TRANSPORTATION FEE CHANGES

Requested by: Representatives Coates, Cole

DOT FEE INCREASES

SECTION 44.1.(a) G.S. 20-7 reads as rewritten:

"§ 20-7. Issuance and renewal of drivers licenses.

...

(i) Fees. – The fee for a regular drivers license is the amount set in the following table multiplied by the number of years in the period for which the license is issued:

Class of Regular License	Fee For Each Year
Class A	~~$4.30~~ $4.00
Class B	~~4.30~~ 4.00
Class C	~~3.05~~ 4.00

The fee for a motorcycle endorsement is one dollar and seventy-five cents ($1.75) for each year of the period for which the endorsement is issued. The appropriate fee shall be paid before a person receives a regular drivers license or an endorsement.

(i1) Restoration Fee. – Any person whose drivers license has been revoked pursuant to the provisions of this Chapter, other than G.S. 20-17(2), shall pay a restoration fee of ~~twenty-five dollars ($25.00).~~ fifty dollars ($50.00). A person whose drivers license has been revoked under G.S. 20-17(2) shall pay a restoration fee of ~~fifty dollars ($50.00)~~ seventy-five dollars ($75.00) until the end of the fiscal year in which the cumulative total amount of fees deposited under this subsection in the General Fund exceeds ten million dollars ($10,000,000), and shall pay a restoration fee of ~~twenty-five dollars ($25.00)~~ fifty dollars ($50.00) thereafter. The fee shall be paid to the Division prior to the issuance to such person of a new drivers license or the restoration of the drivers license. The restoration fee shall be paid to the Division in addition to any and all fees which may be provided by law. This restoration fee shall not be required from any licensee whose license was revoked or voluntarily surrendered for medical or health reasons whether or not a medical evaluation was conducted pursuant to this Chapter. The ~~twenty-five dollar ($25.00) fee, and the first twenty-five dollars ($25.00) of the fifty-dollar ($50.00) fee,~~ fifty-dollar ($50.00) fee, and the first fifty dollars ($50.00) of the seventy-five-dollar ($75.00) fee, shall be deposited in the Highway Fund. The remaining twenty-five dollars ($25.00) of ~~the fifty-dollar ($50.00) fee~~ the seventy-five-dollar ($75.00) fee shall be deposited in the General Fund of the State. The Office of State Budget and Management shall certify to the Department of Transportation and the General Assembly when the cumulative total amount of fees deposited in the General Fund under this subsection exceeds ten million dollars ($10,000,000), and shall annually report to the General Assembly the amount of fees deposited in the General Fund under this subsection.

It is the intent of the General Assembly to annually appropriate the funds deposited in the General Fund under this subsection to the Board of Governors of The University of North Carolina to be used for the Center for Alcohol Studies Endowment at The University of North Carolina at Chapel Hill, but not to exceed this cumulative total of ten million dollars ($10,000,000).

...

(l) Learner's Permit. – A person who is at least 18 years old may obtain a learner's permit. A learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle while in possession of the permit. A learner's permit is valid for a period of 18 months after it is issued. The fee for a learner's permit is ~~ten dollars ($10.00).~~ fifteen dollars ($15.00). A learner's permit may be renewed, or a second learner's permit may be issued, for an additional period of 18 months. The permit holder must, while operating a motor vehicle over the highways, be accompanied by a person who is licensed to operate the motor vehicle being driven and is seated beside the permit holder."

SECTION 44.1.(b) G.S. 20-11(j) reads as rewritten:

"(j) Duration and Fee. – A limited learner's permit expires on the eighteenth birthday of the permit holder. A limited provisional license expires on the eighteenth birthday of the license holder. A limited learner's permit or limited provisional license issued under this section that expires on a weekend or State holiday shall remain valid through the fifth regular State business day following the date of expiration. A full

provisional license expires on the date set under G.S. 20-7(f). The fee for a limited learner's permit or a limited provisional license is ~~ten dollars ($10.00).~~ fifteen dollars ($15.00). The fee for a full provisional license is the amount set under G.S. 20-7(i)."

SECTION 44.1.(c) G.S. 20-14 reads as rewritten:

"**§ 20-14. Duplicate licenses.**

A person may obtain a duplicate of a license issued by the Division by paying a fee of ten dollars ~~and five cents ($10.05)~~ ($10.00) and giving the Division satisfactory proof that any of the following has occurred:

(1) The person's license has been lost or destroyed.

(2) It is necessary to change the name or address on the license.

(3) Because of age, the person is entitled to a license with a different color photographic background or a different color border.

(4) The Division revoked the person's license, the revocation period has expired, and the period for which the license was issued has not expired."

SECTION 44.1.(d) G.S. 20-16(e) reads as rewritten:

"(e) The Division may conduct driver improvement clinics for the benefit of those who have been convicted of one or more violations of this Chapter. Each driver attending a driver improvement clinic shall pay a fee of ~~twenty-five dollars ($25.00).~~ fifty dollars ($50.00)."

SECTION 44.1.(e) G.S. 20-26(c) reads as rewritten:

"(c) The Division shall furnish copies of license records required to be kept by subsection (a) of this section in accordance with G.S. 20-43.1 to other persons for uses other than official upon prepayment of the following fees:

(1) Limited extract copy of license record, for period up to three years ..... ~~$5.00~~ $8.00

(2) Complete extract copy of license record..... ~~5.00~~ 8.00

(3) Certified true copy of complete license record..... ~~7.00.~~ 11.00.

All fees received by the Division under this subsection shall be credited to the Highway Fund."

SECTION 44.1.(f) G.S. 20-37.15(a1) reads as rewritten:

"(a1) The application must be accompanied by a nonrefundable application fee of ~~twenty dollars ($20.00).~~ thirty dollars ($30.00). This fee does not apply in any of the following circumstances:

(1) When an individual surrenders a commercial driver learner's permit issued by the Division when submitting the application.

(2) When the application is to renew a commercial drivers license issued by the Division.

This fee shall entitle the applicant to three attempts to pass the written knowledge test without payment of a new fee. No application fee shall be charged to an applicant eligible for a waiver under G.S. 20-37.13(c)."

SECTION 44.1.(g) G.S. 20-37.16(d) reads as rewritten:

"(d) The fee for a Class A, B, or C commercial drivers license is ~~ten dollars ($10.00)~~ fifteen dollars ($15.00) for each year of the period for which the license is

issued. The fee for each endorsement is ~~one dollar and twenty-five cents ($1.25)~~ three dollars ($3.00) for each year of the period for which the endorsement is issued. The fees required under this section do not apply to employees of the Driver License Section of the Division who are designated by the Commissioner."

SECTION 44.1.(h) G.S. 20-42(b) reads as rewritten:

"(b) The Commissioner and officers of the Division designated by the Commissioner may prepare under the seal of the Division and deliver upon request a certified copy of any document of the Division for a fee. The fee for a document, other than an accident report under G.S. 20-166.1, is ~~five dollars ($5.00).~~ ten dollars ($10.00). The fee for an accident report is ~~four dollars ($4.00).~~ five dollars ($5.00). A certified copy shall be admissible in any proceeding in any court in like manner as the original thereof, without further certification. The certification fee does not apply to a document furnished for official use to a judicial official or to an official of the federal government, a state government, or a local government."

SECTION 44.1.(i) G.S. 20-50(b) reads as rewritten:

"(b) The Division may issue a temporary license plate for a vehicle. A temporary license plate is valid for the period set by the Division. The period may not be less than 10 days nor more than 60 days.

A person may obtain a temporary license plate for a vehicle by filing an application with the Division and paying the required fee. An application must be filed on a form provided by the Division.

The fee for a temporary license plate that is valid for 10 days is ~~three dollars ($3.00).~~ five dollars ($5.00). The fee for a temporary license plate that is valid for more than 10 days is the amount that would be required with an application for a license plate for the vehicle. If a person obtains for a vehicle a temporary license plate that is valid for more than 10 days and files an application for a license plate for that vehicle before the temporary license plate expires, the person is not required to pay the fee that would otherwise be required for the license plate.

A temporary license plate is subject to the following limitations and conditions:

(1) It may be issued only upon proper proof that the applicant has met the applicable financial responsibility requirements.

(2) It expires on midnight of the day set for expiration.

(3) It may be used only on the vehicle for which issued and may not be transferred, loaned, or assigned to another.

(4) If it is lost or stolen, the person who applied for it must notify the Division.

(5) It may not be issued by a dealer.

(6) The provisions of G.S. 20-63, 20-71, 20-110 and 20-111 that apply to license plates apply to temporary license plates insofar as possible."

SECTION 44.1.(j) G.S. 20-73(c) reads as rewritten:

"(c) Penalties. – A person to whom a vehicle is transferred who fails to apply for a certificate of title within the required time is subject to a civil penalty of ~~ten dollars ($10.00)~~ fifteen dollars ($15.00) and is guilty of a Class 2 misdemeanor. A person who undertakes to apply for a certificate of title on behalf of another person and who fails to

apply for a title within the required time is subject to a civil penalty of ~~ten dollars ($10.00).~~fifteen dollars ($15.00). When a person to whom a vehicle is transferred fails to obtain a title within the required time because a person who undertook to apply for the certificate of title did not do so within the required time, the Division may impose a civil penalty only on the person who undertook to apply for the title. Civil penalties collected under this subsection shall be credited to the Highway Fund."

SECTION 44.1.(k) G.S. 20-85(a) reads as rewritten:

"(a) The following fees are imposed concerning a certificate of title, a registration card, or a registration plate for a motor vehicle. These fees are payable to the Division and are in addition to the tax imposed by Article 5A of Chapter 105 of the General Statutes.

(1) Each application for certificate of title ..... ~~$35.00~~$39.00
(2) Each application for duplicate or corrected certificate of title ..... ~~10.00~~14.00
(3) Each application of repossessor for certificate of title..... ~~10.00~~14.00
(4) Each transfer of registration..... ~~10.00~~15.00
(5) Each set of replacement registration plates..... ~~10.00~~15.00
(6) Each application for duplicate registration card ..... ~~10.00~~15.00
(7) Each application for recording supplementary lien ..... ~~10.00~~14.00
(8) Each application for removing a lien from a certificate of title ..... ~~10.00~~14.00
(9) Each application for certificate of title for a motor vehicle transferred to a manufacturer, as defined in G.S. 20-286, or a motor vehicle retailer for the purpose of resale ..... ~~10.00~~14.00
(10) Each application for a salvage certificate of title made by an insurer ..... ~~10.00~~15.00
(11) Each set of replacement Stock Car Racing Theme plates issued under G.S. 20-79.4 ..... 25.00."

SECTION 44.1.(l) G.S. 20-85.1 reads as rewritten:

"**§ 20-85.1. Registration by mail; one-day title service; fees.**

(a) The owner of a vehicle registered in North Carolina may renew that vehicle registration by mail. A postage and handling fee of one dollar ($1.00) per vehicle to be registered shall be charged for this service.

(b) The Commissioner and the employees of the Division designated by the Commissioner may prepare and deliver upon request a certificate of title, charging a fee of ~~fifty dollars ($50.00)~~ seventy-five dollars ($75.00) for one-day title service, in lieu of the title fee required by G.S. 20-85(a). The fee for one-day title service must be paid by cash or by certified check.

(c) The fee collected under subsection (a) shall be credited to the Highway Fund. The fee collected under subsection (b) shall be credited to the Highway Trust Fund."

SECTION 44.1.(m) G.S. 20-87 reads as rewritten:

"**§ 20-87. Passenger vehicle registration fees.**

These shall be paid to the Division annually, as of the first day of January, for the registration and licensing of passenger vehicles, fees according to the following classifications and schedules:

(1) For-Hire Passenger Vehicles. – The fee for a passenger vehicle that is operated for compensation and has a capacity of 15 passengers or less is seventy-eight dollars ($78.00). The fee for a passenger vehicle that is operated for compensation and has a capacity of more than 15 passengers is one dollar and forty cents ($1.40) per hundred pounds of empty weight of the vehicle.

(2) U-Drive-It Vehicles. – U-drive-it vehicles shall pay the following tax:

Motorcycles:	1-passenger capacity	$18.00
	2-passenger capacity	22.00
	3-passenger capacity	26.00
Automobiles:	15 or fewer passengers	~~$41.00~~ $51.00
Buses:	16 or more passengers	~~$1.40~~ $2.00 per hundred pounds of empty weight
Trucks under 7,000 pounds that do not haul products for hire:	4,000 pounds	$41.50
	5,000 pounds	$51.00
	6,000 pounds	$61.00.

(3) Repealed by Session Laws 1981, c. 976, s. 3.

(4) Limousine Vehicles. – For-hire passenger vehicles on call or demand which do not solicit passengers indiscriminately for hire between points along streets or highways, shall be taxed at the same rate as for-hire passenger vehicles under G.S. 20-87(1) but shall be issued appropriate registration plates to distinguish such vehicles from taxicabs.

(5) Private Passenger Vehicles. – There shall be paid to the Division annually, as of the first day of January, for the registration and licensing of private passenger vehicles, fees according to the following classifications and schedules:

Private passenger vehicles of not more than fifteen passengers	~~$20.00~~ $28.00
Private passenger vehicles over fifteen passengers	~~23.00~~ 31.00

Provided, that a fee of only one dollar ($1.00) shall be charged for any vehicle given by the federal government to any veteran on account of any disability suffered during war so long as such vehicle is owned by the original donee or other veteran entitled to receive such gift under Title 38, section 252, United States Code Annotated.

(6) Private Motorcycles. – The base fee on private passenger motorcycles shall be ~~nine dollars ($9.00);~~ fifteen dollars ($15.00); except that when a motorcycle is equipped with an additional form of device designed to transport persons or property, the base fee shall be ~~sixteen dollars ($16.00).~~ twenty-two dollars ($22.00). An additional fee of three dollars ($3.00) is imposed on each private motorcycle registered under this subdivision in addition to the base fee. The revenue from the additional fee, in addition to any other funds appropriated for this purpose, shall be used to fund the Motorcycle Safety Instruction Program created in G.S. 115D-72.

(7) Dealer License Plates. – The fee for a dealer license plate is the regular fee for each of the first five plates issued to the same dealer and is one-half the regular fee for each additional dealer license plate issued to the same dealer. The "regular fee" is the fee set in subdivision (5) of this section for a private passenger motor vehicle of not more than 15 passengers.

(8) Driveaway Companies. – Any person engaged in the business of driving new motor vehicles from the place of manufacture to the place of sale in this State for compensation shall pay a fee of one-half of the amount that would otherwise be payable under this section for each set of plates.

(9) House Trailers. – In lieu of other registration and license fees levied on house trailers under this section or G.S. 20-88, the registration and license fee on house trailers shall be ~~seven dollars ($7.00)~~ eleven dollars ($11.00) for the license year or any portion thereof.

(10) Special Mobile Equipment. – The fee for special mobile equipment for the license year or any part of the license year is two times the fee in subdivision (5) for a private passenger motor vehicle of not more than 15 passengers.

(11) Any vehicle fee determined under this section according to the weight of the vehicle shall be increased by the sum of three dollars ($3.00) to arrive at the total fee.

(12) Low-Speed Vehicles. – The fee for a low-speed vehicle is the same as the fee for private passengers vehicles of not more than 15 passengers."

SECTION 44.1.(n) G.S. 20-88 reads as rewritten:

"**§ 20-88. Property-hauling vehicles.**

(a) Determination of Weight. – For the purpose of licensing, the weight of self-propelled property-carrying vehicles shall be the empty weight and heaviest load to be transported, as declared by the owner or operator; provided, that any determination of weight shall be made only in units of 1,000 pounds or major fraction thereof, weights of over 500 pounds counted as 1,000 and weights of 500 pounds or less disregarded. The declared gross weight of self-propelled property-carrying vehicles operated in conjunction with trailers or semitrailers shall include the empty weight of the vehicles to

be operated in the combination and the heaviest load to be transported by such combination at any time during the registration period, except that the gross weight of a trailer or semitrailer is not required to be included when the operation is to be in conjunction with a self-propelled property-carrying vehicle which is licensed for 6,000 pounds or less gross weight and the gross weight of such combination does not exceed 9,000 pounds, except wreckers as defined under G.S. 20-4.01(50). Those property-hauling vehicles registered for 4,000 pounds shall be permitted a tolerance of 500 pounds above the weight permitted under the table of weights and rates appearing in subsection (b) of this section.

(b) The following fees are imposed on the annual registration of self-propelled property-hauling vehicles; the fees are based on the type of vehicle and its weight:

SCHEDULE OF WEIGHTS AND RATES

Rates Per Hundred Pound Gross Weight	Farmer Rate
Not over 4,000 pounds	~~$0.23~~$0.29
4,001 to 9,000 pounds inclusive	~~.29~~ .40
9,001 to 13,000 pounds inclusive	~~.37~~ .50
13,001 to 17,000 pounds inclusive	~~.51~~ .68
Over 17,000 pounds	~~.58~~ .77

Rates Per Hundred Pound Gross Weight	General Rate
Not over 4,000 pounds	~~$0.46~~$0.59
4,001 to 9,000 pounds inclusive	~~.63~~ .81
9,001 to 13,000 pounds inclusive	~~.78~~ 1.00
13,001 to 17,000 pounds inclusive	~~1.06~~ 1.36
Over 17,000 pounds	~~1.20~~ 1.54

(1) The minimum fee for a vehicle licensed under this subsection is ~~seventeen dollars and fifty cents ($17.50)~~ twenty-four dollars ($24.00) at the farmer rate and ~~twenty-one dollars and fifty cents ($21.50)~~ twenty-eight dollars ($28.00) at the general rate.

(2) The term "farmer" as used in this subsection means any person engaged in the raising and growing of farm products on a farm in North Carolina not less than 10 acres in area, and who does not engage in the business of buying products for resale.

(3) License plates issued at the farmer rate shall be placed upon trucks and truck-tractors that are operated exclusively in the carrying or transportation of applicant's farm products, raised or produced on his farm, and farm supplies and not operated in hauling for hire.

(4) "Farm products" means any food crop, livestock, poultry, dairy products, flower bulbs, or other nursery products and other agricultural

products designed to be used for food purposes, including in the term "farm products" also cotton, tobacco, logs, bark, pulpwood, tannic acid wood and other forest products grown, produced, or processed by the farmer.

(5) The Division shall issue necessary rules and regulations providing for the recall, transfer, exchange or cancellation of "farmer" plates, when vehicle bearing such plates shall be sold or transferred.

(5a) Notwithstanding any other provision of this Chapter, license plates issued pursuant to this subsection at the farmer rate may be purchased for any three-month period at one fourth of the annual fee.

(6) There shall be paid to the Division annually as of the first of January, the following fees for "wreckers" as defined under G.S. 20-4.01(50): a wrecker fully equipped weighing 7,000 pounds or less, seventy-five dollars ($75.00); wreckers weighing in excess of 7,000 pounds shall pay one hundred forty-eight dollars ($148.00). Fees to be prorated quarterly. Provided, further, that nothing herein shall prohibit a licensed dealer from using a dealer's license plate to tow a vehicle for a customer.

(c) The fee for a semitrailer or trailer is ~~ten dollars ($10.00)~~ nineteen dollars ($19.00) for each year or part of a year. The fee is payable on or before January 1 of each year. Upon the application of the owner of a semitrailer or trailer, the Division may issue a multiyear plate and registration card for the semitrailer or trailer for a fee of seventy-five dollars ($75.00). A multiyear plate and registration card for a semitrailer or trailer are valid until the owner transfers the semitrailer or trailer to another person or surrenders the plate and registration card to the Division. A multiyear plate may not be transferred to another vehicle.

The Division shall issue a multiyear semitrailer or trailer plate in a different color than an annual semitrailer or trailer plate and shall include the word "multiyear" on the plate. The Division may not issue a multiyear plate for a house trailer.

(d) Rates on trucks, trailers and semitrailers wholly or partially equipped with solid tires shall be double the above schedule.

(e) Repealed by Session Laws 1981, c. 976, s. 6.

(f) Repealed by Session Laws 1995, c. 163, s. 6.

(g) Repealed by Session Laws 1969, c. 600, s. 17.

(h) Repealed by Session Laws 1979, c. 419.

(i) Any vehicle fee determined under this section according to the weight of the vehicle shall be increased by the sum of three dollars ($3.00) to arrive at the total fee.

(j) No heavy vehicle subject to the use tax imposed by Section 4481 of the Internal Revenue Code of 1954 (26 U.S.C. 4481) may be registered or licensed pursuant to G.S. 20-88 without proof of payment of the use tax imposed by that law. The proof of payment shall be on a form prescribed by the United States Secretary of Treasury pursuant to the provisions of 23 U.S.C. 141(d).

(k) A person may not drive a vehicle on a highway if the vehicle's gross weight exceeds its declared gross weight. A vehicle driven in violation of this subsection is

subject to the axle-group weight penalties set in G.S. 20-118(e). The penalties apply to the amount by which the vehicle's gross weight exceeds its declared weight.

(l) The Division shall issue permanent truck and truck-tractor plates to Class A and Class B Motor Vehicles and shall include the word "permanent" on the plate. The permanent registration plates issued pursuant to this section shall be subject to annual registration fees set in this section. The Division shall issue the necessary rules providing for the recall, transfer, exchange, or cancellation of permanent plates issued pursuant to this section."

SECTION 44.1.(o) G.S. 20-289 reads as rewritten:

"**§ 20-289. License fees.**

(a) The license fee for each fiscal year, or part thereof, shall be as follows:

(1) For motor vehicle dealers, distributors, distributor branches, and wholesalers, ~~fifty dollars ($50.00)~~ seventy dollars ($70.00) for each place of business.

(2) For manufacturers, ~~one hundred dollars ($100.00),~~ one hundred fifty dollars ($150.00) and for each factory branch in this State, ~~seventy dollars ($70.00).~~one hundred dollars ($100.00).

(3) For motor vehicle sales representatives, ~~ten dollars ($10.00).~~fifteen dollars ($15.00).

(4) For factory representatives, or distributor representatives, ~~ten dollars ($10.00).~~fifteen dollars ($15.00).

(5) Repealed by Session Laws 1991, c. 662, s. 4.

(b) The fees collected under this section shall be credited to the Highway Fund. These fees are in addition to all other taxes and fees."

SECTION 44.1.(p) G.S. 20-385 reads as rewritten:

"**§ 20-385. Fee schedule.**

(a) Amounts. –

(1) Verification by a for-hire motor carrier of insurance for each for-hire motor vehicle operated in this State	$ 1.00
(2) Application by an intrastate motor carrier for a certificate of exemption	~~25.00~~ 45.00
(3) Certification by an interstate motor carrier that it is not regulated by the United States Department of Transportation	~~25.00~~ 45.00
(4) Application by an interstate motor carrier for an emergency permit	~~10.00.~~18.00.

(b) Reciprocal Agreements. – The fee set in subdivision (a)(1) of this section does not apply to the verification of insurance by an interstate motor carrier regulated by the United States Department of Transportation if the Division had a reciprocal agreement on November 15, 1991, with another state by which no fee is imposed. The Division had reciprocal agreements as of that date with the following states: California, Delaware, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, Pennsylvania, Texas, and Vermont."

SECTION 44.1.(q) Section 5(c) of S.L. 2004-189 reads as rewritten:

"**SECTION 5.(c)** The Division of Motor Vehicles shall retain a portion of ~~the proceeds~~five cents ($0.05) collected for the issuance of each ~~of the increase in~~ drivers license and duplicate license ~~fees enacted in this Section~~ to offset the actual cost of developing and maintaining the online Organ Donor Internet site established pursuant to Section 1 of this act. ~~Proceeds remaining after deduction of amounts for development and maintenance costs~~The remainder of the five cents ($0.05) shall be credited to the License to Give Trust Fund established under G.S. 20-7.4 and shall be used for the purposes authorized under G.S. 20-7.4 and G.S. 20-7.5."

SECTION 44.1.(r) G.S. 20-291 reads as rewritten:

"**§ 20-291. Representatives to carry license and display it on request; license to name employer.**

Every person to whom a sales representative, factory representative, or distributor representative license is issued shall carry the license when engaged in business, and shall display it upon request. The license shall state the name of the representative's employer. If the representative changes employers, the representative shall immediately apply to the Division for a license that states the name of the representative's new employer. The fee for issuing a license stating the name of a new employer is ~~one-half the fee set in G.S. 20-289 for an annual license.~~ ten dollars ($10.00)."

SECTION 44.1.(s) This section becomes effective October 1, 2005, and applies to fees collected on or after that date.

PART XLV. INDUSTRIAL COMMISSION FEES

Requested by: Representatives Hunter, Warren

INDUSTRIAL COMMISSION FEES

SECTION 45.1.(a) G.S. 97-73 reads as rewritten:

"**§ 97-73. ~~Expenses of making examinations.~~Fees.**

(a) The Industrial Commission ~~shall~~ may establish by rule a schedule of fees for examinations ~~conducted and~~ conducted, reports ~~made pursuant to G.S. 97-61.1 through 97-61.6 and 97-67 through 97-71.~~ made, documents filed, and agreements reviewed under this Article. The fees shall be collected in accordance with rules adopted by the Industrial Commission.

(b), (c) Repealed by Session Laws 2003-284, s. 10.33(d), effective July 1, 2003."

SECTION 45.1.(b) This section is effective when it becomes law.

PART XLVI. MISCELLANEOUS PROVISIONS

Requested by: Representatives Alexander, Gibson, Luebke, Wainwright

EFFECTIVE DATE

SECTION 46.6. Except as otherwise provided, this act becomes effective July 1, 2005.

SENATE BILL 622:
2005 Appropriations Act

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 14, 2005
Introduced by:	Sen. Garrou	**Summary by:**	Cindy Avrette
Version:	PCS to Fourth Edition S622-PCS35240		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 622 makes the following tax law changes:***

- ***It increases the excise tax on cigarettes 25¢ from 5¢ a pack to 30¢ a pack. It also increases the excise tax on all other tobacco products except cigars from 2% of the cost price to 6%, effective July 1, 2005.***
- ***It equalizes the privilege tax on entertainment by taxing movies and live entertainment at the same rate as video rentals, cable TV, and satellite TV[1], effective September 1, 2005.***
- ***It equalizes the gross premiums tax on insurance companies by taxing HMOs at the same 1.9% rate as other insurers, effective for taxable years beginning on or after January 1, 2006.***
- ***It provides a refundable tax credit for qualifying expenses of a production company, effective for taxable years beginning on or after January 1, 2005.***
- ***It provides a tax credit to a small business that provides health insurance to all of its full-time employees, effective for taxable years beginning on or after January 1, 2006.***

It also increases various fees as requested by the House Appropriation Subcommittees. The proposed committee substitute before you today, S622-PCS35240-LYxf-23, differs from the PCS considered last night in that it removes from the bill the authority for the Department of Transportation to establish and collect tolls on existing interstate highways.

BILL ANALYSIS OF TAX AND FEE PROVISIONS:

Part 8: Community Colleges

- G.S. 115D-92 allows the community colleges to establish fees for licensing proprietary schools. Fees collected go into a special fund called the Commercial Education Fund. The fees are used to support the licensure function in the System Office, but are not sufficient to cover the actual costs incurred. The State Board of Community Colleges adopted a proposed fee schedule at its November 18, 2004, meeting. The System Office asked for an increase in the fees through the regular rule making process; however, it was unable to consult with the Joint Legislative Commission on Governmental Operations about the fee increase before the 2005 Legislative Session began. The System Office would like to implement the new fees beginning with the next school year. To accommodate this need, the fee amounts have been specifically set forth in this bill. There is no impact to the General Fund budget.

Part 34: Tobacco Tax Rate Changes

- Increases the tax on cigarettes by 25 cents for a total tax of 30 cents, effective July 1, 2005.

[1] The Senate tax package (contained in SB 622, 4th Edition) and the House proposal in HB 1630 would tax cable TV and satellite TV at the combined State and local sales and use tax rate.

- Increases the tax on all other tobacco products, except cigars, from 2% of cost price to 6% of cost price, effective July 1, 2005.

Part 38: Corporate, Excise, and Insurance Tax Changes

- Equalizes the gross receipts privilege tax on entertainment by taxing all forms of entertainment at a rate that equals the combined State and local sales and use tax rate, effective September 1, 2005. Currently, movies are taxed at 1% and live entertainment is taxed at 3%. Video rentals are taxed at the combined State and local sales tax rate and both the Senate in SB 622 and the House in HB 1630 have proposed taxing cable and satellite TV at the combined State and local sales tax rate.
- Equalizes the gross premiums tax on insurance companies by taxing HMOs at the same rate as other insurers. HMOs are currently taxed at 1%; this bill would tax HMOs at 1.9%, effective for taxable years beginning on or after January 1, 2006. The bill also provides for an estimated payment of the gross premiums tax by HMOs for the 2006 and 2007 calendar years.

Part 39: Tax Incentives

- Effective January 1, 2005, provides a refundable income tax credit equal to 15% of the qualifying expenses totaling at least $250,000 spent by a production company in connection with a production that is NOT political advertising, is NOT a news program or sporting event, and does NOT contain obscene material. The incentive is targeted at feature films, TV episodes, and commercial advertising. The credit sunsets January 1, 2010.
- Effective January 1, 2006, provides a tax credit to a small business that provides health insurance to all of its full-time employees. The amount of the credit would be $400 per each eligible employee for whom the taxpayer provides health insurance benefits. A small business is defined to be a taxpayer that employs no more than 25 employees throughout the taxable year. The credit would be in lieu of any expense deduction the taxpayer claimed on its income tax return for the health insurance costs. The credit sunsets January 1, 2010.

Part 40: Set Rates for Insurance Regulatory Charge and Public Utilities Fees

- Sets insurance regulatory charge at 5.5%, an increase of .5%.
- Retains the current rate for the public utility regulatory fee of 0.12% for each public utility's jurisdictional revenues and $200,000 for the electric membership corporation.

Part 41: Health and Human Services Fees

- Sets the newborn screening fee at $14. The current fee amount is $10. The increased fee amount will allow the program to become receipt-supported.
- Increases the annual license or certification fees for adult care homes; hospitals; nursing homes; home care agencies; ambulatory surgical facilities; cardiac rehabilitation certification programs; hospitals or clinics certified to perform abortions; facilities for the mentally ill, the developmentally disabled, and substance abusers; and nursing beds and adult care home beds in continuing care retirement facilities. The General Assembly established these fees in 2003. This bill would essentially double the fee amounts.

Parts 12 and 42: NER Fees

- **Part 12** expands the express permit and certification review program statewide.
- **Part 42** increases various agricultural fees.
- **Part 42** increases the cap for CAMA permit fees from $400 to $800.

Parts 14, 29, and 43: Justice and Public Safety Fees

- **Part 14** authorizes the Judicial Department to charge the full cost of production for all copies of the appellate division reports that are sold.
- **Part 29** increases the costs in criminal actions by increasing the amount collected and remitted for the supplemental pension benefits of sheriffs from 75¢ to $1.25.
- **Part 43** increases the criminal court of justice fee by $9.50; increases civil court of justice fees by $10; increases the cap on probate fees from $3,000 to $6,000; and increases the court cost for a seat belt violation from $50 to $75.
- **Part 43** imposes a $90 fee on electronic monitoring devices used for house arrests.
- **Part 43** increases the property tax rate for Butner from 20¢ to 25¢.
- **Part 43** codifies the current fee schedule for participation in the Police Information Network and, effective January 1, 2006, increases the monthly fee assessed for mobile terminals from $6 to $12.

Part 44: Department of Transportation

- **Part 44** increases various fees payable to the Department of Transportation.

Part 45: Industrial Commission Fees

- Authorizes the Industrial Commission to adopt a fee for reviewing Form 21 agreements

S0622e4-SMRB-PCS35240

SB 622- 2005 Appropriations Act - PCS

Taxes				
Section	**Proposal**	**Effective**	**2005-06**	**2006-07**
34.1	Tobacco Tax Rate Changes - Increases tax on cigarettes to 30 cents, increases tax on OTP (except cigars) to 6%.	7/1/2005	142.0	165.0
38.3	Equalize Tax on Entertainment - from 3% and 1% to 7% Gross Recp.	9/1/2005	18.0	30.0
38.4	Equalize Gross Premiums Tax - Increase tax on HMOs to 1.9%	1/1/2006	14.3	14.3
39.1	Film Industry Job Incentives	1/1/2005	(6.0)	(6.0)
39.2	Small Business Health Insurance Credit	1/1/2006	(17.7)	(39.8)
	SUBTOTAL		150.6	163.5
	Additional GF Fee Revenue (see page 2)		20.8	20.8
	TOTAL		171.4	184.3

Fees

Fees that Affect the General Fund

Section	Fee	Description	2005-06	2006-07	Same as Senate?
14.7	Increase Charges for Appellate Division Reports to Actual Cost	As noted in the title.	0.12	0.12	Yes
43.1	General Court of Justice Fee Increases	Increases several court related fees.	20.40	20.40	Yes
43.2	Devise Fee for House Arrest	Establishes a flat fee of $90 to be paid by offenders sentenced to Electronic House Arrest.	0.12	0.12	Yes
43.2	Increase Butner Taxes	Increases property tax public safety surcharge rate from 20 cents to 25 cents per $100.	0.16	0.16	Yes

Fees with Corresponding Cuts

Section	Fee	Description	2005-06	2006-07	Same as Senate?
41.1	Newborn Screening Fee	Sets the fee at $14.00 and makes the program self sustaining.	0.37	0.37	Yes
41.2	Division of Facility Services - DHHS	Increases several fees related to the Division.	1.80	1.80	New
42.1	Increase Various Agricultural Fees	related fees. Sets a maximum amount to charge for various fees. Differs from the Senate Budget by allowing the Department of Agriculture flexibility in setting the amount of fees they can	0.64	0.64	Similar
42.3	Increase Cap for CAMA Permit Fees	Increases the cap from $400 to $800	0.30	0.40	New
43.4	Fee for Police Information Network (PIN)	Increases the monthly fee for law enforcement agencies accessing the PIN via a mobile data terminal from $6 to $12 per devise. Effective January 1, 2006.	0.33	0.65	Yes

Other Fees

Section	Fee	Description	2005-06	2006-07	Same as Senate?
8.14	Proprietary Schools Licensing Fee	Authorizes Fee Schedule Adopted by Community College System. Funds are placed in a non-reverting special fund.	0.08	0.08	New
28.21	Establish Tollways	Allows collection of tolls on NC interstates if allowed by federal government.	n/a	n/a	New
40.1	Set Insurance Regulatory Charge	Sets rate at 5.5%	22.90		Yes
40.2	Set Regulatory Fee for Utilities Commission	Sets rate at 0.12%	Same as previous		Yes
44	DOT Fee Increases	Makes numerous fee increases. (See additional chart).	106.0 (HF) 13.0 (HTF)	144.6 (HF) 18.3 (HTF)	Similar
45.1	Industrial Commission Fees	Allows the Industrial Commission to establish a new fee for required Form 21 Agreements. Sets the new fee at $100. Funds will be used to create receipt supported positions.	0.80	0.80	Yes

Other Issues

Section	Fee	Description	2005-06	2006-07	Same as Senate?
12	Expand Express Program Review Statewide	Codifies fees for express review of certain environmental permit applications.	0.54	0.72	Yes
29.3	Increase court costs earmarked for Sheriff's supplemental pension fund	This language expends funds raised elsewhere in the bill.			Yes

Division of Facility Services
Licensure and Construction Fees

LICENSURE FEES	Current Fees		*Proposed Fees*	
Facility Type	Base Fee	Additional Fee*	*Base Fee*	*Additional Fee**
General Acute Hospitals				
1 - 49 beds	$ 125	$ 6.25	*$ 250*	*$ 12.50*
50 - 99 beds	$ 175	$ 6.25	*$ 350*	*$ 12.50*
100 - 199 beds	$ 225	$ 6.25	*$ 450*	*$ 12.50*
200 - 399 beds	$ 275	$ 6.25	*$ 550*	*$ 12.50*
400 - 699 beds	$ 375	$ 6.25	*$ 750*	*$ 12.50*
700 + beds	$ 475	$ 6.25	*$ 950*	*$ 12.50*
Other Hospitals**	$ 250	$ 6.25	*$ 500*	*$ 12.50*
Abortion Clinics	$ 350	$ 0.00	*$ 700*	*$ 0.00*
Adult Care Homes ≤ 6 Beds	$ 125	$ 0.00	*$ 250*	*$ 0.00*
Adult Care Homes > 6 Beds	$ 175	$ 6.25	*$ 350*	*$ 12.50*
Ambulatory Surgery Facilities	$ 350	$ 25.00	*$ 700*	*$ 50.00*
Cardiac Rehabilitation Facilities	$ 125	$ 0.00	*$ 250*	*$ 0.00*
Continuing Care Retirement Communities	$ 225	$ 6.25	*$ 450*	*$ 12.50*
Home Health Agencies (Medicare-certified)	$ 175	$ 0.00	*$ 350*	*$ 0.00*
Licensed-Only Home Care Agencies (non-Medicare certified)	$ 175	$ 0.00	*$ 350*	*$ 0.00*
Mental Health Facilities (Excluding ICF-MR) ≤ 6 Beds	$ 125	$ 0.00	*$ 250*	*$ 0.00*
Mental Health Facilities (ICF-MR Only) ≤ 6 Beds	$ 325	$ 0.00	*$ 650*	*$ 0.00*
Mental Health Facilities (Excluding ICF-MR) > 6 Beds	$ 175	$ 6.25	*$ 350*	*$ 12.50*
Mental Health Facilities (ICF-MR Only) > 6 Beds	$ 325	$ 6.25	*$ 650*	*$ 12.50*
Nursing Homes	$ 225	$ 6.25	*$ 450*	*$ 12.50*

* The additional fee that will be based on the number of beds, offices or rooms.

**"Other hospitals" excludes all State-owned facilities which are exempt from licensure.

Division of Facility Services
Licensure and Construction Fees

CONSTRUCTION PROJECT REVIEW FEES	Current Fees		*Proposed Fees*	
Facility Type	Base Fee	Additional Fee per Square Foot	*Base Fee*	*Additional Fee per Square Foot*
Hospitals	$ 150	$ 0.10	*$ 300*	*$ 0.20*
Nursing Homes	$ 125	$ 0.08	*$ 250*	*$ 0.16*
Ambulatory Surgical Facilities	$ 100	$ 0.08	*$ 200*	*$ 0.16*
Psyciatric Hospitals	$ 100	$ 0.08	*$ 200*	*$ 0.16*
Adult Care Homes (7+ Beds)	$ 87	$ 0.05	*$ 175*	*$ 0.10*
Family Care Homes (1-6 Beds)	$ 87	$ 0.00	*$ 175*	*$ 0.00*
ICF/MR Group Homes	$ 137	$ 0.00	*$ 275*	*$ 0.00*
Group Homes (1-3 Beds)	$ 50	$ 0.00	*$ 100*	*$ 0.00*
Group Homes (4-6 Beds)	$ 87	$ 0.00	*$ 175*	*$ 0.00*
Group Homes (7-9 Beds)	$ 112	$ 0.00	*$ 225*	*$ 0.00*
Group Homes (>9 Beds)	$ 112	$ 0.038	*$ 225*	*$ 0.075*

June 13, 2005

Major DOT Fee Increases in House Version of SB622
(NOTE: The House version is virtually identical to SB 622. Two small changes are noted below.)

The DOT fee changes in SB622 would raise revenues to the Highway Fund and Highway Trust Fund, on an annual basis, as follows:

Highway Fund	$141.0 million	($106 million first year)
Highway Trust Fund	$ 17.8 million	($ 13 million first year)
Total	$158.8 million	($119 million first year)

(The revenues shown are annualized. The revenues in FY06 would be lower by 25% than those shown as the increases would not be implemented until October 1, 2005.)

Major Changes in Fees Going to the Highway Fund (Annual Basis)

Driver License Fees

Copies of Driver License Records — $23.7 million
Increases about 60%; last fee change 1991

Operator Licenses – Class C *(most common)* — $ 5.1
Increase 31% to $4 per year; last fee change 2004

Restoration Fee *(after license revocation)* — $ 3.0
Increase 100% from $25 to $50; last fee change 1981

Commercial Operators Licenses and Endorsements — $ 2.8
Increase from $10 to $15/year for license; $1.25 to $3/year for endorsements; last fee change 1995

Staggered Registration — $63.0
Mostly automobiles and light trucks; automobile registration (tag) fees would go from $20 to $28, or 40%; last increase 1983

Truck Licenses — $22.0
Property-hauling vehicles; fees are based on weight; Increases of about 26-38%; last (significant) increase 1981

International Registration Plan — $15.8
Generally trucks used in interstate commerce; fees are apportioned among the member states; same increases as for truck licenses

June 13, 2005

Major Changes in Fees Going to the Highway Trust Fund (Annual Basis)

Certificate of Title $11.7

Increase to $40; fee set at $35 in 1989 and increased By $1 in 2004

Registration Fees $ 5.0

Miscellaneous fees set in 1989 at $10 are increased to $15; instant title fee increased from $50 to $75

Changes from SB622

Section 44.1(q) is a technical correction to pick up a Session Law that was missed in the Senate Bill.

Section 44.1(r) changes the fee for a sales, factory, or distributor representative who changes employers and must get a new license from DMV. The fee in current law is $5 (one half of the $10.00 original license); in SB 622 it is $7.50 (one half of the new $15.00 fee for the original license); in the House version it is $10.00. No significant change in revenues is expected.

DOT Fee Changes in SB622

Description	G.S. Ref.	Last Fee Change	Fee Amount		% Increase	New Fee Amount		% Increase	Revenues FY04	Annual Increase
Driver's License Fees										
Chauffeurs License-Class A&B	20-7 (l)	11/2004	$4.30	per year	-7%	$ 4.00			$ 129,004	$ (9,000)
Operators License-Class C	20-7 (l)	11/2004	$3.05	per year	31%	$ 4.00			$ 16,291,746	$ 5,074,478
Duplicate License	20-14	11/2004	$10.05		0%	$ 10.00			$ 5,735,130	$ (28,533)
Learners Permit (Incl CDL Permit)	20-7(l) & 20-37.13	8/1/1991	$10.00		50%	$ 15.00			$ 1,796,750	$ 898,375
Restoration Fee (inc 1/2 of DWI)	20-7(i1)	7/1/1981	$25.00		100%	$ 50.00			$ 3,031,478	$ 3,031,478
Special ID Card (same as duplicate)	20-14 20-37.7(d)	8/1/1991	$10.00		50%	$ 15.00			$ 2,284,250	$ 1,142,125
Record Fee (MVR)	20-26(c)	8/1/1991	$5/$7		60%	$8/$11			$ 39,467,378	$ 23,680,427
Drivers Improvement Clinic	20-16(e)	10/1/1982	$25		100%	$ 50.00			$ 86,678	$ 86,678
Commercial Application	20-37.15(a1)	9/1/1990	$20		50%	$ 30.00			$ 706,743	$ 353,372
Commercial License, Class A, B, C	20-37.16(d)	1/1/1995	$10/year		50%	$ 15.00			$ 2,963,866	$ 1,481,933
Commercial Endorsement	20-37.16(d)	1/1/1995	$1.25/year		140%	$ 3.00			$ 960,707	$ 1,344,990
Provisional License (Limited)	20-11(j)		$10		50%	$ 15.00			$ 1,148,184	$ 574,092
Staggered Registration									$ 157,378,509	$ 62,951,404
Automobile	20-87	9/1/1983	$20.00		40%	$ 28.00				
Trucks 4,000 lbs. & less	20-88(b)(1)	9/1/1983	$21.50		30%	$ 28.00				
Motorcycle	20-87(6)	9/1/1983	$9.00		67%	$ 15.00				
Trailer-Boat-Utility-Semi	20-88(c)	9/1/1983	$10.00		90%	$ 19.00				
Trailer-House	20-87(9)	10/1/1989	$7.00		57%	$ 11.00				
Temporary Plate (10 day)	20.50 (b)	10/1/1989	$3.00		67%	$ 5.00				
U-Drive It - 15 Passengers or fewer	20-87(1)	9/1/1983	$41.00		24%	$ 51.00				
Buses		9/1/1983	$23.00		43%	$ 33.00				
Misc. Registration Fees									$ 2,787,378	$ 1,839,669
Salvage Titles	20-85 (a)	8/15/1989	$10		50%	$ 15.00				
Late Penalty Fee	20-73©	8/1/1991	$10		50%	$ 15.00				
Certification Fee	20-42(b)	8/1/1991	$5		100%	$ 10.00				
Truck License	20-88	7/1/1981							$ 66,816,761	$ 22,049,531
			Farmer	Other	%Inc. Fmr	Farmer	Other	%Inc. Other		
4,000 lbs. and less			$0.23	$0.46	26%	$ 0.29	$ 0.59	28%		
4,001 - 9,000 lbs.		10/1/1993	$0.29	$0.63	38%	$ 0.40	$ 0.81	29%		
9,001 - 13,000 lbs.		10/1/1993	$0.37	$0.78	35%	$ 0.50	$ 1.00	28%		
13,001 - 17,000 lbs.		10/1/1993	$0.51	$1.06	33%	$ 0.68	$ 1.36	28%		
Over 17,000 lbs.		10/1/1993	$0.58	$1.20	33%	$ 0.77	$ 1.54	28%		
Lien Recording Fee (License & Theft)	20-77	7/1/1991	$10		50%	$ 15.00			$ 228,420	$ 114,210

DOT Fee Changes in SB622

Description	G.S. Ref.	Last Fee Change	Fee Amount		% Increase	New Fee Amount		% Increase	Revenues FY04	Annual Increase
			Farmer	Other	%Inc. Fmr	Farmer	Other	%Inc. Other		
International Registration Plan	20-86.1	7/1/1981							$ 47,623,500	$ 15,715,755
			$0.23	$0.46	26%	$ 0.29	$ 0.59	28%		
			$0.29	$0.63	38%	$ 0.40	$ 0.81	29%		
			$0.37	$0.78	35%	$ 0.50	$ 1.00	28%		
			$0.51	$1.06	33%	$ 0.68	$ 1.36	28%		
			$0.58	$1.20	33%	$ 0.77	$ 1.54	28%		
Dealer and Manufacturers License Fees	20-289								$ 1,071,555	$ 478,985
Distributors		7/1/1992	$50		40%	$ 70.00				
Wholesalers		7/1/1992	$50		40%	$ 70.00				
Manufacturers		7/1/1992	$100		50%	$ 150.00				
Factory Branch		7/1/1992	$70		43%	$ 100.00				
Factory and Distributor Rep		7/1/1992	$10		50%	$ 15.00				
Salesman		7/1/1992	$10		50%	$ 15.00				
Dealers		7/1/1992	$50		40%	$ 70.00				
Motor Carrier Fees	20-385	10/10/1983								
Registration of Exempt Operations			$25		80%	$ 45.00			$ 418,144	$ 167,258
Certificate of Exemption			$25		80%	$ 45.00				
Emergency Permit			$10		80%	$ 18.00				
Title Fees (Highway Trust Fund)										
Certificate of Title	*20-85*	*8/15/1989*	*$35*		*14%*	*$ 40.00*			*$ 83,715,429*	*$ 11,720,160*
Lien Recording or Removal Fee (HTF)	*20-85*	*8/15/1989*	*$10*		*50%*	*$ 15.00*			*$ 2,141,361*	*$ 1,070,681*
Registration Fees (Highway Trust Fund)									*$ 10,067,099*	*$ 5,033,549*
Duplicate/Corrected Title	*20-85*	*8/15/1989*	*$10*		*50%*	*$ 15.00*				
Repossessor Title	*20-85*	*8/15/1989*	*$10*		*50%*	*$ 15.00*				
Transfer of Registration Plate	*20-85*	*8/15/1989*	*$10*		*50%*	*$ 15.00*				
Replacement of Registration Plate	*20-85*	*8/15/1989*	*$10*		*50%*	*$ 15.00*				
Duplicate Registration Card	*20-85*	*8/15/1989*	*$10*		*50%*	*$ 15.00*				
Manufacturer of Dealer Title	*20-85*	*8/15/1989*	*$10*		*50%*	*$ 15.00*				
Instant Title	*20-85.1(b)*	*8/15/1989*	*$50*		*50%*	*$ 75.00*				
Special Identification Card (11-15)	20-37.7	8/1/1991	$10		50%	$ 15.00			$ 137,790	$ 68,895
Sale of Collision Reports	20-42	7/1/1981	$4		25%	$ 5.00			$ 18,195	$ 4,549
									$ 447,006,055	$ 158,845,060

Note: Fees that go to the Highway Trust Fund are shown in italics.

Highway Fund	**$ 351,082,166**	**$ 141,020,670**
Highway Trust Fund	***$ 95,923,889***	***$ 17,824,390***

Note: Fee changes would be effective 10/1/05. The Annual Increase for FY06 would be 75% of the totals shown.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

SB 622 A BILL TO BE ENTITLED AN ACT TO MAKE BASE BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS OF STATE DEPARTMENTS, INSTITUTIONS, AND AGENCIES, AND FOR OTHER PURPOSES.

☒ With a favorable report as to the House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill 2 and recommendation that the House committee substitute bill be re-referred to the Committee on APPROPRIATIONS.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1051
PROPOSED COMMITTEE SUBSTITUTE H1051-CSLK-21 [v.2]

5/27/2005 3:44:10 PM

Short Title: Macon-Jackson Regional Airport Authority. (Local)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO ENABLE THE CREATION OF A MACON-JACKSON REGIONAL AIRPORT AUTHORITY; TO LIMIT OPERATIONS OF SOME FIXED AND ROTARY WING AIRCRAFT; AND TO CHANGE THE MEMBERSHIP OF THE JACKSON COUNTY AIRPORT AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. There is hereby created the "Macon-Jackson Regional Airport Authority" (for brevity hereinafter referred to as the "Airport Authority"), which shall be a body both corporate and politic, having the powers and jurisdiction hereinafter enumerated and such other and additional powers as shall be conferred upon it by general law and future acts of the General Assembly.

SECTION 2. The Airport Authority shall consist of not less than five and not more than nine members. The exact provisions relating to the appointment, terms, succession, removal, and vacancies of members, and other similar matters shall be jointly determined and adopted by a resolution of the board of county commissioners of each county.

Each member shall take and subscribe before the Clerk of Court of Macon County or the Clerk of Court of Jackson County, depending on the member's residence, an oath of office and file that oath with the board of county commissioners of both counties. Membership on the Airport Authority and the Macon County Board of Commissioners or the Jackson County Board of Commissioners shall not constitute dual office holding within the meaning of Section 9 of Article VI of the North Carolina Constitution.

SECTION 3. The Airport Authority may adopt suitable bylaws for its management. The members of the Airport Authority may receive compensation, per diem, or otherwise as the Macon County Board of Commissioners and the Jackson County Board of Commissioners from time to time jointly determine. Members shall be allowed and paid their actual expenses incurred in transacting the business and at the instance of the Airport Authority. Members of the Airport Authority shall not be

personally liable for their acts as members of the Airport Authority, except for acts resulting from misfeasance or malfeasance.

SECTION 4(a). The Airport Authority shall constitute a body, both corporate and politic, and shall have the following powers and authority:

(1) To purchase, acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports and landing fields for the use of airplanes and other aircraft within the limits of the counties and for this purpose to purchase, improve, own, hold, lease, or operate real or personal property. The Airport Authority may exercise these powers alone or in conjunction with the counties of Macon and Jackson.

(2) To sue and be sued in the name of the Airport Authority, to make contracts and hold any personal property necessary for the exercise of the powers of the Airport Authority, and acquire by purchase, lease, or otherwise any existing lease, leasehold right, or other interest in any existing airport located in the county.

(3) To charge and collect reasonable and adequate fees and rents for the use of airport property or for services rendered in the operation of the airport.

(4) To make all reasonable rules and regulations it deems necessary for the proper maintenance, use, operation, and control of the airport, including public safety, and provide penalties for the violation of these rules and regulations; provided, the rules and regulations and schedules of fees not be in conflict with the laws of North Carolina and the regulations of the Federal Aviation Administration. The Airport Authority may administer and enforce any airport zoning regulations adopted by the counties of Macon or Jackson depending on the location of the airport.

(5) To issue bonds pursuant to Article 5 of Chapter 159 of the General Statutes.

(6) To sell, lease, or otherwise dispose of any property, real or personal, belonging to the Airport Authority, according to the procedures described in Article 12 of Chapter 160A of the General Statutes, but no sale of real property shall be made without the approval of the board of commissioners of the county in which the real property is located.

(7) To purchase any insurance that the Federal Aviation Administration or the Airport Authority shall deem necessary. The Airport Authority shall be responsible for any and all insurance claims or liabilities.

(8) To deposit or invest and reinvest any of its funds as provided by the Local Government Finance Act, as it may be amended from time to time, for the deposit or investment of unit funds.

(9) To purchase any of its outstanding bonds or notes.

(10) To operate, own, lease, control, regulate, or grant to others, for a period not to exceed 20 years, the right to operate on any airport

premises restaurants, snack bars, vending machines, food and beverage dispensing outlets, rental car services, catering services, novelty shops, insurance sales, advertising media, merchandising outlets, motels, hotels, barbershops, automobile parking and storage facilities, automobile service establishments, and all other types of facilities as may be directly or indirectly related to the maintenance and furnishing to the general public of a complete air terminal installation.

(11) To contract with persons, firms, or corporations for terms not to exceed 20 years, for the operation of airline-scheduled passenger and freight flights, nonscheduled flights, and any other airplane activities not inconsistent with the grant agreements under which the airport property is held.

(12) To erect and construct buildings, hangars, shops, and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; to lease these improvements and facilities for a term or terms not to exceed 20 years; to borrow money for use in making and paying for these improvements and facilities, secured by and on the credit only of the lease agreements in respect to these improvements and facilities, and to pledge and assign the leases and lease agreements as security for the authorized loans.

(13) Subject to the limitations set out in this act, to have all the same power and authority granted to cities and counties pursuant to Chapter 63 of the General Statutes, Aeronautics.

(14) To have a corporate seal, which may be altered at will.

SECTION 4(b). The Airport Authority shall possess the same exemptions in respect to payment of taxes and license fees and be eligible for sales and use tax refunds to the same extent as provided for municipal corporations by the laws of the State of North Carolina.

SECTION 5. The Airport Authority may acquire from the counties by agreement with the counties, and the counties may grant and convey, either by gift or for such consideration as the county may deem wise, any real or personal property which it now owns or may hereafter acquire, including nontax monies, and which may be necessary for the construction, operation, and maintenance of any airport located in the counties.

SECTION 6. Any lands acquired, owned, controlled, or occupied by the Airport Authority shall be, and are declared to be, acquired, owned, controlled, and occupied for a public purpose.

SECTION 7. Private property needed by the Airport Authority for any airport, landing field, or as facilities of an airport or landing field, may be acquired by gift or devise, or may be acquired by private purchase or by the exercise of eminent domain pursuant to Chapter 40A of the General Statutes, as a local public condemnor, including the provisions of G.S. 40A-42. If property acquired by gift, devise, purchase, or condemnation has a burial ground or graveyard, then it shall be lawful for the Airport

Authority, after 30 days' notice to the surviving spouse or next of kin of the deceased buried there or the person in control of the graves, if they are known, to remove the interred body and reinter the body in another cemetery in Macon County or Jackson County. If no surviving spouse or next of kin or person in control can be found, then the Airport Authority may advertise for four consecutive weeks in a newspaper published in Macon County and Jackson County of the intended removal of the graves. The removal shall then be conducted under the supervision of the Clerk of the Superior Court of Macon County or the Clerk of the Superior Court of Jackson County or his or her representative. The expense of the removal shall be borne by the Airport Authority.

SECTION 8. The Airport Authority shall make an annual report to the Macon County Board of Commissioners and the Jackson County Board of Commissioners setting forth in detail the operations and transactions conducted by it pursuant to this act. The Airport Authority shall not have the power to pledge the credit of Macon County or Jackson County, or any subdivision thereof, or to impose any obligation on Macon County or Jackson County, or any of its subdivisions, except when that power is expressly granted by statute.

SECTION 9. Subject to the limitations as set out in this act, all rights and powers given and granted to counties or municipalities by general law, which may now be in effect, or enacted in the future, relating to the development, regulation, and control of municipal airports and the regulation of aircraft are now concurrently vested in the Airport Authority. The Macon County Board of Commissioners and the Jackson County Board of Commissioners may delegate its powers under these acts to the Airport Authority, and the Airport Authority shall have concurrent rights with Macon County and Jackson County to control, regulate, and provide for the development of aviation in Macon County or Jackson County.

SECTION 10. The Airport Authority may contract with and accept grants from the Federal Aviation Administration, the State of North Carolina, or any of the agencies or representatives of either of said governmental bodies relating to the purchase of land and air easements and to the grading, constructing, equipping, improving, maintaining, or operating of an airport or its facilities or both.

SECTION 11. The Airport Authority may employ or contract with any agents, engineers, attorneys, and other persons whose services may be deemed by the Airport Authority to be necessary and useful in carrying out the provisions of Sections 1 through 10 of this act.

SECTION 12. The Macon County Board of Commissioners and the Jackson County Board of Commissioners may appropriate funds derived from any source including ad valorem taxes to carry out the provisions of this act in any proportion or upon any basis as may be determined by the Macon County Board of Commissioners or the Jackson County Board of Commissioners. The Macon County Board of Commissioners and the Jackson County Board of Commissioners may provide county services to the Airport Authority upon any basis as may be determined by the Macon County Board of Commissioners or the Jackson County Board of Commissioners.

SECTION 13. The Airport Authority may expend the funds that are appropriated by the county for joint airport purposes and may pledge the credit of the Airport Authority to the extent of the appropriated funds.

SECTION 14. The Airport Authority shall elect from among its members a chair and other officers at its initial meeting and then biennially thereafter. Officers shall be eligible to succeed themselves in office and to serve consecutive terms at the will of the members of the Airport Authority. A majority of the Airport Authority shall control its decisions. Each member of the Airport Authority, including the chair, shall have one vote. The Airport Authority shall meet at the places and times designated by the chair.

SECTION 15. If an airport established pursuant to this act ceases to be operated by the Airport Authority, or if any property acquired pursuant to this act for airport purposes is abandoned, then the title to that real or personal property, or rights under any existing lease, shall revert to and vest in the county in which the property is located; and on the sale of that property, the proceeds shall vest in the county in which the property is located.

SECTION 16. The powers granted to the Airport Authority shall not be effective until the members of the Airport Authority have been appointed by the Macon County Board of Commissioners and the Jackson County Board of Commissioners, acting jointly, and nothing in this act shall require either board of commissioners to make the initial appointments. It is the intent of this act to enable but not to require the formation of the Macon-Jackson Regional Airport Authority.

SECTION 17. Upon the creation of the Macon-Jackson Regional Airport Authority, either county may elect to dissolve its current county Airport Authority. The dissolution may be effectuated by a resolution of the board of county commissioners following a public hearing held on the matter, or by a resolution of the board of county commissioners ratifying a favorable binding referendum on the question of the dissolution. The referendum on the dissolution may be held at the same time as any other state or county primary, election, special election, or referendum.

SECTION 18. No fixed wing or rotary wing commercial flights may originate or terminate in Macon County or Jackson County unless they originate or terminate from an airport approved by the Federal Aviation Authority and operated pursuant to Chapter 63 of the General Statutes. This section shall not apply to fixed wing or rotary wing aircraft operated by or at the direction of governmental agencies or providing medical air services.

SECTION 19. (a) Section 2 of S.L. 1997-22 reads as rewritten:

"Section 2. The Airport Authority shall consist of ~~six~~ seven members, who shall be residents of Jackson County and who shall be appointed to staggered terms of six years by the Jackson County Board of Commissioners. Members may succeed themselves in office and serve more than one term. Two initial appointments to the Airport Authority shall be for two years, two initial appointments to the Airport Authority shall be for four years, and the remaining two initial appointments to the Airport Authority shall be for six years. When vacancies occur in the membership of the Airport Authority, for any reason, the remaining members of the Airport Authority shall submit a list of two or more candidates to the Jackson County Board of

Commissioners who shall select one from that list to fill the unexpired term of the vacant office. Each member shall take and subscribe before the Clerk of Superior Court of Jackson County an oath of office and file the same with the Jackson County Board of Commissioners. Membership on the Jackson County Board of Commissioners and the Airport Authority shall not constitute double office holding within the meaning of Article VI, Section 9 of the Constitution of North Carolina."

(b) The new member of the Jackson County Airport Authority created by enactment subsection (a) of this section shall be appointed in the same manner used for filling vacancies in the membership of the existing Airport Authority.

SECTION 20. If any one or more sections, clauses, sentences, or parts of this act shall be adjudged invalid, such judgment shall not affect, impair, or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provisions held invalid, and the inapplicability or invalidity of any section, clause, sentence, or part of this act in one or more instances or circumstances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

SECTION 21. Sections 1 through 17 of this act shall expire on January 1, 2007, if the Macon County Board of County Commissioners and the Jackson County Board of County Commissioners have not appointed members of the Macon-Jackson Regional Airport Authority prior to that date.

SECTION 22. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1051

Short Title:	Macon-Jackson Regional Airport Authority.	(Local)
Sponsors:	Representatives Haire and West (Primary Sponsors).	
Referred to:	Finance.	

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO CONSOLIDATE THE EXISTING MACON COUNTY AIRPORT AUTHORITY AND THE EXISTING JACKSON COUNTY AIRPORT AUTHORITY TO CREATE A NEW MACON-JACKSON REGIONAL AIRPORT AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. S.L. 1999-238 reads as rewritten:

"Section 1. There is hereby created the ~~"Macon County~~"Macon-Jackson Regional Airport Authority" (for brevity hereinafter referred to as the "Airport Authority"), which shall be a body both corporate and politic, having the powers and jurisdiction hereinafter enumerated and such other and additional powers as shall be conferred upon it by general law and future acts of the General Assembly.

Section 2. The Airport Authority shall consist of five members, who shall be residents of Macon County or Jackson County and who shall be appointed to staggered terms of six years by agreement of the Macon County Board of Commissioners and the Jackson County Board of Commissioners. Members may succeed themselves in office and serve more than one term. Two initial appointments to the Airport Authority shall be for two years, two initial appointments to the Airport Authority shall be for four years, and the remaining initial appointment to the Airport Authority shall be for six years.

When vacancies occur in the membership of the Airport Authority, for any reason, the remaining members of the Airport Authority shall submit a list of two or more candidates to the Macon County Board of Commissioners and the Jackson County Board of Commissioners. The ~~Board~~ Boards of Commissioners shall either jointly select one from that list to fill the unexpired term of the vacant office or shall request that the Airport Authority submit additional candidates. The Airport Authority shall submit additional candidates upon request until the ~~Board~~ Boards of Commissioners ~~selects~~ select a member from the candidates submitted.

Each member shall take and subscribe before the Clerk of Superior Court of Macon County or the Clerk of the Superior Court of Jackson County, depending on the member's residence, an oath of office and file the same with the Macon County Board of Commissioners. Membership on the Macon County Board of Commissioners or the Jackson County Board of Commissioners and the Airport Authority shall not constitute double office holding within the meaning of Article VI, Section 9, of the Constitution of North Carolina.

Section 3. The Airport Authority may adopt suitable bylaws for its management. The members of the Airport Authority may receive compensation, per diem, or otherwise as the Macon County Board of Commissioners and the Jackson County Board of Commissioners from time to time ~~determines.~~jointly determine. Members shall be allowed and paid their actual expenses incurred in transacting the business and at the instance of the Airport Authority. Members of the Airport Authority shall not be personally liable for their acts as members of the Airport Authority, except for acts resulting from misfeasance or malfeasance.

Section 4.(a) The Airport Authority shall constitute a body, both corporate and politic, and shall have the following powers and authority:

(1) To purchase, acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports and landing fields for the use of airplanes and other aircraft within the limits of the county and for this purpose to purchase, improve, own, hold, lease, or operate real or personal property. The Airport Authority may exercise these powers alone or in conjunction with the ~~County~~ counties of ~~Macon.~~Macon and Jackson.

(2) To sue and be sued in the name of the Airport Authority, to make contracts and hold any personal property necessary for the exercise of the powers of the Airport Authority, and acquire by purchase, lease, or otherwise any existing lease, leasehold right, or other interest in any existing airport located in the county.

(3) To charge and collect reasonable and adequate fees and rents for the use of airport property or for services rendered in the operation of the airport.

(4) To make all reasonable rules and regulations it deems necessary for the proper maintenance, use, operation, and control of the airport, including public safety, and provide penalties for the violation of these rules and regulations; provided, the rules and regulations and schedules of fees not be in conflict with the laws of North Carolina and the regulations of the Federal Aviation Administration. The Airport Authority may administer and enforce any airport zoning regulations adopted by the ~~County~~ counties of ~~Macon.~~Macon or Jackson depending on the location of the airport.

(5) To issue bonds pursuant to Article 5 of Chapter 159 of the General Statutes.

(6) To sell, lease, or otherwise dispose of any property, real or personal, belonging to the Airport Authority, according to the procedures described in Article 12 of Chapter 160A of the General Statutes, but no sale of real property shall be made without the approval of the ~~Macon County~~ Board of ~~Commissioners.~~Commissioners of the county in which the real property is located.

(7) To purchase any insurance that the Federal Aviation Administration or the Airport Authority shall deem necessary. The Airport Authority shall be responsible for any and all insurance claims or liabilities.

(8) To deposit or invest and reinvest any of its funds as provided by the Local Government Finance Act, as it may be amended from time to time, for the deposit or investment of unit funds.

(9) To purchase any of its outstanding bonds or notes.

(10) To operate, own, lease, control, regulate, or grant to others, for a period not to exceed 20 years, the right to operate on any airport premises restaurants, snack bars, vending machines, food and beverage dispensing outlets, rental car services, catering services, novelty shops, insurance sales, advertising media, merchandising outlets, motels, hotels, barbershops, automobile parking and storage facilities, automobile service establishments, and all other types of facilities as may be directly or indirectly related to the maintenance and furnishing to the general public of a complete air terminal installation.

(11) To contract with persons, firms, or corporations for terms not to exceed 20 years, for the operation of airline-scheduled passenger and freight flights, nonscheduled flights, and any other airplane activities not inconsistent with the grant agreements under which the airport property is held.

(12) To erect and construct buildings, hangars, shops, and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; to lease these improvements and facilities for a term or terms not to exceed 20 years; to borrow money for use in making and paying for these improvements and facilities, secured by and on the credit only of the lease agreements in respect to these improvements and facilities, and to pledge and assign the leases and lease agreements as security for the authorized loans.

(13) Subject to the limitations set out in this act, to have all the same power and authority granted to cities and counties pursuant to Chapter 63 of the General Statutes, Aeronautics.

(14) To have a corporate seal, which may be altered at will.

Section 4.(b) The Airport Authority shall possess the same exemptions in respect to payment of taxes and license fees and be eligible for sales and use tax refunds to the same extent as provided for municipal corporations by the laws of the State of North Carolina.

Section 5. The Airport Authority may acquire from the ~~county,~~ counties by agreement with the ~~county,~~counties, and the ~~county~~ counties may grant and convey, either by gift or for such consideration as the county may deem wise, any real or personal property which it now owns or may hereafter acquire, including nontax monies, and which may be necessary for the construction, operation, and maintenance of any airport located in the ~~county.~~counties.

Section 6. Any lands acquired, owned, controlled, or occupied by the Airport Authority shall be, and are declared to be, acquired, owned, controlled, and occupied for a public purpose.

Section 7. Private property needed by the Airport Authority for any airport, landing field, or as facilities of an airport or landing field, may be acquired by gift or devise, or may be acquired by private purchase or by the exercise of eminent domain pursuant to Chapter 40A of the General Statutes, as a local public condemnor, including the provisions of G.S. 40A-42. If property acquired by gift, devise, purchase, or condemnation has a burial ground or graveyard, then it shall be lawful for the Airport Authority, after 30 days' notice to the surviving spouse or next of kin of the deceased buried there or the person in control of the graves, if they are known, to remove the interred body and reinter the body in another cemetery in Macon County or Jackson County. If no surviving spouse or next of kin or person in control can be found, then the Airport Authority may advertise for four consecutive weeks in a newspaper published in Macon County and Jackson County of the intended removal of the graves. The removal shall then be conducted under the supervision of the Clerk of the Superior Court of Macon County or the Clerk of the Superior Court of Jackson County or his or her representative. The expense of the removal shall be borne by the Airport Authority.

Section 8. The Airport Authority shall make an annual report to the Macon County Board of Commissioners and the Jackson County Board of Commissioners setting forth in detail the operations and transactions conducted by it pursuant to this act. The Airport Authority shall not have the power to pledge the credit of Macon County or Jackson County, or any subdivision thereof, or to impose any obligation on Macon County or Jackson County, or any of its subdivisions, except when that power is expressly granted by statute.

Section 9. Subject to the limitations as set out in this act, all rights and powers given and granted to counties or municipalities by general law, which may now be in effect, or enacted in the future, relating to the development, regulation, and control of municipal airports and the regulation of aircraft are now concurrently vested in the Airport Authority. The Macon County Board of Commissioners and the Jackson County Board of Commissioners may delegate its powers under these acts to the Airport Authority, and the Airport Authority shall have concurrent rights with Macon County and Jackson County to control, regulate, and provide for the development of aviation in Macon County or Jackson County.

Section 10. The Airport Authority may contract with and accept grants from the Federal Aviation Administration, the State of North Carolina, or any of the agencies or representatives of either of said governmental bodies relating to the purchase of land

and air easements and to the grading, constructing, equipping, improving, maintaining, or operating of an airport or its facilities or both.

Section 11. The Airport Authority may employ or contract with any agents, engineers, attorneys, and other persons whose services may be deemed by the Airport Authority to be necessary and useful in carrying out the provisions of Sections 1 through 10 of this act.

Section 12. The Macon County Board of Commissioners and the Jackson County Board of Commissioners may appropriate funds derived from any source including ad valorem taxes to carry out the provisions of this act in any proportion or upon any basis as may be determined by the Macon County Board of Commissioners or the Jackson County Board of Commissioners. The Macon County Board of Commissioners and the Jackson County Board of Commissioners may provide county services to the Airport Authority upon any basis as may be determined by the Macon County Board of Commissioners or the Jackson County Board of Commissioners.

Section 13. The Airport Authority may expend the funds that are appropriated by the county for joint airport purposes and may pledge the credit of the Airport Authority to the extent of the appropriated funds.

Section 14. The Airport Authority shall elect from among its members a chair and other officers at its initial meeting and then biennially thereafter. Officers shall be eligible to succeed themselves in office and to serve consecutive terms at the will of the members of the Airport Authority. A majority of the Airport Authority shall control its decisions. Each member of the Airport Authority, including the chair, shall have one vote. The Airport Authority shall meet at the places and times designated by the chair.

Section 15. If an airport established pursuant to this act ceases to be operated by the Airport Authority, or if any property acquired pursuant to this act for airport purposes is abandoned, then the title to that real or personal property, or rights under any existing lease, shall revert to and vest in the County of Macon and on the sale of that property, the proceeds shall vest totally in the County of Macon.

Section 16. The powers granted to the Airport Authority shall not be effective until the members of the Airport Authority have been appointed by the Macon County Board of Commissioners and the Jackson County Board of Commissioners, acting jointly, and nothing in this act shall require ~~the~~ either Board of Commissioners to make the initial appointments. It is the intent of this act to enable but not to require the formation of the ~~Macon County~~ Macon-Jackson Regional Airport Authority. Upon appointment of the members of the Macon-Jackson Regional Airport Authority, the Macon County Airport Authority and the Jackson County Airport Authority, if in existence, are dissolved.

Section 17. If any one or more sections, clauses, sentences, or parts of this act shall be adjudged invalid, such judgment shall not affect, impair, or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provisions held invalid, and the inapplicability or invalidity of any section, clause, sentence, or part of this act in one or more instances or circumstances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Section 18. Chapter 955 of the 1989 Session Laws, except for Section 10 is repealed.

Section 19. This act is effective when it becomes law."

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

HOUSE BILL 1051:
Macon-Jackson Regional Airport Authority

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Haire and West
Date:	June 14, 2005	**Analysis by:**	Martha Walston
Version:	1st Edition		Committee Counsel
	H1051-CSLK-21		

SUMMARY: House Bill 1051 is a local bill that authorizes the formation of the Macon-Jackson Regional Airport Authority if the Boards of County Commissioners of Macon and Jackson Counties decide to appoint members to the proposed Airport Authority. The bill also bans most fixed wing or rotary wing commercial flights from Macon County or Jackson County unless they originate or terminate from an FAA approved airport.

House Bill 1051 also increases the membership of the Jackson County Airport Authority from six to seven members.

The original version of House Bill 1051 would have consolidated the existing Macon County Airport Authority and the existing Jackson County Airport Authority to create a new Macon-Jackson Regional Airport Authority.

BILL ANALYSIS: In 1997, the General Assembly enacted legislation enabling the Jackson County Board of Commissioners to establish the Jackson County Airport Authority. In 1989, the General Assembly enacted legislation enabling the Macon County Board of Commissioners to establish the Macon County Airport Authority and allowing the Rutherford Airport Authority to lease land to the State for a period not to exceed 30 years. In 1999, the General Assembly repealed the 1989 legislation, except for the language affecting the Rutherford Airport Authority and enacted legislation authorizing the establishment of the Macon County Airport Authority. The 1999 legislation changed the number of members of the Authority, and added to the powers of the Authority.

House Bill 1051 would authorize the Boards of County Commissioners of Macon and Jackson Counties to form the Macon-Jackson Regional Airport Authority possessing the same powers that the separate county airport authorities currently have. Upon creation of the proposed Authority, each County's Board of Commissioners may elect to dissolve its existing county airport authority. The Bill would also prohibit fixed wing or rotary wing commercial flights from originating or terminating in Macon or Jackson County unless the flights originate or terminate from an airport approved by the Federal Aviation Authority and operated under Chapter 63 (Aeronautics) of the General Statutes. Fixed wing or rotary wing aircraft operated by or at the direction of governmental agencies or providing medical air services would be exempt from this prohibition.

House Bill 1051 provides that the authorization to create the Macon-Jackson Regional Airport Authority will expire January 1, 2007, if the Macon and Jackson County Boards of Commissioners have not appointed members of the new Authority by that date.

House Bill 1051 increases the membership of the Jackson county Airport Authority from six to seven members.

BACKGROUND: On March and April of 2005, the Jackson County Board of Commissioners and Macon County Board of Commissioners adopted resolutions requesting the General Assembly to enact legislation enabling the creation of the Macon-Jackson Regional Airport Authority. According to the resolutions, the Jackson County Airport has a runway length of only 3003 feet and the topography limits further expansion of the Jackson County Airport or extension of the runway. The Macon County Airport has a runway length of 4400 feet, and there are plans to extend the runway to accommodate larger business-class jet aircraft. The Macon County Airport is only 30 miles from the Jackson County Airport and is an alternate local airport for Jackson County. The availability of the longer runway enhances the business climate in both counties and the entire southwestern mountain region, and a shared commitment of local resources will promote efficiency by eliminating the duplication of airport services and enhancing the overall level of airport services available to the southwestern mountain region.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H **D**

HOUSE BILL 1084

Committee Substitute Favorable 4/21/05

PROPOSED COMMITTEE SUBSTITUTE H1084-CSRQ-35 [v.4]

6/9/2005 10:38:31 AM

Short Title: Expunge Nonviolent Felonies/Young Offenders. (Public)

Sponsors:

Referred to:

April 4, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A YOUTHFUL OFFENDER'S CRIMINAL RECORD MAY BE EXPUNGED OF NONVIOLENT FELONIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-149. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.**

(a) For purposes of this section, the term "nonviolent felony" means any felony except the following:

(1) A Class A through F felony.

(2) A felony that includes assault as an essential element of the offense; and

(3) A felony that is an offense for which the convicted offender must register under Article 27A of Chapter 14 of the General Statutes.

(b) Notwithstanding any other provision of law, if a person is convicted of more than one nonviolent felony in the same session of court, then the multiple nonviolent felony convictions shall be treated as one nonviolent felony conviction under this section, and the expunction order issued under this section shall provide that the multiple convictions shall be expunged from the person's record in accordance with this section.

(c) Whenever any person who had not yet attained the age of 18 years at the time of the offense and has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file a petition in the court where the person was convicted for expunction of the nonviolent felony from the person's criminal record. The petition cannot be filed earlier than two

years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The person shall also perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he or she has been of good behavior for the two-year period since the date of conviction of the nonviolent felony in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage that they know the character and reputation of the petitioner in the community in which he or she lives and that the petitioner's character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential records of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts to conduct the searches and report the findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him or her are outstanding.

(6) An affidavit by the petitioner that the petitioner has performed at least 100 hours of community service since the conviction for the nonviolent felony. The affidavit shall include a list of the community services performed, a list of the recipients of the services, and a detailed description of those services.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that the judge deems desirable.

(d) The court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information if the court finds all of the following after a hearing:

(1) The petitioner has remained of good behavior and has been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the nonviolent felony in question or any active sentence, period of probation or post-release supervision has been served, whichever is later.

(2) The petitioner has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state.

(3) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him or her.

(4) The petitioner was less than 18 years old at the time of the commission of the offense in question.

(5) The petitioner has performed at least 100 hours of community service since the time of the conviction.

(6) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction.

No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of the person for any purpose.

(e) The court shall also order that the nonviolent felony conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief, or head of any other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(f) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

(g) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in the clerk's county, file with the Administrative Office of the Courts the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.

(h) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the felony which is to be expunged under this section.

(i) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred dollars ($100.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 2. This act becomes effective December 1, 2005 and expires December 1, 2012.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1084

Committee Substitute Favorable 4/21/05

Short Title: Expunge Nonviolent Felonies/Young Offenders. (Public)

Sponsors:

Referred to:

April 4, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A YOUTHFUL OFFENDER'S CRIMINAL RECORD MAY BE EXPUNGED OF NONVIOLENT FELONIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-149. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.**

(a) For purposes of this section, the term "nonviolent felony" means any felony except the following:

(1) A Class A through E felony.

(2) A felony that includes assault as an essential element of the offense; and

(3) A felony that is an offense for which the convicted offender must register under Article 27A of Chapter 14 of the General Statutes.

(b) Notwithstanding any other provision of law, if a person is convicted of more than one nonviolent felony in the same session of court, then the multiple nonviolent felony convictions shall be treated as one nonviolent felony conviction under this section, and the expunction order issued under this section shall provide that the multiple convictions shall be expunged from the person's record in accordance with this section.

(c) Whenever any person who had not yet attained the age of 18 years at the time of the offense and has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file a petition in the court where the person was convicted for expunction of the nonviolent felony from the person's criminal record. The petition cannot be filed earlier than two years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The person shall

also perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the nonviolent felony in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage that they know the character and reputation of the petitioner in the community in which he or she lives and that the petitioner's character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expungements maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts to conduct the searches and report the findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him or her are outstanding.

(6) An affidavit by the petitioner that the petitioner has performed at least 100 hours of community service since the conviction for the nonviolent felony. The affidavit shall include a list of the community services performed, a list of the recipients of the services, and a detailed description of those services.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that the judge deems desirable.

(d) If the court, after a hearing, finds that the petitioner has remained of good behavior and has been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the nonviolent felony in question or any active sentence, period of probation or post-release supervision has been served, whichever is later, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him or her, the

petitioner was less than 18 years old at the time of the commission of the offense in question, and the petitioner has performed at least 100 hours of community service since the time of the conviction, then the court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of the person for any purpose.

(e) The court shall also order that the nonviolent felony conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief, or head of any other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(f) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged.

(g) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in the clerk's county, file with the Administrative Office of the Courts the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.

(h) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the felony which is to be expunged under this section.

(i) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred dollars ($100.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 2. This act becomes effective December 1, 2005.

HOUSE BILL 1084:
Expunge Nonviolent Felonies/Young Offenders

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 14, 2005
Introduced by:	Reps. Bordsen, Crawford	**Summary by:**	Drupti Chauhan
Version:	PCS to Second Edition H1084-CSRQ-35 [v.4]		

SUMMARY: The PCS for House Bill 1084 would provide for the expunction of criminal records for offenders who are under the age of 18 at the time of commission of a nonviolent felony. A waiting period of 2 years after the conviction or any period of probation, or time served for an active sentence, period of probation or post-supervised release (whichever is later); 100 hours of community service, no prior or subsequent felony or non-traffic misdemeanor offenses; and affidavits attesting to the petitioner's character are all required.

CURRENT LAW: Article 5 of the Criminal Procedure Act provides for the expunction of criminal records of certain criminal charges or convictions. Expunction is the process by which a record of criminal conviction is removed by order of the court, and the individual is restored to the status he or she occupied before the arrest or indictment. General Statute 15A-145 (Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors) allows a person convicted of a misdemeanor to file a petition for expunction of the misdemeanor from his or her criminal record if the person was under 18 at the time of a conviction or, in the case of a misdemeanor alcohol possession charge, the person was under 21 at the time of conviction. The petition may not be filed sooner than 2 years after the conviction or completion of probation and must include the following [1]:

1) an affidavit of good behavior for the two years following conviction, stating that the petitioner has not been convicted of any felony or non-traffic misdemeanor charge;

2) two affidavits of good character from persons unrelated to the petitioner;

3) a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted; and

4) affidavits of the clerk of superior court, chief of police, and sheriff of the county of the offense and where the petitioner resides showing that petitioner has not been convicted of a felony or non-traffic misdemeanor offense prior to or in the two years since the conviction in question.

If the court finds in favor of the petitioner the clerk of superior court and the appropriate law enforcement agencies must expunge the record of the conviction.

Other sections of Article 5 provide for "Expunction of records when charges are dismissed or there are finding of not guilty as a result of identity fraud"[2] and "Expunction of DNA records when charges are dismissed on appeal or pardon of innocence is granted."[3].

BILL ANALYSIS: The PCS to the bill would add a new section to Article 5 "Expunction of Records" of Chapter 15A "Criminal Procedure Act" of the General Statutes. The proposed G.S. 15A-149 would

[1] G.S. 15A-145(a)(1) through (4).
[2] G.S. 15A-147.
[3] G.S. 15A-148.

provide expunction of the criminal records of first time offenders who are under 18 years of age at the time of the commission of the nonviolent felony if there are no previous or subsequent felony or misdemeanor convictions, other than a traffic violation. The petitioner cannot have received a prior expunction. "Nonviolent felony" would include any felony ***except*** the following:

- A Class A through F felony;
- A felony that includes assault as an essential element of the offense; and
- A felony that is an offense for which the convicted offender must register under Article 27A of Chapter 14 of the General Statutes (sex offenders).

If the person is convicted of more than one nonviolent felony in the same session of court, the bill provides that the multiple nonviolent felony convictions are to be treated as one nonviolent felony conviction under the section and the expunction order is to provide that the multiple convictions are to be expunged.

The procedure to be followed by the petitioner is modeled along the lines of the existing procedures for expunction of records. The petition cannot be filed earlier than two years after the date of conviction or after the time when any active sentence, period of probation, or post-release supervision has been served, whichever occurs later. The petitioner is also required to perform at least 100 hours of community service before filing the petition for expunction.

The petition must contain at least the following:

1) An affidavit of good behavior by the petitioner for the 2 years following conviction, stating that the petitioner has not been convicted of any felony or non-traffic misdemeanor charge under the laws of the United States, this State or any other state during that time;

2) Two affidavits of good character from persons unrelated to petitioner;

3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted;

4) An application authorizing a State and national criminal record check by the Department of Justice with the results reported to the court;

5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding; and

6) An affidavit by the petitioner that he or she has performed at least 100 hours of community service since the conviction with a list of the community services performed, a list of the recipients of the services, and a detailed description of the services.

The petition is to be served on the district attorney who has 10 days to file any objections. The judge is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct. If the judge finds that the petitioner has met all of the requirements, the judge shall order that the petitioner be restored to the statute he or she had before the arrest or indictment. The judge shall also order that the nonviolent felony conviction be expunged from the records of the court and direct all law enforcement agencies to expunge their records, including the State Bureau of Investigation and the Federal Bureau of Investigation.

Any other applicable State or local government agency is directed to expunge from its records any entries made as a result of the conviction order expunged under this section. The agency is required to

also reverse any administrative actions taken against a person whose record is expunged under this section.

The clerk of superior court in each North Carolina county shall file with the Administrative Offices of the Court the names of those persons granted a discharge under the provisions of this section and the Administrative Offices of the Courts must maintain a confidential file containing the names of persons granted conditional discharges. This information can only be disclosed to judges of the General Court of Justice of North Carolina for the purpose of determining if any person charged with an offense has been previously given a discharge.

If a probation officer is assigned to the person eligible for expunction, the probation officer must notify the person of the provisions of this section. If no probation officer is assigned, then the court which heard the felony must provide notification of the possibility of expunction under this section.

The bill would set the filing fee for the expunction petition at $100.00 unless the petitioner was indigent. Fees collected would be deposited into the General Fund.

EFFECTIVE DATE: The bill would become effective December 1, 2005 and would expire December 1, 2012.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 9, 2005

TO: House Finance Committee

FROM: Chloe Gossage, Douglas Holbrook, and Aaron Paul
Fiscal Research Division

RE: PCS H1084-CSRQ-35 [v.4] – Expunge Nonviolent Felonies/Young Offenders

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:	$58,600	$40,500	$22,400	$22,400	$22,400
EXPENDITURES:					
Judicial Branch	$36,750	$26,442	$13,858	$13,858	$13,858
Justice	$64,303	$44,460	$24,618	$24,618	$24,618
TOTAL EXPENDITURES:	$101,053	$70,902	$38,476	$38,476	$38,476
POSITIONS (cumulative)-DOJ:	1	1	0.5	0.5	0.5

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch; Department of Justice

EFFECTIVE DATE: December 1, 2005

BILL SUMMARY: This bill would enact new G.S. 15A-149 to allow expunction of records for nonviolent felonies committed by first-time offenders who were under the age of 18 at the time of the conviction. In the second edition of this bill, a nonviolent felony was defined as any felony except a Class A through Class E felony, a felony with assault as an essential element of the offense, and a felony for which the convicted offender must register as a sex offender. This PCS also excludes Class F felonies from the definition of nonviolent felonies.

To be eligible for expunction under the bill, the offender must not have been previously convicted of any felony or misdemeanor other than a traffic violation, and must have remained of good behavior and been free of conviction of any felony or misdemeanor other than a traffic violation for two years from the date of conviction of the nonviolent felony to be expunged. This PCS additionally requires that the offender must not have previously been granted an expunction. A petition cannot be filed earlier than two years after the date of conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The offender must also perform 100 hours of community service before filing a petition. The provisions in this bill expire in seven years (December 1, 2012).

Source: Adapted from Administrative Office of the Courts, Research and Planning (04/27/05).

ASSUMPTIONS AND METHODOLOGY:

To estimate the number of individuals eligible to file a petition for expunction under this bill, the Administrative Office of the Courts (AOC) identified the number of defendants convicted of a single nonviolent felony while under the age of eighteen by counting the number of convictions recorded per defendant's name in each county. Using this method, AOC identified 12,056 defendants eligible for expunction due to this bill.[1]

As it would be unreasonable to assume that all 12,056 eligible individuals would petition for expunction, AOC estimated the percentage of this total that would file a petition by utilizing the petition rate for existing expunction provisions under G.S. 15A-145(a), which allows for expunction of non-traffic misdemeanors committed by offenders under age eighteen. In calendar year 2004, there were 244 petitions filed out of an estimated 6,900 eligible convictions, revealing that approximately 4 percent of eligible individuals actually sought to have their convictions expunged.

For the 12,056 existing convictions that would be eligible for expunction, AOC estimates that a greater proportion of individuals would seek expunction initially and at declining rates thereafter. However, each year AOC anticipates that an additional 725 convictions would become eligible for expunction. Of these, AOC estimates that 8 percent would seek expunction, resulting in an additional 58 petitions annually. Table 1 below outlines the total number of petitions that would be filed each year based on the estimated numbers of eligible convictions and the rate at which eligible individuals would seek expunction.

Table 1: Estimated Number of Expunction Petitions Filed

	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Existing Backlog of Convictions	12,056	12,056	12,056	12,056	12,056
Percentage Seeking Expunction	6%	4%	2%	2%	2%
Petitions	**723**	**482**	**241**	**241**	**241**
New Convictions	725	725	725	725	725
Percentage Seeking Expunction	8%	8%	8%	8%	8%
Petitions	**58**	**58**	**58**	**58**	**58**
Total Estimated Petitions	**781**	**540**	**299**	**299**	**299**

[1] To the extent that two individuals with identical names would appear to be one individual with multiple convictions, this approximation would underestimate the number of defendants eligible for expunction under this bill. However, to the extent that some individuals could have a single conviction in multiple counties, this approximation would be an overestimate.

Revenues

Under this bill there would be a $100 fee when filing a petition for expunction. AOC estimates that approximately one quarter of petitioners would be indigent and would thus not pay the fee when seeking expunction. Table 2 below outlines projected revenues if 75 percent of petitioners were to pay the $100 fee.

Table 2: Estimated Revenues Resulting from $100 Fee.

	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Total Estimated Petitions	781	540	299	299	299
Non-Indigent Petitions (75%)	586	405	224	224	224
Revenues	**$58,600**	**$40,500**	**$22,400**	**$22,400**	**$22,400**

Expenditures

Judicial Branch

Petitions filed as a result of this bill would lead to additional workload and costs for superior court and the Administrative Office of the Courts.

Superior Court: Clerks would devote time to receiving, filing, and processing petitions, as well as destroying and otherwise expunging court files and records. Additionally, the petitioner would pay a $100 fee when filing a petition, and clerks would incur time receiving and processing these payments or an affidavit of indigency if the petitioner is unable to pay. The petition must also be served on the district attorney, who would then have ten days to review and file an objection. Furthermore, the bill specifies that a hearing must be held and lists the findings that would justify expunction. Under current practice, most hearings are conducted in chambers or otherwise informally, and with rare exceptions, are uncontested. Nevertheless, expunction petitions due to this bill would require additional judge time to review affidavits and other documents, hear from the petitioner, make an evaluation, and issue an order. For cases that are contested or require closer scrutiny, significant judge time would be required.

Administrative Office of the Courts: To seek expunction under existing law, a person fills out an AOC form, which is sent to the SBI for a national record check and to the AOC to determine whether the person has previously had a record expunged. In 2004, AOC processed 6,297 of these requests. As under current law, this bill would require AOC to maintain a confidential file of expungements, but unlike some provisions of current law, this bill does not specify that a person may only seek an expungement once in their lifetime. Handling current expunction petitions requires approximately one-half of a position in order to look up the information, handle related communications with the clerk and SBI, answer citizen questions, and maintain the files. Also, AOC would incur costs for programming, development, production of forms, postage, copying, printing, mailing, and similar operating costs.

Table 3 on the next page outlines the additional costs that would be needed to process the estimated number of expunction petitions resulting from this bill each year. These figures represent additional resource costs for the Courts but, as they are formulated on fractional position estimates, do not represent the need for additional positions. The position and cost estimates are not changed with the slight reduction in petitions by excluding Class F felonies under the PCS.

Table 3: Estimated Judiciary Position and Operating Expenditures

	FY 05-06 781 Petitions		FY 06-07 540 Petitions		FY 07-08 to FY 09-10 299 Petitions	
	Positions	Cost	Positions	Cost	Positions	Cost
Deputy Clerks	0.20	$6,766	0.14	$4,736	0.08	$2,706
Superior Court Judges	0.11	$16,452	0.08	$11,965	0.04	$5,982
Assistant District Attorneys	0.11	$8,597	0.08	$6,252	0.04	$3,126
AOC Staff	0.07	$3,345	0.05	$2,389	0.03	$1,434
Operating Costs	-	$1,590	-	$1,100	-	$610
Total		**$36,750**		**$26,442**		**$13,858**

Department of Justice

The State Bureau of Investigation (SBI) in the Department of Justice is involved in the expunction process in two ways:

1. The SBI reviews applications for expunction to determine whether the applicant is eligible, and transmits that information to the Court system.
2. Upon a judicial order for expunction, the SBI removes information from its databases and forwards the expunction order to the Federal Bureau of Investigation.

The workload of four different positions in the SBI is affected by this bill – two processing assistants, a fingerprint technician supervisor, and an attorney. It requires a total of approximately 67 minutes of staff time to process an application and 172 minutes of staff time to process an expunction order. The SBI estimates that 87 percent of applications result in expunction orders. Using data and methodology from the Administrative Office of the Courts, we estimate the following:

Table 4: Estimated SBI Position and Operating Expenditures

	2005-06	2006-07	2007-08
Number of applications	781	540	299
Number of orders (87%)	679	470	260
Cost per Application	$27.79	$27.79	$27.79
Cost per Order	$61.24	$61.24	$61.24
Postage per Order	$1.27	$1.27	$1.27
TOTAL	**$64,303**	**$44,460**	**$24,618**
Positions required	**1.30**	**0.90**	**0.50**

The staff time required to process 781 applications is equivalent to one full-time position. Therefore, the box on the front page reflects one additional position required for the SBI in FY 2005-06. Position requirements will decrease in later years as workload declines.

SOURCES OF DATA: Administrative Office of the Courts, Department of Justice

TECHNICAL CONSIDERATIONS:

1. Effective date: This bill would be effective December 1, 2005. AOC notes that considerable preparation would be necessary to implement this bill, including hiring and training personnel, modifying computer programs, and coordination between AOC and the SBI to prepare for the

anticipated increase in petitions. AOC expects that an effective date no earlier than January 1, 2006 would be necessary to implement the bill.

2. Notice to Department of Correction and Division of Motor Vehicles: The bill does not include the Department of Correction or Division of Motor Vehicles among the agencies to whom the Clerk must send a certified copy of an expungement order. The mechanism by which DOC and DMV would receive notice of an expungement order is not specified.

3. Fee for Expungement. This bill sets a fee of $100 for expungements resulting from this legislation. Currently, the fee for expungement is $65. Senate Bill 622 (2005 Appropriations Act), which has passed the Senate and been referred to the House, would increase fees for expungements to $125.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 3

SENATE BILL 386

State and Local Government Committee Substitute Adopted 6/1/05
Third Edition Engrossed 6/2/05

Short Title: Cabarrus Build/Develop/Annex Changes. (Local)

Sponsors:

Referred to:

March 7, 2005

A BILL TO BE ENTITLED

AN ACT ALLOWING THE DESIGN-BUILD METHOD OF CONSTRUCTION FOR A JAIL, ANCILLARY JAIL, AND TEMPORARY FACILITY IN CABARRUS COUNTY, AUTHORIZING CABARRUS COUNTY AND THE MUNICIPALITIES LOCATED IN WHOLE OR IN PART IN CABARRUS COUNTY TO ENTER INTO DEVELOPMENT AGREEMENTS WITH DEVELOPERS, AND TO EXTEND A MORATORIUM ON ANNEXATIONS INTO THE COUNTY OF CABARRUS BY MUNICIPALITIES LOCATED PRIMARILY OUTSIDE THE COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 143-128, 143-129, and 143-132, Cabarrus County may use the design-build method of construction for the construction of a jail, ancillary jail, and temporary facility at the intersection of Union Street and Corban Avenue in the City of Concord. No contract under this act shall be entered into after June 30, 2008.

SECTION 2. Article 19 of Chapter 160A of the General Statutes is amended by adding a new Part to read:

"Part 3D. Development Agreements.

"**§ 160A-400.20. Authorization for development agreements.**

(a) The General Assembly finds:

(1) Large-scale development projects often occur in multiple phases extending over a period of years, requiring a long-term commitment of both public and private resources.

(2) Such large-scale developments often create potential community impacts and potential opportunities that are difficult or impossible to accommodate within traditional zoning processes.

(3) Because of their scale and duration, such large-scale projects often require careful integration between public capital facilities planning,

financing, and construction schedules and the phasing of the private development.

(4) Because of their scale and duration, such large-scale projects involve substantial commitments of private capital by developers, which developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of the development.

(5) Because of their size and duration, such developments often permit communities and developers to experiment with different or nontraditional types of development concepts and standards, while still managing impacts on the surrounding areas.

(6) To better structure and manage development approvals for such large-scale developments and ensure their proper integration into local capital facilities programs, local governments need the flexibility in negotiating such developments.

(b) Local governments and agencies may enter into development agreements with developers, subject to the procedures and requirements of this Part. In entering into such agreements, a city may not exercise any authority or make any commitment not authorized by general or local act.

(c) This Part is supplemental to the powers conferred upon local governments and does not preclude or supersede rights and obligations established pursuant to other law regarding building permits, site-specific development plans, phased development plans, or other provisions of law.

"**§ 160A-400.21. Definitions.**

The following definitions apply in this Part:

(1) Comprehensive plan. – The comprehensive plan, land-use plan, small area plans, neighborhood plans, transportation plan, capital improvement plan, official map, and any other plans regarding land use and development that have been officially adopted by the governing board.

(2) Developer. – A person, including a governmental agency or redevelopment authority, who intends to undertake any development and who has a legal or equitable interest in the property to be developed.

(3) Development. – The planning for or carrying out of a building activity, the making of a material change in the use or appearance of any structure or property, or the dividing of land into two or more parcels. 'Development', as designated in a law or development permit, includes the planning for and all other activity customarily associated with it unless otherwise specified. When appropriate to the context, 'development' refers to the planning for or the act of developing or to the result of development. Reference to a specific operation is not intended to mean that the operation or activity, when part of other

operations or activities, is not development. Reference to particular operations is not intended to limit the generality of this item.

(4) Development permit. – A building permit, zoning permit, subdivision approval, special or conditional use permit, variance, or any other official action of local government having the effect of permitting the development of property.

(5) Governing body. – The city council of a municipality or the board of county commissioners of a county.

(6) Land development regulations. – Ordinances and regulations enacted by the appropriate governing body for the regulation of any aspect of development and includes zoning, subdivision, or any other land development ordinances.

(7) Laws. – All ordinances, resolutions, regulations, comprehensive plans, land development regulations, policies, and rules adopted by a local government affecting the development of property, and includes laws governing permitted uses of the property, density, design, and improvements.

(8) Property. – All real property subject to land-use regulation by a local government and includes any improvements or structures customarily regarded as a part of real property.

(9) Local government. – Any municipality or county that exercises regulatory authority over and grants development permits for land development or which provides public facilities.

(10) Local planning board. – Any planning board established pursuant to G.S. 160A-361 or G.S. 153A-321.

(11) Person. – An individual, corporation, business or land trust, estate, trust, partnership, association, two or more persons having a joint or common interest, State agency, or any legal entity.

(12) Public facilities. – Major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities.

"**§ 160A-400.22. Local governments authorized to enter into development agreements; approval of county or municipal governing body required.**

A local government may establish procedures and requirements, as provided in this Part, to consider and enter into development agreements with developers. A development agreement must be approved by the governing body of a county or municipality by ordinance.

"**§ 160A-400.23. Developed property must contain certain number of acres; permissible durations of agreements.**

A local government may enter into a development agreement with a developer for the development of property as provided in this Part, provided the property contains 25 acres or more of developable property (exclusive of wetlands, mandatory buffers, steep slopes, and other portions of the property precluded from development at the time of

application). Development agreements shall be of a term specified in the agreement, provided they may not be for a term exceeding 20 years.

"**§ 160A-400.24. Public hearing.**

Before entering into a development agreement, a local government shall conduct a public hearing on the proposed agreement following the procedures set forth in G.S. 160A-364 or G.S. 153A-323 regarding zoning ordinance adoption or property subject to the development agreement, the development uses proposed on the property, and must specify a place where a copy of the proposed development agreement can be obtained. In the event that the development agreement provides that the local government shall provide certain public facilities, the development agreement shall provide that the delivery date of such public facilities will be tied to successful performance by the developer in implementing the proposed development (such as meeting defined completion percentages or other performance standards).

"**§ 160A-400.25. What development agreement must provide; what it may provide; major modification requires public notice and hearing.**

(a) A development agreement shall at a minimum include all of the following:

(1) A legal description of the property subject to the agreement and the names of its legal and equitable property owners.

(2) The duration of the agreement. However, the parties are not precluded from entering into subsequent development agreements that may extend the original duration period.

(3) The development uses permitted on the property, including population densities and building types, intensities, placement on the site, and design.

(4) A description of public facilities that will service the development, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development.

(5) A description, where appropriate, of any reservation or dedication of land for public purposes and any provisions to protect environmentally sensitive property.

(6) A description of all local development permits approved or needed to be approved for the development of the property together with a statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing their permitting requirements, conditions, terms, or restriction.

(7) A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens.

(8) A description, where appropriate, of any provisions for the preservation and restoration of historic structures.

(b) A development agreement may provide that the entire development or any phase of it be commenced or completed within a specified period of time. The development agreement must provide a development schedule including commencement dates and interim completion dates at no greater than five-year intervals; provided, however, the failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of the development agreement pursuant to G.S. 160A-400.27 but must be judged based upon the totality of the circumstances. The development agreement may include other defined performance standards to be met by the developer. The developer may request a modification in the dates as set forth in the agreement. Consideration of a proposed major modification of the agreement shall follow the same procedures as required for initial approval of a development agreement.

(c) If more than one local government is made party to an agreement, the agreement must specify which local government is responsible for the overall administration of the development agreement.

(d) The development agreement also may cover any other matter not inconsistent with this Part.

"**§ 160A-400.26. Law in effect at time of agreement governs development; exceptions.**

(a) Unless the development agreement specifically provides for the application of subsequently enacted laws, the laws applicable to development of the property subject to a development agreement are those in force at the time of execution of the agreement.

(b) Except for grounds specified in G.S. 160A-385.1(e), a local government may not apply subsequently adopted ordinances or development policies to a development that is subject to a development agreement.

(c) In the event State or federal law is changed after a development agreement has been entered into and the change prevents or precludes compliance with one or more provisions of the development agreement, the city may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the development agreement, by ordinance after notice and a hearing.

(d) This section does not abrogate any rights preserved by G.S. 160A-385, 160A-385.1, 153A-344, and 153A-344.1 or that may vest pursuant to common law or otherwise in the absence of a development agreement.

"**§ 160A-400.27. Periodic review to assess compliance with agreement; material breach by developer; notice of breach; cure of breach or modification or termination of agreement.**

(a) Procedures established pursuant to G.S. 160A-400.22 must include a provision for requiring periodic review by the zoning administrator or other appropriate officer of the local government at least every 12 months, at which time the developer must be required to demonstrate good faith compliance with the terms of the development agreement.

(b) If, as a result of a periodic review, the local government finds and determines that the developer has committed a material breach of the terms or conditions of the agreement, the local government shall serve notice in writing, within a reasonable time

after the periodic review, upon the developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the developer a reasonable time in which to cure the material breach.

(c) If the developer fails to cure the material breach within the time given, then the local government unilaterally may terminate or modify the development agreement; provided, the notice of termination or modification may be appealed to the board of adjustment in the manner provided by G.S. 160A-388(b) and G.S. 153A-345(b).

"**§ 160A-400.28. Amendment or cancellation of development agreement by mutual consent of parties or successors in interest.**

A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest.

"**§ 160A-400.29. Validity and duration of agreement entered into prior to change of jurisdiction; subsequent modification or suspension.**

(a) Except as otherwise provided by this Part, any development agreement entered into by a local government before the effective date of a change of jurisdiction shall be valid for the duration of the agreement, or eight years from the effective date of the change in jurisdiction, whichever is earlier. The parties to the development agreement and the local government assuming jurisdiction have the same rights and obligations with respect to each other regarding matters addressed in the development agreement as if the property had remained in the previous jurisdiction.

(b) A local government assuming jurisdiction may modify or suspend the provisions of the development agreement if the local government determines that the failure of the local government to do so would place the residents of the territory subject to the development agreement, or the residents of the local government, or both, in a condition dangerous to their health or safety, or both.

"**§ 160A-400.30. Developer to record agreement within 14 days; burdens and benefits inure to successors in interest.**

Within 14 days after a local government enters into a development agreement, the developer shall record the agreement with the register of deeds in the county where the property is located. The burdens of the development agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

"**§ 160A-400.31. Applicability to local government of constitutional and statutory procedures for approval of debt.**

In the event that any of the obligations of the local government in the development agreement constitute debt, the local government shall comply, at the time of the obligation to incur the debt and before the debt becomes enforceable against the local government, with any applicable constitutional and statutory procedures for the approval of this debt.

"**§ 160A-400.32. Relationship of agreement to building or housing code.**

A development agreement adopted pursuant to this Chapter shall not exempt the property owner or developer from compliance with the State Building Code or State or local housing codes that are not part of the city's or county's planning, zoning, or subdivision regulations."

SECTION 3. Section 3 of S.L. 2003-326 reads as rewritten:

"**SECTION 3.** Section 1 of this act is effective when it becomes law and expires June 30, ~~2005.~~ 2006. The remainder of this act is effective when it becomes law."

SECTION 4. Section 2 of this act applies only to Cabarrus County and to the municipalities located in whole or in part in Cabarrus County.

SECTION 5. The District Engineer for the North Carolina Department of Transportation is authorized to sign a voluntary annexation petition with the Town of Knightdale for the annexation of State right-of-way. Annexed areas must be within the established Utility Service Area of the Town. The annexation is upon the condition that the Town provides mowing along the right-of-way or median of such highway to be annexed under the normal terms and conditions established by the Department.

SECTION 6. Section 5 of this act applies only to the Town of Knightdale.

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

2005

HOUSE FINANCE

COMMITTEE MINUTES

North Carolina General Assembly

House Committee on Finance

Minutes

~

June 21, 2005

The House Committee on Finance met on Tuesday, June 21, 2005 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Howard, Gibson, Luebke, and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives Blackwood, Bordsen, Capps, Carney, Faison, Fisher, Folwell, Glazier, Goforth, Hackney, Harrell, Holliman, Jones, McGee, Rayfield, Underhill, Vinson, Walend, and Wiley. An Ex-Officio member present was Representative Culpepper. Also present were Sergeant-at-Arms Bill Freeman, Fred Hines, Dusty Rhodes, and Walter Spell. Staff persons present included Rodney Bizzell, Erika Churchill, Brenna Erford, Ashley Huffstetler, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Gibson called the meeting to order at 8:37 am and recognized the eight (8) pages present: (1) Scott Burton of Mecklenburg County, sponsored by Representative Rhodes; (2) Will Carlton of Wake County, sponsored by Speaker Black; (3) Jonathan Carpenter of Lee County, sponsored by Representative Sauls; (4) Amy Gwynn of Wake County, sponsored by Representative Culpepper; (5) Cam Hill of Chatham County, sponsored by Representative Hackney; (6) Amy McLeod of Wake County, sponsored by Representative Culpepper; (7) Anne Miller of Guilford County, sponsored by Representative Harrison; and (8) Katie Phillips of Wake County, sponsored by Speaker Black.

The first bill under the Committee's consideration was **HB 1063 – KILL DEVIL HILLS ASSESSMENT** (see **attachment 3**). Chairman Gibson recognized the bill sponsor, Representative Culpepper, who explained that this bill allows the Town of Kill Devil Hills to make assessments without petition including those for construction of new streets, sidewalks, curbs, gutters and for widening of streets and sidewalks. He further stated that the bill had been requested by the Town Council and that he knew of no opposition. Following the explanation, Representative Alexander moved that House Bill 1063 be given a favorable report by the Committee. Seeing no further discussion, Chairman Gibson called the motion to a vote and it carried by consent.

The following bill considered by the Committee was **SB 537 – ALLOW PAYMENT OF TAX BY OFFSET** (see **attachment 4**). Chairman Gibson first recognized Senator Clodfelter who explained that the bill allows a tax assessor to accept as payment for taxes an offset of an obligation owed to the taxpayer by the taxing unit so long as the obligation arises from a lease or another contract entered into between the taxpayer and the taxing unit before the taxes were levied. Representative Ross was then recognized and moved that Senate Bill 537 be given a favorable report by the Committee. Chairman Gibson then recognized Representative Underhill who asked how

many other states have similar legislation in effect. Senator Clodfelter was then recognized and stated that the Research staff was surprised that legislation was not already passed that contained this provision. As there was no further debate, Chairman Gibson called the motion to a vote and it carried without objection.

The next bill considered by the Committee was **HB 1284 – IMPROVE REAL ESTATE LICENSING LAW** (see **attachment 5**). Chairman Gibson first recognized Representative Hill who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Representative Howard was then recognized and offered a section by section explanation of the bill. In summary, House Bill 1284 amends the real estate licensing laws to eliminate real estate salesperson licenses making all licensed real estate agents real estate brokers as of March 1, 2006. Representative Howard then sent forth a technical amendment (see **attachment 6**) and explained that the technical amendment changes page 17 line 22 to provide that sections 6 and 12 be effective October 1, 2005. Representative Howard then moved for the adoption of her amendment. Seeing no discussion on the amendment, Chairman Gibson then called the matter to a vote and the amendment was adopted. Chairman Gibson then recognized Representative Hackney who asked if a fiscal note had been prepared for the provisions in section 12. Doug Holbrook with Fiscal Research, responding to Representative Hackney's question, reported that there have been no official records kept as to how many disputes covered by section 12 of the bill have occurred in the Clerk of Court's offices each year. Thus, there was no way to predict the fiscal impact of section 12. Chairman Gibson next recognized Tom Miller of the Attorney General's Office and counsel to the Real Estate Commission who added that his office did not think that section 12 would be a significant burden on the clerks. He also stated that the Administrative Office of the Courts has been contacted concerning this provision and expressed no concerns. Representative Womble was then recognized and asked if there was a grandfather clause for persons with a real estate salesperson license. Representative Howard was recognized to respond and stated that a salesperson would have to complete an additional 24 hours of class or demonstrate that they have had four years of full-time experience in the last six years in order to continue to be involved in real estate transactions. Representative Glazier was then recognized and asked about the appeals process for section 12 of the bill. Pete Powell of the Administrative Office of the Courts was recognized and stated that any appeals of a Clerk of Superior Court's decisions would be handled through the Court of Appeals. Chairman Gibson then recognized Representative Underhill who asked how many other states provide reciprocation. Larry Outlaw of the Real Estate Commission was recognized and reported that 12 other states have a reciprocation agreement and that most, excluding Virginia, were those states in the closest proximity to North Carolina. Representative Blackwood was then recognized and asked if this legislation will make it more difficult for people to enter the real estate business. Chairman Gibson recognized Representative Howard who said that this bill would require individuals entering the real estate business to have additional education. She further stated that this legislation would allow them to become more knowledgeable and more competent, but she did not see this as making it more difficult to enter the profession.. Representative Wainwright was then recognized and asked how realtors across the state are reacting to this bill. Mr. Outlaw was again recognized and stated that he had received very little concern regarding the bill. Rick Zechini from the Realtor's Association was then recognized and reported that this proposed legislation was outlined in the Realtor's Magazine last winter and that he had received many questions but had heard little opposition to the bill. Representative Holliman was then recognized and moved for a favorable report to the proposed committee substitute, incorporating the adopted technical amendment, and an unfavorable report to the original bill. Chairman Gibson then recognized Representative Jones who asked why this legislation was needed. Mr. Miller of the Attorney General's Office was recognized again and stated that this legislation is needed because consumers need well-educated and well-informed agents. He reported that the largest number of complaints heard in his office was from consumers who have been in business

with agents who were not competent. Representative Blackwood was then recognized and asked how many complaints were filed each year. Mr. Miller responded by stating that approximately 1200 complaints were filled each year. Representatives Ross and McGee were recognized and shared their support for the bill, stating that consumers needed competent people handling increasingly complex real estate transactions. Seeing no further discussion, Chairman Gibson then called the Holliman motion for a favorable report to a new PCS to a vote, and it carried with no known objection.

The following bill considered by the Committee was **SB 1059 – PERFUSIONISTS LICENSURE** (see **attachment 7**). Chairman Gibson first recognized Representative Hill who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Chairman Gibson then recognized Senator Purcell who explained that the bill would prohibit a person from practicing perfusion without a license. Following the explanation, Representative Luebke was recognized and moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Chairman Gibson then recognized Representative Blackwood who asked for an explanation of the difference between a person being certified and licensed. Senator Purcell was recognized and stated that this bill will allow the medical board to discipline licensees. Certified perfusionists would not be under the oversight of the state medical board. As there was no further debate, Chairman Gibson called the Luebke motion to a vote, and it carried without objection.

The final bill heard by the Committee was **HB 1084 – EXPUNGE NONVIOLENT FELONIES/YOUNG OFFENDERS** (see **attachment 8**). Chairman Gibson first recognized Representative Hill who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion passed. Representative Bordsen was then recognized to explain the bill which provides that a youthful offender's criminal record be expunged for nonviolent felonies. She reported that currently the law contains a similar provision for youth offenders under the age of 16. This bill extends the provision to all youth under the age of 18 and includes a seven-year sunset. Following the explanation, Bryan Lewis, the Executive Director of the Covenant for North Carolina's Children, was recognized and stated that the bill would enable nonviolent youthful offenders to qualify for college admissions and grants that they otherwise would not qualify for. Chairman Gibson then recognized Colon Willoughby, District Attorney of Wake County, who opposed the bill claiming that the bill would allow the expungement of too many crimes, including arson, identity theft, etc. Following Mr. Willoughby's remarks, Chairman Gibson recognized Terry Collins, the Pastor of the First Baptist Church in Mebane. Mr. Collins stated that he supported the bill because the State needs to give children a second chance. Chairman Gibson then recognized Patsy Simpson, a mother from Alamance County, who also voiced her support for the bill. She added that her children have not been involved in criminal behavior; but if they were, she would want the State to exercise a level of forgiveness. Chairman Gibson recognized Janice Burke of Alamance County for the final comment. She stated that she was in support of the bill and believes that children deserve a second chance and the opportunity to become productive members of society. Following Ms. Burke's comments, Chairman Gibson announced that a vote would not be taken on the bill as the Committee's time had expired. He announced that the Committee would continue its consideration of the bill at a later date.

Chairman Gibson then adjourned the meeting at 10:03 am.

Respectfully submitted,

Representative Pryor Gibson
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. House Bill 1063 (and related materials)
4. Senate Bill 537 (and related materials)
5. House Bill 1284 (and related materials)
6. Howard Amendment on HB 1284 - **ADOPTED**
7. Senate Bill 1059 (and related materials)
8. House Bill 1084 (and related materials)
9. House Bill 688 (and related materials) - (NOT DISCUSSED)
10. House Bill 1327 (and related materials) – (NOT DISCUSSED)
11. House Bill 1330 (and related materials) – (REMOVED FROM CALENDAR)
12. House Bill 1515 (and related materials) – (REMOVED FROM CALENDAR)

AGENDA

House Finance Committee

ATTACHMENT 1

June 21, 2005
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Gibson

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard
Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order

Introduction of Pages

Bills:

HB 688 **CERTIFY ON-SITE WASTEWATER CONTRACTORS**
Reps. Gibson & Culp

HB 1063 **KILL DEVIL HILLS ASSESSMENTS** *Rep. Culpepper*

HB 1084 **EXPUNGE NONVIOLENT FELONIES/YOUNG OFFENDERS**
Rep. Bordsen

HB 1284 **IMPROVE REAL ESTATE LICENSING LAW**
Reps. Culpepper, Howard, & Brubaker

HB 1327 **CRIM. RECORD CHECKS/PSYCHOLOGY PRACTICE ACT**
Reps. Harrison, Martin, & Wiley

SB 537 **ALLOW PAYMENT OF TAX BY OFFSET** *Sen. Clodfelter*

SB 1059 **PERFUSIONISTS LICENSURE** *Sen. Purcell*

Adjournment

CORRECTED NOTICE:
HB 1330 & HB 1515 – REMOVED

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, June 21, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 688 – CERTIFY ON-SITE WASTEWATER CONTRACTORS – Reps. Gibson & Culp

HB 1063 – KILL DEVIL HILLS ASSESSMENTS – Rep. Culpepper

HB 1084 – EXPUNGE NONVIOLENT FELONIES/YOUNG OFFENDERS – Rep. Bordsen

HB 1284 – IMPROVE REAL ESTATE LICENSING LAW – Reps. Culpepper, Howard, & Brubaker

HB 1327 – CRIM. RECORD CHECKS/PSYCHOLOGY PRACTICE ACT – Reps. Harrison, Martin, & Wiley

~~**HB 1330 – AMEND ELECTROLYSIS PRACTICE ACT/FEES – Rep. Jeffus**~~

~~**HB 1515 – MED SCHOOLS/CRIM BACKGROUND CHECK – Reps. LaRoque & England**~~

SB 537 – ALLOW PAYMENT OF TAX BY OFFSET – Sen. Clodfelter

SB 1059 – PERFUSIONISTS LICENSURE – Sen. Purcell

Respectfully,
Representatives Alexander, Gibson, Howard,
Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **2:47 pm** on **June 20, 2005**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, June 21, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 688 – CERTIFY ON-SITE WASTEWATER CONTRACTORS – Reps. Gibson & Culp

HB 1063 – KILL DEVIL HILLS ASSESSMENTS – Rep. Culpepper

HB 1084 – EXPUNGE NONVIOLENT FELONIES/YOUNG OFFENDERS – Rep. Bordsen

HB 1284 – IMPROVE REAL ESTATE LICENSING LAW – Reps. Culpepper, Howard, & Brubaker

HB 1327 – CRIM. RECORD CHECKS/PSYCHOLOGY PRACTICE ACT – Reps. Harrison, Martin, & Wiley

HB 1330 – AMEND ELECTROLYSIS PRACTICE ACT/FEES – Rep. Jeffus

HB 1515 – MED SCHOOLS/CRIM BACKGROUND CHECK – Reps. LaRoque & England

SB 537 – ALLOW PAYMENT OF TAX BY OFFSET – Sen. Clodfelter

SB 1059 – PERFUSIONISTS LICENSURE – Sen. Purcell

Respectfully,
Representatives Alexander, Gibson, Howard,
Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **11:50 pm** on **June 15, 2005**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

ATTACHMENT 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 21, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Everette Lynn	Wake County Environmental Services
Kent Daeke	Wake County ~~Environmental~~ Services
Rev. Terry Farmer	First Baptist Church of Mebane
Tony Arnold	DENR - DEH
Tom Miller	NCAGO for NCREC
Larry Outlaw	NCREC
Russ Dubisky	CCPS
Don Hargrove	DJJDP
Brian Lewis	Covenant w/ NC's Children
Richard Cheek	2985 Rogers Rd, Graham, NC 27253
Donnie Cheek	2985 Rogers Rd, Graham, NC 27253

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 21, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Candace Johnson	3312 Rogers Rd., Graham NC 27253
Nancy Alcorn	1203 Grace Ave Burlington NC 27217
Mr & Mrs. Leon D. Cunyus	5878 N NC 119 Burlington NC 27217
Cynthia Mills	3472 Corbett Rd Mebane NC 27302
Eddie Caldwell	NC Sheriffs Assn
Rich Webb	NCBA Intern
DAVID BARNES	Poyner Spruill
Rick Zechini	NC Assoc. of Realtors
Stephanie Simpson	NC Assn of REALTORS
Ed Turlington	BPM HL
Mark Gleason	Capitol Group

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 21, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lee Hodge	KCCH
Henry Hunter IV	N.C. SDH.
Jon Carr	NC Assoc. Plumbing Heating Cooling Contractors
Elizabeth Dalton	NCCBI
Joe McClure	McClure Consult
Carin Sewell	Rep Glazier
[illegible]	NC MC

VISITOR REGISTRATION SHEET

Finance — 6-21-05

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Doug Lassiter	NCSTA
R. Paul Wilms	NCHBA
Patsy Simpson	Alamance County Citizen
Ken Gonzalez	Alamance City Citizen
Janice Bullard	Alamance County Citizen
Ruby Talley	Alamance Co. Citizen
R. Thomas May	Guilford Co. Citizen
Jeron Robertson	Alamance County Citizen
Johanna Reese	DENR
Erin Wynia	N.C. General Assembly
Sally Cameron	NC Psychological Assoc
Brandy Bynum	NCCAJ
Rebecca Badger	Intern Rep. Wainwright
Ashleigh Taylor	Intern Rep. Wainwright
Clark Leonard	Intern Rep. Hill
Milton Alford	OSBM
Cola Willoughby	10th Dist Atty.
Sonia Panin	NCDOT
Luis Lluberes	Intern
HB Powell	AOC
Joanne Stevens	nursing
Rex Aycock	County Com Assoc
Mel Chilton	NCVAN
David Crawford	AIA NC
Gill Hinton Keel	Autism Soc. / CCWI
Al Wentzy	DSS - Northampton Co
ASHLEA SPINNER	NCCCPS

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1063

Short Title:	Kill Devil Hills Assessments.	(Local)
Sponsors:	Representative Culpepper.	
Referred to:	Finance.	

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWN OF KILL DEVIL HILLS TO MAKE CERTAIN ASSESSMENTS WITHOUT PETITION.

The General Assembly of North Carolina enacts:

SECTION 1. The Charter of the Town of Kill Devil Hills, being Chapter 735 of the 1995 Session Laws, is amended by adding a new Article to read:

"ARTICLE VII. STREET/SIDEWALK/STORMWATER MANAGEMENT IMPROVEMENTS; ASSESSMENT OF COSTS.

"Sec. 7.1. **Authority.**

(a) The Town of Kill Devil Hills is not subject to G.S. 160A-217(a) when making special assessments for:

(1) Construction of new streets.
(2) Construction of new sidewalks.
(3) Widening of streets or sidewalks.
(4) Construction of new curbs.
(5) Construction of new gutters.

(b) If the Town of Kill Devil Hills elects to make assessments under the authority of subsection (a) of this section and a sidewalk is constructed on only one side of the street, the cost thereof may be assessed against the property abutting on both sides of the street, unless there already exists a sidewalk on the other side of the street, the total cost of which was assessed against the abutting property.

(c) The Town of Kill Devil Hills may not assess without petition under subsection (a) of this section except upon a four-fifths majority vote of the Board of Commissioners.

(d) This act is supplemental to any other authority of the Town."

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

HOUSE BILL 1063:
Kill Devil Hills Assessments

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 17, 2005
Introduced by:	Rep. Culpepper	**Summary by:**	R. Erika Churchill
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1063 would permit the Town of Kill Devil Kills to make certain assessments against real property without first receiving a petition; effective when it becomes law.

CURRENT LAW:

Under G.S. 160A-216, cities are authorized to make special assessments against benefited property within their corporate limits for any of the following purposes:

(1) Constructing, reconstructing, paving, widening, installing curbs and gutters, and otherwise building and improving streets.
(2) Constructing, reconstructing, paving, widening, and otherwise building or improving sidewalks in any public street.
(3) Constructing, reconstructing, extending, and otherwise building or improving water systems.
(4) Constructing, reconstructing, extending, or otherwise building or improving sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems.
(5) Constructing, reconstructing, extending, and otherwise building or improving storm sewer and drainage systems.

However, cities do not have the authority to levy special assessments for street or sidewalk improvements unless the city first receives a petition for the improvements signed by at least a majority in number of the owners of property to be assessed. That petition must represent at least a majority of all the lineal feet of frontage of the lands abutting on the street or portion of street to be improved. Unless the petition specifies another percentage, not more than 50% of the cost may be assessed. G.S. 160A-217.

BILL ANALYSIS: The bill would allow the Town of Kill Devil Hills to levy a special assessment for each of the following without first receiving a petition:

1. Construction of new streets.
2. Construction of new sidewalks.
3. Widening of streets or sidewalks.
4. Construction of new curbs.
5. Construction of new gutters.

In levying such an assessment, the board of commissioners of the Town must approve the assessment by a 4/5-majority vote. If the levy is for a sidewalk on only one side of the street and there is no sidewalk on the other side of the street, the cost of levy may be assessed against property owners on both sides of the street.

BACKGROUND: Similar legislation has previously been enacted for Ahoskie (S.L. 1987-261), Beech Mountain (S.L. 1995-133), Carrboro (S.L. 1987-476), Laurinburg (S.L. 2000-13), Oxford (S.L. 1993-240), Tabor City (S.L. 2002-13) and Wake Forest (S.L. 1989-347).

H1063e1-SMST

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 1063 A BILL TO BE ENTITLED AN ACT TO ALLOW THE TOWN OF KILL DEVIL HILLS TO MAKE CERTAIN ASSESSMENTS WITHOUT PETITION.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S **2**

SENATE BILL 537

Finance Committee Substitute Adopted 5/26/05

Short Title: Allow Payment of Tax by Offset. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE PAYMENT OF TAXES IN LIMITED CIRCUMSTANCES BY OFFSET OF AN OBLIGATION OWED TO THE TAXPAYER BY THE TAXING UNIT.

The General Assembly of North Carolina enacts:

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

"(a) Medium of Payment. – Taxes shall be payable in existing national currency. Deeds to real property, notes of the taxpayer or others, bonds or notes of the taxing unit, and payments in kind shall not be accepted in payment of ~~taxes, nor shall any~~ taxes. A taxing unit may not permit the payment of taxes by offset of any bill, claim, judgment, or other obligation owed to the taxpayer by the taxing unit. The prohibition against payment of taxes by offset does not apply to offset of an obligation arising from a lease or another contract entered into between the taxpayer and the taxing unit before July 1 of the fiscal year for which the unpaid taxes were levied."

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

SENATE BILL 537:
Allow Payment of Tax by Offset

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 21, 2005
Introduced by:	Sen. Clodfelter	**Summary by:**	Martha Walston
Version:	Second Edition		Committee Counsel

SUMMARY: The 2nd edition of Senate Bill 537 would allow a tax assessor to accept as payment for taxes an offset of an obligation owed to the taxpayer by the taxing unit so long as the obligation arises from a lease or another contract entered into between the taxpayer and the taxing unit before the taxes were levied. The bill becomes effective when it becomes law.

CURRENT LAW: G.S. 105-357 provides that taxes owed to local taxing authorities are payable in existing national currency. A taxing unit is specifically prohibited from accepting the following as payment of taxes: deeds to real property; notes of the taxpayer; bonds or notes of the taxing unit; payments in kind; offset of any bill, claim, judgment, other obligation owed to the taxpayer by the taxing unit.[1]

BILL ANALYSIS: Senate Bill 537 would change the law by allowing a taxing unit to accept as payment of taxes an offset of an obligation owed to the taxpayer by the taxing unit. However, an offset may only be allowed if the obligation arises from a lease or another contract entered into between the taxpayer and the taxing unit before July 1 of the fiscal year for which the unpaid taxes were levied.

EFFECTIVE DATE: The bill would become effective when it becomes law.

BACKGROUND: When a taxpayer declares bankruptcy, the bankruptcy laws generally operate as a stay for all actions to collect pre-petition debts.[2] However, a creditor's right of setoff under non-bankruptcy law is preserved when the right of setoff arose before the commencement of the bankruptcy case.[3] To affect a setoff, a 'party in interest' must seek court approval from the automatic stay. The court will generally allow the setoff if the debt is a pre-petition debt and if the right of offset existed under applicable non-bankruptcy law. G.S. 105-357 currently prevents local taxing authorities from utilizing this form of collection in bankruptcy cases because, as applicable non-bankruptcy law, it forbids such an offset.

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

S0537e1-SMRB-CSRB

[1] G.S. 105-241 provides that taxes owed to the State are payable in national currency. However, the statute does not specifically prohibit the right of setoff.
[2] 11 U.S.C. § 362.
[3] 11 U.S.C. § 553.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

SB 537 A BILL TO BE ENTITLED AN ACT TO ALLOW THE PAYMENT OF TAXES IN LIMITED CIRCUMSTANCES BY OFFSET OF AN OBLIGATION OWED TO THE TAXPAYER BY THE TAXING UNIT.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1284
PROPOSED COMMITTEE SUBSTITUTE H1284-CSLAf-19 [v.2]

6/16/2005 4:27:53 PM

Short Title: Improve Real Estate Licensing Law. (Public)

Sponsors:

Referred to:

April 19, 2005

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE REAL ESTATE LICENSING LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93A-1 reads as rewritten:

"**§ 93A-1. License required of real estate ~~brokers and real estate salespersons.~~brokers.**

From and after July 1, 1957, it shall be unlawful for any person, partnership, corporation, limited liability company, association, or other business entity in this State to act as a real estate ~~broker or real estate salesperson,~~ broker, or directly or indirectly to engage or assume to engage in the business of real estate broker ~~or real estate salesperson~~ or to advertise or hold himself or herself or themselves out as engaging in or conducting such business without first obtaining a license issued by the North Carolina Real Estate Commission (hereinafter referred to as the Commission), under the provisions of this Chapter. A license shall be obtained from the Commission even if the person, partnership, corporation, limited liability company, association, or business entity is licensed in another state and is affiliated or otherwise associated with a licensed real estate broker ~~or salesperson~~ in this State."

SECTION 2. G.S. 93A-2 is amended by adding a new subsection to read:

"(a2) The term provisional broker within the meaning of this Chapter means a real estate broker who, pending acquisition and documentation to the Commission of the education or experience prescribed by either G.S. 93A-4(a1) or G.S. 93A-4C, must be supervised by a broker-in-charge when performing any act for which a real estate license is required."

SECTION 3. G.S. 93A-2(b) reads as rewritten:

"(b) The term real estate salesperson within the meaning of this Chapter shall mean and include any person who ~~under the supervision of a real estate broker designated as broker-in-charge of a real estate office, for a compensation or valuable consideration is associated with or engaged by or on behalf of a licensed real estate~~

~~broker to do, perform or deal in any act, acts or transactions set out or comprehended by the foregoing definition of real estate broker.~~was formerly licensed by the Commission as a real estate salesperson before March 1, 2006."

SECTION 4. G.S. 93A-3 reads as rewritten:

"**§ 93A-3. Commission created; compensation; organization.**

(a) There is hereby created the North Carolina Real Estate Commission, hereinafter called the Commission. The Commission shall consist of nine members, seven members to be appointed by the Governor, one member to be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, and one member to be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. At least three members of the Commission shall be licensed real estate ~~brokers or real estate salespersons.~~brokers. At least two members of the Commission shall be persons who are not involved directly or indirectly in the real estate or real estate appraisal business. Members of the Commission shall serve three-year terms, so staggered that the terms of three members expire in one year, the terms of three members expire in the next year, and the terms of three members expire in the third year of each three-year period. The members of the Commission shall elect one of their members to serve as chairman of the Commission for a term of one year. The Governor may remove any member of the Commission for misconduct, incompetency, or willful neglect of duty. The Governor shall have the power to fill all vacancies occurring on the Commission, except vacancies in legislative appointments shall be filled under G.S. 120-122.

...

(c1) The provisions of G.S. 93A-1 and G.S. 93A-2 notwithstanding, the Commission may adopt rules to permit a real estate broker to pay a fee or other valuable consideration to a travel agent for the introduction or procurement of tenants or potential tenants in vacation rentals as defined in G.S. 42A-4. Rules adopted pursuant to this subsection may include a definition of the term "travel agent", may regulate the conduct of permitted transactions, and may limit the amount of the fee or the value of the consideration that may be paid to the travel agent. However, the Commission may not authorize a person or entity not licensed as a broker ~~or salesperson~~ to negotiate any real estate transaction on behalf of another.

...."

SECTION 5. G.S. 93A-4 reads as rewritten:

"**§ 93A-4. Applications for licenses; fees; qualifications; examinations; privilege licenses; renewal or reinstatement of license; power to enforce provisions.**

(a) Any person, partnership, corporation, limited liability company, association, or other business entity hereafter desiring to enter into business of and obtain a license as a real estate broker ~~or real estate salesperson~~ shall make written application for such license to the Commission in the form and manner prescribed by the Commission. Each applicant for a license as a real estate broker ~~or real estate salesperson~~ shall be at least 18 years of age. ~~Each applicant for a license as a real estate salesperson shall, within~~

~~three years preceding the date application is made, have satisfactorily completed, at a school approved by the Commission, a real estate fundamentals course consisting of at least 67 hours of classroom instruction in subjects determined by the Commission, or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the course.~~ Each applicant for a license as a real estate broker shall, within three years preceding the date the application is made, have satisfactorily completed, at a school approved by the Commission, an education program consisting of at least ~~60~~ 75 hours of classroom instruction in subjects determined by the Commission, ~~which shall be in addition to the course required for a real estate salesperson license,~~ or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the education program. Each applicant for a license as a real estate broker ~~or real estate salesperson~~ shall be required to pay a fee, fixed by the Commission but not to exceed thirty dollars ($30.00).

(a1) Each person who is issued a real estate broker license on or after March 1, 2006, shall initially be classified as a provisional broker and shall, within three years following initial licensure, satisfactorily complete, at a school approved by the Commission, a postlicensing education program consisting of 90 hours of classroom instruction in subjects determined by the Commission or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the education program. The Commission may, by rule, establish a schedule for completion of the prescribed postlicensing education that requires provisional brokers to complete portions of the 90-hour postlicensing education program in less than three years, and provisional brokers must comply with this schedule in order to be entitled to actively engage in real estate brokerage. Upon completion of the postlicensing education program, the provisional status of the broker's license shall be terminated. When a provisional broker fails to complete all 90 hours of required postlicensing education within three years following initial licensure, the broker's license shall be cancelled, and the Commission may, in its discretion, require the person whose license was cancelled to satisfy the postlicensing education program and the requirements for original licensure prescribed in this Chapter as a condition of license reinstatement, including the examination requirements and the license reinstatement fee prescribed by subsection (c) of this section.

(a2) An approved school shall pay a fee of ten dollars ($10.00) per licensee to the Commission for each licensee completing a postlicensing education course conducted by the school, provided that these fees shall not be charged to a community college, junior college, college, or university located in this State and accredited by the Southern Association of Colleges and Schools.

(b) Except as otherwise provided in this Chapter, any person who submits an application to the Commission in proper manner for a license as real estate broker ~~or a license as real estate salesperson~~ shall be required to take an examination. The examination may be administered orally, by computer, or by any other method the Commission deems appropriate. The Commission may require the applicant to pay the Commission or a provider contracted by the Commission the actual cost of the

examination and its administration. The cost of the examination and its administration shall be in addition to any other fees the applicant is required to pay under subsection (a) of this section. The examination shall determine the applicant's qualifications with due regard to the paramount interests of the public as to the applicant's competency. ~~A person holding a real estate salesperson license in this State and applying for a real estate broker license shall not be required to take an additional examination under this subsection.~~ A person who fails the license examination shall be entitled to know the result and score. A person who passes the exam shall be notified only that the person passed the examination. Whether a person passed or failed the examination shall be a matter of public record; however, the scores for license examinations shall not be considered public records. Nothing in this subsection shall limit the rights granted to any person under G.S. 93B-8.

An applicant for licensure under this Chapter shall satisfy the Commission that he or she possesses the competency, honesty, truthfulness, integrity, and general moral character necessary to protect the public interest and promote public confidence in the real estate brokerage business. The Commission may investigate the moral character of each applicant for licensure and require an applicant to provide the Commission with a criminal record report. All applicants shall obtain criminal record reports from one or more reporting services designated by the Commission to provide criminal record reports. Applicants are required to pay the designated reporting service for the cost of these reports. If the results of any required competency examination and investigation of the applicant's moral character shall be satisfactory to the Commission, then the Commission shall issue to the applicant a license, authorizing the applicant to act as a real estate broker ~~or real estate salesperson~~ in the State of North Carolina, upon the payment of privilege taxes now required by law or that may hereafter be required by law.

...."

SECTION 6. G.S. 93A-4A reads as rewritten:

"**§ 93A-4A. Continuing education.**

(a) The Commission shall establish a program of continuing education for real estate ~~brokers and salespersons.~~brokers. An individual licensed as a real estate broker ~~or salesperson~~ is required to complete continuing education requirements in an amount not to exceed eight classroom hours of instruction a year during any license renewal period in subjects and at times the Commission deems appropriate. Any licensee who fails to complete continuing education requirements pursuant to this section shall not actively engage in the business of real estate ~~broker or salesperson.~~broker.

(a1) ~~In addition to the requirements of subsection (a) of this section, the~~The Commission ~~may~~ may, as part of the broker continuing education requirements, require real estate brokers-in-charge to complete during each annual license period a special continuing education course ~~of study, not to exceed six classroom hours every three years,~~ consisting of not more than four classroom hours of instruction in subjects prescribed by the Commission.

(b) The Commission shall establish procedures allowing for a deferral of continuing education for brokers ~~and salespersons~~ while they are not actively engaged in real estate brokerage.

(c) The Commission may adopt any reasonable rules not inconsistent with this Chapter to give purpose and effect to the continuing education requirement, including rules that govern:

(1) The content and subject matter of continuing education courses.
(2) The curriculum of courses required.
(3) The criteria, standards, and procedures for the approval of courses, course sponsors, and course instructors.
(4) The methods of instruction.
(5) The computation of course credit.
(6) The ability to carry forward course credit from one year to another.
(7) The deferral of continuing education for brokers and salespersons not engaged in brokerage.
(8) The waiver of or variance from the continuing education requirement for hardship or other reasons.
(9) The procedures for compliance and sanctions for noncompliance.

(d) The Commission may establish a nonrefundable course application fee to be charged to a course sponsor for the review and approval of a proposed continuing education course. The fee shall not exceed one hundred twenty-five dollars ($125.00) per course. The Commission may charge the sponsor of an approved course a nonrefundable fee not to exceed seventy-five dollars ($75.00) for the annual renewal of course approval.

~~The Commission may also require a~~ An approved course sponsor ~~to~~ shall pay a fee of ten dollars ($10.00) per licensee to the Commission for each licensee completing an approved continuing education course conducted by the sponsor. ~~The fee shall not exceed five dollars ($5.00) per licensee.~~

The Commission shall not charge a course application fee, a course renewal fee, or any other fee for a continuing education course sponsored by a community college, junior college, college, or university located in this State and accredited by the Southern Association of Colleges and Schools.

(e) The Commission may award continuing education credit for an unapproved course or related educational activity. The Commission may prescribe procedures for a licensee to submit information on an unapproved course or related educational activity for continuing education credit. The Commission may charge a fee to the licensee for each course or activity submitted. The fee shall not exceed fifty dollars ($50.00)."

SECTION 7. Article 1 of Chapter 93A of the General Statutes is amended by adding the following new sections to read:

"**§ 93A-4B. Broker-in-charge qualification.**

To be qualified to serve as a broker-in-charge of a real estate office, a real estate broker shall possess at least one year of full-time real estate brokerage experience or equivalent part-time real estate brokerage experience within the previous five years or real estate education or experience in real estate transactions that the Commission finds

equivalent to such experience, and shall complete, within a time prescribed by the Commission, a course of study prescribed by the Commission for brokers-in-charge not to exceed 12 classroom hours of instruction. A provisional broker may not be designated as a broker-in-charge.

"**§ 93A-4C. Elimination of salesperson license; conversion of salesperson licenses to broker licenses.**

(a) Effective March 1, 2006, the Commission shall discontinue issuing real estate salesperson licenses. Also effective March 1, 2006, all salesperson licenses shall become broker licenses, and each person holding a broker license that was changed from salesperson to broker on that date shall be classified as a provisional broker as defined in G.S. 93A-2(a2).

(b) A provisional broker as contemplated in subsection (a) of this section who was issued a salesperson license prior to October 1, 2005, shall, not later than March 1, 2008, complete a broker transition course prescribed by the Commission, not to exceed 24 classroom hours of instruction, or shall demonstrate to the Commission that he or she possesses four years full-time real estate brokerage experience or equivalent part-time real estate brokerage experience within the previous six years. If the provisional broker satisfies this requirement by March 1, 2008, the provisional status of his or her broker license will be terminated, and the broker will not be required to complete the 90 classroom hour broker postlicensing education program prescribed by G.S. 93A-4(a1). If the provisional broker fails to satisfy this requirement by March 1, 2008, his or her license will be placed on inactive status, if not already on inactive status, and he or she must complete the 90-classroom-hour broker postlicensing education program prescribed by G.S. 93A-4(a1) in order to terminate the provisional status of the broker license and to be eligible to return his or her license to active status.

(c) An approved school or sponsor shall pay a fee of ten dollars ($10.00) per licensee to the Commission for each licensee completing a broker transition course conducted by the school or sponsor, provided that these fees shall not be charged to a community college, junior college, college, or university located in this State and accredited by the Southern Association of Colleges and Schools.

(d) A provisional broker as contemplated in subsection (a) of this section, who was issued a salesperson license between October 1, 2005, and February 28, 2006, shall, not later than March 1, 2008, satisfy the requirements of G.S. 93A-4(a1). Upon satisfaction of the requirements of G.S. 93A-4(a1), the provisional status of the broker's license will be terminated. If the provisional broker fails to satisfy the requirements of G.S. 93A-4(a1) by March 1, 2008, the broker's license shall be cancelled, and the person will be subject to the requirements for licensure reinstatement prescribed by G.S. 93A-4(a1).

(e) A broker who was issued a broker license prior to March 1, 2006, shall not be required to complete either the 90-classroom-hour broker postlicensing education program prescribed by G.S. 93A-4(a1) or the broker transition course prescribed by subsection (b) of this section.

(f) For the purpose of determining a licensee's status, rights, and obligations under this section, the Commission may treat a person who is issued a license on or

after the October 1, 2005, or March 1, 2006, dates cited in subsections (a), (b), (d), or (e) of this section as though the person had been issued a license prior to those dates if the only reason the person's license was not issued prior to those dates was that the person's application was pending a determination by the Commission as to whether the applicant possessed the requisite moral character for licensure. If a license application is pending on March 1, 2006, for any reason other than a determination by the Commission as to the applicant's moral character for licensure, and if the applicant has not satisfied all education and examination requirements for licensing in effect on March 1, 2006, the applicant's application shall be cancelled and the application fee refunded.

(g) No applications for a real estate salesperson license shall be accepted by the Commission between September 1, 2005, and September 30, 2005."

SECTION 8. G.S. 93A-5 reads as rewritten:

"**§ 93A-5. Register of applicants; roster of ~~brokers and salespersons;~~brokers; financial report to Secretary of State.**

(a) The Executive Director of the Commission shall keep a register of all applicants for license, showing for each the date of application, name, place of residence, and whether the license was granted or refused. Said register shall be prima facie evidence of all matters recorded therein.

(b) The Executive Director of the Commission shall also keep a current roster showing the names and places of business of all licensed real estate ~~brokers and real estate salespersons,~~brokers, which roster shall be kept on file in the office of the Commission and be open to public inspection.

(c) On or before the first day of September of each year, the Commission shall file with the Secretary of State a copy of the roster of real estate brokers ~~and real estate salespersons~~ holding certificates of license, and at the same time shall also file with the Secretary of State a report containing a complete statement of receipts and disbursements of the Commission for the preceding fiscal year ending June 30 attested by the affidavit of the Executive Director of the Commission."

SECTION 9. G.S. 93A-6(a) reads as rewritten:

"(a) The Commission has power to take disciplinary action. Upon its own initiative, or on the complaint of any person, the Commission may investigate the actions of any person or entity licensed under this Chapter, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a licensee has violated any of the provisions of this Chapter, the Commission may hold a hearing on the allegations of misconduct.

The Commission has power to suspend or revoke at any time a license issued under the provisions of this Chapter, or to reprimand or censure any licensee, if, following a hearing, the Commission adjudges the licensee to be guilty of:

(1) Making any willful or negligent misrepresentation or any willful or negligent omission of material fact.

(2) Making any false promises of a character likely to influence, persuade, or induce.

(3) Pursuing a course of misrepresentation or making of false promises through agents, ~~salespersons,~~ advertising or otherwise.
(4) Acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts.
(5) Accepting a commission or valuable consideration as a real estate salesperson for the performance of any of the acts specified in this Article or Article 4 of this Chapter, from any person except his or her broker-in-charge or licensed broker by whom he or she is employed.
(6) Representing or attempting to represent a real estate broker other than the broker by whom he or she is engaged or associated, without the express knowledge and consent of the broker with whom he or she is associated.
(7) Failing, within a reasonable time, to account for or to remit any monies coming into his or her possession which belong to others.
(8) Being unworthy or incompetent to act as a real estate broker ~~or salesperson~~ in a manner as to endanger the interest of the public.
(9) Paying a commission or valuable consideration to any person for acts or services performed in violation of this Chapter.
(10) Any other conduct which constitutes improper, fraudulent or dishonest dealing.
(11) Performing or undertaking to perform any legal service, as set forth in G.S. 84-2.1, or any other acts constituting the practice of law.
(12) Commingling the money or other property of his or her principals with his or her own or failure to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association in North Carolina all money received by him or her as a real estate licensee acting in that capacity, or an escrow agent, or the temporary custodian of the funds of others, in a real estate transaction; provided, these accounts shall not bear interest unless the principals authorize in writing the deposit be made in an interest bearing account and also provide for the disbursement of the interest accrued.
(13) Failing to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy and sell real estate to the buyer and to the seller.
(14) Failing, at the time the transaction is consummated, to deliver to the seller in every real estate transaction, a complete detailed closing statement showing all of the receipts and disbursements handled by him or her for the seller or failing to deliver to the buyer a complete statement showing all money received in the transaction from the buyer and how and for what it was disbursed.
(15) Violating any rule or regulation promulgated by the Commission.

The Executive Director shall transmit a certified copy of all final orders of the Commission suspending or revoking licenses issued under this Chapter to the clerk of

superior court of the county in which the licensee maintains his or her principal place of business. The clerk shall enter these orders upon the judgment docket of the county."

SECTION 10. G.S. 93A-6.1(a) reads as rewritten:

"(a) The Commission, Executive Director, or other representative designated by the Commission may issue a subpoena for the appearance of witnesses deemed necessary to testify concerning any matter to be heard before or investigated by the Commission. The Commission may issue a subpoena ordering any person in possession of records, documents, or other materials, however maintained, that concern any matter to be heard before or investigated by the Commission to produce the records, documents, or other materials for ~~inspection.~~inspection or deliver the same into the custody of the Commission's authorized representatives. Upon written request, the Commission shall revoke a subpoena if it finds that the evidence, the production of which is required, does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence, the production of which is required, or if for any other reason in law the subpoena is invalid. If any person shall fail to fully and promptly comply with a subpoena issued under this section, the Commission may apply to any judge of the superior court resident in any county where the person to whom the subpoena is issued maintains a residence or place of business for an order compelling the person to show cause why he or she should not be held in contempt of the Commission and its processes. The court shall have the power to impose punishment for acts that would constitute direct or indirect contempt if the acts occurred in an action pending in superior court."

SECTION 11. G.S. 93A-9 reads as rewritten:

"**§ 93A-9. Licensing nonresidents.**

(a) An applicant from another state, which offers licensing privileges to residents of North Carolina, may be licensed by conforming to all the provisions of this Chapter and, in the discretion of the Commission, such other terms and conditions as are required of North Carolina residents applying for license in such other state; provided that the Commission may exempt from the examination prescribed in G.S. 93A-4 a broker or salesperson duly licensed in another state if a similar exemption is extended to licensed brokers ~~and salespersons~~ from North Carolina. A license applicant who has been a resident of North Carolina for not more than 90 days may be considered by the Commission as a nonresident for the purposes of this subsection.

(b) The Commission may issue a limited broker's ~~or salesperson's~~ license to a person or an entity from another state or territory of the United States without regard to whether that state or territory offers similar licensing privileges to residents in North Carolina if the person or entity satisfies all of the following:

(1) Is of good moral character and licensed as a real estate broker or salesperson in good standing in another state or territory of the United States.

(2) Only engages in business as a real estate broker ~~or salesperson~~ in North Carolina in transactions involving commercial real estate and while the person or entity is affiliated with a resident North Carolina real estate ~~broker or salesperson.~~broker.

(3) Complies with the laws of this State regulating real estate brokers and ~~salespersons and~~ rules adopted by the Commission.

The Commission may require an applicant for licensure under this subsection to pay a fee not to exceed three hundred dollars ($300.00). All licenses issued under this subsection shall expire on June 30 of each year following issuance or on a date that the Commission deems appropriate unless the license is renewed pursuant to the requirements of G.S. 93A-4. A person or entity licensed under this subsection may be disciplined by the Commission for violations of this Chapter as provided in G.S. 93A-6 and G.S. 93A-54.

Any person or entity licensed under this subsection shall be affiliated with a resident North Carolina real estate ~~broker or salesperson,~~broker, and the resident North Carolina real estate broker ~~or salesperson~~ shall actively and personally supervise the licensee in a manner that reasonably assures that the licensee complies with the requirements of this Chapter and rules adopted by the Commission. A person or entity licensed under this subsection shall not, however, be affiliated with a resident North Carolina real estate provisional broker. The Commission may exempt applicants for licensure under this subsection from examination and the other licensing requirements under G.S. 93A-4. The Commission may adopt rules as it deems necessary to give effect to this subsection, including rules establishing: (i) qualifications for licensure; (ii) licensure and renewal procedures; (iii) requirements for continuing education; (iv) conduct of persons and entities licensed under this subsection and their affiliated resident real estate ~~brokers or salespersons;~~ brokers; (v) a definition of commercial real estate; and (vi) any requirements or limitations on affiliation between resident real estate brokers ~~or salespersons~~ and persons or entities seeking licensure under this subsection."

SECTION 12. Article 1 of Chapter 93A of the General Statutes is amended by adding the following new section to read:

"**§ 93A-12. Disputed monies.**

A real estate broker licensed under this Chapter may deposit with the clerk of court, monies, other than a residential security deposit, the ownership of which are in dispute and that the real estate broker received while acting in a fiduciary capacity. The disputed monies shall be deposited with the clerk of court in the county in which the property for which the disputed monies are being held is located. At the time of depositing the disputed monies the real estate broker shall provide proof to the clerk of court that the persons who are claiming ownership of the disputed monies have been notified that the disputed monies are to be deposited with the clerk of court and that they may initiate a special proceeding with the clerk of court to recover the disputed monies. Notice to the persons who are claiming ownership to the disputed monies shall be provided by either mailing a copy of the notice, registered or certified mail, addressed to the person to be served, and delivering it to the addressee, or depositing with a designated delivery service authorized under 26.U.S.C. §7502(f)(2) a copy of the notice, addressed to the person to be served, and delivering it to the addressee. A real estate broker shall not deposit disputed monies with the clerk of court until 90 days following notification of the persons claiming ownership of the disputed monies. Upon the filing of a special proceeding to recover the disputed monies, the clerk shall determine the

rightful ownership of the monies and distribute the disputed monies accordingly. If no special proceeding is filed with the clerk of court within one year of the disputed monies being deposited with the clerk of court, the clerk shall escheat the funds."

SECTION 13. G.S. 93A-16(a) reads as rewritten:

"(a) There is hereby created a special fund to be known as the "Real Estate Recovery Fund" which shall be set aside and maintained by the North Carolina Real Estate Commission. The fund shall be used in the manner provided under this Article for the payment of unsatisfied judgments where the aggrieved person has suffered a direct monetary loss by reason of certain acts committed by any real estate ~~broker or salesperson licensed under this Chapter.~~salesperson licensed before March 1, 2006, or by any real estate broker."

SECTION 14. G.S. 93A-17 reads as rewritten:

"**§ 93A-17. Grounds for payment; notice and application to Commission.**

(a) An aggrieved person who has suffered a direct monetary loss by reason of the conversion of trust funds by a real estate ~~broker or~~ salesperson licensed before March 1, 2006, or by any licensed real estate broker ~~under this Chapter~~ shall be eligible to recover, subject to the limitations of this Article, the amount of trust funds converted and which is otherwise unrecoverable provided that:

(1) The act or acts of conversion which form the basis of the claim for recovery occurred on or after September 1, 1979;

(2) The aggrieved person has sued the real estate broker or salesperson in a court of competent jurisdiction and has filed with the Commission written notice of such lawsuit within 60 days after its commencement unless the claim against the Real Estate Recovery Fund is for an amount less than three thousand dollars ($3,000), excluding attorneys fees, in which case the notice may be filed within 60 days after the termination of all judicial proceedings including appeals;

(3) The aggrieved person has obtained final judgment in a court of competent jurisdiction against the real estate broker or salesperson on grounds of conversion of trust funds arising out of a transaction which occurred when such broker or salesperson was licensed and acting in a capacity for which a license is required; and

(4) Execution of the judgment has been attempted and has been returned unsatisfied in whole or in part.

Upon the termination of all judicial proceedings including appeals, and for a period of one year thereafter, a person eligible for recovery may file a verified application with the Commission for payment out of the Real Estate Recovery Fund of the amount remaining unpaid upon the judgment which represents the actual and direct loss sustained by reason of conversion of trust funds. A copy of the judgment and return of execution shall be attached to the application and filed with the Commission. The applicant shall serve upon the judgment debtor a copy of the application and shall file with the Commission an affidavit or certificate of such service.

(b) For the purposes of this Article, the term "trust funds" shall include all earnest money deposits, down payments, sales proceeds, tenant security deposits, undisbursed

rents and other such monies which belong to another or others and are held by a real estate broker or salesperson acting in that capacity. Trust funds shall also include all time share purchase monies which are required to be held in trust by G.S. 93A-45(c) during the time they are, in fact, so held. Trust funds shall not include, however, any funds held by an independent escrow agent under G.S. 93A-42 or any funds which the court may find to be subject to an implied, constructive or resulting trust.

(c) For the purposes of this Article, the terms "licensee", "broker", and "salesperson" shall include only individual persons licensed under this Chapter as brokers ~~and~~ or individual persons who were licensed under this Chapter as salespersons prior to March 1, 2006. The terms "licensee", "broker", and "salesperson" ~~and~~ shall not include a time share developer, time share project, independent escrow agent, corporation or other entity licensed under this Chapter."

SECTION 15. G.S. 93A-22 reads as rewritten:

"**§ 93A-22. Repayment to fund; automatic suspension of license.**

Should the Commission pay from the Real Estate Recovery Fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed real estate broker or salesperson, ~~the~~ any license ~~of~~ issued to the broker or salesperson shall be automatically suspended upon the effective date of the order authorizing payment from the fund. No such broker or salesperson shall be granted a reinstatement until the fund has been repaid in full, including interest at the legal rate as provided for in G.S. 24-1."

SECTION 16. G.S. 93A-32(2) reads as rewritten:

"(2) "Private real estate school" means any real estate educational entity which is privately owned and operated by an individual, partnership, ~~corporation~~ corporation, limited liability company or association, and which conducts, for a profit or tuition charge, real estate ~~salesperson or~~ broker prelicensing or postlicensing courses prescribed by ~~G.S. 93A-4(a),~~G.S. 93A-4(a) or (a1), provided that a proprietary business or trade school licensed by the State Board of Community Colleges under G.S. 115D-90 to conduct courses other than those real estate courses described herein shall not be considered to be a private real estate school."

SECTION 17. G.S. 93A-34 reads as rewritten:

"**§ 93A-34. License required; application for license; fees; requirements for issuance of license.**

(a) No person, partnership, corporation or association shall operate or maintain or offer to operate in this State a private real estate school as defined herein unless a license is first obtained from the Commission in accordance with the provisions of this Article and the rules and regulations promulgated by the Commission under this Article. For licensing purposes, each branch location where a school conducts courses shall be considered a separate school requiring a separate license.

(b) Application for a license shall be filed in the manner and upon the forms prescribed by the Commission for that purpose. The Commission may by rule set nonrefundable application fees not to exceed two hundred fifty dollars ($250.00) for each school location and fifty dollars ($50.00) for each real estate ~~salesperson or~~ broker

prelicensing or postlicensing course. The application for a license shall be accompanied by the appropriate fees and shall contain the following:

(1) Name and address of the applicant and the school;
(2) Names, biographical data, and qualifications of director, administrators and instructors;
(3) Description of school facilities and equipment;
(4) Description of course(s) to be offered and instructional materials to be utilized;
(5) Information on financial resources available to equip and operate the school;
(6) Information on school policies and procedures regarding administration, record keeping, entrance requirements, registration, tuition and fees, grades, student progress, attendance, and student conduct;
(7) Copies of bulletins, catalogues and other official publications;
(8) Copy of bond required by G.S. 93A-36;
(9) Such additional information as the Commission may deem necessary to enable it to determine the adequacy of the instructional program and the ability of the applicant to operate a school in such a manner as would best serve the public interest.

(c) After due investigation and consideration by the Commission, a license shall be issued to the applicant when it is shown to the satisfaction of the Commission that the applicant and school are in compliance with the following standards, as well as the requirements of any supplemental regulations of the Commission regarding these standards:

(1) The program of instruction is adequate in terms of quality, content and duration.
(2) The director, administrators and instructors are adequately qualified by reason of education and experience.
(3) There are adequate facilities, equipment, instructional materials and instructor personnel to provide instruction of good quality.
(4) The school has adopted adequate policies and procedures regarding administration, instruction, record keeping, entrance requirements, registration, tuition and fees, grades, student progress, attendance, and student conduct.
(5) The school publishes and provides to all students upon enrollment a bulletin, catalogue or similar official publication which is certified as being true and correct in content and policy by an authorized school official, and which contains the following information:
    a. Identifying data and publication date;
    b. Name(s) of school and its full-time officials and faculty;
    c. School's policies and procedures relating to entrance requirements, registration, grades, student progress, attendance, student conduct and refund of tuition and fees;

d. Detailed schedule of tuition and fees;
e. Detailed course outline of all courses offered.

(6) Adequate records as prescribed by the Commission are maintained in regard to grades, attendance, registration and financial operations.

(7) Institutional standards relating to grades, attendance and progress are enforced in a satisfactory manner.

(8) The applicant is financially sound and capable of fulfilling educational commitments made to students.

(9) The school's owner(s), director, administrators and instructors are of good reputation and character.

(10) The ~~school complies~~school's facilities and equipment comply with all applicable local, State and federal laws and regulations regarding ~~safety and sanitation of facilities.~~health, safety, and welfare, including the Americans with Disabilities Act and other laws relating to accessibility standards for places of public accommodation.

(11) The school does not utilize advertising of any type which is false or misleading, either by actual statement, omission or intimation.

(12) Such additional standards as may be deemed necessary by the Commission to assure the conduct of adequate instructional programs and the operation of schools in a manner which will best serve the public interest."

SECTION 18. G.S. 93A-38(6) reads as rewritten:

"**§ 93A-38. Suspension, revocation or denial of license.**

The Commission shall have the power to suspend, revoke, deny issuance, or deny renewal of license to operate a private real estate school. In all proceedings to suspend, revoke or deny a license, the provisions of Chapter 150B of the General Statutes shall be applicable. The Commission may suspend, revoke, or deny such license when it finds:

...

(6) That the applicant for or holder of such license or any officer of a corporate licensee or corporation applying for a license, ~~or~~ any partner of a partnership licensee or partnership applying for a license, or any member of a limited liability company licensee or limited liability company applying for a license has pleaded guilty, entered a plea of nolo contendere or been found guilty of a crime involving moral turpitude in any state or federal court."

SECTION 19. G.S. 93A-40 reads as rewritten:

"**§ 93A-40. Registration required of time share projects; real estate ~~salespersons~~ license required.**

(a) ~~From and after July 1, 1984, it~~It shall be unlawful for any person in this State to engage or assume to engage in the business of a time share salesperson without first obtaining a real estate broker ~~or salesperson~~ license issued by the North Carolina Real Estate Commission under the provisions of Article 1 of this Chapter, and it shall be unlawful for a time share developer to sell or offer to sell a time share located in this

State without first obtaining a certificate of registration for the time share project to be offered for sale issued by the North Carolina Real Estate Commission under the provisions of this Article.

(b) A person responsible as general partner, corporate officer, joint venturer or sole proprietor who intentionally acts as a time share developer, allowing the offering of sale or the sale of time shares to a purchaser, without first obtaining registration of the time share project under this Article shall be guilty of a Class I felony."

SECTION 20. G.S. 93A-41(7a) reads as rewritten:

"(7a) "Project broker" means a natural person licensed as a real estate broker and designated by the developer to supervise brokers ~~and salespersons~~ at the time share project;".

SECTION 21. G.S. 93A-50 reads as rewritten:

"**§ 93A-50. Securities laws apply.**

The North Carolina Securities Act, Chapter 78A, shall also apply, in addition to the laws relating to real estate, to time shares deemed to be investment contracts or to other securities offered with or incident to a time share; provided, in the event of such applicability of the North Carolina Securities Act, any offer or sale of time shares registered under this Article shall not be subject to the provisions of G.S. 78A-24 and any real estate broker ~~or salesperson~~ registered under Article 1 of this Chapter shall not be subject to the provisions of G.S. 78A-36."

SECTION 22. G.S. 93A-52 reads as rewritten:

"**§ 93A-52. Application for registration of time share project; denial of registration; renewal; reinstatement; and termination of developer's interest.**

(a) Prior to the offering in this State of any time share located in this State, the developer of the time share project shall make written application to the Commission for the registration of the project. The application shall be accompanied by a fee in an amount fixed by the Commission but not to exceed ~~fifteen hundred dollars ($1500),~~ one thousand five hundred dollars ($1,500), and shall include a description of the project, copies of proposed time share instruments including public offering statements, sale contracts, deeds, and other documents referred to therein, information pertaining to any marketing or managing entity to be employed by the developer for the sale of time shares in a time share project or the management of the project, information regarding any exchange program available to the purchaser, an irrevocable appointment of the Commission to receive service of any lawful process in any proceeding against the developer or the developer's time share salespersons arising under this Article, and such other information as the Commission may by rule require.

Upon receipt of a properly completed application and fee and upon a determination by the Commission that the sale and management of the time shares in the time share project will be directed and conducted by persons of good moral character, the Commission shall issue to the developer a certificate of registration authorizing the developer to offer time shares in the project for sale. The Commission shall within 15 days after receipt of an incomplete application, notify the developer by mail that the Commission has found specified deficiencies, and shall, within 45 days after the receipt

of a properly completed application, either issue the certificate of registration or notify the developer by mail of any specific objections to the registration of the project. The certificate shall be prominently displayed in the office of the developer on the site of the project.

The developer shall promptly report to the Commission any and all changes in the information required to be submitted for the purpose of the registration. The developer shall also immediately furnish the Commission complete information regarding any change in its interest in a registered time share project. In the event a developer disposes of, or otherwise terminates its interest in a time share project, the developer shall certify to the Commission in writing that its interest in the time share project is terminated and shall return to the Commission for cancellation the certificate of registration.

...

(d) All certificates of registration granted and issued by the Commission under the provisions of this Article shall expire on the 30th day of June following issuance thereof, and shall become invalid after such date unless reinstated. Renewal of such certificate may be effected at any time during the month of June preceding the date of expiration of such registration upon proper application to the Commission and by the payment of a renewal fee fixed by the Commission but not to exceed one thousand five hundred dollars ($1,500) for each time share project. The developer shall, when making application for renewal, also provide a copy of the report required in G.S. 93A-48. Each certificate reinstated after the expiration date thereof shall be subject to a ~~late filing~~ fee of fifty dollars ($50.00) in addition to the required renewal fee. In the event a time share developer fails to reinstate the registration within 12 months after the expiration date thereof, the Commission may, in its discretion, consider the time share project as not having been previously registered, and thereby subject to the provisions of this Article relating to the issuance of an original certificate. Duplicate certificates may be issued by the Commission upon payment of a fee of one dollar ($1.00) by the registrant developer. Except as prescribed by Commission rules, all fees paid pursuant to this Article shall be nonrefundable."

SECTION 23. G.S. 93A-54 reads as rewritten:

"**§ 93A-54. Disciplinary action by Commission.**

(a) The Commission has power to take disciplinary action. Upon its own motion, or on the verified complaint of any person, the Commission may investigate the actions of any time share salesperson, developer, or project broker of a time share project registered under this Article, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a time share salesperson, developer, or project broker has violated any of the provisions of this Article, the Commission may hold a hearing on the allegations of misconduct.

The Commission has the power to suspend or revoke at any time a real estate license issued to a time share salesperson or project broker, or a certificate of registration of a time share project issued to a developer; or to reprimand or censure such salesperson, developer, or project broker; or to fine such developer in the amount of five hundred dollars ($500.00) for each violation of this Article, if, after a hearing, the Commission adjudges either the salesperson, developer, or project broker to be guilty of:

...

(3) Pursuing a course of misrepresentation or making of false promises through agents, ~~salesperson,~~salespersons, advertising or otherwise;

...

(e) When a licensee is accused of any act, omission, or misconduct under this Article which would subject the licensee to disciplinary action, the licensee may, with the consent and approval of the Commission, surrender the licensee's license and all the rights and privileges pertaining to it for a period of time to be established by the Commission. A licensee who surrenders a license shall not be eligible for, or submit any application for, licensure as a real estate broker ~~or salesperson~~ or registration of a time share project during the period of license surrender. For the purposes of this section, the term licensee shall include a time share developer."

SECTION 24. G.S. 93A-58(c) reads as rewritten:

"(c) The developer shall designate for each project and other locations where time shares are sold or offered for sale a project broker. The project broker shall act as supervising broker for all ~~persons licensed as~~ time share salespersons at the project or other location and shall directly, personally, and actively supervise all such persons ~~licensed as brokers or salespersons~~ at the project or other location in a manner to reasonably ensure that the sale of time shares will be conducted in accordance with the provisions of this Chapter."

SECTION 24. This section and G.S. 93A-4C, as enacted in Section 7 of this act, are effective when this act becomes law. Section 12 of this act becomes effective October 1, 2005. The remainder of the act becomes effective March 1, 2006.

HOUSE BILL 1284

Short Title:	Improve Real Estate Licensing Law.	(Public)
Sponsors:	Representatives Culpepper, Howard, Brubaker (Primary Sponsors); LaRoque and Sauls.	
Referred to:	Finance.	

April 19, 2005

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE REAL ESTATE LICENSING LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93A-1 reads as rewritten:

"**§ 93A-1. License required of real estate ~~brokers and real estate salespersons.~~brokers.**

From and after July 1, 1957, it shall be unlawful for any person, partnership, corporation, limited liability company, association, or other business entity in this State to act as a real estate ~~broker or real estate salesperson,~~ broker, or directly or indirectly to engage or assume to engage in the business of real estate broker ~~or real estate salesperson~~ or to advertise or hold himself or herself or themselves out as engaging in or conducting such business without first obtaining a license issued by the North Carolina Real Estate Commission (hereinafter referred to as the Commission), under the provisions of this Chapter. A license shall be obtained from the Commission even if the person, partnership, corporation, limited liability company, association, or business entity is licensed in another state and is affiliated or otherwise associated with a licensed real estate broker ~~or salesperson~~ in this State."

SECTION 2. G.S. 93A-2 is amended by adding a new subsection to read:

"(a2) The term provisional broker within the meaning of this Chapter means a real estate broker who, pending acquisition and documentation to the Commission of the education or experience prescribed by either G.S. 93A-4(a1) or G.S. 93A-4C, must be supervised by a broker-in-charge when performing any act for which a real estate license is required."

SECTION 3. G.S. 93A-2(b) reads as rewritten:

"(b) The term real estate salesperson within the meaning of this Chapter shall mean and include any person who ~~under the supervision of a real estate broker designated as broker-in-charge of a real estate office, for a compensation or valuable consideration is associated with or engaged by or on behalf of a licensed real estate~~

~~broker to do, perform or deal in any act, acts or transactions set out or comprehended by the foregoing definition of real estate broker.~~was formerly licensed by the Commission as a real estate salesperson before March 1, 2006."

SECTION 4. G.S. 93A-3 reads as rewritten:

"**§ 93A-3. Commission created; compensation; organization.**

(a) There is hereby created the North Carolina Real Estate Commission, hereinafter called the Commission. The Commission shall consist of nine members, seven members to be appointed by the Governor, one member to be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, and one member to be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. At least three members of the Commission shall be licensed real estate ~~brokers or real estate salespersons.~~brokers. At least two members of the Commission shall be persons who are not involved directly or indirectly in the real estate or real estate appraisal business. Members of the Commission shall serve three-year terms, so staggered that the terms of three members expire in one year, the terms of three members expire in the next year, and the terms of three members expire in the third year of each three-year period. The members of the Commission shall elect one of their members to serve as chairman of the Commission for a term of one year. The Governor may remove any member of the Commission for misconduct, incompetency, or willful neglect of duty. The Governor shall have the power to fill all vacancies occurring on the Commission, except vacancies in legislative appointments shall be filled under G.S. 120-122.

...

(c1) The provisions of G.S. 93A-1 and G.S. 93A-2 notwithstanding, the Commission may adopt rules to permit a real estate broker to pay a fee or other valuable consideration to a travel agent for the introduction or procurement of tenants or potential tenants in vacation rentals as defined in G.S. 42A-4. Rules adopted pursuant to this subsection may include a definition of the term "travel agent", may regulate the conduct of permitted transactions, and may limit the amount of the fee or the value of the consideration that may be paid to the travel agent. However, the Commission may not authorize a person or entity not licensed as a broker ~~or salesperson~~ to negotiate any real estate transaction on behalf of another.

...."

SECTION 5. G.S. 93A-4 reads as rewritten:

"**§ 93A-4. Applications for licenses; fees; qualifications; examinations; privilege licenses; renewal or reinstatement of license; power to enforce provisions.**

(a) Any person, partnership, corporation, limited liability company, association, or other business entity hereafter desiring to enter into business of and obtain a license as a real estate broker ~~or real estate salesperson~~ shall make written application for such license to the Commission in the form and manner prescribed by the Commission. Each applicant for a license as a real estate broker ~~or real estate salesperson~~ shall be at least 18 years of age. ~~Each applicant for a license as a real estate salesperson shall, within~~

~~three years preceding the date application is made, have satisfactorily completed, at a school approved by the Commission, a real estate fundamentals course consisting of at least 67 hours of classroom instruction in subjects determined by the Commission, or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the course.~~ Each applicant for a license as a real estate broker shall, within three years preceding the date the application is made, have satisfactorily completed, at a school approved by the Commission, an education program consisting of at least ~~60~~ 90 hours of classroom instruction in subjects determined by the Commission, ~~which shall be in addition to the course required for a real estate salesperson license,~~ or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the education program. Each applicant for a license as a real estate broker ~~or real estate salesperson~~ shall be required to pay a fee, fixed by the Commission but not to exceed thirty dollars ($30.00).

(a1) Each person who is issued a real estate broker license on or after March 1, 2006, shall initially be classified as a provisional broker and shall, within two years following initial licensure, satisfactorily complete, at a school approved by the Commission, a postlicensing education program consisting of 90 hours of classroom instruction in subjects determined by the Commission or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the education program. Upon completion of the postlicensing education program, the provisional status of the broker's license shall be terminated. When a provisional broker fails to complete the postlicensing education program within the prescribed period, the broker's license shall be cancelled, and the Commission may, in its discretion, require the person whose license was cancelled to satisfy the postlicensing education program and the requirements for original licensure prescribed in this Chapter as a condition of license reinstatement, including the examination requirements and the license reinstatement fee prescribed by subsection (c) of this section.

(a2) An approved school shall pay a fee of ten dollars ($10.00) per licensee to the Commission for each licensee completing a postlicensing education course conducted by the school, provided that these fees shall not be charged to a community college, junior college, college, or university located in this State and accredited by the Southern Association of Colleges and Schools.

(b) Except as otherwise provided in this Chapter, any person who submits an application to the Commission in proper manner for a license as real estate broker ~~or a license as real estate salesperson~~ shall be required to take an examination. The examination may be administered orally, by computer, or by any other method the Commission deems appropriate. The Commission may require the applicant to pay the Commission or a provider contracted by the Commission the actual cost of the examination and its administration. The cost of the examination and its administration shall be in addition to any other fees the applicant is required to pay under subsection (a) of this section. The examination shall determine the applicant's qualifications with due regard to the paramount interests of the public as to the applicant's competency. ~~A person holding a real estate salesperson license in this State and applying for a real~~

~~estate broker license shall not be required to take an additional examination under this subsection.~~ A person who fails the license examination shall be entitled to know the result and score. A person who passes the exam shall be notified only that the person passed the examination. Whether a person passed or failed the examination shall be a matter of public record; however, the scores for license examinations shall not be considered public records. Nothing in this subsection shall limit the rights granted to any person under G.S. 93B-8.

An applicant for licensure under this Chapter shall satisfy the Commission that he or she possesses the competency, honesty, truthfulness, integrity, and general moral character necessary to protect the public interest and promote public confidence in the real estate brokerage business. The Commission may investigate the moral character of each applicant for licensure and require an applicant to provide the Commission with a criminal record report. All applicants shall obtain criminal record reports from one or more reporting services designated by the Commission to provide criminal record reports. Applicants are required to pay the designated reporting service for the cost of these reports. If the results of any required competency examination and investigation of the applicant's moral character shall be satisfactory to the Commission, then the Commission shall issue to the applicant a license, authorizing the applicant to act as a real estate broker ~~or real estate salesperson~~ in the State of North Carolina, upon the payment of privilege taxes now required by law or that may hereafter be required by law.

...."

SECTION 6. G.S. 93A-4A reads as rewritten:

"**§ 93A-4A. Continuing education.**

(a) The Commission shall establish a program of continuing education for real estate ~~brokers and salespersons.~~brokers. An individual licensed as a real estate broker ~~or salesperson~~ is required to complete continuing education requirements in an amount not to exceed eight classroom hours of instruction a year during any license renewal period in subjects and at times the Commission deems appropriate. Any licensee who fails to complete continuing education requirements pursuant to this section shall not actively engage in the business of real estate ~~broker or salesperson.~~broker.

(a1) ~~In addition to the requirements of subsection (a) of this section, the~~The Commission ~~may~~ may, as part of the broker continuing education requirements, require real estate brokers-in-charge to complete a special continuing education course ~~of study, not to exceed six classroom hours every three years,~~ in subjects prescribed by the Commission.

(b) The Commission shall establish procedures allowing for a deferral of continuing education for brokers ~~and salespersons~~ while they are not actively engaged in real estate brokerage.

(c) The Commission may adopt any reasonable rules not inconsistent with this Chapter to give purpose and effect to the continuing education requirement, including rules that govern:

(1) The content and subject matter of continuing education courses.

(2) The curriculum of courses required.

(3) The criteria, standards, and procedures for the approval of courses, course sponsors, and course instructors.
(4) The methods of instruction.
(5) The computation of course credit.
(6) The ability to carry forward course credit from one year to another.
(7) The deferral of continuing education for brokers and salespersons not engaged in brokerage.
(8) The waiver of or variance from the continuing education requirement for hardship or other reasons.
(9) The procedures for compliance and sanctions for noncompliance.

(d) The Commission may establish a nonrefundable course application fee to be charged to a course sponsor for the review and approval of a proposed continuing education course. The fee shall not exceed one hundred twenty-five dollars ($125.00) per course. The Commission may charge the sponsor of an approved course a nonrefundable fee not to exceed seventy-five dollars ($75.00) for the annual renewal of course approval.

~~The Commission may also require a~~ An approved course sponsor ~~to~~ shall pay a fee of ten dollars ($10.00) per licensee to the Commission for each licensee completing an approved continuing education course conducted by the sponsor. ~~The fee shall not exceed five dollars ($5.00) per licensee.~~

The Commission shall not charge a course application fee, a course renewal fee, or any other fee for a continuing education course sponsored by a community college, junior college, college, or university located in this State and accredited by the Southern Association of Colleges and Schools.

(e) The Commission may award continuing education credit for an unapproved course or related educational activity. The Commission may prescribe procedures for a licensee to submit information on an unapproved course or related educational activity for continuing education credit. The Commission may charge a fee to the licensee for each course or activity submitted. The fee shall not exceed fifty dollars ($50.00)."

SECTION 7. Article 1 of Chapter 93A of the General Statutes is amended by adding the following new sections to read:

"**§ 93A-4B. Broker-in-charge qualification.**

To be qualified to serve as a broker-in-charge of a real estate office, a real estate broker shall possess at least one year of full-time real estate brokerage experience or equivalent part-time real estate brokerage experience within the previous five years or real estate education or experience in real estate transactions that the Commission finds equivalent to such experience, and shall complete, within a time prescribed by the Commission, a course of study prescribed by the Commission for brokers-in-charge not to exceed 12 classroom hours of instruction. A provisional broker may not be designated as a broker-in-charge.

"**§ 93A-4C. Elimination of salesperson license; conversion of salesperson licenses to broker licenses.**

(a) Effective March 1, 2006, the Commission shall discontinue issuing real estate salesperson licenses. Also effective March 1, 2006, all salesperson licenses shall

become broker licenses, and each person holding a broker license that was changed from salesperson to broker on that date shall be classified as a provisional broker as defined in G.S. 93A-2(a2).

(b) A provisional broker as contemplated in subsection (a) of this section who was issued a salesperson license prior to October 1, 2005, shall, not later than March 1, 2008, complete a broker transition course prescribed by the Commission, not to exceed 24 classroom hours of instruction, or shall demonstrate to the Commission that he or she possesses four years full-time real estate brokerage experience or equivalent part-time real estate brokerage experience within the previous six years. If the provisional broker satisfies this requirement by March 1, 2008, the provisional status of his or her broker license will be terminated, and the broker will not be required to complete the 90 classroom hour broker postlicensing education program prescribed by G.S. 93A-4(a1). If the provisional broker fails to satisfy this requirement by March 1, 2008, his or her license will be placed on inactive status, if not already on inactive status, and he or she must complete the 90-classroom-hour broker postlicensing education program prescribed by G.S. 93A-4(a1) in order to terminate the provisional status of the broker license and to be eligible to return his or her license to active status.

(c) An approved school or sponsor shall pay a fee of ten dollars ($10.00) per licensee to the Commission for each licensee completing a broker transition course conducted by the school or sponsor, provided that these fees shall not be charged to a community college, junior college, college, or university located in this State and accredited by the Southern Association of Colleges and Schools.

(d) A provisional broker as contemplated in subsection (a) of this section, who was issued a salesperson license between October 1, 2005, and February 28, 2006, shall, not later than March 1, 2008, satisfy the requirements of G.S. 93A-4(a1). Upon satisfaction of the requirements of G.S. 93A-4(a1), the provisional status of the broker's license will be terminated. If the provisional broker fails to satisfy the requirements of G.S. 93A-4(a1) by March 1, 2008, the broker's license shall be cancelled, and the person will be subject to the requirements for licensure reinstatement prescribed by G.S. 93A-4(a1).

(e) A broker who was issued a broker license prior to March 1, 2006, shall not be required to complete either the 90-classroom-hour broker postlicensing education program prescribed by G.S. 93A-4(a1) or the broker transition course prescribed by subsection (b) of this section.

(f) For the purpose of determining a licensee's status, rights, and obligations under this section, the Commission may treat a person who is issued a license on or after the October 1, 2005, or March 1, 2006, dates cited in subsections (a), (b), (d), or (e) of this section as though the person had been issued a license prior to those dates if the only reason the person's license was not issued prior to those dates was that the person's application was pending a determination by the Commission as to whether the applicant possessed the requisite moral character for licensure. If a license application is pending on March 1, 2006, for any reason other than a determination by the Commission as to the applicant's moral character for licensure, and if the applicant has not satisfied all education and examination requirements for licensing in effect on

March 1, 2006, the applicant's application shall be cancelled and the application fee refunded.

(g) No applications for a real estate salesperson license shall be accepted by the Commission between September 1, 2005, and September 30, 2005."

SECTION 8. G.S. 93A-5 reads as rewritten:

"**§ 93A-5. Register of applicants; roster of ~~brokers and salespersons;~~brokers; financial report to Secretary of State.**

(a) The Executive Director of the Commission shall keep a register of all applicants for license, showing for each the date of application, name, place of residence, and whether the license was granted or refused. Said register shall be prima facie evidence of all matters recorded therein.

(b) The Executive Director of the Commission shall also keep a current roster showing the names and places of business of all licensed real estate ~~brokers and real estate salespersons,~~brokers, which roster shall be kept on file in the office of the Commission and be open to public inspection.

(c) On or before the first day of September of each year, the Commission shall file with the Secretary of State a copy of the roster of real estate brokers ~~and real estate salespersons~~ holding certificates of license, and at the same time shall also file with the Secretary of State a report containing a complete statement of receipts and disbursements of the Commission for the preceding fiscal year ending June 30 attested by the affidavit of the Executive Director of the Commission."

SECTION 9. G.S. 93A-6(a) reads as rewritten:

"(a) The Commission has power to take disciplinary action. Upon its own initiative, or on the complaint of any person, the Commission may investigate the actions of any person or entity licensed under this Chapter, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a licensee has violated any of the provisions of this Chapter, the Commission may hold a hearing on the allegations of misconduct.

The Commission has power to suspend or revoke at any time a license issued under the provisions of this Chapter, or to reprimand or censure any licensee, if, following a hearing, the Commission adjudges the licensee to be guilty of:

(1) Making any willful or negligent misrepresentation or any willful or negligent omission of material fact.

(2) Making any false promises of a character likely to influence, persuade, or induce.

(3) Pursuing a course of misrepresentation or making of false promises through agents, ~~salespersons,~~ advertising or otherwise.

(4) Acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts.

(5) Accepting a commission or valuable consideration as a real estate salesperson for the performance of any of the acts specified in this Article or Article 4 of this Chapter, from any person except his or her broker-in-charge or licensed broker by whom he or she is employed.

(6) Representing or attempting to represent a real estate broker other than the broker by whom he or she is engaged or associated, without the express knowledge and consent of the broker with whom he or she is associated.

(7) Failing, within a reasonable time, to account for or to remit any monies coming into his or her possession which belong to others.

(8) Being unworthy or incompetent to act as a real estate broker ~~or salesperson~~ in a manner as to endanger the interest of the public.

(9) Paying a commission or valuable consideration to any person for acts or services performed in violation of this Chapter.

(10) Any other conduct which constitutes improper, fraudulent or dishonest dealing.

(11) Performing or undertaking to perform any legal service, as set forth in G.S. 84-2.1, or any other acts constituting the practice of law.

(12) Commingling the money or other property of his or her principals with his or her own or failure to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association in North Carolina all money received by him or her as a real estate licensee acting in that capacity, or an escrow agent, or the temporary custodian of the funds of others, in a real estate transaction; provided, these accounts shall not bear interest unless the principals authorize in writing the deposit be made in an interest bearing account and also provide for the disbursement of the interest accrued.

(13) Failing to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy and sell real estate to the buyer and to the seller.

(14) Failing, at the time the transaction is consummated, to deliver to the seller in every real estate transaction, a complete detailed closing statement showing all of the receipts and disbursements handled by him or her for the seller or failing to deliver to the buyer a complete statement showing all money received in the transaction from the buyer and how and for what it was disbursed.

(15) Violating any rule or regulation promulgated by the Commission.

The Executive Director shall transmit a certified copy of all final orders of the Commission suspending or revoking licenses issued under this Chapter to the clerk of superior court of the county in which the licensee maintains his or her principal place of business. The clerk shall enter these orders upon the judgment docket of the county."

SECTION 10. G.S. 93A-6.1(a) reads as rewritten:

"(a) The Commission, Executive Director, or other representative designated by the Commission may issue a subpoena for the appearance of witnesses deemed necessary to testify concerning any matter to be heard before or investigated by the Commission. The Commission may issue a subpoena ordering any person in possession of records, documents, or other materials, however maintained, that concern any matter to be heard before or investigated by the Commission to produce the records,

documents, or other materials for ~~inspection.~~inspection or deliver the same into the custody of the Commission's authorized representatives. Upon written request, the Commission shall revoke a subpoena if it finds that the evidence, the production of which is required, does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence, the production of which is required, or if for any other reason in law the subpoena is invalid. If any person shall fail to fully and promptly comply with a subpoena issued under this section, the Commission may apply to any judge of the superior court resident in any county where the person to whom the subpoena is issued maintains a residence or place of business for an order compelling the person to show cause why he or she should not be held in contempt of the Commission and its processes. The court shall have the power to impose punishment for acts that would constitute direct or indirect contempt if the acts occurred in an action pending in superior court."

SECTION 11. G.S. 93A-9 reads as rewritten:

"**§ 93A-9. Licensing nonresidents.**

(a) An applicant from another state, which offers licensing privileges to residents of North Carolina, may be licensed by conforming to all the provisions of this Chapter and, in the discretion of the Commission, such other terms and conditions as are required of North Carolina residents applying for license in such other state; provided that the Commission may exempt from the examination prescribed in G.S. 93A-4 a broker or salesperson duly licensed in another state if a similar exemption is extended to licensed brokers ~~and salespersons~~ from North Carolina. A license applicant who has been a resident of North Carolina for not more than 90 days may be considered by the Commission as a nonresident for the purposes of this subsection.

(b) The Commission may issue a limited broker's ~~or salesperson's~~ license to a person or an entity from another state or territory of the United States without regard to whether that state or territory offers similar licensing privileges to residents in North Carolina if the person or entity satisfies all of the following:

(1) Is of good moral character and licensed as a real estate broker or salesperson in good standing in another state or territory of the United States.

(2) Only engages in business as a real estate broker ~~or salesperson~~ in North Carolina in transactions involving commercial real estate and while the person or entity is affiliated with a resident North Carolina real estate ~~broker or salesperson.~~broker.

(3) Complies with the laws of this State regulating real estate brokers and ~~salespersons and~~ rules adopted by the Commission.

The Commission may require an applicant for licensure under this subsection to pay a fee not to exceed three hundred dollars ($300.00). All licenses issued under this subsection shall expire on June 30 of each year following issuance or on a date that the Commission deems appropriate unless the license is renewed pursuant to the requirements of G.S. 93A-4. A person or entity licensed under this subsection may be disciplined by the Commission for violations of this Chapter as provided in G.S. 93A-6 and G.S. 93A-54.

Any person or entity licensed under this subsection shall be affiliated with a resident North Carolina real estate ~~broker or salesperson,~~broker, and the resident North Carolina real estate broker ~~or salesperson~~ shall actively and personally supervise the licensee in a manner that reasonably assures that the licensee complies with the requirements of this Chapter and rules adopted by the Commission. A person or entity licensed under this subsection shall not, however, be affiliated with a resident North Carolina real estate provisional broker. The Commission may exempt applicants for licensure under this subsection from examination and the other licensing requirements under G.S. 93A-4. The Commission may adopt rules as it deems necessary to give effect to this subsection, including rules establishing: (i) qualifications for licensure; (ii) licensure and renewal procedures; (iii) requirements for continuing education; (iv) conduct of persons and entities licensed under this subsection and their affiliated resident real estate ~~brokers or salespersons;~~ brokers; (v) a definition of commercial real estate; and (vi) any requirements or limitations on affiliation between resident real estate brokers ~~or salespersons~~ and persons or entities seeking licensure under this subsection."

SECTION 12. G.S. 93A-16(a) reads as rewritten:

"(a) There is hereby created a special fund to be known as the "Real Estate Recovery Fund" which shall be set aside and maintained by the North Carolina Real Estate Commission. The fund shall be used in the manner provided under this Article for the payment of unsatisfied judgments where the aggrieved person has suffered a direct monetary loss by reason of certain acts committed by any real estate ~~broker or salesperson licensed under this Chapter.~~salesperson licensed before March 1, 2006, or by any real estate broker."

SECTION 13. G.S. 93A-17 reads as rewritten:

"**§ 93A-17. Grounds for payment; notice and application to Commission.**

(a) An aggrieved person who has suffered a direct monetary loss by reason of the conversion of trust funds by a real estate ~~broker or~~ salesperson licensed before March 1, 2006, or by any licensed real estate broker ~~under this Chapter~~ shall be eligible to recover, subject to the limitations of this Article, the amount of trust funds converted and which is otherwise unrecoverable provided that:

(1) The act or acts of conversion which form the basis of the claim for recovery occurred on or after September 1, 1979;

(2) The aggrieved person has sued the real estate broker or salesperson in a court of competent jurisdiction and has filed with the Commission written notice of such lawsuit within 60 days after its commencement unless the claim against the Real Estate Recovery Fund is for an amount less than three thousand dollars ($3,000), excluding attorneys fees, in which case the notice may be filed within 60 days after the termination of all judicial proceedings including appeals;

(3) The aggrieved person has obtained final judgment in a court of competent jurisdiction against the real estate broker or salesperson on grounds of conversion of trust funds arising out of a transaction which occurred when such broker or salesperson was licensed and acting in a capacity for which a license is required; and

(4) Execution of the judgment has been attempted and has been returned unsatisfied in whole or in part.

Upon the termination of all judicial proceedings including appeals, and for a period of one year thereafter, a person eligible for recovery may file a verified application with the Commission for payment out of the Real Estate Recovery Fund of the amount remaining unpaid upon the judgment which represents the actual and direct loss sustained by reason of conversion of trust funds. A copy of the judgment and return of execution shall be attached to the application and filed with the Commission. The applicant shall serve upon the judgment debtor a copy of the application and shall file with the Commission an affidavit or certificate of such service.

(b) For the purposes of this Article, the term "trust funds" shall include all earnest money deposits, down payments, sales proceeds, tenant security deposits, undisbursed rents and other such monies which belong to another or others and are held by a real estate broker or salesperson acting in that capacity. Trust funds shall also include all time share purchase monies which are required to be held in trust by G.S. 93A-45(c) during the time they are, in fact, so held. Trust funds shall not include, however, any funds held by an independent escrow agent under G.S. 93A-42 or any funds which the court may find to be subject to an implied, constructive or resulting trust.

(c) For the purposes of this Article, the terms "licensee", "broker", and "salesperson" shall include only individual persons licensed under this Chapter as brokers ~~and~~ or individual persons who were licensed under this Chapter as salespersons prior to March 1, 2006. The terms "licensee", "broker", and "salesperson" ~~and~~ shall not include a time share developer, time share project, independent escrow agent, corporation or other entity licensed under this Chapter."

SECTION 14. G.S. 93A-22 reads as rewritten:

"**§ 93A-22. Repayment to fund; automatic suspension of license.**

Should the Commission pay from the Real Estate Recovery Fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed real estate broker or salesperson, ~~the~~ any license ~~of~~ issued to the broker or salesperson shall be automatically suspended upon the effective date of the order authorizing payment from the fund. No such broker or salesperson shall be granted a reinstatement until the fund has been repaid in full, including interest at the legal rate as provided for in G.S. 24-1."

SECTION 15. G.S. 93A-32(2) reads as rewritten:

"(2) "Private real estate school" means any real estate educational entity which is privately owned and operated by an individual, partnership, ~~corporation~~ corporation, limited liability company or association, and which conducts, for a profit or tuition charge, real estate ~~salesperson or~~ broker prelicensing or postlicensing courses prescribed by ~~G.S. 93A-4(a),~~G.S. 93A-4(a) or (a1), provided that a proprietary business or trade school licensed by the State Board of Community Colleges under G.S. 115D-90 to conduct courses other than those real estate courses described herein shall not be considered to be a private real estate school."

SECTION 16. G.S. 93A-34 reads as rewritten:

"**§ 93A-34. License required; application for license; fees; requirements for issuance of license.**

(a) No person, partnership, corporation or association shall operate or maintain or offer to operate in this State a private real estate school as defined herein unless a license is first obtained from the Commission in accordance with the provisions of this Article and the rules and regulations promulgated by the Commission under this Article. For licensing purposes, each branch location where a school conducts courses shall be considered a separate school requiring a separate license.

(b) Application for a license shall be filed in the manner and upon the forms prescribed by the Commission for that purpose. The Commission may by rule set nonrefundable application fees not to exceed two hundred fifty dollars ($250.00) for each school location and fifty dollars ($50.00) for each real estate ~~salesperson or~~ broker prelicensing or postlicensing course. The application for a license shall be accompanied by the appropriate fees and shall contain the following:

(1) Name and address of the applicant and the school;
(2) Names, biographical data, and qualifications of director, administrators and instructors;
(3) Description of school facilities and equipment;
(4) Description of course(s) to be offered and instructional materials to be utilized;
(5) Information on financial resources available to equip and operate the school;
(6) Information on school policies and procedures regarding administration, record keeping, entrance requirements, registration, tuition and fees, grades, student progress, attendance, and student conduct;
(7) Copies of bulletins, catalogues and other official publications;
(8) Copy of bond required by G.S. 93A-36;
(9) Such additional information as the Commission may deem necessary to enable it to determine the adequacy of the instructional program and the ability of the applicant to operate a school in such a manner as would best serve the public interest.

(c) After due investigation and consideration by the Commission, a license shall be issued to the applicant when it is shown to the satisfaction of the Commission that the applicant and school are in compliance with the following standards, as well as the requirements of any supplemental regulations of the Commission regarding these standards:

(1) The program of instruction is adequate in terms of quality, content and duration.
(2) The director, administrators and instructors are adequately qualified by reason of education and experience.
(3) There are adequate facilities, equipment, instructional materials and instructor personnel to provide instruction of good quality.

(4) The school has adopted adequate policies and procedures regarding administration, instruction, record keeping, entrance requirements, registration, tuition and fees, grades, student progress, attendance, and student conduct.

(5) The school publishes and provides to all students upon enrollment a bulletin, catalogue or similar official publication which is certified as being true and correct in content and policy by an authorized school official, and which contains the following information:

a. Identifying data and publication date;

b. Name(s) of school and its full-time officials and faculty;

c. School's policies and procedures relating to entrance requirements, registration, grades, student progress, attendance, student conduct and refund of tuition and fees;

d. Detailed schedule of tuition and fees;

e. Detailed course outline of all courses offered.

(6) Adequate records as prescribed by the Commission are maintained in regard to grades, attendance, registration and financial operations.

(7) Institutional standards relating to grades, attendance and progress are enforced in a satisfactory manner.

(8) The applicant is financially sound and capable of fulfilling educational commitments made to students.

(9) The school's owner(s), director, administrators and instructors are of good reputation and character.

(10) The ~~school complies~~school's facilities and equipment comply with all applicable local, State and federal laws and regulations regarding ~~safety and sanitation of facilities.~~health, safety, and welfare, including the Americans with Disabilities Act and other laws relating to accessibility standards for places of public accommodation.

(11) The school does not utilize advertising of any type which is false or misleading, either by actual statement, omission or intimation.

(12) Such additional standards as may be deemed necessary by the Commission to assure the conduct of adequate instructional programs and the operation of schools in a manner which will best serve the public interest."

SECTION 17. G.S. 93A-38(6) reads as rewritten:

"**§ 93A-38. Suspension, revocation or denial of license.**

The Commission shall have the power to suspend, revoke, deny issuance, or deny renewal of license to operate a private real estate school. In all proceedings to suspend, revoke or deny a license, the provisions of Chapter 150B of the General Statutes shall be applicable. The Commission may suspend, revoke, or deny such license when it finds:

...

(6) That the applicant for or holder of such license or any officer of a corporate licensee or corporation applying for a license, ~~or~~ any partner

of a partnership licensee or partnership applying for a license, or any member of a limited liability company licensee or limited liability company applying for a license has pleaded guilty, entered a plea of nolo contendere or been found guilty of a crime involving moral turpitude in any state or federal court."

SECTION 18. G.S. 93A-40 reads as rewritten:

"**§ 93A-40. Registration required of time share projects; real estate ~~salespersons~~ license required.**

(a) ~~From and after July 1, 1984, it~~It shall be unlawful for any person in this State to engage or assume to engage in the business of a time share salesperson without first obtaining a real estate broker ~~or salesperson~~ license issued by the North Carolina Real Estate Commission under the provisions of Article 1 of this Chapter, and it shall be unlawful for a time share developer to sell or offer to sell a time share located in this State without first obtaining a certificate of registration for the time share project to be offered for sale issued by the North Carolina Real Estate Commission under the provisions of this Article.

(b) A person responsible as general partner, corporate officer, joint venturer or sole proprietor who intentionally acts as a time share developer, allowing the offering of sale or the sale of time shares to a purchaser, without first obtaining registration of the time share project under this Article shall be guilty of a Class I felony."

SECTION 19. G.S. 93A-41(7a) reads as rewritten:

"(7a) "Project broker" means a natural person licensed as a real estate broker and designated by the developer to supervise brokers ~~and salespersons~~ at the time share project;".

SECTION 20. G.S. 93A-50 reads as rewritten:

"**§ 93A-50. Securities laws apply.**

The North Carolina Securities Act, Chapter 78A, shall also apply, in addition to the laws relating to real estate, to time shares deemed to be investment contracts or to other securities offered with or incident to a time share; provided, in the event of such applicability of the North Carolina Securities Act, any offer or sale of time shares registered under this Article shall not be subject to the provisions of G.S. 78A-24 and any real estate broker ~~or salesperson~~ registered under Article 1 of this Chapter shall not be subject to the provisions of G.S. 78A-36."

SECTION 21. G.S. 93A-52 reads as rewritten:

"**§ 93A-52. Application for registration of time share project; denial of registration; renewal; reinstatement; and termination of developer's interest.**

(a) Prior to the offering in this State of any time share located in this State, the developer of the time share project shall make written application to the Commission for the registration of the project. The application shall be accompanied by a fee in an amount fixed by the Commission but not to exceed ~~fifteen hundred dollars ($1500),~~ one thousand five hundred dollars ($1,500), and shall include a description of the project, copies of proposed time share instruments including public offering statements, sale contracts, deeds, and other documents referred to therein, information pertaining to any

marketing or managing entity to be employed by the developer for the sale of time shares in a time share project or the management of the project, information regarding any exchange program available to the purchaser, an irrevocable appointment of the Commission to receive service of any lawful process in any proceeding against the developer or the developer's time share salespersons arising under this Article, and such other information as the Commission may by rule require.

Upon receipt of a properly completed application and fee and upon a determination by the Commission that the sale and management of the time shares in the time share project will be directed and conducted by persons of good moral character, the Commission shall issue to the developer a certificate of registration authorizing the developer to offer time shares in the project for sale. The Commission shall within 15 days after receipt of an incomplete application, notify the developer by mail that the Commission has found specified deficiencies, and shall, within 45 days after the receipt of a properly completed application, either issue the certificate of registration or notify the developer by mail of any specific objections to the registration of the project. The certificate shall be prominently displayed in the office of the developer on the site of the project.

The developer shall promptly report to the Commission any and all changes in the information required to be submitted for the purpose of the registration. The developer shall also immediately furnish the Commission complete information regarding any change in its interest in a registered time share project. In the event a developer disposes of, or otherwise terminates its interest in a time share project, the developer shall certify to the Commission in writing that its interest in the time share project is terminated and shall return to the Commission for cancellation the certificate of registration.

...

(d) All certificates of registration granted and issued by the Commission under the provisions of this Article shall expire on the 30th day of June following issuance thereof, and shall become invalid after such date unless reinstated. Renewal of such certificate may be effected at any time during the month of June preceding the date of expiration of such registration upon proper application to the Commission and by the payment of a renewal fee fixed by the Commission but not to exceed one thousand five hundred dollars ($1,500) for each time share project. The developer shall, when making application for renewal, also provide a copy of the report required in G.S. 93A-48. Each certificate reinstated after the expiration date thereof shall be subject to a ~~late filing~~ fee of fifty dollars ($50.00) in addition to the required renewal fee. In the event a time share developer fails to reinstate the registration within 12 months after the expiration date thereof, the Commission may, in its discretion, consider the time share project as not having been previously registered, and thereby subject to the provisions of this Article relating to the issuance of an original certificate. Duplicate certificates may be issued by the Commission upon payment of a fee of one dollar ($1.00) by the registrant developer. Except as prescribed by Commission rules, all fees paid pursuant to this Article shall be nonrefundable."

SECTION 22. G.S. 93A-54 reads as rewritten:

"**§ 93A-54. Disciplinary action by Commission.**

(a) The Commission has power to take disciplinary action. Upon its own motion, or on the verified complaint of any person, the Commission may investigate the actions of any time share salesperson, developer, or project broker of a time share project registered under this Article, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a time share salesperson, developer, or project broker has violated any of the provisions of this Article, the Commission may hold a hearing on the allegations of misconduct.

The Commission has the power to suspend or revoke at any time a real estate license issued to a time share salesperson or project broker, or a certificate of registration of a time share project issued to a developer; or to reprimand or censure such salesperson, developer, or project broker; or to fine such developer in the amount of five hundred dollars ($500.00) for each violation of this Article, if, after a hearing, the Commission adjudges either the salesperson, developer, or project broker to be guilty of:

...

(3) Pursuing a course of misrepresentation or making of false promises through agents, ~~salesperson,~~salespersons, advertising or otherwise;

...

(e) When a licensee is accused of any act, omission, or misconduct under this Article which would subject the licensee to disciplinary action, the licensee may, with the consent and approval of the Commission, surrender the licensee's license and all the rights and privileges pertaining to it for a period of time to be established by the Commission. A licensee who surrenders a license shall not be eligible for, or submit any application for, licensure as a real estate broker ~~or salesperson~~ or registration of a time share project during the period of license surrender. For the purposes of this section, the term licensee shall include a time share developer."

SECTION 23. G.S. 93A-58(c) reads as rewritten:

"(c) The developer shall designate for each project and other locations where time shares are sold or offered for sale a project broker. The project broker shall act as supervising broker for all ~~persons licensed as~~ time share salespersons at the project or other location and shall directly, personally, and actively supervise all such persons ~~licensed as brokers or salespersons~~ at the project or other location in a manner to reasonably ensure that the sale of time shares will be conducted in accordance with the provisions of this Chapter."

SECTION 24. Article 19 of Chapter 7A of General Statutes is amended by adding a new section to read:

"**§ 7A-211.2. Declaratory judgment in small claims court.**

Notwithstanding G.S. 7A-210(2), a real estate broker licensed pursuant to Chapter 93A of the General Statutes has recourse to obtain a declaratory judgment ruling in accordance with G.S. 1A-1, Rule 57, in a small claims action with respect to monies, other than a residential security deposit held pursuant to Article 6 of Chapter 42 of the General Statutes, the ownership of which are in dispute and that the real estate broker received while acting in a fiduciary capacity. Notwithstanding G.S. 7A-211, venue for an action under this section is appropriate in the county in which the property for which the disputed monies are being held is located. The defendant may be subjected to the

jurisdiction of the court over his person by the methods provided in G.S. 7A-217 or G.S. 1A-1, Rules 4(j) and 4(j1) of the Rules of Civil Procedure."

SECTION 25. This section and G.S. 93A-4C, as enacted in Section 7 of this act, are effective when this act becomes law. The remainder of the act becomes effective March 1, 2006.

HOUSE BILL 1284:
Improve Real Estate Licensing Law

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 21, 2005
Introduced by:	Reps. Culpepper, Howard, Brubaker	**Summary by:**	Martha Walston
Version:	PCS to First Edition H1284-CSLAf-19		Committee Counsel

SUMMARY: ***House Bill 1284 would amend the real estate licensing laws to eliminate real estate salespersons licenses making all licensed real estate agents real estate brokers as of March 1, 2006. Senate Bill 1120 is a companion bill and is in Senate Commerce.***

House Bill 1284 is in House Finance because of the following new fees and fee increases:

- ***Increases the fee a real estate continuing education course sponsor pays to the North Carolina Real Estate Commission when reporting a licensee's completion of an approved CE course from a maximum of $5 to a flat fee of $10.***
- ***Requires a school or sponsor to pay a $10 fee per licensee to the Commission for each licensee completing a broker transition course. (Successful completion of the course will terminate the provisional status of a broker license that is converted on March 1, 2006, from a salesperson license to provisional broker license.)***
- ***Requires a school to pay a $10 fee per licensee to the Commission for each licensee completing a postlicensing education course (Successful completion of a postlicensing education course is required of new licensees who are licensed as provisional brokers on and after March 1, 2006, as well as provisional brokers whose licenses were converted from salesperson licenses and who are not eligible to perfect the conversion by taking a special broker transition course.)***

The above fees are NOT charged to a community college, junior college, college, or university located in the State and accredited by the Southern Association of Colleges and Schools.

The proposed committee substitute differs from the 1st edition of HB 1284 as follows:

- ***Reduces the proposed amount of instruction that an applicant must complete to obtain an entry-level provisional broker license from 90 hours of classroom instruction to 75 hours of classroom instruction.***
- ***Increases the time from two years to three years in which a provisional broker must complete the 90-hour postlicensing education program after being licensed with provisional broker status in order to become a broker. Authorizes the Commission to establish, by rule, a schedule for completion of the postlicensing course.***
- ***Authorizes the Commission to require brokers-in-charge to compete during each annual license period a special continuing education course of not more than four classroom hours of instruction. (The 1st edition does NOT specify the number of classroom hours.)***
- ***Adds a new section providing that disputed earnest money deposits, other than residential security deposits, may be deposited with the clerk of court for determination of the rightful owner and deletes language in the 1st edition that allows a broker who holds money in trust for parties to a real estate transaction to seek a declaratory judgment in small claims court in the event of a dispute of ownership of the money.***

CURRENT LAW: Under Article 1 of Chapter 93A of the General Statutes, the North Carolina Real Estate Commission is directed to issue two types of real estate licenses to persons legally authorized to

sell or lease real estate for compensation in NC, namely a real estate salesperson license and a real estate broker license. A real estate salesperson must operate under the supervision of a real estate broker. An applicant for a real estate salesperson license must complete a 67-hour real estate course and pass the real estate license examination to qualify for a salesperson license. An applicant for a real estate broker license has to satisfy the salesperson license requirements and take an additional 60-hour course.

BILL ANALYSIS: Sections 5 and 7 of the bill eliminate the real estate salesperson license category as of March 1, 2006, establish a "broker-only" license structure with increased education requirements to obtain a broker license, and establish stricter requirements for brokers to serve as broker-in-charge of a real estate office.

Section 5 changes the number of prelicensing classroom hours needed to obtain an entry-level real estate license (provisional broker) from 67 hours to 75 hours effective March 1, 2006. In addition, all provisional brokers who are initially licensed on or after March 1, 2006, will have to complete a 90-hour postlicensing education program within 3 years after being licensed as a provisional broker in order to terminate the provisional status of their broker license. (Under current law, a salesperson may complete a 60-hour broker course and obtain a broker license, but has the option to keep the salesperson license indefinitely and never become a broker.) Failure to complete the postlicensing education within 3 years will result in the license being cancelled until the education is completed. A provisional broker may be exempt from the 90-hour postlicensing course if he or she possesses equivalent real estate education or experience.

Section 7 requires a real estate broker who requests to be designated as the broker-in-charge of a real estate office to possess at least 1 year of full-time (or part-time equivalent) brokerage experience and to complete, on a one-time basis, a broker-in-charge course not to exceed 12 hours. Under current law, no experience is required but a broker-in-charge must complete a special course of not more than 6 hours no more frequently than every 3 years. Section 6 authorizes the Commission to require brokers who are designated as broker-in-charge to complete a special continuing education course not to exceed four hours per annual license period as part of their regular broker continuing education requirement, which is eight hours per year.

Section 7 also sets out the transition process for converting a salesperson license to a broker license. On March 1, 2006, all salesperson licenses will be converted to broker licenses and the holder of the broker license will be classified as a provisional broker. A provisional broker who was issued a salesperson license prior to October 1, 2005, may terminate provisional status by completing one of the following requirements by March 1, 2008:

- complete a broker transition course not to exceed 24 classroom hours.
- demonstrate to the Commission that he or she possesses four years of full-time real estate brokerage experience or equivalent part-time brokerage experience within the previous six years.

If the provisional broker fails to satisfy one of the above requirements by March 1, 2008, then his or her license will be placed on inactive status and he or she must take the 90-hour postlicensing education program to be eligible for active license status.

A provisional broker who was issued a salesperson license between October 1, 2005, and February 1, 2006, must satisfy one of the following requirements by March 1, 2008, in order to terminate the provisional status of his or her broker license:

- satisfactorily complete the 90-hour postlicensing course.
- possess equivalent real estate education or experience in real estate transactions.

If the provisional broker fails to satisfy one of the above requirements by March 1, 2008, then his or her broker license is cancelled.

A person licensed as a broker prior to March 1, 2006, shall not be required to take the 90-hour postlicensing course.

No applications for a real estate salesperson license will be accepted between September 1, 2005, and September 30, 2005.

Section 2 requires all provisional brokers to work under the supervision of a broker-in-charge until they fulfill the requirements to be licensed as a broker.

Section 10 authorizes the Commission to take custody of documents or materials obtained by subpoena in order to photocopy them. Current law only allows the Commission to examine the documents or materials obtained by a subpoena.

Section 11 provides that an applicant from a reciprocal state has 90 days after establishing residency in North Carolina to obtain a North Carolina license without taking the licensing examination.

Section 12 adds a new section to the Article to provide that a broker, may deposit with the clerk of court, disputed earnest money, other than a residential security deposit, for determination of the rightful owner. The broker must provide notice to the persons claiming ownership that the money is to be deposited and that the person may initiate a special proceeding with the clerk of court to recover the disputed monies. In order to give the parties an opportunity to settle the dispute, the monies may not be deposited until 90 days following notification. Current law requires a broker to hold disputed earnest monies until the parties resolve ownership, which may never happen.

The remaining sections of the bill contain technical and conforming changes to the real estate licensing law to reflect the changes made in Sections 5 and 7 of the bill.

EFFECTIVE DATE: The transition provisions of Section 7 designated as the new G.S. 93A-4C become effective with the bill becomes law. Section 12 of the bill becomes effective October 1, 2005. The remainder of the bill becomes effective March 1, 2006.

H1284e1-SMLA-CSLAf-19

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 20, 2005

TO: Representatives Brubaker, Culpepper, and Howard

FROM: Brenna Erford and Rodney Bizzell
Fiscal Research Division

RE: House Bill 1284 (Proposed Committee Substitute)

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	**FY 2006-07**	**FY 2007-08**	**FY 2008-09**	**FY 2009-10**
REVENUES:					
General Fund			**No Impact to General Fund**		
Licensing board	$309,000	$253,000	$193,000	$470,000	$470,000
EXPENDITURES:					
Licensing board	($200,000)	($100,000)	($100,000)	($100,000)	($100,000)
Net revenue	**$109,000**	**$253,000**	**$93,000**	**$370,000**	**$370,000**
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Real Estate Commission

EFFECTIVE DATE: Section 7, when law; Sections 6 and 12, Oct. 1, 2005; and all other sections, March 1, 2006.

BILL SUMMARY: House Bill 1284 would amend the real estate licensing laws to eliminate real estate salespersons licenses making all licensed real estate agents real estate brokers as of March 1, 2006. House Bill 1284 is in House Finance because of the following new fees and fee increases:

- Increases the fee a real estate continuing education course sponsor pays to the North Carolina Real Estate Commission when reporting a licensee's completion of an approved CE course from a maximum of $5 to a flat fee of $10.
- Requires a school or sponsor to pay a $10 fee per licensee to the Commission for each licensee completing a broker transition course. (Successful completion of the course will terminate the provisional status of a broker license that is converted on March 1, 2006, from a salesperson license to provisional broker license.)
- Requires a school to pay a $10 fee per licensee to the Commission for each licensee completing a postlicensing education course (Successful completion of a postlicensing education course is required of new licensees who are licensed as provisional brokers on and after March 1, 2006, as well as provisional brokers whose licenses were converted from salesperson licenses and who are not eligible to perfect the conversion by taking a special broker transition course.)

The above fees are NOT charged to a community college, junior college, college, or university located in the State and accredited by the Southern Association of Colleges and Schools.

ASSUMPTIONS AND METHODOLOGY: Under Article 1 of Chapter 93A of the General Statutes, the North Carolina Real Estate Commission is directed to issue two types of real estate licenses to persons legally authorized to sell real estate for compensation in NC, namely a real estate salesperson license and a real estate broker license. A real estate salesperson must operate under the supervision of a real estate broker. An applicant for a real estate salesperson license must complete a 67-hour real estate course and pass the real estate license examination to qualify for a salesperson license. An applicant for a real estate broker license has to satisfy the salesperson license requirements and take an additional 60-hour course before taking the real estate broker exam. Sections 5 and 7 of the bill eliminate the real estate salesperson license category as of March 1, 2006, establish a "broker-only" license structure with increased education requirements to obtain a broker license, and establish stricter requirements for brokers to serve as broker-in-charge of a real estate office.

This projection assumes that brokers will take approximately 2 continuing education (CE) courses per year, resulting in a total new revenue of $10 per broker to the Real Estate Commission. The Commission estimates 3,500 persons will complete the broker transition course during 2006-07 and 2007-08, after which the conversion will be completed and the course will no longer have to be offered. The Commission also estimates that 4,000 brokers will complete postlicensing education in 2006-07. They expect that number will increase to 6,000 by 2007-08 and remain approximately the same in future years.

The Commission foregone revenue totaling $76,000 in 2005-06 resulting from a projected 50% decrease in broker license application fees between July 2005 and February 2006 due to salespersons anticipating the license conversion. They also expect to incur $200,000 of expenses related to implementation of the licensing change. These expenses include computer programming, printing, postage, and other miscellaneous charges. The Commission does not have further detail

on the first-year expense of the bill at the present time. The total estimated expenses and foregone revenue for 2005-06 are $276,000.

In 2006-07, the Commission expects a reduction in the total number of license application fees due to having only one license and a loss of renewal fees from inactive provisional brokers (former inactive salespersons) who do not renew in June 2006 due to the requirement to take the broker transition course by March 1, 2008. The Commission estimates they will forego $152,000 in license application fees and $80,000 in renewal fees due to these circumstances. The $100,000 in recurring administrative expenses is due to the Commission's expectation that they will hire additional personnel to aid with administration of the new licensing procedures.

Schedule of revenues and expenditures for House Bill 1284					
REVENUES	2005-06	2006-07	2007-08	2008-09	2009-2010
$5 for 2 CE courses per broker ($10)	$ 385,000	$ 410,000	$ 410,000	$ 410,000	$ 410,000
$10 for broker transition course	$ -	$ 35,000	$ 35,000	$ -	$ -
$10 for postlicensing education	$ -	$ 40,000	$ 60,000	$ 60,000	$ 60,000
50% decrease in broker license apps	$ (76,000)				
Reduction in total license applications	$ -	$ (152,000)	$ (152,000)	$ -	$ -
Loss of renewal fees from brokers	$ -	$ (80,000)	$ (160,000)	$ -	$ -
Total revenue	$ 309,000	$ 253,000	$ 193,000	$ 470,000	$ 470,000
EXPENDITURES	$ -	$ -	$ -	$ -	$ -
Bill implementation expenses	$ 200,000	$ -	$ -	$ -	$ -
Administrative expenses	$ -	$ 100,000	$ 100,000	$ 100,000	$ 100,000
Total expenditures	$ 200,000	$ 100,000	$ 100,000	$ 100,000	$ 100,000
NET REVENUE	**$ 109,000**	**$ 153,000**	**$ 93,000**	**$ 370,000**	**$ 370,000**

SOURCES OF DATA: North Carolina Real Estate Commission

TECHNICAL CONSIDERATIONS: None

ATTACHMENT 6

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1284

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

H1284-ALA-13 [v.2]

Date June 21 ,2005

Comm. Sub. [YES]
Amends Title [NO]
H1284-CSLAf-19

Representative Howard

moves to amend the bill on page 17, line 22, by rewriting the sentence beginning on that line to read:
"Sections 6 and 12 of this act become effective".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

THE GREAT SEAL OF THE STATE OF NORTH CAROLINA
MAY 20, 1775
APRIL 12 1776
ESSE QUAM VIDERI

North Carolina Association of REALTORS®

House Bill 1284 – Improve Real Estate Licensing Law

Background: **The North Carolina Association of REALTORS® supports House Bill 1284 (Improve Real Estate Licensing Law).** NCAR has been integral in developing this legislation, which seeks to enhance the professionalism of the real estate industry by increasing the educational requirements for real estate licensees. House Bill 1284 also makes other changes to the real estate licensing statutes.

Legislation: **House Bill 1284** does the following:

- Eliminates the salesperson license and requires persons entering the real estate industry to obtain a broker license. Applicants for a broker license would have to complete a 75 hour pre-licensing course, pass the state license examination and complete a 90 hour post-licensure course within three years of licensure. (Currently an applicant must complete a 67 hour course and pass the state license examination to obtain a salesperson license. Completion of an additional 60 hour course is required to obtain a broker license.) The bill also establishes a fee charged to real estate schools that teach the post-licensure course in the amount of $10 per licensee per course.

- Provides that existing salesperson licensees can obtain a broker license if they have at least four years of full-time cumulative experience as a salesperson within the past six years or if they complete a 24 hour transition course. The bill establishes a fee charged to real estate schools that teach the 24-hour transition course in the amount of $10 per licensee.

- Provides that in order to qualify for designation as a Broker-in-Charge a broker must have at least one year of full-time real estate brokerage experience or equivalent part-time real estate brokerage experience within the previous five years or real estate education or experience in real estate transactions that the Real Estate Commission finds equivalent to such experience. Brokers-in-Charge (BICs) are those real estate brokers who are responsible for certain supervisory and administrative duties and every real estate office must designate a broker to serve as a BIC.

- Requires a BIC to complete an introductory BIC course, not to exceed 12 classroom hours, as developed by the Real Estate Commission. The length of the current course is 4 ½ hours.

- Requires a BIC to annually complete a BIC continuing education course not to exceed 4 hours.

- Increases the fee for real estate schools that teach continuing education courses from $5 per licensee to $10 per licensee.

- Explicitly provides that the Real Estate Commission may take custody of documents or materials obtained by a subpoena in order to photocopy them. Current law only allows the Commission to examine the documents or materials obtained by a subpoena.

North Carolina Association of REALTORS®, Inc.,
Legislative Department, 421 Fayetteville Street, Suite 1109, Raleigh, NC 27601
800-443-9956 • Fax 919-856-9157

- Provides that a nonresident commercial licensee must affiliate with and be supervised by a North Carolina broker. Current law allows affiliation with and supervision by a North Carolina salesperson or broker.

- Makes technical changes that recognize limited liability companies as a type of corporate entity.

- Provides that a real estate licensee from a state that North Carolina has a reciprocal licensing agreement with has until 90 days after establishing residency in North Carolina to obtain a North Carolina license without taking pre-licensing education and a licensing examination. Under current law, once North Carolina residency is established licensing by reciprocity is not allowed and the new resident who holds an out of state real estate license must at least take the licensing examination.

- Makes explicit the requirement that real estate school facilities comply with the Americans with Disabilities Act and related laws.

- Eliminates the reference to late fee in the time share statutes.

- Provides that disputed earnest money deposits may be deposited with the clerk of court for determination of the rightful owner. Current law requires a broker to hold disputed earnest money until the parties resolve ownership, which may never happen.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 1284 A BILL TO BE ENTITLED AN ACT TO IMPROVE THE REAL ESTATE LICENSING LAW.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1059

Health Care Committee Substitute Adopted 5/5/05
Finance Committee Substitute Adopted 6/1/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1059-CSSVf-46 [v.1]

6/20/2005 9:21:43 PM

Short Title: Perfusionists Licensure. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE LICENSURE OF PERFUSIONISTS.

The General Assembly of North Carolina enacts:

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

"Article 40.

"Perfusionist Licensure Act.

"**§ 90-681. Legislative findings.**

The General Assembly finds that the practice of perfusion is an area of health care that is continually evolving to include more sophisticated and demanding patient care activities. The General Assembly further finds that the practice of perfusion by unauthorized, unqualified, unprofessional, and incompetent persons is a threat to public health, safety, and welfare, and therefore it is necessary to establish minimum standards of education, training, and competency for persons engaged in the practice of perfusion.

"**§ 90-682. Definitions.**

The following definitions apply in this Article:

(1) Certified clinical perfusionist. – A person who has successfully completed the examination process and has been issued a certificate by the American Board of Cardiovascular Perfusion or its successor organization.

(2) Committee. – The North Carolina Perfusion Advisory Committee.

(3) Extracorporeal circulation. – The diversion of a patient's blood through a heart-lung machine or a similar device that assumes the functions of the patient's heart, lungs, kidneys, liver, or other organs.

(4) Licensee. – A person who has been issued a license to practice perfusion under this Article.

(5) Perfusion protocols. – Perfusion-related policies and protocols developed or approved by a licensed health care facility or a physician through collaboration with administrators, licensed perfusionists, and other health care professionals.

(6) Practice of perfusion. – The performing of functions, under the supervision of a licensed physician, necessary for the support, treatment, measurement, or supplementation of the cardiovascular, circulatory, and respiratory systems or other organs, or a combination of those functions, and the ensuring of safe management of physiological function by monitoring and analyzing the parameters of the systems during any medical situation where it is necessary to support or replace the patient's cardiopulmonary or circulatory function. The term also includes the use of extracorporeal circulation, long-term cardiopulmonary support techniques, including extracorporeal carbon-dioxide removal and extracorporeal membrane oxygenation, and associated therapeutic and diagnostic technologies; counterpulsation, ventricular assistance, autotransfusion, blood conservation techniques, myocardial and organ preservation, extracorporeal life support, and isolated limb perfusion; the use of techniques involving blood management, advanced life support, and other related functions; and, in the performance of the acts described in this subsection, (i) the administration of pharmacological and therapeutic agents, blood products, or anesthetic agents through the extracorporeal circuit or through an intravenous line as ordered by a physician; (ii) the performance and use of anticoagulation monitoring and analysis, physiologic monitoring and analysis, blood gas and chemistry monitoring and analysis, hematological monitoring and analysis, hypothermia, hyperthermia, hemoconcentration and hemodilution, and hemodialysis in conjunction with perfusion service; and (iii) the observation of signs and symptoms related to perfusion services, the determination of whether the signs and symptoms exhibit abnormal characteristics, and the implementation of appropriate reporting, perfusion protocols, or changes in or the initiation of emergency procedures.

"**§ 90-683. License required; exemptions.**

(a) On or after July 1, 2006, no person shall practice or offer to practice perfusion as defined in this Article, use the title 'licensed perfusionist' or 'provisional licensed perfusionist', use the letters 'LP' or 'PLP', or otherwise indicate or imply that the person is a licensed perfusionist or a provisionally licensed perfusionist unless that person is currently licensed as provided in this Article.

(b) The provisions of this Article shall not apply to:

(1) Any person registered, certified, credentialed, or licensed to engage in another profession or occupation or any person working under the supervision of a person registered, certified, credentialed, or licensed

to engage in another profession or occupation in this State if the person is performing work incidental to the practice of that profession or occupation and the person does not represent himself or herself as a licensed perfusionist or a provisionally licensed perfusionist.

(2) A student enrolled in an accredited perfusion education program if perfusion services performed by the student are an integral part of the student's course of study and are performed under the direct supervision of a licensed perfusionist.

(3) A perfusionist employed by the United States government when performing duties associated with that employment.

(4) A person performing autotransfusion or blood conservation techniques under the direct supervision of a licensed physician.

"**§ 90-684. Perfusion Advisory Committee.**

(a) Composition and Terms. – The North Carolina Perfusion Advisory Committee is created. The Committee shall consist of seven members who shall serve staggered terms. The initial Committee members shall be selected on or before October 1, 2005, as follows:

(1) The North Carolina Medical Board shall appoint three licensed perfusionists, two of whom shall serve a term of three years and one of whom shall serve a term of two years.

(2) The North Carolina Medical Board shall appoint one physician who is licensed under Article 1 of Chapter 90 of the General Statutes and is a cardiothoracic surgeon or a cardiovascular anesthesiologist, who shall serve a term of two years.

(3) The North Carolina Hospital Association shall appoint two hospital administrators, one of whom shall serve a term of two years and one of whom shall serve a one-year term.

(4) The Governor shall appoint one public member who shall serve a one-year term.

Upon the expiration of the terms of the initial Committee members, members shall be appointed by the appointing authorities designated in subdivisions (1) through (4) of this subsection for a term of three years and shall serve until a successor is appointed. No member may serve more than two consecutive full terms.

(b) Qualifications. – Members of the Committee shall be citizens of the United States and residents of this State. The perfusionist members shall hold current licenses from the Committee and shall remain in good standing with the Committee during their terms. Public members of the Committee shall not be: (i) trained or experienced in the practice of perfusion, (ii) an agent or employee of a person engaged in the practice of perfusion, (iii) a health care professional licensed under this Chapter or a person enrolled in a program to become a licensed health care professional, (iv) an agent or employee of a health care institution, a health care insurer, or a health care professional school, (v) a member of an allied health profession or a person enrolled in a program to become a member of an allied health profession, or (vi) a spouse of an individual who may not serve as a public member of the Committee.

(c) Vacancies. – Any vacancy shall be filled by the authority originally filling that position. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(d) Removal. – The Committee may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings in his or her capacity as a licensed perfusionist shall be disqualified from participating in the official business of the Committee until the charges have been resolved.

(e) Compensation. – Each member of the Committee shall receive per diem and reimbursement for travel and subsistence as provided in G.S. 93B-5.

(f) Officers. – The officers of the Committee shall be a chair, a vice-chair, and other officers deemed necessary by the Committee to carry out the purposes of this Article. All officers shall be elected annually by the Committee for two-year terms and shall serve until their successors are elected and qualified. The chair of the Committee shall be a licensed perfusionist.

(g) Meetings. – The Committee shall hold its first meeting within 30 days after the appointment of its members and shall hold at least two meetings each year to conduct business and to review the standards and rules previously adopted by the Committee. The Committee shall establish the procedures for calling, holding, and conducting regular and special meetings. A majority of Committee members constitutes a quorum.

(h) Administration. – The Committee shall be housed for administrative purposes only under the North Carolina Medical Board.

"**§ 90-685. Powers of the Committee.**

The Committee shall have the power and duty to:

(1) Administer this Article.

(2) Issue interpretations of this Article.

(3) Adopt, amend, or repeal rules as may be necessary to carry out the provisions of this Article.

(4) Employ and fix the compensation of personnel that the Committee determines is necessary to carry into effect the provisions of this Article and incur other expenses necessary to effectuate this Article.

(5) Determine the qualifications and fitness of applicants for licensure, provisional licensure, licensure renewal, and reciprocal licensure.

(6) Issue, renew, deny, suspend, or revoke licenses, order probation, issue reprimands, and carry out any other disciplinary actions authorized by this Article.

(7) Set fees for licensure, provisional licensure, reciprocal licensure, licensure renewal, and other services deemed necessary to carry out the purposes of this Article.

(8) Establish continuing education requirements for licensees.

(9) Establish a code of ethics for licensees.

(10) Maintain a current list of all persons who have been licensed under this Article.

(11) Conduct investigations for the purpose of determining whether violations of this Article or grounds for disciplining licensees exist.

(12) Maintain a record of all proceedings and make available to all licensees and other concerned parties an annual report of all Committee action.

(13) Adopt a seal containing the name of the Committee for use on all official documents and reports issued by the Committee.

"**§ 90-686. Qualifications for licensure.**

(a) An applicant shall be licensed to practice perfusion if the applicant meets all of the following qualifications:

(1) Is at least 18 years old.

(2) Completes an application on a form provided by the Committee.

(3) Successfully completes a perfusion education program approved by the Committee.

(4) Pays the required fee under G.S. 90-689.

(5) Is a certified clinical perfusionist.

(b) All persons licensed under this section shall practice perfusion under the supervision of a physician licensed under Article 1 of Chapter 90 of the General Statutes.

"**§ 90-687. Reciprocity.**

The Committee may grant, upon application and payment of proper fees, a license to a person who has been licensed to practice perfusion in another state or territory of the United States whose standards of competency are substantially equivalent to those provided in this Article or holds a current certificate as a certified clinical perfusionist.

"**§ 90-688. Provisional license.**

The Committee may grant a provisional license for a period not exceeding 12 months to any applicant who has successfully completed an approved perfusion education program and pays the required fee under G.S. 90-689. A provisional license shall allow the individual to practice perfusion under the supervision and direction of a licensed perfusionist and in accordance with rules adopted pursuant to this Article. A license granted under this section shall contain an endorsement indicating that the license is provisional and stating the terms and conditions of its use by the licensee and shall state the date the license was granted and the date it expires. Provisional licenses shall be renewed in accordance with the provisions of G.S. 90-690.

"**§ 90-689. Expenses; fees.**

(a) All fees payable to the Committee shall be deposited in the name of the Committee in financial institutions designated by the Committee as official depositories and shall be used to pay all expenses incurred in carrying out the purposes of this Article.

(b) All salaries, compensation, and expenses incurred or allowed to carry out the purposes of this Article shall be paid by the Committee exclusively out of the fees received by the Committee as authorized by this Article or funds received from other sources. In no case shall any salary, expense, or other obligation of the Committee be charged against the State treasury.

(c) The Committee shall establish fees not exceeding the following amounts:

(1)	Initial application	$ 25.00
(2)	Issuance of license	$350.00
(3)	Biennial renewal of license	$350.00
(4)	Late renewal of license	$100.00
(5)	Provisional license	$ 35.00
(6)	Copies of rules	Cost

"**§ 90-690. Renewal of licenses.**

(a) All licenses to practice perfusion shall expire two years after the date they were issued. The Committee shall send a notice of expiration to each licensee at his or her last known address at least 30 days prior to the expiration of his or her license. All applications for renewal of unexpired licenses shall be filed with the Committee and accompanied by proof satisfactory to the Committee that the applicant has completed the continuing education requirements established by the Committee and the renewal fee as required by G.S. 90-689.

(b) An application for renewal of a license that has been expired for less than three years shall be accompanied by proof satisfactory to the Committee that the applicant has satisfied the continuing education requirements established by the Committee and the renewal and late fees required by G.S. 90-689. A license that has been expired for more than three years shall not be renewed, but the applicant may apply for a new license by complying with the current requirements for licensure under this Article.

"**§ 90-691. Suspension, revocation, and refusal to renew.**

(a) The Committee may deny, refuse to renew, suspend, or revoke an application or license or order probation or issue a reprimand if the applicant or licensee:

(1) Gives false information or withholds material information from the Committee in procuring or attempting to procure a license.

(2) Gives false information or withholds material information from the Committee during the course of an investigation conducted by the Committee.

(3) Has been convicted of or pled guilty or no contest to a crime that indicates the person is unfit or incompetent to practice perfusion as defined in this Article or that indicates the person has deceived, defrauded, or endangered the public.

(4) Has a habitual substance abuse or mental impairment that interferes with his or her ability to provide appropriate care as established by this Article or rules adopted by the Committee.

(5) Has demonstrated gross negligence, incompetency, or misconduct in the practice of perfusion as defined in this Article.

(6) Has had an application for licensure or a license to practice perfusion in another jurisdiction denied, suspended, or revoked for reasons that would be grounds for similar action in this State.

(7) Has willfully violated any provision of this Article or rules adopted by the Committee.

(b) The taking of any action authorized under subsection (a) of this section may be ordered by the Committee after a hearing is held in accordance with Article 3A of Chapter 150B of the General Statutes. The Committee may reinstate a revoked license if it finds that the reasons for revocation no longer exist and that the person can reasonably be expected to perform the services authorized under this Article in a safe manner.

"**§ 90-692. Enjoining illegal practices.**

The Committee may apply to the superior court for an order enjoining violations of this Article. Upon a showing by the Committee that any person has violated this Article, the court may grant injunctive relief.

"**§ 90-693. Civil penalties; disciplinary costs.**

(a) Authority to Assess Civil Penalties. – The Committee may assess a civil penalty not in excess of one thousand dollars ($1,000) for the violation of any section of this Article or the violation of any rules adopted by the Committee. The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Consideration Factors. – Before imposing and assessing a civil penalty, the Committee shall consider the following factors:

(1) The nature, gravity, and persistence of the particular violation.

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.

(3) Whether the violation was willful and malicious.

(4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

(c) Schedule of Civil Penalties. – The Committee shall establish a schedule of civil penalties for violations of this Article and rules adopted by the Committee.

(d) Costs. – The Committee may assess the costs of disciplinary actions against a person found to be in violation of this Article or rules adopted by the Committee.

"**§ 90-694. Third-party reimbursement.**

Nothing in this Article shall be construed to require direct third-party reimbursements to persons licensed under this Article."

SECTION 2. Notwithstanding the requirements of this act, the North Carolina Perfusion Advisory Committee shall issue a license to practice perfusion to any person who has, as his or her primary job function, been operating cardiopulmonary bypass systems during cardiac surgery cases in a licensed health care facility in the five years immediately preceding application to the Committee or within five of the last eight years preceding application to the Committee.

SECTION 3. A perfusionist member of the North Carolina Perfusion Advisory Committee shall apply for and obtain a license from the Committee within 90 days after the Committee begins issuing licenses.

SECTION 4. This act is effective when it becomes law. Section 2 of this act expires December 31, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 3

SENATE BILL 1059

Health Care Committee Substitute Adopted 5/5/05
Finance Committee Substitute Adopted 6/1/05

Short Title: Perfusionists Licensure. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE LICENSURE OF PERFUSIONISTS.

The General Assembly of North Carolina enacts:

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

"Article 40.

"Perfusionist Licensure Act.

"**§ 90-681. Legislative findings.**

The General Assembly finds that the practice of perfusion is an area of health care that is continually evolving to include more sophisticated and demanding patient care activities. The General Assembly further finds that the practice of perfusion by unauthorized, unqualified, unprofessional, and incompetent persons is a threat to public health, safety, and welfare, and therefore it is necessary to establish minimum standards of education, training, and competency for persons engaged in the practice of perfusion.

"**§ 90-682. Definitions.**

The following definitions apply in this Article:

(1) Certified clinical perfusionist. – A person who has successfully completed the examination process and has been issued a certificate by the American Board of Cardiovascular Perfusion or its successor organization.

(2) Committee. – The North Carolina Perfusion Advisory Committee.

(3) Extracorporeal circulation. – The diversion of a patient's blood through a heart-lung machine or a similar device that assumes the functions of the patient's heart, lungs, kidneys, liver, or other organs.

(4) Licensee. – A person who has been issued a license to practice perfusion under this Article.

(5) Perfusion protocols. – Perfusion-related policies and protocols developed or approved by a licensed health care facility or a physician

through collaboration with administrators, licensed perfusionists, and other health care professionals.

(6) Practice of perfusion. – The performing of functions, under the supervision of a licensed physician, necessary for the support, treatment, measurement, or supplementation of the cardiovascular, circulatory, and respiratory systems or other organs, or a combination of those functions, and the ensuring of safe management of physiological function by monitoring and analyzing the parameters of the systems during any medical situation where it is necessary to support or replace the patient's cardiopulmonary or circulatory function. The term also includes the use of extracorporeal circulation, long-term cardiopulmonary support techniques, including extracorporeal carbon-dioxide removal and extracorporeal membrane oxygenation, and associated therapeutic and diagnostic technologies; counterpulsation, ventricular assistance, autotransfusion, blood conservation techniques, myocardial and organ preservation, extracorporeal life support, and isolated limb perfusion; the use of techniques involving blood management, advanced life support, and other related functions; and, in the performance of the acts described in this subsection, (i) the administration of pharmacological and therapeutic agents, blood products, or anesthetic agents through the extracorporeal circuit or through an intravenous line as ordered by a physician; (ii) the performance and use of anticoagulation monitoring and analysis, physiologic monitoring and analysis, blood gas and chemistry monitoring and analysis, hematological monitoring and analysis, hypothermia, hyperthermia, hemoconcentration and hemodilution, and hemodialysis in conjunction with perfusion service; and (iii) the observation of signs and symptoms related to perfusion services, the determination of whether the signs and symptoms exhibit abnormal characteristics, and the implementation of appropriate reporting, perfusion protocols, or changes in or the initiation of emergency procedures.

"**§ 90-683. License required; exemptions.**

(a) On or after July 1, 2006, no person shall practice or offer to practice perfusion as defined in this Article, use the title 'licensed perfusionist' or 'provisional licensed perfusionist', use the letters 'LP' or 'PLP', or otherwise indicate or imply that the person is a licensed perfusionist or a provisionally licensed perfusionist unless that person is currently licensed as provided in this Article.

(b) The provisions of this Article shall not apply to:

(1) Any person registered, certified, credentialed, or licensed to engage in another profession or occupation or any person working under the supervision of a person registered, certified, credentialed, or licensed to engage in another profession or occupation in this State if the person is performing work incidental to the practice of that profession or

occupation and the person does not represent himself or herself as a licensed perfusionist or a provisionally licensed perfusionist.

(2) A student enrolled in an accredited perfusion education program if perfusion services performed by the student are an integral part of the student's course of study and are performed under the direct supervision of a licensed perfusionist.

(3) A perfusionist employed by the United States government when performing duties associated with that employment.

(4) A person performing autotransfusion or blood conservation techniques under the direct supervision of a licensed physician.

"**§ 90-684. Perfusion Advisory Committee.**

(a) Composition and Terms. – The North Carolina Perfusion Advisory Committee is created. The Committee shall consist of seven members who shall serve staggered terms. The initial Committee members shall be selected on or before October 1, 2005, as follows:

(1) The North Carolina Medical Board shall appoint three licensed perfusionists, two of whom shall serve a term of three years and one of whom shall serve a term of two years.

(2) The North Carolina Medical Board shall appoint one physician who is licensed under Article 1 of Chapter 90 of the General Statutes and is a cardiothoracic surgeon or a cardiovascular anesthesiologist, who shall serve a term of two years.

(3) The North Carolina Hospital Association shall appoint two hospital administrators, one of whom shall serve a term of two years and one of whom shall serve a one-year term.

(4) The Governor shall appoint one public member who shall serve a one-year term.

Upon the expiration of the terms of the initial Committee members, members shall be appointed by the appointing authorities designated in subdivisions (1) through (4) of this subsection for a term of three years and shall serve until a successor is appointed. No member may serve more than two consecutive full terms.

(b) Qualifications. – Members of the Committee shall be citizens of the United States and residents of this State. The perfusionist members shall hold current licenses from the Committee and shall remain in good standing with the Committee during their terms. Public members of the Committee shall not be: (i) trained or experienced in the practice of perfusion, (ii) an agent or employee of a person engaged in the practice of perfusion, (iii) a health care professional licensed under this Chapter or a person enrolled in a program to become a licensed health care professional, (iv) an agent or employee of a health care institution, a health care insurer, or a health care professional school, (v) a member of an allied health profession or a person enrolled in a program to become a member of an allied health profession, or (vi) a spouse of an individual who may not serve as a public member of the Committee.

(c) Vacancies. – Any vacancy shall be filled by the authority originally filling that position. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(d) Removal. – The Committee may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings in his or her capacity as a licensed perfusionist shall be disqualified from participating in the official business of the Committee until the charges have been resolved.

(e) Compensation. – Each member of the Committee shall receive per diem and reimbursement for travel and subsistence as provided in G.S. 93B-5.

(f) Officers. – The officers of the Committee shall be a chair, a vice-chair, and other officers deemed necessary by the Committee to carry out the purposes of this Article. All officers shall be elected annually by the Committee for two-year terms and shall serve until their successors are elected and qualified. The chair of the Committee shall be a licensed perfusionist.

(g) Meetings. – The Committee shall hold its first meeting within 30 days after the appointment of its members and shall hold at least two meetings each year to conduct business and to review the standards and rules previously adopted by the Committee. The Committee shall establish the procedures for calling, holding, and conducting regular and special meetings. A majority of Committee members constitutes a quorum.

"**§ 90-685. Powers of the Committee.**

The Committee shall have the power and duty to:

(1) Administer this Article.

(2) Issue interpretations of this Article.

(3) Adopt, amend, or repeal rules as may be necessary to carry out the provisions of this Article.

(4) Employ and fix the compensation of personnel that the Committee determines is necessary to carry into effect the provisions of this Article and incur other expenses necessary to effectuate this Article.

(5) Determine the qualifications and fitness of applicants for licensure, provisional licensure, licensure renewal, and reciprocal licensure.

(6) Issue, renew, deny, suspend, or revoke licenses, order probation, issue reprimands, and carry out any other disciplinary actions authorized by this Article.

(7) Set fees for licensure, provisional licensure, reciprocal licensure, licensure renewal, and other services deemed necessary to carry out the purposes of this Article.

(8) Establish continuing education requirements for licensees.

(9) Establish a code of ethics for licensees.

(10) Maintain a current list of all persons who have been licensed under this Article.

(11) Conduct investigations for the purpose of determining whether violations of this Article or grounds for disciplining licensees exist.

(12) Maintain a record of all proceedings and make available to all licensees and other concerned parties an annual report of all Committee action.

(13) Adopt a seal containing the name of the Committee for use on all official documents and reports issued by the Committee.

"**§ 90-686. Qualifications for licensure.**

(a) An applicant shall be licensed to practice perfusion if the applicant meets all of the following qualifications:

(1) Is at least 18 years old.

(2) Completes an application on a form provided by the Committee.

(3) Successfully completes a perfusion education program approved by the Committee.

(4) Pays the required fee under G.S. 90-689.

(5) Is a certified clinical perfusionist.

(b) All persons licensed under this section shall practice perfusion under the supervision of a physician licensed under Article 1 of Chapter 90 of the General Statutes.

"**§ 90-687. Reciprocity.**

The Committee may grant, upon application and payment of proper fees, a license to a person who has been licensed to practice perfusion in another state or territory of the United States whose standards of competency are substantially equivalent to those provided in this Article or holds a current certificate as a certified clinical perfusionist.

"**§ 90-688. Provisional license.**

The Committee may grant a provisional license for a period not exceeding 12 months to any applicant who has successfully completed an approved perfusion education program and pays the required fee under G.S. 90-689. A provisional license shall allow the individual to practice perfusion under the supervision and direction of a licensed perfusionist and in accordance with rules adopted pursuant to this Article. A license granted under this section shall contain an endorsement indicating that the license is provisional and stating the terms and conditions of its use by the licensee and shall state the date the license was granted and the date it expires. Provisional licenses shall be renewed in accordance with the provisions of G.S. 90-690.

"**§ 90-689. Expenses; fees.**

(a) All fees payable to the Committee shall be deposited in the name of the Committee in financial institutions designated by the Committee as official depositories and shall be used to pay all expenses incurred in carrying out the purposes of this Article.

(b) All salaries, compensation, and expenses incurred or allowed to carry out the purposes of this Article shall be paid by the Committee exclusively out of the fees received by the Committee as authorized by this Article or funds received from other sources. In no case shall any salary, expense, or other obligation of the Committee be charged against the State treasury.

(c) The Committee shall establish fees not exceeding the following amounts:

(1) Initial application $ 25.00

(2) Issuance of license	$350.00
(3) Biennial renewal of license	$350.00
(4) Late renewal of license	$100.00
(5) Provisional license	$ 35.00
(6) Copies of rules	Cost

"**§ 90-690. Renewal of licenses.**

(a) All licenses to practice perfusion shall expire two years after the date they were issued. The Committee shall send a notice of expiration to each licensee at his or her last known address at least 30 days prior to the expiration of his or her license. All applications for renewal of unexpired licenses shall be filed with the Committee and accompanied by proof satisfactory to the Committee that the applicant has completed the continuing education requirements established by the Committee and the renewal fee as required by G.S. 90-689.

(b) An application for renewal of a license that has been expired for less than three years shall be accompanied by proof satisfactory to the Committee that the applicant has satisfied the continuing education requirements established by the Committee and the renewal and late fees required by G.S. 90-689. A license that has been expired for more than three years shall not be renewed, but the applicant may apply for a new license by complying with the current requirements for licensure under this Article.

"**§ 90-691. Suspension, revocation, and refusal to renew.**

(a) The Committee may deny, refuse to renew, suspend, or revoke an application or license or order probation or issue a reprimand if the applicant or licensee:

(1) Gives false information or withholds material information from the Committee in procuring or attempting to procure a license.

(2) Gives false information or withholds material information from the Committee during the course of an investigation conducted by the Committee.

(3) Has been convicted of or pled guilty or no contest to a crime that indicates the person is unfit or incompetent to practice perfusion as defined in this Article or that indicates the person has deceived, defrauded, or endangered the public.

(4) Has a habitual substance abuse or mental impairment that interferes with his or her ability to provide appropriate care as established by this Article or rules adopted by the Committee.

(5) Has demonstrated gross negligence, incompetency, or misconduct in the practice of perfusion as defined in this Article.

(6) Has had an application for licensure or a license to practice perfusion in another jurisdiction denied, suspended, or revoked for reasons that would be grounds for similar action in this State.

(7) Has willfully violated any provision of this Article or rules adopted by the Committee.

(b) The taking of any action authorized under subsection (a) of this section may be ordered by the Committee after a hearing is held in accordance with Article 3A of

Chapter 150B of the General Statutes. The Committee may reinstate a revoked license if it finds that the reasons for revocation no longer exist and that the person can reasonably be expected to perform the services authorized under this Article in a safe manner.

"**§ 90-692. Enjoining illegal practices.**

The Committee may apply to the superior court for an order enjoining violations of this Article. Upon a showing by the Committee that any person has violated this Article, the court may grant injunctive relief.

"**§ 90-693. Civil penalties; disciplinary costs.**

(a) Authority to Assess Civil Penalties. – The Committee may assess a civil penalty not in excess of one thousand dollars ($1,000) for the violation of any section of this Article or the violation of any rules adopted by the Committee. The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Consideration Factors. – Before imposing and assessing a civil penalty, the Committee shall consider the following factors:

(1) The nature, gravity, and persistence of the particular violation.

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.

(3) Whether the violation was willful and malicious.

(4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

(c) Schedule of Civil Penalties. – The Committee shall establish a schedule of civil penalties for violations of this Article and rules adopted by the Committee.

(d) Costs. – The Committee may assess the costs of disciplinary actions against a person found to be in violation of this Article or rules adopted by the Committee.

"**§ 90-694. Third-party reimbursement.**

Nothing in this Article shall be construed to require direct third-party reimbursements to persons licensed under this Article."

SECTION 2. Notwithstanding the requirements of this act, the North Carolina Perfusion Advisory Committee shall issue a license to practice perfusion to any person who has, as his or her primary job function, been operating cardiopulmonary bypass systems during cardiac surgery cases in a licensed health care facility in the five years immediately preceding application to the Committee or within five of the last eight years preceding application to the Committee.

SECTION 3. A perfusionist member of the North Carolina Perfusion Advisory Committee shall apply for and obtain a license from the Committee within 90 days after the Committee begins issuing licenses.

SECTION 4. This act is effective when it becomes law. Section 2 of this act expires December 31, 2007.

SENATE BILL 1059: Perfusionists Licensure

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 21, 2005
Introduced by:	Sen. Purcell	**Summary by:**	Martha Walston
Version:	Third Edition		Committee Counsel

SUMMARY: ***Effective July 1, 2006, Senate Bill 1059[1] would prohibit a person from practicing perfusion without a license. A perfusionist is the person responsible for the selection, set-up and operation of the cardiopulmonary bypass systems during cardiac surgery cases.***

BILL ANALYSIS: Senate Bill 1059 creates the North Carolina Perfusion Advisory Committee. The Advisory Committee would be responsible for licensure, regulation, and discipline of perfusionists. Perfusionists may only practice perfusion under the supervision of a licensed physician.

Mandatory Licensure – Effective July 1, 2006, a current license under the provisions of this Article would be required for a person to practice as a 'licensed perfusionist' (LP) or as a 'provisional licensed perfusionist' (PLP). A person who violates this Article would be subject to civil penalties. The following health care personnel would be exempt from the licensure requirement:

- Perfusionists working for the United States government.
- Students enrolled in accredited perfusion education programs if services are supervised by a licensed perfusionist and are part of their studies.
- Persons performing autotransfusion or blood conservation techniques under the supervision of a licensed physician.
- Persons registered, certified, credentialed or licensed to engage in another occupation or profession in the State if they are performing work incidental to the practice of that profession and are not representing themselves as being a LP or PLP.

A license would expire two years from the date it was issued. To renew the license, a perfusionist would need to satisfy the continuing education requirements established by the Advisory Committee and pay the renewal fee. A license that has been expired for more than three year may not be renewed.

North Carolina Perfusion Advisory Committee – The Advisory Committee would be a seven member committee appointed by the North Carolina Medical Board, the North Carolina Hospital Association, and the Governor. The members would represent various interested parties and would be charged with administering the Perfusionist Licensure Act. The Advisory Committee would be granted the power and duty to do the following: adopt, amend or repeal rules as necessary to carry out the provisions of the Act; employ and compensate personnel they deem necessary to carry out the provisions of the Act; determine qualifications and fitness of applicants for licensure; issue, renew, deny, suspend or revoke licenses as authorized by the Act; set fees for licensure, renewal and other related services; establish continuing education requirements for licensees; establish a code of ethics; and maintain a current list of licensees. The Advisory Committee members who must be licensed perfusionists must apply for and obtain a license within 90 days after the Advisory Committee begins issuing licenses.

Qualifications for Licensure – Applicants meeting the following qualifications would be licensed to practice perfusion:

[1] As introduced, the bill was identical to House Bill 903, introduced by Rep. England. HB 903 is in the House Finance Committee.

- Is at least 18 years old.
- Successfully completes an approved perfusion education program.
- Pays the required fee.
- Is a certified clinical perfusionist.

The Advisory Committee would be able to grant reciprocity to persons licensed to practice perfusion in another state or territory of the United States with substantially equivalent standards of competency or to a person who holds a current certificate as a certified clinical perfusionist. The Advisory Committee could also grant a provisional license valid for up to 12 months to any applicant who has successfully completed an approved perfusion education program and pays the required fee. Provisional licensees would be able to practice perfusion under the supervision and direction of a licensed perfusionist in accordance with rules adopted pursuant to the Act.

Section 2 of the bill provides a grandfather provision for those currently practicing perfusion. It would direct the Advisory Committee to issue a license to practice perfusion to any person who has been operating cardiopulmonary bypass systems during cardiac surgery cases in a licensed health care facility in the five years immediately preceding application or within five of the last eight years preceding application.

Expenses and fees – Fees payable to the Advisory Committee would be used to pay all expenses incurred in carrying out the purposes of the Act. The Advisory Committee would set the fees charged for applications, renewals, and related actions, not to exceed the following amounts:

• Initial application	$ 25.00
• Issuance of license	$350.00
• License renewal	$350.00
• Late renewal fee	$100.00
• Provisional license	$ 35.00

To set the fee amount, the Advisory Committee will have to go through the administrative rules process.[2] In addition to the notice and public comment provided for under the administrative rules process, the Advisory Committee will also have to consult with the Joint Legislative Commission on Governmental Operations on the amount and purpose of the fee before the fee may become effective.[3]

Disciplinary Actions – The Advisory Committee would be empowered to deny, refuse to renew, suspend, or revoke an application or license or order probation or issue a reprimand if a licensee or applicant violates any of the provisions of this Article. Civil penalties not to exceed $1,000 could be assessed for violation of Article or of any rules adopted by the Advisory Committee. The clear proceeds of any civil penalty would be remitted to the Civil Penalty and Forfeiture Fund.

Third Party Reimbursement – Nothing in the Act is to be construed to require third-party reimbursements to persons licensed under the Act.

EFFECTIVE DATE: The Act is effective when it becomes law. Section 2 of the bill sunsets December 31, 2007. (Section 2 provides a grandfather clause giving the Committee the authority to issue licenses on the basis of past practice alone.)

BACKGROUND: Perfusionists have been recognized as a definable health profession by the American Medical Association since 1977. Working under the direct supervision of a surgeon, perfusionists are the only non-licensed health care professionals who routinely administer drugs and blood products to patients. A perfusionist is the person responsible for the selection, set up, and

[2] Chapter 150B of the General Statutes.
[3] G.S. 12-3.1.

operation of the heart-lung machine. To maintain life during open-heart surgery, the patient's heart must be stopped and the patient's blood is diverted outside the body, circulating through the heart-lung machine, and returned to the patient. Certification by the American Board of Cardiovascular Profusion (ABCP) is currently the accepted state and national standard for perfusionists.

The Legislative Committee on New Licensing Boards conducted an assessment of Senate Bill 1059 finding that the sponsors of the bill successfully met the criteria by which the Committee judges licensure proposals and recommending the licensure of perfusionists.

Ben Popkin, counsel to Senate Committee on Health Care, substantially contributed to this summary.

S1059e2-SMRB

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 1059 (Third Edition)

SHORT TITLE: Perfusionists Licensure.

SPONSOR(S): Senator Purcell

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund		**No Impact to General Fund**			
Licensing Board	-	**$35,250**	**$750**	**$35,050**	**$2,850**
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Perfusion Advisory Committee

EFFECTIVE DATE: Section 1, July 1, 2006; all other sections, when law.

BILL SUMMARY: Senate Bill 1059 creates the North Carolina Perfusion Advisory Committee. The Committee would be responsible for licensure, regulation, and discipline of perfusionists. Perfusionists may only practice perfusion under the supervision of a licensed physician.

ASSUMPTIONS AND METHODOLOGY: According to the North Carolina Association of Perfusionists, there are 92 practicing perfusionists in the state. The state gains approximately two perfusionists per year. The following table details the statutory maximum fees to be charged for licensure and the projected revenues for the North Carolina Perfusionists Advisory Committee based on those fees:

Projected Fee Revenue 2005-2010						
Category	**Fee**	**2005-06**	**2006-07**	**2007-08**	**2008-09**	**2009-10**
Initial application	$ 25	$ -	$ 2,350	$ 50	$ 50	$ 50
Issuance of license	350	-	32,900	700	700	700
Biennial renewal of license	350	-	-	-	34,300	2,100
Late renewal of license	100	-	-	-	-	-
Provisional license	35	-	-	-	-	-
Total		**$ -**	**$ 35,250**	**$ 750**	**$ 35,050**	**$ 2,850**

The North Carolina Association of Perfusionists has indicated that they will most likely charge the maximum fee for each category. The Association did not have any data available on which to base an estimate of the number of provisional licenses that may be issued.

SOURCES OF DATA: North Carolina Association of Perfusionists

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brenna Erford and Rodney Bizzell

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

Official
Fiscal Research Division
Publication

DATE: June 17, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute 2 for
SB 1059 A BILL TO BE ENTITLED AN ACT AUTHORIZING THE LICENSURE OF PERFUSIONISTS.

☒ With a favorable report as to the House committee substitute bill, unfavorable as to Senate committee substitute bill 2.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H D

HOUSE BILL 1084
Committee Substitute Favorable 4/21/05
PROPOSED COMMITTEE SUBSTITUTE H1084-CSRQ-35 [v.4]

6/9/2005 10:38:31 AM

Short Title: Expunge Nonviolent Felonies/Young Offenders. (Public)

Sponsors:

Referred to:

April 4, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A YOUTHFUL OFFENDER'S CRIMINAL RECORD MAY BE EXPUNGED OF NONVIOLENT FELONIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-149. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.**

(a) For purposes of this section, the term "nonviolent felony" means any felony except the following:

(1) A Class A through F felony.

(2) A felony that includes assault as an essential element of the offense; and

(3) A felony that is an offense for which the convicted offender must register under Article 27A of Chapter 14 of the General Statutes.

(b) Notwithstanding any other provision of law, if a person is convicted of more than one nonviolent felony in the same session of court, then the multiple nonviolent felony convictions shall be treated as one nonviolent felony conviction under this section, and the expunction order issued under this section shall provide that the multiple convictions shall be expunged from the person's record in accordance with this section.

(c) Whenever any person who had not yet attained the age of 18 years at the time of the offense and has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file a petition in the court where the person was convicted for expunction of the nonviolent felony from the person's criminal record. The petition cannot be filed earlier than two

years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The person shall also perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he or she has been of good behavior for the two-year period since the date of conviction of the nonviolent felony in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage that they know the character and reputation of the petitioner in the community in which he or she lives and that the petitioner's character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential records of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts to conduct the searches and report the findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him or her are outstanding.

(6) An affidavit by the petitioner that the petitioner has performed at least 100 hours of community service since the conviction for the nonviolent felony. The affidavit shall include a list of the community services performed, a list of the recipients of the services, and a detailed description of those services.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that the judge deems desirable.

(d) The court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information if the court finds all of the following after a hearing:

(1) The petitioner has remained of good behavior and has been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the nonviolent felony in question or any active sentence, period of probation or post-release supervision has been served, whichever is later.

(2) The petitioner has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state.

(3) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him or her.

(4) The petitioner was less than 18 years old at the time of the commission of the offense in question.

(5) The petitioner has performed at least 100 hours of community service since the time of the conviction.

(6) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction.

No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of the person for any purpose.

(e) The court shall also order that the nonviolent felony conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief, or head of any other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(f) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

(g) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in the clerk's county, file with the Administrative Office of the Courts the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.

(h) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the felony which is to be expunged under this section.

(i) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred dollars ($100.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 2. This act becomes effective December 1, 2005 and expires December 1, 2012.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1084
Committee Substitute Favorable 4/21/05

Short Title: Expunge Nonviolent Felonies/Young Offenders. (Public)

Sponsors:

Referred to:

April 4, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A YOUTHFUL OFFENDER'S CRIMINAL RECORD MAY BE EXPUNGED OF NONVIOLENT FELONIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-149. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.**

(a) For purposes of this section, the term "nonviolent felony" means any felony except the following:

(1) A Class A through E felony.

(2) A felony that includes assault as an essential element of the offense; and

(3) A felony that is an offense for which the convicted offender must register under Article 27A of Chapter 14 of the General Statutes.

(b) Notwithstanding any other provision of law, if a person is convicted of more than one nonviolent felony in the same session of court, then the multiple nonviolent felony convictions shall be treated as one nonviolent felony conviction under this section, and the expunction order issued under this section shall provide that the multiple convictions shall be expunged from the person's record in accordance with this section.

(c) Whenever any person who had not yet attained the age of 18 years at the time of the offense and has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file a petition in the court where the person was convicted for expunction of the nonviolent felony from the person's criminal record. The petition cannot be filed earlier than two years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The person shall

also perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the nonviolent felony in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage that they know the character and reputation of the petitioner in the community in which he or she lives and that the petitioner's character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expungements maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts to conduct the searches and report the findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him or her are outstanding.

(6) An affidavit by the petitioner that the petitioner has performed at least 100 hours of community service since the conviction for the nonviolent felony. The affidavit shall include a list of the community services performed, a list of the recipients of the services, and a detailed description of those services.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that the judge deems desirable.

(d) If the court, after a hearing, finds that the petitioner has remained of good behavior and has been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the nonviolent felony in question or any active sentence, period of probation or post-release supervision has been served, whichever is later, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him or her, the

petitioner was less than 18 years old at the time of the commission of the offense in question, and the petitioner has performed at least 100 hours of community service since the time of the conviction, then the court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of the person for any purpose.

(e) The court shall also order that the nonviolent felony conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief, or head of any other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(f) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged.

(g) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in the clerk's county, file with the Administrative Office of the Courts the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.

(h) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the felony which is to be expunged under this section.

(i) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred dollars ($100.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 2. This act becomes effective December 1, 2005.

HOUSE BILL 1084:
Expunge Nonviolent Felonies/Young Offenders

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 14, 2005
Introduced by:	Reps. Bordsen, Crawford	**Summary by:**	Drupti Chauhan
Version:	PCS to Second Edition H1084-CSRQ-35 [v.4]		

SUMMARY: The PCS for House Bill 1084 would provide for the expunction of criminal records for offenders who are under the age of 18 at the time of commission of a nonviolent felony. A waiting period of 2 years after the conviction or any period of probation, or time served for an active sentence, period of probation or post-supervised release (whichever is later); 100 hours of community service, no prior or subsequent felony or non-traffic misdemeanor offenses; and affidavits attesting to the petitioner's character are all required.

CURRENT LAW: Article 5 of the Criminal Procedure Act provides for the expunction of criminal records of certain criminal charges or convictions. Expunction is the process by which a record of criminal conviction is removed by order of the court, and the individual is restored to the status he or she occupied before the arrest or indictment. General Statute 15A-145 (Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors) allows a person convicted of a misdemeanor to file a petition for expunction of the misdemeanor from his or her criminal record if the person was under 18 at the time of a conviction or, in the case of a misdemeanor alcohol possession charge, the person was under 21 at the time of conviction. The petition may not be filed sooner than 2 years after the conviction or completion of probation and must include the following [1]:

1) an affidavit of good behavior for the two years following conviction, stating that the petitioner has not been convicted of any felony or non-traffic misdemeanor charge;

2) two affidavits of good character from persons unrelated to the petitioner;

3) a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted; and

4) affidavits of the clerk of superior court, chief of police, and sheriff of the county of the offense and where the petitioner resides showing that petitioner has not been convicted of a felony or non-traffic misdemeanor offense prior to or in the two years since the conviction in question.

If the court finds in favor of the petitioner the clerk of superior court and the appropriate law enforcement agencies must expunge the record of the conviction.

Other sections of Article 5 provide for "Expunction of records when charges are dismissed or there are finding of not guilty as a result of identity fraud"[2] and "Expunction of DNA records when charges are dismissed on appeal or pardon of innocence is granted."[3].

BILL ANALYSIS: The PCS to the bill would add a new section to Article 5 "Expunction of Records" of Chapter 15A "Criminal Procedure Act" of the General Statutes. The proposed G.S. 15A-149 would

[1] G.S. 15A-145(a)(1) through (4).
[2] G.S. 15A-147.
[3] G.S. 15A-148.

provide expunction of the criminal records of first time offenders who are under 18 years of age at the time of the commission of the nonviolent felony if there are no previous or subsequent felony or misdemeanor convictions, other than a traffic violation. The petitioner cannot have received a prior expunction. "Nonviolent felony" would include any felony ***except*** the following:

- A Class A through F felony;
- A felony that includes assault as an essential element of the offense; and
- A felony that is an offense for which the convicted offender must register under Article 27A of Chapter 14 of the General Statutes (sex offenders).

If the person is convicted of more than one nonviolent felony in the same session of court, the bill provides that the multiple nonviolent felony convictions are to be treated as one nonviolent felony conviction under the section and the expunction order is to provide that the multiple convictions are to be expunged.

The procedure to be followed by the petitioner is modeled along the lines of the existing procedures for expunction of records. The petition cannot be filed earlier than two years after the date of conviction or after the time when any active sentence, period of probation, or post-release supervision has been served, whichever occurs later. The petitioner is also required to perform at least 100 hours of community service before filing the petition for expunction.

The petition must contain at least the following:

1) An affidavit of good behavior by the petitioner for the 2 years following conviction, stating that the petitioner has not been convicted of any felony or non-traffic misdemeanor charge under the laws of the United States, this State or any other state during that time;

2) Two affidavits of good character from persons unrelated to petitioner;

3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted;

4) An application authorizing a State and national criminal record check by the Department of Justice with the results reported to the court;

5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding; and

6) An affidavit by the petitioner that he or she has performed at least 100 hours of community service since the conviction with a list of the community services performed, a list of the recipients of the services, and a detailed description of the services.

The petition is to be served on the district attorney who has 10 days to file any objections. The judge is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct. If the judge finds that the petitioner has met all of the requirements, the judge shall order that the petitioner be restored to the statute he or she had before the arrest or indictment. The judge shall also order that the nonviolent felony conviction be expunged from the records of the court and direct all law enforcement agencies to expunge their records, including the State Bureau of Investigation and the Federal Bureau of Investigation.

Any other applicable State or local government agency is directed to expunge from its records any entries made as a result of the conviction order expunged under this section. The agency is required to

also reverse any administrative actions taken against a person whose record is expunged under this section.

The clerk of superior court in each North Carolina county shall file with the Administrative Offices of the Court the names of those persons granted a discharge under the provisions of this section and the Administrative Offices of the Courts must maintain a confidential file containing the names of persons granted conditional discharges. This information can only be disclosed to judges of the General Court of Justice of North Carolina for the purpose of determining if any person charged with an offense has been previously given a discharge.

If a probation officer is assigned to the person eligible for expunction, the probation officer must notify the person of the provisions of this section. If no probation officer is assigned, then the court which heard the felony must provide notification of the possibility of expunction under this section.

The bill would set the filing fee for the expunction petition at $100.00 unless the petitioner was indigent. Fees collected would be deposited into the General Fund.

EFFECTIVE DATE: The bill would become effective December 1, 2005 and would expire December 1, 2012.

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 20, 2005

TO: House Finance Committee

FROM: Chloe Gossage, Douglas Holbrook, and Aaron Paul
Fiscal Research Division

RE: PCS H1084-CSRQ-35 [v.4] – Expunge Nonviolent Felonies/Young Offenders

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:	$58,600	$40,500	$22,400	$22,400	$22,400
EXPENDITURES:					
Judicial Branch	$36,750	$26,442	$13,858	$13,858	$13,858
Justice	$64,303	$44,460	$24,618	$24,618	$24,618
TOTAL EXPENDITURES:	$101,053	$70,902	$38,476	$38,476	$38,476
POSITIONS (cumulative)-DOJ:	1	1	0.5	0.5	0.5

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch; Department of Justice

EFFECTIVE DATE: December 1, 2005

BILL SUMMARY: This bill would enact new G.S. 15A-149 to allow expunction of records for nonviolent felonies committed by first-time offenders who were under the age of 18 at the time of the conviction. In the second edition of this bill, a nonviolent felony was defined as any felony except a Class A through Class E felony, a felony with assault as an essential element of the offense, and a felony for which the convicted offender must register as a sex offender. This PCS also excludes Class F felonies from the definition of nonviolent felonies.

To be eligible for expunction under the bill, the offender must not have been previously convicted of any felony or misdemeanor other than a traffic violation, and must have remained of good behavior and been free of conviction of any felony or misdemeanor other than a traffic violation for two years from the date of conviction of the nonviolent felony to be expunged. This PCS additionally requires that the offender must not have previously been granted an expunction. A petition cannot be filed earlier than two years after the date of conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The offender must also perform 100 hours of community service before filing a petition. The provisions in this bill expire in seven years (December 1, 2012).

Source: Adapted from Administrative Office of the Courts, Research and Planning (04/27/05).

ASSUMPTIONS AND METHODOLOGY:

To estimate the number of individuals eligible to file a petition for expunction under this bill, the Administrative Office of the Courts (AOC) identified the number of defendants convicted of a single nonviolent felony while under the age of eighteen by counting the number of convictions recorded per defendant's name in each county. Using this method, AOC identified 12,056 defendants eligible for expunction due to this bill.[1]

As it would be unreasonable to assume that all 12,056 eligible individuals would petition for expunction, AOC estimated the percentage of this total that would file a petition by utilizing the petition rate for existing expunction provisions under G.S. 15A-145(a), which allows for expunction of non-traffic misdemeanors committed by offenders under age eighteen. In calendar year 2004, there were 244 petitions filed out of an estimated 6,900 eligible convictions, revealing that approximately 4 percent of eligible individuals actually sought to have their convictions expunged.

For the 12,056 existing convictions that would be eligible for expunction, AOC estimates that a greater proportion of individuals would seek expunction initially and at declining rates thereafter. However, each year AOC anticipates that an additional 725 convictions would become eligible for expunction. Of these, AOC estimates that 8 percent would seek expunction, resulting in an additional 58 petitions annually. Table 1 below outlines the total number of petitions that would be filed each year based on the estimated numbers of eligible convictions and the rate at which eligible individuals would seek expunction.

Table 1: Estimated Number of Expunction Petitions Filed

	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Existing Backlog of Convictions	12,056	12,056	12,056	12,056	12,056
Percentage Seeking Expunction	6%	4%	2%	2%	2%
Petitions	**723**	**482**	**241**	**241**	**241**
New Convictions	725	725	725	725	725
Percentage Seeking Expunction	8%	8%	8%	8%	8%
Petitions	**58**	**58**	**58**	**58**	**58**
Total Estimated Petitions	**781**	**540**	**299**	**299**	**299**

[1] To the extent that two individuals with identical names would appear to be one individual with multiple convictions, this approximation would underestimate the number of defendants eligible for expunction under this bill. However, to the extent that some individuals could have a single conviction in multiple counties, this approximation would be an overestimate.

Revenues

Under this bill there would be a $100 fee when filing a petition for expunction. AOC estimates that approximately one quarter of petitioners would be indigent and would thus not pay the fee when seeking expunction. Table 2 below outlines projected revenues if 75 percent of petitioners were to pay the $100 fee.

Table 2: Estimated Revenues Resulting from $100 Fee.

	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Total Estimated Petitions	781	540	299	299	299
Non-Indigent Petitions (75%)	586	405	224	224	224
Revenues	**$58,600**	**$40,500**	**$22,400**	**$22,400**	**$22,400**

Expenditures

Judicial Branch

Petitions filed as a result of this bill would lead to additional workload and costs for superior court and the Administrative Office of the Courts.

Superior Court: Clerks would devote time to receiving, filing, and processing petitions, as well as destroying and otherwise expunging court files and records. Additionally, the petitioner would pay a $100 fee when filing a petition, and clerks would incur time receiving and processing these payments or an affidavit of indigency if the petitioner is unable to pay. The petition must also be served on the district attorney, who would then have ten days to review and file an objection. Furthermore, the bill specifies that a hearing must be held and lists the findings that would justify expunction. Under current practice, most hearings are conducted in chambers or otherwise informally, and with rare exceptions, are uncontested. Nevertheless, expunction petitions due to this bill would require additional judge time to review affidavits and other documents, hear from the petitioner, make an evaluation, and issue an order. For cases that are contested or require closer scrutiny, significant judge time would be required.

Administrative Office of the Courts: To seek expunction under existing law, a person fills out an AOC form, which is sent to the SBI for a national record check and to the AOC to determine whether the person has previously had a record expunged. In 2004, AOC processed 6,297 of these requests. As under current law, this bill would require AOC to maintain a confidential file of expungements. Handling current expunction petitions requires approximately one-half of a position in order to look up the information, handle related communications with the clerk and SBI, answer citizen questions, and maintain the files. Also, AOC would incur costs for programming, development, production of forms, postage, copying, printing, mailing, and similar operating costs.

Table 3 on the next page outlines the additional costs that would be needed to process the estimated number of expunction petitions resulting from this bill each year. These figures represent additional resource costs for the Courts but, as they are formulated on fractional position estimates, do not represent the need for additional positions. The position and cost estimates are not changed with the slight reduction in petitions by excluding Class F felonies under the PCS.

Table 3: Estimated Judiciary Position and Operating Expenditures

	FY 05-06 781 Petitions		FY 06-07 540 Petitions		FY 07-08 to FY 09-10 299 Petitions	
	Positions	Cost	Positions	Cost	Positions	Cost
Deputy Clerks	0.20	$6,766	0.14	$4,736	0.08	$2,706
Superior Court Judges	0.11	$16,452	0.08	$11,965	0.04	$5,982
Assistant District Attorneys	0.11	$8,597	0.08	$6,252	0.04	$3,126
AOC Staff	0.07	$3,345	0.05	$2,389	0.03	$1,434
Operating Costs	-	$1,590	-	$1,100	-	$610
Total		**$36,750**		**$26,442**		**$13,858**

Department of Justice

The State Bureau of Investigation (SBI) in the Department of Justice is involved in the expunction process in two ways:

1. The SBI reviews applications for expunction to determine whether the applicant is eligible, and transmits that information to the Court system.
2. Upon a judicial order for expunction, the SBI removes information from its databases and forwards the expunction order to the Federal Bureau of Investigation.

The workload of four different positions in the SBI is affected by this bill – two processing assistants, a fingerprint technician supervisor, and an attorney. It requires a total of approximately 67 minutes of staff time to process an application and 172 minutes of staff time to process an expunction order. The SBI estimates that 87 percent of applications result in expunction orders. Using data and methodology from the Administrative Office of the Courts, we estimate the following:

Table 4: Estimated SBI Position and Operating Expenditures

	2005-06	2006-07	2007-08
Number of applications	781	540	299
Number of orders (87%)	679	470	260
Cost per Application	$27.79	$27.79	$27.79
Cost per Order	$61.24	$61.24	$61.24
Postage per Order	$1.27	$1.27	$1.27
TOTAL	**$64,303**	**$44,460**	**$24,618**
Positions required	**1.30**	**0.90**	**0.50**

The staff time required to process 781 applications is equivalent to one full-time position. Therefore, the box on the front page reflects one additional position required for the SBI in FY 2005-06. Position requirements will decrease in later years as workload declines.

SOURCES OF DATA: Administrative Office of the Courts, Department of Justice

TECHNICAL CONSIDERATIONS:

1. Effective date: This bill would be effective December 1, 2005. AOC notes that considerable preparation would be necessary to implement this bill, including hiring and training personnel, modifying computer programs, and coordination between AOC and the SBI to prepare for the

anticipated increase in petitions. AOC expects that an effective date no earlier than January 1, 2006 would be necessary to implement the bill.

2. Notice to Department of Correction and Division of Motor Vehicles: The bill does not include the Department of Correction or Division of Motor Vehicles among the agencies to whom the Clerk must send a certified copy of an expungement order. The mechanism by which DOC and DMV would receive notice of an expungement order is not specified.

3. Fee for Expungement. This bill sets a fee of $100 for expungements resulting from this legislation. Currently, the fee for expungement is $65. Senate Bill 622 (2005 Appropriations Act), which has passed the Senate and been referred to the House, would increase fees for expungements to $125.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 688*
PROPOSED COMMITTEE SUBSTITUTE H688-CSMB-24 [v.3]

6/17/2005 3:11:38 PM

Short Title: Certify On-Site Wastewater Contractors. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE CERTIFICATION OF ON-SITE WASTEWATER CONTRACTORS AND INSPECTORS.

The General Assembly of North Carolina enacts:

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

"Article 5.

"Certification of On-Site Wastewater Contractors and Inspectors.

"**§ 90A-70. Purpose.**

It is the purpose of this Article to protect the environment, public health, and safety by ensuring the integrity and competence of on-site wastewater contractors and inspectors; to require the examination of on-site wastewater contractors and inspectors and the certification of their competency to supervise, conduct, or inspect the construction, installation, repair, or inspection of on-site wastewater systems; to establish minimum standards for ethical conduct, responsibility, training, experience, and continuing education for on-site wastewater system contractors and inspectors; and to provide appropriate enforcement procedures for rules adopted by the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board.

"**§ 90A-71. Definitions.**

The following definitions apply in this Article:

(1) 'Board' means the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board.

(2) 'Department' means the Department of Environment and Natural Resources.

(3) 'Certified On-Site Wastewater System Inspector' means a person who is certified under this Article to conduct an inspection of an existing on-site wastewater system at the time of resale.

(4) 'On-site wastewater system' means any wastewater system permitted under the provisions of Article 11 of Chapter 130A of the General Statutes that does not discharge to a treatment facility or the surface waters.

(5) 'Contractor' means a person who constructs, installs, or repairs, or offers to construct, install, or repair an on-site wastewater system in the State.

(6) 'Person' means all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities, or political subdivisions, governmental agencies, or private or public corporations organized and existing under the laws of this State or any other state or country.

(7) 'Responsible charge' means the direct control and personal supervision of the installation, construction, repair, or inspection of an on-site wastewater system.

"**§ 90A-72. Certification required; applicability.**

(a) Certification Required. – No person shall construct, install, repair, or inspect, or offer to construct, install, repair, or inspect an on-site wastewater system in the State without first obtaining and holding the required level of certification for the specified system. A certified on-site wastewater system inspector shall be required for any professional performance inspection of an existing on-site wastewater system.

(b) Applicability. – This Article does not apply to the following:

(1) A person who constructs, installs, or repairs an on-site wastewater system described as a single septic tank with a gravity-fed distribution system when located on land owned by that person and that is intended solely for use by that person and members of that person's immediate family.

(2) A person licensed under Article 1 of Chapter 87 of the General Statutes who constructs or installs an on-site wastewater system ancillary to the building being constructed.

(3) A person who is certified by the Water Pollution Control System Operators Certification Commission and contracted to provide necessary operation and maintenance on the permitted on-site wastewater system.

(4) A person permitted under Article 21 of Chapter 143 who is constructing a water pollution control facility necessary to comply with the terms and conditions of a National Pollutant Discharge Elimination System (NPDES) permit.

(5) A person licensed under Article 1 of Chapter 87 of the General Statutes as a licensed public utilities contractor who is installing or expanding a wastewater treatment facility, including a collection system, designed by a registered professional engineer.

"**§ 90A-73. Creation and membership of the Board.**

(a) Creation and Appointments. – There is created the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board. The Board shall consist of nine members appointed to three-year terms as follows:

(1) One member appointed by the Governor who, at the time of appointment, is engaged in the construction, installation, repair, or inspection of on-site wastewater systems, to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(2) One member appointed by the Governor who, at the time of appointment, is a certified water treatment facility operator pursuant to Article 2 of Chapter 90A of the General Statutes, to a term that expires on 1 July of years evenly divisible by three.

(3) One member appointed by the Governor who is an employee of the Division of Environmental Health to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.

(4) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is engaged in the construction, installation, repair, or inspection of on-site wastewater systems, to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.

(5) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is engaged in the business of inspecting on-site wastewater systems, to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(6) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate upon the recommendation of the North Carolina Home Builders Association, to a term that expires on 1 July of years evenly divisible by three.

(7) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is engaged in the construction, installation, repair, or inspection of on-site wastewater systems, to a term that expires on 1 July of years evenly divisible by three.

(8) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) employed as an environmental health specialist, and (ii) engaged primarily in the inspection and permitting of on-site wastewater systems, to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.

(9) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who,

at the time of appointment, is (i) employed by North Carolina State University Cooperative Extension Service, and (ii) is knowledgeable in the area of on-site wastewater systems, to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(b) Vacancies. – An appointment to fill a vacancy on the Commission created by the resignation, dismissal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled as provided in G.S. 120-122.

(c) Oath. – Each member of the Board, before entering upon the discharge of the duties of the Board, shall take and file with the Secretary of State an oath in writing to perform properly the duties as a member of the Board and to uphold the Constitution of North Carolina and the Constitution of the United States.

(d) Officers. – The Board shall elect a Chair from among its members. The Chair shall serve from the time of election until 30 June of the following year, or until a successor is elected.

(e) Compensation. – Board members who are State employees shall receive no per diem compensation for serving on the Board but shall be reimbursed for their expenses in accordance with G.S. 138-6. All other Board members shall receive per diem compensation and reimbursement in accordance with the compensation rate established in G.S. 93B-5.

(f) Quorum. – A majority of the members of the Board constitutes a quorum for the transaction of business.

(g) Meetings. – The Board shall meet at least twice each year and may hold special meetings at the call of the Chair or a majority of the members of the Board.

(h) Staff. – The Board may employ staff to carry out the duties of the Board and the provisions of this Article. The Board shall determine the compensation, duties, and other terms and conditions of employment of the staff.

"**§ 90A-74. Powers and duties of the Board.**

The Board shall have the following general powers and duties:

(1) To adopt rules in the manner prescribed by Chapter 150B of the General Statutes to govern its actions and to implement the provisions of this Article.

(2) To determine the qualifications of persons who are certified pursuant to this Article.

(3) To establish grades of certifications based on design capacity, complexity, projected costs, and other features of approved on-site wastewater systems.

(4) To develop and administer examinations for each grade of certification. The Board may approve applications by recognized associations for certification of its members after a review of the requirements of the association to ensure that they are equivalent to the requirements of the Board.

(5) To issue, renew, deny, restrict, suspend, or revoke licenses and to carry out any of the other actions authorized by this Article.

(6) To establish, publish, and enforce rules of professional conduct of persons who are certified pursuant to this Article.

(7) To maintain a record of all proceedings and make available to persons licensed under this Article, and to other concerned parties, an annual report of all Board action.

(8) To establish reasonable fees for application, certification, and renewal, and other services provided by the Board.

(9) To conduct investigations for the purpose of determining whether violations of this Article or grounds for disciplining persons certified under this Article exist.

(10) To adopt a common seal containing the name of the Board for use on all certificates and official reports issued by the Board.

(11) To conduct other services necessary to carry out the purposes of this Article.

"**§ 90A-75. Expenses and fees.**

(a) Expenses. – All salaries, compensation, and expenses incurred or allowed for the purposes of carrying out this Article shall be paid by the Board exclusively out of the funds received by the Board as authorized by this Article. No salary, expense, or other obligations of the Board may be charged against the General Fund of the State. Neither the Board nor any of its members or employees may incur any expense, debt, or financial obligation binding upon the State.

(b) Contributions. – The Board may accept grants, contributions, bequests, and gifts that shall be kept in the same account as the funds deposited in accordance with this Article and other provisions of the law.

(c) Fees. – All fees shall be established in rules adopted by the Board. The Board shall establish fees sufficient to pay the costs of administering this Article, but in no event shall the Board charge a fee at an annual rate in excess of the following:

(1)	Application for basic certification	$150.00
(2)	Application for each step grade	$50.00
(3)	Certification renewal	$100.00
(4)	Reinstatement of revoked or suspended certification	$500.00
(5)	Application for on-site wastewater system inspector	$200.00.

(d) Audit. – The Board is subject to the oversight of the State Auditor under Article 5A of Chapter 147 of the General Statutes.

"**§ 90A-76. On-Site Wastewater Certification Fund.**

Fund. – The On-Site Wastewater Certification Fund is created as a nonreverting account within the Department. All fees collected pursuant to this Article shall be credited to the Fund. The Fund shall be used solely for the costs of administering this Article.

"**§ 90A-77. Certification requirements.**

(a) Certification. – The Board shall issue a certificate of the appropriate grade level to an applicant who satisfies all of the following conditions:

(1) Is at least 18 years of age.

(2) Files a properly completed application with the Board or submits a recognized application from an accepted association.

(3) Is of good moral character and submits affidavits of three persons not related to the applicant for whom the applicant provided on-site wastewater services.

(4) Completes the training program designed by the Board specific to the grade level for which the applicant is applying.

(5) Pays the applicable fees set by the Board for the particular application.

(b) Examination. – For grade levels greater than conventional systems for a conventional system as defined by G.S. 130A-343(a)(3), the applicant must pass a written or oral examination that tests the applicant's proficiency in the following areas:

(1) Principles of public and environmental health associated with on-site wastewater systems.

(2) Principles of construction and safety.

(3) Technical and practical knowledge of on-site wastewater systems typical to the specified grade level.

(4) Laws and rules related to the installation, construction, repair, or inspection of the specified on-site wastewater system.

(c) Location of Examinations. – The Board shall provide a minimum of three examinations each year; one each in the coastal plain, the Piedmont, and the mountain areas of the State.

(d) Approval of Certification Programs. – The Board may issue a certificate at the appropriate grade level to an applicant from a recognized association after review and approval of the continuing education program of the association.

(e) No Prior Experience. – Applicants with no prior experience in providing on-site wastewater services shall, upon a properly completed application, complete a basic on-site wastewater education program approved by the Board. Upon completion of the basic on-site wastewater education program, the applicant shall be eligible to participate in courses in an on-site wastewater systems training program designed by the Board specific to the grade level for which the applicant is applying.

(f) No Degree Required. – An applicant shall not be required to hold or obtain an educational diploma or degree to obtain a certificate. If the applicant meets all the conditions for certification except for passage of the Board examination, the applicant may take the examination on two more occasions without having to file for a new application, pay an additional application fee, or repeat the training program. If the applicant fails to pass the Board examination on three successive occasions, the applicant must reapply to the Board, pay the application fee, and repeat the training program.

(g) Certificate. – The certification shall show the full name of the certificate holder. The certificate shall provide a unique identification number and shall be signed by the Chair. Issuance of the certificate by the Board shall be prima facie evidence that

the person named therein is entitled to all the rights and privileges of a certified on-site wastewater contractor or inspector, at the grade level specified on the certificate, while the certificate remains in effect.

(h) Replacement Certificate. – A new certificate to replace one lost, destroyed, or mutilated shall be issued subject to rules adopted by the Board and with the payment of a fee set by the Board. The fee for a duplicate or replacement certificate shall not exceed twenty-five dollars ($25.00).

"**§ 90A-78. Certification renewal.**

(a) Renewal. – All certifications shall expire at intervals determined by the Board unless they are renewed. In no event may the interval determined by the Board be less than one year. To renew a certification, a contractor or inspector must meet all of the following conditions:

(1) Submit an application for renewal on the form prescribed by the Board.

(2) Meet the continuing education requirements prescribed by the Board.

(3) Pay the certification renewal fee.

(b) Late Fee. – A contractor or inspector with an expired certificate may renew the certification within 90 days of its expiration upon payment of a late fee set by the Board. The late fee shall not exceed twenty-five dollars ($25.00). If a certification is not renewed within 90 days of its expiration, the certification shall not be renewed, and the holder must apply for a new certificate.

"**§ 90A-79. Continuing education.**

(a) Requirements. – The Board shall require continuing education as a condition of certification and renewal. The Board shall determine the number of hours, based on grade levels applied for, up to a maximum of 12 hours per year, and the subject material for the specified grade level. The Board shall maintain records of continuing education coursework successfully completed by each certificate holder.

(b) Approval of Continuing Education Programs. – The Board may approve a continuing education program or course if the Board finds that the program or course offers useful educational experience that will enhance the construction, installation, repair, or inspection of on-site wastewater systems. The Board may develop and offer continuing education programs.

"**§ 90A-80. Responsibility of the certificate holder.**

(a) Responsibilities. – The certificate holder shall be responsible for all crew actions and quality of workmanship. A certificate may be issued jointly to an individual doing business under the name of the individual, under a trade name, or under the name of a firm, partnership, association, or corporation. The certificate holder shall be the person of responsible charge and shall assume all duties and liabilities for the construction, installation, repair, or inspection of the system.

(b) Separation of Employment. – If the certificate holder is an employee of the firm, partnership, association, or corporation, employment must continue for the certificate to remain in force. If separation of the employee occurs, the firm, partnership, association, or corporation must employ a certified contractor or inspector within 60 days for the certificate to remain in force.

"**§ 90A-81. Investigation of complaints.**

(a) Misconduct. – A person may refer to the Board charges of fraud, deceit, negligence, incompetence, or misconduct against any contractor or inspector licensed under this Article. The charges shall be in writing and sworn to by the complainant and submitted to the Board. These charges, unless dismissed without a hearing by the Board as unfounded or trivial, shall be heard and determined by the Board in accordance with the provisions of Chapter 150B of the General Statutes. An association that receives professional recognition of its own certification process by the Board shall be responsible for the conduct and competency of its members.

(b) Records. – The Board shall establish and maintain detailed records regarding complaints concerning each certified contractor or inspector. The records shall include those certified by recognized associations. The records shall also detail the levels of certification held by each contractor or inspector.

(c) Notification. – The Board shall notify local health departments of updates in certifications, complaints, suspensions, or reinstatements.

"**§ 90A-82. Remedies.**

(a) Denial, Suspension, and Revocation of Certification. – The Board may deny, suspend, or revoke a certificate under this Article for:

(1) A violation of this Article or a rule of the Board.

(2) The use of fraud or deceit in obtaining or renewing a certificate.

(3) Any act of gross negligence, incompetence, or misconduct in the construction, installation, repair, or inspection of an on-site wastewater system.

(b) Arbitration. – The Board may establish a voluntary arbitration procedure to resolve complaints concerning a certificate holder or any work performed by the certificate holder, or conflicts involving any certificate holder and the Division of Environmental Health or a local health department.

(c) Injunction. – The Board may ask the Attorney General to seek an injunction to restrain any person, firm, partnership, or corporation from violating the provisions of this Article or rules adopted by the Board. The Attorney General may bring an action for an injunction in the name of the State in the superior court of any county in which the violator resides or the violator's principal place of business is located. In any proceedings for an injunction, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation. Members of the Board shall not be personally or professionally liable for any act or omission pursuant to this subsection. The Board shall not be required to post a bond in connection with any action to obtain an injunction.

(d) Offenses. – A person who commits any one or more of the following offenses is guilty of a Class 2 misdemeanor:

(1) Engages in or offers to engage in the construction, installation, repair, or inspection of an on-site wastewater system without the appropriate certificate for the specific grade of on-site wastewater system.

(2) Gives false or forged evidence of any kind in obtaining a certificate.

(3) Falsely impersonates a certificate holder."

SECTION 2.(a) In order to provide for a system of staggered three-year terms for the members of the On-Site Wastewater Contractors and Inspectors Certification Board established by G.S. 90A-73(a), as enacted by Section 1 of this act, the following provisions shall apply:

(1) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(1) shall be three years and shall expire on 1 July 2008.

(2) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(2) shall be four years and shall expire on 1 July 2009.

(3) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(3) shall be five years and shall expire on 1 July 2010.

(4) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(4) shall be five years and shall expire on 1 July 2010.

(5) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(5) shall be three years and shall expire on 1 July 2008.

(6) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(6) shall be four years and shall expire on 1 July 2009.

(7) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(7) shall be four years and shall expire on 1 July 2009.

(8) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(8) shall be five years and shall expire on 1 July 2010.

(9) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(9) shall be three years and shall expire on 1 July 2008.

SECTION 2.(b) In the event that the General Assembly fails to appoint one or more initial members to the On-Site Wastewater Contractors and Inspectors Certification Board while the General Assembly is in session during 2005, the failure to make an initial appointment shall be treated as though a vacancy had occurred, and the vacancy may be filled by appointment as provided in G.S. 120-122.

SECTION 3. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The On-Site Wastewater Contractors and Inspectors Certification Board may adopt temporary rules to implement the provisions of this act until 1 July 2007. Notwithstanding G.S. 150B-21.1(d), a temporary rule adopted in accordance with this section shall remain in effect until a permanent rule adopted to replace the temporary rule becomes effective. Prior to the adoption of temporary rules under this section, the Board shall:

(1) Consult with persons who may be interested in the subject matter of the temporary rule during the development of the text of the proposed temporary rule.

(2) Establish a mailing list pursuant to G.S. 150B-21.2(d) and notify persons on the mailing list of its intent to adopt a temporary rule.

(3) Publish a notice of intent to adopt a temporary rule in the North Carolina Register. The notice shall set out the text of the proposed temporary rule and include the name of the person to whom questions and written comments on the proposed rule may be submitted. The Board shall accept written comments on the proposed temporary rule for at least 30 days after the notice of intent to adopt the temporary rule as published in the North Carolina Register.

(4) Hold at least one public hearing on the proposed temporary rule.

SECTION 4. Section 1 of this act is effective when it becomes law except that G.S. 90A-72, 90A-79, and 90A-82, as enacted by Section 1 of this act, become effective January 1, 2007. Sections 2, 3, and 4 of this act are effective when the act becomes law.

HOUSE BILL 688*

Short Title:	Certify On-Site Wastewater Contractors.	(Public)
Sponsors:	Representatives Gibson and Culp (Primary Sponsors).	
Referred to:	Finance.	

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE CERTIFICATION OF ON-SITE WASTEWATER CONTRACTORS AND INSPECTORS.

The General Assembly of North Carolina enacts:

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

"Article 5.

"Certification of On-Site Wastewater Contractors and Inspectors.

"**§ 90A-70. Purpose.**

It is the purpose of this Article to protect the environment, public health, and safety by ensuring the integrity and competence of on-site wastewater contractors and inspectors; to require the examination of on-site wastewater contractors and inspectors and the certification of their competency to supervise, conduct, or inspect the construction, installation, repair, or inspection of on-site wastewater systems; to establish minimum standards for ethical conduct, responsibility, training, experience, and continuing education for on-site wastewater system contractors and inspectors; and to provide appropriate enforcement procedures for rules adopted by the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board.

"**§ 90A-71. Definitions.**

The following definitions apply in this Article:

(1) 'Board' means the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board.

(2) 'Department' means the Department of Environment and Natural Resources.

(3) 'Inspector' means a person that evaluates and reports on or offers to evaluate and report on the performance of an on-site wastewater system.

(4) 'On-site wastewater system' means any wastewater system permitted under the provisions of Article 11 of Chapter 130A of the General Statutes.

(5) 'Contractor' means a person that constructs, installs, or repairs, or offers to construct, install, or repair an on-site wastewater system in the State.

(6) 'Person' means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities, or political subdivisions, governmental agencies, or private or public corporations organized and existing under the laws of this State or any other state or country.

(7) 'Responsible charge' means the direct control and personal supervision of the installation, construction, repair, or inspection of an on-site wastewater system.

"**§ 90A-72. Certification required; applicability.**

(a) Certification Required. – No person shall construct, install, repair, or inspect, or offer to construct, install, repair, or inspect an on-site wastewater system in the State without first obtaining and holding the required level of certification for the specified system. A certified on-site wastewater system inspector shall be required for any professional performance inspection of an existing on-site wastewater system.

(b) Applicability. – This Article does not apply to the following:

(1) A person who constructs, installs, or repairs an on-site wastewater system described as a single septic tank with a gravity-fed distribution system when located on land owned by that person and that is intended solely for use by that person and members of that person's immediate family.

(2) A person licensed under Article 1 of Chapter 87 of the General Statutes who constructs or installs an on-site wastewater system ancillary to the building being constructed.

"**§ 90A-73. Creation and membership of the Board.**

(a) Creation and Appointments. – There is created the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board. The Board shall consist of nine members appointed to three-year terms as follows:

(1) One member appointed by the Governor who, at the time of appointment, is engaged in the construction, installation, repair, or inspection of on-site wastewater systems, to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(2) One member appointed by the Governor who, at the time of appointment, is a certified water treatment facility operator pursuant to Article 2 of Chapter 90A of the General Statutes, to a term that expires on 1 July of years evenly divisible by three.

(3) One member appointed by the Governor who is an employee of the Division of Environmental Health to a term that expires on 1 July of

years that follow by one year those years that are evenly divisible by three.

(4) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is engaged in the construction, installation, repair, or inspection of on-site wastewater systems, to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.

(5) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is engaged in the business of inspecting on-site wastewater systems, to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(6) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate upon the recommendation of the North Carolina Home Builders Association, to a term that expires on 1 July of years evenly divisible by three.

(7) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is engaged in the construction, installation, repair, or inspection of on-site wastewater systems, to a term that expires on 1 July of years evenly divisible by three.

(8) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) employed as an environmental health specialist, and (ii) engaged primarily in the inspection and permitting of on-site wastewater systems, to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.

(9) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) employed by North Carolina State University Cooperative Extension Service, and (ii) is knowledgeable in the area of on-site wastewater systems, to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(b) Vacancies. – An appointment to fill a vacancy on the Commission created by the resignation, dismissal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled as provided in G.S. 120-122.

(c) Oath. – Each member of the Board, before entering upon the discharge of the duties of the Board, shall take and file with the Secretary of State an oath in writing to perform properly the duties as a member of the Board and to uphold the Constitution of North Carolina and the Constitution of the United States.

(d) Officers. – The Board shall elect a Chair from among its members. The Chair shall serve from the time of their election until 30 June of the following year, or until a successor is elected.

(e) Compensation. – Board members who are State employees shall receive no per diem compensation for serving on the Board but shall be reimbursed for their expenses in accordance with G.S. 138-6. All other Board members shall receive per diem compensation and reimbursement in accordance with the compensation rate established in G.S. 93B-5.

(f) Quorum. – A majority of the members of the Board constitutes a quorum for the transaction of business.

(g) Meetings. – The Board shall meet at least twice each year and may hold special meetings at the call of the Chair or a majority of the members of the Board.

(h) Staff. – The Board may employ staff to carry out the duties of the Board and the provisions of this Article. The Board shall determine the compensation, duties, and other terms and conditions of employment of the staff.

"**§ 90A-74. Powers and duties of the Board.**

The Board shall have the following general powers and duties:

(1) To adopt rules in the manner prescribed by Chapter 150B of the General Statutes to govern its actions and to implement the provisions of this Article.

(2) To determine the qualifications of persons who are certified pursuant to this Article.

(3) To establish grades of certifications based on design capacity, complexity, projected costs, and other features of approved on-site wastewater systems.

(4) To develop and administer examinations for each grade of certification. The Board may approve applications by recognized associations for certification of its members after a review of the requirements of the association to ensure that they are equivalent to the requirements of the Board.

(5) To issue, renew, deny, restrict, suspend, or revoke licenses and to carry out any of the other actions authorized by this Article.

(6) To establish, publish, and enforce rules of professional conduct of persons who are certified pursuant to this Article.

(7) To maintain a record of all proceedings and make available to persons licensed under this Article, and to other concerned parties, an annual report of all Board action.

(8) To establish reasonable fees for application, certification, and renewal, and other services provided by the Board.

(9) To conduct investigations for the purpose of determining whether violations of this Article or grounds for disciplining persons certified under this Article exist.

(10) To adopt a common seal containing the name of the Board for use on all certificates and official reports issued by the Board.

(11) To conduct other services necessary to carry out the purpose of this Article.

"**§ 90A-75. Expenses and fees.**

(a) Expenses. – All salaries, compensation, and expenses incurred or allowed for the purposes of carrying out this Article shall be paid by the Board exclusively out of the funds received by the Board as authorized by this Article. No salary, expense, or other obligations of the Board may be charged against the General Fund of the State. Neither the Board nor any of its members or employees may incur any expense, debt, or financial obligation binding upon the State.

(b) Contributions. – The Board may accept grants, contributions, bequests, and gifts that shall be kept in the same account as the funds deposited in accordance with this Article and other provisions of the law.

(c) Fees. – All fees shall be established in rules adopted by the Board. The Board shall establish fees sufficient to pay the costs of administering this Article, but in no event shall the Board charge a fee at an annual rate in excess of the following:

(1)	Application for basic certification	$150.00
(2)	Application for each step grade	$50.00
(3)	Certification renewal	$100.00
(4)	Reinstatement of revoked or suspended certification	$500.00
(5)	Application for on-site wastewater system inspector	$200.00.

(d) Audit. – The Board is subject to the oversight of the State Auditor under Article 5A of Chapter 147 of the General Statutes.

"**§ 90A-76. On-Site Wastewater Certification Fund.**

Fund. – The On-Site Wastewater Certification Fund is created as a nonreverting account within the Department. All fees collected pursuant to this Article shall be credited to the Fund. The Fund shall be used for the costs of administering this Article.

"**§ 90A-77. Certification requirements.**

(a) Certification. – The Board shall issue a certificate of the appropriate grade level to an applicant who satisfies all of the following conditions:

(1) Is at least 18 years of age.

(2) Files a properly completed application with the Board or submits a recognized application from an accepted association.

(3) Is of good moral character and submits affidavits of three persons not related to the applicant for whom the applicant provided on-site wastewater services.

(4) Completes the training program designed by the Board specific to the grade level for which the applicant is applying.

(5) Pays the applicable fees set by the Board for the particular application.

(b) Examination. – For grade levels greater than conventional systems for a conventional system as defined by G.S. 130A-343(a)(3), the applicant must pass a written or oral examination that tests the applicant's proficiency in the following areas:

(1) Principles of public and environmental health associated with on-site wastewater systems.
(2) Principles of construction and safety.
(3) Technical and practical knowledge of on-site wastewater systems typical to the specified grade level.
(4) Laws and rules related to the installation, construction, repair, or inspection of the specified on-site wastewater system.

(c) Location of Examinations. – The Board shall provide a minimum of three examinations each year; one each in the coastal plain, the Piedmont, and the mountain areas of the State.

(d) Approval of Certification Programs. – The Board may issue a certificate at the appropriate grade level to an applicant from a recognized association after review and approval of the continuing education program of the association.

(e) No Prior Experience. – Applicants with no prior experience in providing on-site wastewater services shall, upon a properly completed application, complete a basic on-site wastewater education program approved by the Board. Upon completion of the basic on-site wastewater education program, the applicant shall be eligible to participate in courses in an on-site wastewater systems training program designed by the Board specific to the grade level for which the applicant is applying.

(f) No Degree Required. – An applicant shall not be required to hold or obtain an educational diploma or degree to obtain a certificate. If the applicant meets all the conditions for certification except for passage of the Board examination, the applicant may take the examination on two more occasions without having to file for a new application, pay an additional application fee, or repeat the training program. If the applicant fails to pass the Board examination on three successive occasions, the applicant must reapply to the Board, pay the application fee, and repeat the training program.

(g) Certificate. – The certification shall show the full name of the certificate holder. The certificate shall provide a unique identification number and shall be signed by the Chair. Issuance of the certificate by the Board shall be prima facie evidence that the person named therein is entitled to all the rights and privileges of a certified on-site wastewater contractor or inspector, at the grade level specified on the certificate, while the certificate remains in effect.

(h) Replacement Certificate. – A new certificate to replace one lost, destroyed, or mutilated shall be issued subject to rules adopted by the Board and with the payment of a fee set by the Board. The fee for a duplicate or replacement certificate shall not exceed twenty-five dollars ($25.00).

"**§ 90A-78. Certification renewal.**

(a) Renewal. – All certifications shall expire at intervals determined by the Board unless they are renewed. In no event may the interval determined by the Board be less than one year. To renew a certification, a contractor or inspector must meet all of the following conditions:

(1) Submit an application for renewal on the form prescribed by the Board.

(2) Meet the continuing education requirements prescribed by the Board.
(3) Pay the certification renewal fee.

(b) Late Fee. – A contractor or inspector with an expired certificate may renew the certification within 90 days of its expiration upon payment of a late fee set by the Board. The late fee shall not exceed twenty-five dollars ($25.00). If a certification is not renewed within 90 days of its expiration, the certification shall not be renewed, and the holder must apply for a new certificate.

"**§ 90A-79. Continuing education.**

(a) Requirements. – The Board shall require continuing education as a condition of certification and renewal. The Board shall determine the number of hours, based on grade levels applied for, up to a maximum of 12 hours per year, and the subject material for the specified grade level. The Board shall maintain records of continuing education coursework successfully completed by each certificate holder.

(b) Approval of Continuing Education Programs. – The Board may approve a continuing education program or course if the Board finds that the program or course offers useful educational experience that will enhance the construction, installation, repair, or inspection of on-site wastewater systems. The Board may develop and offer continuing education programs.

"**§ 90A-80. Responsibility of the certificate holder.**

(a) Responsibilities. – The certificate holder shall be responsible for all crew actions and quality of workmanship. A certificate may be issued jointly to an individual doing business under the name of the individual, under a trade name, or under the name of a firm, partnership, association, or corporation. The certificate holder shall be the person of responsible charge and shall assume all duties and liabilities for the construction, installation, repair, or inspection of the system.

(b) Separation of Employment. – If the certificate holder is an employee of the firm, partnership, association, or corporation, employment must continue for the certificate to remain in force. If separation of the employee occurs, the firm, partnership, association, or corporation must employ a certified contractor or inspector within 60 days for the certificate to remain in force.

"**§ 90A-81. Investigation of complaints.**

(a) Misconduct. – A person may refer to the Board charges of fraud, deceit, negligence, incompetence, or misconduct against any contractor or inspector licensed under this Article. The charges shall be in writing and sworn to by the complainant and submitted to the Board. These charges, unless dismissed without a hearing by the Board as unfounded or trivial, shall be heard and determined by the Board in accordance with the provisions of Chapter 150B of the General Statutes. An association that receives professional recognition of its own certification process by the Board shall be responsible for the conduct and competency of its members.

(b) Records. – The Board shall establish and maintain detailed records regarding complaints concerning each certified contractor or inspector. The records shall include those certified by recognized associations. The records shall also detail the levels of certification held by each contractor or inspector.

(c) Notification. – The Board shall notify local health departments of updates in certifications, complaints, suspensions, or reinstatements.

"**§ 90A-82. Remedies.**

(a) Denial, Suspension, and Revocation of Certification. – The Board may deny, suspend, or revoke a certificate under this Article for:

(1) A violation of this Article or a rule of the Board.

(2) The use of fraud or deceit in obtaining or renewing a certificate.

(3) Any act of gross negligence, incompetence, or misconduct in the construction, installation, repair, or inspection of an on-site wastewater system.

(b) Arbitration. – The Board may establish a voluntary arbitration procedure to resolve complaints concerning a certificate holder or any work performed by the certificate holder, or conflicts involving any certificate holder and the Division of Environmental Health or a local health department.

(c) Injunction. – The Board may ask the Attorney General to seek an injunction to restrain any person, firm, partnership, or corporation from violating the provisions of this Article or rules adopted by the Board. The Attorney General may bring an action for an injunction in the name of the State in the superior court of any county in which the violator resides or the violator's principal place of business is located. In any proceedings for an injunction, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation. Members of the Board shall not be personally or professionally liable for any act or omission pursuant to this subsection. The Board shall not be required to post a bond in connection with any action to obtain an injunction.

(d) Offenses. – A person who commits any one or more of the following offenses is guilty of a Class 2 misdemeanor:

(1) Engages in or offers to engage in the construction, installation, repair, or inspection of an on-site wastewater system without the appropriate certificate for the specific grade of on-site wastewater system.

(2) Gives false or forged evidence of any kind in obtaining a certificate.

(3) Falsely impersonates a certificate holder."

SECTION 2.(a) In order to provide for a system of staggered three-year terms for the members of the On-Site Wastewater Contractors and Inspectors Certification Board established by G.S. 90A-73(a), as enacted by Section 1 of this act, the following provisions shall apply:

(1) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(1) shall be three years and shall expire on 1 July 2008.

(2) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(2) shall be four years and shall expire on 1 July 2009.

(3) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(3) shall be five years and shall expire on 1 July 2010.

(4) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(4) shall be five years and shall expire on 1 July 2010.

(5) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(5) shall be three years and shall expire on 1 July 2008.

(6) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(6) shall be four years and shall expire on 1 July 2009.

(7) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(7) shall be four years and shall expire on 1 July 2009.

(8) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(8) shall be five years and shall expire on 1 July 2010.

(9) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(9) shall be three years and shall expire on 1 July 2008.

SECTION 2.(b) In the event that the General Assembly fails to appoint one or more initial members to the On-Site Wastewater Contractors and Inspectors Certification Board while the General Assembly is in session during 2003, the failure to make an initial appointment shall be treated as though a vacancy had occurred, and the vacancy may be filled by appointment as provided in G.S. 120-122.

SECTION 3. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The On-Site Wastewater Contractors and Inspectors Certification Board may adopt temporary rules to implement the provisions of this act until 1 July 2005. Notwithstanding G.S. 150B-21.1(d), a temporary rule adopted in accordance with this section shall remain in effect until a permanent rule adopted to replace the temporary rule becomes effective. Prior to the adoption of temporary rules under this section, the Board shall:

(1) Consult with persons who may be interested in the subject matter of the temporary rule during the development of the text of the proposed temporary rule.

(2) Establish a mailing list pursuant to G.S. 150B-21.2(d) and notify persons on the mailing list of its intent to adopt a temporary rule.

(3) Publish a notice of intent to adopt a temporary rule in the North Carolina Register. The notice shall set out the text of the proposed temporary rule and include the name of the person to whom questions and written comments on the proposed rule may be submitted. The Board shall accept written comments on the proposed temporary rule for at least 30 days after the notice of intent to adopt the temporary rule as published in the North Carolina Register.

(4) Hold at least one public hearing on the proposed temporary rule.

SECTION 4. Section 1 of this act is effective when it becomes law except that G.S. 90A-72, 90A-79, and 90A-82, as enacted by Section 1 of this act, become effective January 1, 2007. Sections 2, 3, and 4 of this act are effective when the act becomes law.

House Bill 688:
Certify On-Site Wastewater Contractors.

BILL ANALYSIS

Committee:	**House Finance**	**Sponsors:**	Representatives Gibson and Culp
Date:	**June 21, 2005**	**Analysis by:**	Ashley Huffstetler
Version:	**PCS to 1st Edition** H688-CSMB-24		Staff Attorney

SUMMARY: The PCS to House Bill 688 requires licensing of on-site wastewater contractors and inspectors. It also creates a nine-member NC On-Site Wastewater Contractors and Inspectors Certification Board and sets out the maximum fees the board may charge.

BACKGROUND: Under current law, persons who install, extend, repair, or inspect on-site wastewater systems are not regulated. In order to install or repair an on-site wastewater system, a person is only required to register with the local health department. The wastewater systems themselves are regulated by the Department of Environment and Natural Resources.

The Legislative Committee on New Licensing Boards studied this issue and published a report in May 2006, recommending licensing of on-site wastewater contractors and inspectors. Specifically, the committee found that the unregulated practice of on-site wastewater contractors can harm the public health, safety, or welfare because the installation and repair of new on-site wastewater systems and the inspection of existing systems at the time of property transfer are not currently regulated in a way that provides the public with assurance of competent construction practices. The Committee found that the current requirement of registration with the local health department does not adequately protect the state's environmental health or the public health of the citizens of North Carolina.

BILL ANALYSIS: The PCS to House Bill 688 adds a new Article 5 to G.S. Chapter 90A to require licensing of on-site wastewater contractors and inspectors.

Any person who constructs, installs, repairs, or inspects an "on-site wastewater system" must hold the required level of certification for the particular system. Also, a certified on-site wastewater system inspector is required for any professional performance inspection of an existing on-site wastewater system. An "on-site wastewater system" is defined as "any wastewater system permitted under the provisions of Article 11 of Chapter 130A of the General Statutes that does not discharge to a treatment facility or other surface waters."

Exemptions from Certification.

Persons not required to be certified include:

- A landowner who constructs, installs, or repairs an on-site wastewater system described as a single septic system so long as it is intended for use by that person and members of that person's immediate family.
- A licensed general contractor who constructs or installs an on-site wastewater system ancillary to the building being constructed.
- A person already certified by the Water Pollution Control System Operators Certification Commission who is contracted to provide necessary operation and maintenance on an on-site wastewater system.
- A person permitted under Chapter 143 to construct a water pollution control facility necessary to comply with the terms and conditions of an NPDES permit.

- A licensed public utilities contractor who is installing or expanding a wastewater treatment facility, including a collection system, designed by a registered professional engineer.

Initial Certification Requirements.

General Requirements: All applicants for certification must meet the following conditions:

- Be at least 18 years old.
- File a properly completed application with the Board or submit a recognized application from an accepted association.
- Be of good moral character and submit three (3) affidavits of persons not related to the applicant for whom the applicant has provided on-site wastewater services.
- Complete the training program designed by the Board specific to the grade level for which the applicant is applying. Grade levels are established by the Board based on design capacity, complexity, projected costs, and other features of approved on-site wastewater systems.
- Pay the applicable fee.

Applicants with No Prior Experience: Applicants with no prior experience in providing on-site wastewater services must:

- Complete an application; and
- Complete a basic on-site wastewater education program approved by the Board.

After meeting the above conditions, the applicant is then eligible to participate in training courses designed by the Board for the grade level for which the applicant is applying.

No Degree Requirement: Applicants are not required to hold a degree to be certified.

Fees. Fees are set by the Board and cannot exceed the following amounts:

Purpose of Fee	Fee Amount
Application for basic certification	$150.00
Application for each step grade	$50.00
Certification renewal	$100.00
Reinstatement of revoked or suspended certification	$500.00
Application for on-site wastewater system inspector certification	$200.00
Replacement of a certificate	$25.00
Late renewal	$25.00

GOVERNING BOARD

North Carolina On-Site Wastewater Contractors and Inspectors Certification Board. The Board will consist of nine members. Three are appointed by the Governor, three by the General Assembly upon recommendation of the President Pro Tem of the Senate, and three by the General Assembly upon recommendation of the Speaker of the House. The Board has administrative and disciplinary powers, and may establish grades of certification, develop and administer exams, and establish fees, not to exceed statutory maximums.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 20, 2005

TO: Representatives Culp and Gibson

FROM: Jennifer Haygood
Aaron Paul
Fiscal Research Division

RE: PCS H688-CSMB-24

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund					
DENR	No Fiscal Impact				
Dept. of Correction	Exact amount cannot be determined; no substantial impact anticipated.				
Judicial Branch	Exact amount cannot be determined; no substantial impact anticipated.				
On-Site Wastewater Certification Fund	$142,500	$228,000	$180,975	$181,901	$183,280
EXPENDITURES:					
On-Site Wastewater Certification Fund	See Assumptions and Methodology				
POSITIONS (cumulative):	See Assumptions and Methodology				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment and Natural Resources (DENR); Department of Correction; Judicial Branch

EFFECTIVE DATE: Effective when it becomes law except provisions requiring persons to be licensed and remedies for violation take effect on January 1, 2007.

BILL SUMMARY: Adds new Article 5 of G.S. Chapter 90A to require licensing of on-site wastewater contractors and inspectors. Creates a nine-member NC On-Site Wastewater Contractors and Inspectors Certification Board, appointed by the Governor and General Assembly. Specifies the duties of the Board including determining the qualifications for certification, issuing, suspending and revoking licenses, and establishing and enforcing rules of professional conduct. Sets out maximum fees that Board may charge. Specifies requirements for applicant for certification and for renewals. Creates the On-Site Wastewater Certification Fund, a non-reverting account with the Department of Environment and Natural Resources (DENR). Sets out procedure for Board to investigate complaints of fraud, deceit, negligence, incompetence, or misconduct of any licensed contractor or inspector. Creates the following new Class 2 misdemeanor offenses: 1) engaging in or offering to engage in the construction, installation, repair, or inspection of an on-site wastewater system without the appropriate certificate for the specific grade of on-site wastewater system; giving false or forged evidence of any kind in obtaining a certificate; and, 2) falsely impersonating a certificate holder. Authorizes Board to adopt temporary rules to implement act until July 1, 2007. Effective when it becomes law except provisions requiring persons to be licensed and remedies for violation take effect on January 1, 2007.

ASSUMPTIONS AND METHODOLOGY:
The On-Site Wastewater Contractors and Inspectors Certification Board created by this act will be entirely funded by fees and contributions as set forth in G.S. 90A-75. All fees and contributions will be deposited into the On-Site Wastewater Certification Fund to be established in DENR. The NC Septic Tank Association estimates the number of installers ranges from 1,500 to 2,000, of which 300 to 400 will also request certification as on-site wastewater system inspectors. In order to meet the January 1, 2007 certification deadline, this fiscal note assumes that half of installers seeking certification will apply in FY 05-06 and half will apply in FY 06-07. After this initial certification period, the Septic Tank Association believes that the number of new applications each year will be minimal. Consequently, this fiscal note assumes a 5% annual growth rate in new applications and a 95% renewal rate in subsequent years. Table 1 below summarizes the revenue generated if the Board adopts the maximum fees allowed. A revenue estimate cannot be given at this time on the number of applications for step grades or revoked/suspended certificates.

Table 1: Estimated Fee Revenue

		FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Number of Applications						
New Applications						
-Basic		750	750	75	79	83
-System Inspector		150	150	15	16	17
Renewals		0	855	1,667	1,669	1,676
Fee Revenues:						
New Applications						
-Basic	$150	$112,500	$112,500	$11,250	$11,813	$12,403
-System Inspector	$200	$30,000	$30,000	$3,000	$3,150	$3,308
Renewals	$100	$0	$85,500	$166,725	$166,939	$167,569
Total		**$142,500**	**$228,000**	**$180,975**	**$181,901**	**$183,280**

At this time a precise estimate of the cost to operate this program is not available. DENR staff, however, estimates the Board's operating costs will average $180,000 a year for a staff of three (includes salaries and fringe benefits, travel for Board and staff, rental, postage, supplies, contractual services, etc.). This estimate is based on the staff DENR employs for its Water Certification Board. Additional start-up costs in the first year are estimated to be $16,000 for furniture, computers, printers, and software.

G.S. 90A-82(d) – Class 2 Misdemeanor Offenses

Department of Correction
The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

As the offenses created by this bill would be new, the Sentencing Commission has no historical data from which to estimate the impact on local jail populations.

- In FY 2003-04, 15 percent of Class 2 misdemeanors resulted in active sentences with an average estimated time served of 13 days.
- Offenders with active sentences of less than thirty days are housed in county jails at county expense.
- The remaining 85 percent of Class 2 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Corrections (DCC) would incur costs of $1.87 per offender per day. Offenders sentenced to community service would cost $0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

Judicial Branch
For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

As this bill would create new Class 2 misdemeanor offenses, no data is available to estimate the specific number of additional charges that might result from this bill. Based on the costs of time in court, attorney preparation time, and indigent defense, the average estimated cost to process one Class 2 misdemeanor via trial is $2,322. This cost includes an estimated $1,373 in costs of time in court and attorney costs and an additional $949 in indigent defense. However, based on

prior-year data, the majority of any new Class 2 misdemeanor charges that are not dismissed are likely to be settled by guilty plea at an estimated cost of $272 per plea.

AOC notes that new G.S. 90A-82(c), which would authorize the Board to request that the Attorney General seek an injunction to restrain any violators of the new article, could increase superior court workload. However, no data is available from which to estimate the frequency with which the Attorney General would seek an injunction under the bill and, as such, the specific cost cannot be determined.

SOURCES OF DATA: Department of Environment and Natural Resources; Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission

TECHNICAL CONSIDERATIONS: None

HOUSE BILL 688/SENATE BILL 568
CERTIFY ON-SITE WASTEWATER CONTRACTORS

History: North Carolina is traditionally #1 or #2 in new on-site wastewater installations nationally each year. On average, about 43,000 new, expanded or repaired systems are installed each year in North Carolina. To date there is no statewide licensing or certification process for those persons doing this work. There are programs already established that require continuing education and certification for persons who service (pump out) septic tanks (Division of Waste Management) and for persons who operate and maintain certain types of on-site systems (sub-surface operators by the Water Pollution Certification Board).

- *Establishes a 9 member Certification Board that would develop the continuing education requirements and administer the Program.*
- *Would develop levels of certification based on technology and complexity so that the individual person could choose the level he is most comfortable with.*
- *Establishes a graduated level of fees. The Program would be fee-supported. If passed, the start-up money would have to be found through donations. There would obviously be initial costs prior to the fees coming in.*
- *Would provide a requirement that persons installing a new system or expanding/repairing an existing system would have to be certified (or licensed) by the State at that level. This language would also prohibit the local health department from approving such an unauthorized system.*
- *Provides a requirement for certification (license) for persons who inspect existing systems at time of property resale. This service is currently being asked for by lending institutions and is being done by traditional "home inspectors" who do not necessarily have to background or equipment to do the job adequately. The 9 member Board would set guidelines as to the "depth" of inspection.*
- *Effective date of this Bill is January 1, 2007. We feel that the passage of this legislation, the development of the Board, the*

establishment of the protocol and curriculum, and the training across the State will require approximately 18 months.

- *There is no "grandfather" clause in this Bill. There are two exemptions: (1) A person licensed under Article 1 of Chapter 87 who constructs or installs an on-site system ancillary to the building being constructed (the licensed General Contractor). This limits the person from advertising as a licensed On-Site Installer. The person must be the General Contractor of record on the project. (2) A person who constructs, installs, or repairs an on-site system on land owned by that person and for their own use. This is also limited to a simple system of a single tank and gravity-fed drainfield.*

There will be the inevitable PCS. This will not change the establishment of the certification (license), only provide some clarifying changes in language. For instance, by definition:

- *"Inspector" is a term already used for denoting the environmental health specialist in the local health department. They are already acting as agents of the State. This Bill would have a definition of "inspector" changed to mean a person certified under this law to conduct a field evaluation of an existing on-site wastewater system.*
- *Applicability: This Article would not apply to a person who is certified by the Water Pollution Board to operate and maintain the on-site wastewater system. In this Bill, only the person who installs the new system or by condition of a repair permit issued by the LHD, expands or repairs the system.*
- *Applicability: This Article does not apply to a person licensed under Article 1 of Chapter 87 of the General Statutes as a licensed public utilities contractor who is installing a Wastewater Treatment Facility with a design flow greater than 3,000 gallons per day and discharging to the surface waters.*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1327
Committee Substitute Favorable 5/25/05

Short Title: Crim. Record Checks/Psychology Practice Act. (Public)

Sponsors:

Referred to:

April 20, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD CHECKS FROM STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORY OF APPLICANTS FOR LICENSURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-270.4(e) reads as rewritten:

"(e) Nothing in this Article shall be construed to prevent qualified members of other professional groups licensed or certified under the laws of this State from rendering services ~~consistent with their professional training and code of ethics,~~within the scope of practice, as defined in the statutes regulating those professional practices, provided they do not hold themselves out to the public by any title or description stating or implying that they are psychologists or are licensed, certified, or registered to practice psychology."

SECTION 2. Article 18A of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"**§ 90-270.22. Criminal history record checks of applicants for licensure and licensees.**

(a) The Board may request that an applicant for licensure or reinstatement of a license or that a licensed psychologist or psychological associate currently under investigation by the Board for allegedly violating this Article consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure or reinstatement of a license to an applicant or take disciplinary action against a licensee, including revocation of a license. The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant or licensee to be checked, a form signed by the applicant or licensee consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories, and

any additional information required by the Department of Justice. The Board shall keep all information obtained pursuant to this section confidential.

(b) Limited Immunity. – The Board, its officers and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying licensure or reinstatement of a license to an applicant or the revocation of a license or other discipline of a licensee based on information provided in the applicant's or licensee's criminal history record check."

SECTION 3. Article 4 of Chapter 114 of the General Statutes is amended by adding the following new section to read:

"**§ 114-19.16. Criminal record checks of applicants for licensure and licensees.**

The Department of Justice may provide to the North Carolina Psychology Board from the State and National Repositories of Criminal Histories the criminal history of any applicant for licensure or reinstatement of a license to practice psychology or a licensed psychologist or psychological associate under Article 18A of Chapter 90 of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant or licensee, a form signed by the applicant or licensee consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant's or licensee's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Board shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

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

House Bill 1327:
Criminal Record Checks/Psychology Practice Act

BILL ANALYSIS

Committee: House Finance
Date: June 21, 2005
Version: 2nd Edition

Sponsor: Representatives Harrison, Martin, and Wiley
Analysis: Ashley Huffstetler

SUMMARY: ***House Bill 1327 provides authority to conduct criminal background checks for applicants for licensure under the Psychology Practice Act.***

BILL ANALYSIS: House Bill 1327 allows the North Carolina Psychology Board ("Board") to request that an applicant for licensure or reinstatement of a license or a licensed psychologist or psychological associate currently under investigation by the Board consent to a criminal background check.

The bill authorizes the Board to obtain fingerprints from the applicant or licensee and submit those to the State Bureau of Investigation ("SBI") for a state and national criminal history check. The SBI is authorized to charge a fee for the background check.

The Board is granted limited immunity for a denial or revocation of a license taken in good faith based on information provided in the criminal history check.

THE 2nd EDITION MADE THE FOLLOWING CHANGES: House Bill 1327 was given a favorable report in House Judiciary I after the following changes were made: a modification to the reference to scope of practice in G.S. 90-270.4(e), a clarification that the criminal history checks apply to those licensees who have *allegedly* violated the provisions of the act, the requirement that the Board ensure that State and federal checks were done was omitted, and the provisions defining which crimes constituted a "criminal history" and the factors the Board was to consider in making a determination of licensure were removed.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 1327 (Second Edition)

SHORT TITLE: Crim. Record Checks/Psychology Practice Act.

SPONSOR(S):

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	**FY 2006-07**	**FY 2007-08**	**FY 2008-09**	**FY 2009-10**
REVENUES:					
Justice	$7,600	$7,600	$7,600	$7,600	$7,600
EXPENDITURES:					
Justice	$7,666	$7,666	$7,666	$7,666	$7,666
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Justice, North Carolina Psychology Board

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY:

The first edition of this bill enacted new GS 114-19.16 concerning an applicant for licensure or reinstatement of license to practice psychology, or a licensed psychologist or psychological associate. Enacted new GS 90-270.22 to provide that: (1) NC Psychology Board may request that applicant for licensure or reinstatement of license or a licensed psychologist or psychological associate currently under investigation by Board to consent to criminal history check; (2) refusal to consent may constitute grounds for denial of licensure or reinstatement of license or disciplinary action against licensee, including revocation of license; (3) "criminal history" is defined to include conviction of specified crimes; and (4) conviction will not automatically bar licensure or reinstatement of license or result in revocation of license, but Board may consider conviction along with other specified factors.

House committee substitute makes the following changes to first edition: Modifies proposed GS 90-270.22 to (1) provide that criminal history record check provisions apply to those who have allegedly violated the provisions of the act (was, violated); (2) delete requirement that the Board ensure that the State and national criminal history of an applicant or licensee is checked; (3) delete

provisions allowing Board to deny licensure or reinstatement even though criminal history record check reveals one or more convictions; and (4) delete provisions defining those crimes the conviction for which makes up one's "criminal history."
Source: Adapted from Bill Digest H.B. 1327 (04/20/0200)

ASSUMPTIONS AND METHODOLOGY:

NC Psychology Board. Based upon the average number of applicants over the past five years, the NC Psychology Board anticipates approximately 200 criminal checks annually with payment for the checks provided by the applicants. According to the Board, the inclusion of a criminal record check in the application process is not expected to increase the time spent in processing an application or requirement for additional personnel. Receipt of this information will be incorporated into the Board's current process. There is an estimated increase in postage of $120.00 that is considered so insignificant that it will be covered in the Board's existing budget.

Department of Justice. The Department charges $38 for a state and national fingerprint background check. Of the $38, $22 is remitted to the Federal Bureau of Investigation for the national check; the remaining $16 is retained by the Department of Justice and used to fund receipt-supported positions to conduct the background checks. Internal costs per background check range from $11.45 to $17.95, with an average cost of $16.33. The Department currently has the capacity to conduct the projected 200 background checks per year due to this bill.

SOURCES OF DATA: Department of Justice, Office of State Budget and Management, NC Psychology Board

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Chloe Gossage, Michele Nelson

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: June 13, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1330

Short Title:	Amend Electrolysis Practice Act/Fees.	(Public)
Sponsors:	Representative Jeffus.	
Referred to:	Finance.	

April 20, 2005

A BILL TO BE ENTITLED

AN ACT ALLOWING THE NORTH CAROLINA BOARD OF ELECTROLYSIS EXAMINERS TO PROVIDE FOR THE CERTIFICATION OF LASER CLINICIANS AND LASER CLINICIAN INSTRUCTORS UPON MEETING CERTAIN REQUIREMENTS ESTABLISHED BY THE BOARD AND AUTHORIZING THE BOARD TO CHARGE FEES RELATED TO THOSE CERTIFICATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 88A-3 is amended by adding the following new subdivisions to read:

"**§ 88A-3. Definitions.**

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

...

(5) 'Laser clinician' means a person who engages in laser, light source, or pulsed light treatments of skin or hair.

(6) 'Laser, light source, or pulsed-light treatments' means the use of laser or pulsed-light devices for nonablative procedures for the removal of hair.

(7) 'Laser, light source, or pulsed-light devices' means a device used in the nonablative procedure for the removal of hair."

SECTION 2. G.S. 88A-9(b) reads as rewritten:

"(b) All fees may be calculated by the Board in amounts sufficient to pay the costs of administration of this act, but in no event may they exceed the following:

(1)	Application for licensure as an electrologist	$150.00
(1a)	Initial license	150.00
(1b)	Examination or reexamination	125.00
(2)	Licensure of electrology renewal	200.00
(3)	Application for certification as an electrology instructor	150.00
(4)	Certificate of electrology instructor renewal	75.00

(5)	Application for certification as a ~~Board approved~~Board-approved school of electrology	500.00
(5a)	Application for certification as laser clinician	150.00
(5b)	Application for certification as laser clinician instructor	150.00
(5c)	Certification as laser clinician renewal	200.00
(5d)	Application for certification as a Board-approved school of laser, light source, or pulsed-light treatments	500.00
(5e)	Certificate of Board-approved school of laser, light source, or pulsed-light renewal	250.00
(6)	Certificate of ~~Board approved~~Board-approved school of electrology renewal	250.00
(6a)	Certification of out-of-state schools	100.00
(6b)	Certification of out-of-state schools renewal	75.00
(6c)	Office inspection or reinspection	100.00
(6d)	License by reciprocity	150.00
(7)	Late renewal charge	75.00
(8)	Reinstatement of expired license or certification	300.00
(9)	Reactivation of license	200.00
(10)	Duplicate license or certification	25.00."

SECTION 3. G.S. 88A-10 reads as rewritten:

"**§ 88A-10. Requirements for licensure as an ~~electrologist.~~electrologist or certification as a laser clinician.**

(a) Any person who desires to be licensed as an "electrologist" pursuant to this Chapter shall:

(1) Submit an application on a form approved by the Board.
(2) Be a resident of North Carolina.
(3) Be ~~18~~ 21 years of age or older.
(4) Meet the requirements of subsection (a1) of this section.
(5) Pass an examination given by the Board.
(6) Submit the application and examination fees required in G.S. 88A-9(b).

(a1) An applicant for licensure under this section shall provide:

(1) Proof of graduation from a school certified by the Board pursuant to G.S. 88A-19; or
(2) Proof satisfactory to the Board that, for at least one year prior to the date of application or the date of initial residence in this State, whichever is earlier, the applicant was engaged in the practice of electrology in a state that does not license electrologists.

Subdivision (2) of this subsection applies only to applicants whose residence in this State began on or after January 31, 1994, who do not meet the qualifications of subdivision (1) of this subsection or G.S. 88A-12.

(b) At least twice each year, the Board shall give an examination to applicants for licensure to determine the applicants' knowledge of the basic and clinical sciences

relating to the theory and practice of electrology. The Board shall give applicants notice of the date, time, and place of the examination at least 60 days in advance.

(c) When the Board determines that an applicant has met all the requirements for licensure, and has submitted the initial license fee required in G.S. 88A-9(b), the Board shall issue a license to the applicant.

(d) An applicant otherwise qualified for licensure who is not a resident of this State may nevertheless submit a statement of intent to begin practicing electrology in this State and receive a license. The applicant must provide to the Board within six months of receiving a license evidence satisfactory to the Board that the applicant has actually begun to practice electrology in this State. The Board may revoke the license of an applicant who fails to submit this proof or whose proof fails to satisfy the Board.

(e) A person seeking a certification by the Board as a laser clinician shall have met the following requirements at the time the certification is requested:

(1) Satisfactorily met all the requirements of subsections (a) through (d) of this section.

(2) Completed a 30-hour laser, light source, or pulsed-light treatment certification course approved by the Board and in accordance with rules adopted by the Board.

(3) Is currently using or anticipates using laser, light source, or pulsed-light devices that the person has been certified to operate."

SECTION 4. G.S. 88A-12 reads as rewritten:

"**§ 88A-12. License or certification renewal.**

(a) Every electrologist license or laser clinician certification issued pursuant to this Chapter must be renewed annually. On or before the date the current license or certification expires, a person who desires to continue to practice electrology or as a laser clinician shall apply for license or certification renewal to the Board on forms approved by the Board, provide evidence of the successful completion of a continuing educational program approved by the Board, meet the criteria for renewal established by the Board, and pay the required fee. The Board may provide for the late renewal of licensure or certification upon payment of a late fee as set by the Board, but late renewal may not be granted more than 90 days after expiration of the ~~license.~~license or certification.

(b) Any person who has failed to renew his or her license or certification for more than 90 days after expiration may have it reinstated by applying to the Board for reinstatement on a form approved by the Board, furnishing a statement of the reason for failure to apply for renewal prior to the deadline, and paying the required fee. The Board may require evidence of competency to resume practice before reinstating the applicant's ~~license.~~license or certification."

SECTION 5. G.S. 88A-13 is amended by adding the following new subsection to read:

"(d) Laser clinicians are required to complete 10 hours of continuing education annually to maintain their certification."

SECTION 6. Chapter 88A of the General Statutes is amended by adding the following new section to read:

"§ 88A-17.1. Requirements for certification as a laser clinician instructor.

(a) Any person who desires certification as a 'laser clinician instructor' pursuant to this Chapter shall meet the following requirements:

(1) Submit an application on a form approved by the Board.

(2) Be a licensed electrologist.

(3) Be a licensed electrology instructor.

(4) Have practiced laser and light-based treatments actively for at least one year immediately before the application.

(5) Have at least 100 hours of training in laser and light-based treatments.

(b) When the Board determines that an applicant has met all qualifications for certification as a laser clinician instructor and has submitted the required fee, the Board shall issue an instructor's certification to the applicant."

SECTION 7. G.S. 88A-18 reads as rewritten:

"**§ 88A-18. Renewal of instructor's certificate.**

An electrology or laser clinician instructor's certificate shall be renewed annually. On or before the date the current certificate expires, the applicant must submit an application for renewal of certification on a form approved by the Board, meet criteria for renewal established by the Board, and pay the required fee. Any person whose instructor's certificate has expired for a period of five years or more shall be required to take and pass the instructor's examination before the certificate can be renewed."

SECTION 8. Chapter 88A of the General Statutes is amended by adding the following new section to read:

"**§ 88A-19.1. Requirements for certification as a Board-approved school of laser, light source, or pulsed-light treatments.**

(a) Any school in this State or another state that desires to be certified as a Board-approved school of laser, light source, or pulsed-light treatments shall:

(1) Submit an application on a form approved by the Board;

(2) Submit a detailed projected floor plan of the institutional area demonstrating adequate school facilities to accommodate students for purposes of lectures, classroom instruction, and practical demonstration;

(3) Submit a detailed list of the equipment to be used by the students in the practical course of their studies;

(4) Submit a copy of the planned laser, light source, or pulsed-light curriculum consisting of the number of hours and subject matter determined by the Board, provided that the number of hours required shall not be less than 30 hours and not more than 600 hours;

(5) Submit a certified copy of the school manual of instruction;

(6) Submit the names and qualifications of the instructors certified; and,

(7) Any additional information the Board may require.

(b) When the Board determines that an applicant has met all the qualifications for certification as a Board-approved school of laser, light source, or pulsed-light treatments and has submitted the required fee, the Board shall issue a certificate to the applicant.

(c) A school's certification is only valid for the location named in the application. When a school desires to change locations, an application shall be submitted to the Board on a form furnished by the Board, and the fee shall be paid for certificate renewal.

(d) A school's certification is not transferrable. Schools must immediately notify the Board in writing of any sale, transfer, or change in ownership or management.

(e) Every school shall display its certification in a manner prescribed by the Board.

(f) All laser, light source, or pulsed-light devices used in the school must be approved by the federal Food and Drug Administration."

SECTION 9. G.S. 88A-20 reads as rewritten:

"**§ 88A-20. Certification renewal.**

Every certificate issued pursuant to G.S. 88A-19 or G.S. 88A-19.1 shall be renewed annually. On or before the date the current certificate expires, the applicant must submit an application for renewal of certification on a form approved by the Board, meet criteria for renewal established by the Board, and pay the required fee. Failure to renew the certificate within 90 days after the expiration date shall result in automatic forfeiture of any certification issued pursuant to this Chapter."

SECTION 10. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1515
Committee Substitute Favorable 5/31/05

Short Title: Med Schools/Crim Background Check. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A CRIMINAL BACKGROUND CHECK OF ALL STUDENTS ADMITTED INTO A SCHOOL OF MEDICINE AT A NORTH CAROLINA INSTITUTION OF HIGHER EDUCATION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 116 of the General Statutes is amended by adding a new Article to read:

"Article 33.

"Criminal Background Checks Required for Medical Students.

"**§ 116-265. Criminal background check required for medical students.**

(a) The following definitions apply in this Article:

(1) "Institution" includes both constituent institutions and private institutions.

(2) "Constituent institution" is as defined in G.S. 116-2.

(3) "Private institution" means an institution licensed under G.S. 116-15 and any other institution in this State that meets all of the requirements and regulations of the accrediting agencies whose approval is normally required for the establishment and operation of a medical school.

(4) "Applicant" means a person who has accepted an offer of admission at a school of medicine at an institution in this State.

(b) Any institution that has a school of medicine shall require as part of its matriculation process a national and State criminal background check of every person who has accepted an offer of admission to the school of medicine at the institution.

(c) The Department of Justice may provide a criminal record check to a constituent institution for a person who is accepted for admission to the school of medicine. If the institution is a private institution, then the Department of Justice may provide a criminal record check to the North Carolina Medical Board on behalf of the private institution as provided by G.S. 116-266. The institution shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any

additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The institution and the North Carolina Medical Board shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection; however, the fee shall not exceed the cost of conducting the criminal background check.

Nothing in this Article prohibits an institution from contracting with a private company to conduct the criminal background checks required by this Article.

"**§ 116-266. North Carolina Medical Board to receive criminal background check information on behalf of private medical schools.**

If the institution requesting the background check in compliance with G.S. 116-265 is a private institution, then the institution may request that the State Bureau of Investigation provide the information received from the background check to the North Carolina Medical Board. Upon request of the private institution, the Medical Board shall receive the information from a student's background check and shall review the information using the same criteria to evaluate the information that is used to evaluate the information received by the Board under G.S. 90-11. If the Medical Board determines any information received from the criminal background check would cause the Medical Board either to refuse to license a student to practice medicine under G.S. 90-11 or to investigate a student further before issuing a license to the student, then the Medical Board shall report that fact to the private institution requesting the background check.

The Medical Board may charge the private institution a reasonable fee for providing this service.

"**§ 116-267. Evaluation of criminal background information by school of medicine; effect on admissions decision.**

The information collected as a result of the criminal background check required by this Article shall be considered by the appropriate school of medicine in determining whether or not to complete an applicant's matriculation process. A criminal conviction shall not automatically preclude an applicant from matriculating, and the school of medicine may use its discretion in evaluating the applicant's fitness for the study of medicine."

SECTION 2. This act is effective when it becomes law and applies to the 2006-2007 academic year and each subsequent academic year.

HOUSE BILL 1515:
Med Schools/Crim Background Check

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 21, 2005
Introduced by:	Reps. LaRoque, England	**Summary by:**	Drupti Chauhan
Version:	Second Edition		Research Division

SUMMARY: House Bill 1515 would require criminal background checks of all students admitted to a school of medicine located in the State.

BILL ANALYSIS: House Bill 1515 would require criminal background checks of all students admitted to a medical school in the State. Every medical school must require, as a part of the matriculation process, a national and State criminal background check of every student that has accepted an offer of admission.

The NC Department of Justice (DOJ) may provide a criminal background check to a UNC constituent institution for a student admitted into a school of medicine. If the institution is private, the Department of Justice may provide a criminal background check to the NC Medical Board for the private institution. Both public and private institutions must provide to the DOJ fingerprints of the applicant, information requested by the DOJ and a consent form signed by the applicant.

The DOJ is required to send the fingerprints to the State Bureau of Investigation for a search of the State criminal records and the State Bureau of Investigation is required to forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check.

All information obtained must be kept confidential. The DOJ may charge each applicant a fee that does not exceed the cost of conducting the criminal background check.

If institution requesting the criminal check is a private institution, then it may request the information received from the background check go to the NC Medical Board. If the NC Medical Board determines that the information would cause the Medical Board to refuse to issue a license to the student or to further investigate the student, then it shall report that fact to the private institution. This determination shall be made using the same criteria that is used to evaluate the issuance of licenses under G.S. 90-11.

The NC Medical Board may charge the private institution a reasonable fee for providing this service.

The school of medicine must use the information collected from criminal background check in determining whether or not to complete the applicant's matriculation process.

EFFECTIVE DATE: The bill would become effective when it becomes law and applies to the 2006-2007 academic year and each subsequent academic year.

North Carolina General Assembly

House Committee on Finance

Minutes

~

June 23, 2005

The House Committee on Finance met on Thursday, June 23, 2005 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Howard, Gibson, and Wainwright; Vice-Chairs Daughtridge, Hill, Weiss, and Womble; and Representatives Blackwood, Capps, Carney, Folwell, Goforth, Hackney, McGee, Rayfield, and Wiley. Also present were Sergeant-at-Arms Bill Freeman, Fred Hines, Dusty Rhodes, and Walter Spell. Staff persons present included Rodney Bizzell, Erika Churchill, and Martha Walston. The Visitor Registration Sheets are attached and incorporated into these minutes as **attachment 1.**

Vice-Chairman Hill called the meeting to order at 8:30 am and recognized the eight (8) pages present: (1) Amber Anderson of Durham County, sponsored by Representative Luebke; (2) Nichole Anderson of Durham County, sponsored by Representative Luebke; (3) Scott Burton of Mecklenburg County, sponsored by Representative Rhodes; (4) Amy Gwynn of Wake County, sponsored by Representative Culpepper; (5) Cam Hill of Chatham County, sponsored by Representative Hackney; (6) Courtney Jackson of Duplin County, sponsored by Representative Tucker; (7) Amy McLeod of Wake County, sponsored by Representative Culpepper; (8) Elizabeth Plemmons of Buncombe County, sponsored by Representative Sherrill.

Vice-Chairman Hill then referred Senate Bill 369 entitled, "Franklin County Occupancy Tax," to the Subcommittee on Occupancy Tax.

Vice-Chairman Hill then recognized Representative Gibson to explain **SB 388 – WATHA TOWN COUNCIL/BOLTON DEANNEXATION** (see **attachment 2**). Representative Gibson explained that the bill amends the charger of the Town of Watha to provide that the Mayor and Commissioners shall serve four-year terms, instead of two-year terms. The bill also annexes certain property to the Town of Bolton. Representative Gibson reported that the bill has received no opposition and received a favorable report from the House Local Government II Committee. He also noted that the bill was extremely time sensitive and had to be passed by both the House and Senate by June 30, before the beginning of the new fiscal year. Following the explanation, Representative Wainwright was recognized and moved that Senate Bill 388 be given a favorable report by the Committee. Seeing no further discussion, Vice-Chairman Hill called the motion to a vote and it carried by consent.

As there was no further business before the Committee, Vice-Chairman Hill then adjourned the meeting at 8:32 am.

Respectfully submitted,

Representative Dewey Hill
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Visitor Registration Sheet
2. Senate Bill 388 (and related materials)
3. House Bill 1084 (and related materials) – (REMOVED FROM CALENDAR)
4. Senate Bill 1126 (and related materials) – (REMOVED FROM CALENDAR)

ATTACHMENT 1

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Marie McClaflin	National Assc. theatre Owners
Casey Brock	National Assc of Theatre Owners
Barbara Canales	BKOR

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 23, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ed Turlington	BAMHL

CORRECTED NOTICE:
HB 1084 & SB 1126 – REMOVED

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Thursday, June 23, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

~~**HB 1084 – EXPUNGE NONVIOLENT FELONIES/YOUNG OFFENDERS – Rep. Bordsen**~~

SB 388 – WATHA TOWN COUNCIL – Sen. Soles

~~**SB 1126 – AMEND FISHING LICENSE REQUIREMENTS 2 – Sen. Albertson**~~

Respectfully,
Representatives Alexander, Gibson, Howard,
Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **2:25 p.m.** on **June 22, 2005**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

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SB 388 – WATHA TOWN COUNCIL – Sen. Soles

SB 1126 – AMEND FISHING LICENSE REQUIREMENTS-2 – Sen. Albertson

Respectfully,
Representatives Alexander, Gibson, Howard,
Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **1:45 p.m.** on **June 22, 2005**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 2

SENATE BILL 388
House Committee Substitute Favorable 6/22/05

Short Title: Watha Town Council/Bolton Annexation. (Local)

Sponsors:

Referred to:

March 7, 2005

A BILL TO BE ENTITLED

AN ACT AMENDING THE CHARTER OF THE TOWN OF WATHA TO EXTEND THE TERMS OF OFFICE FOR THE MAYOR AND TOWN COUNCIL FROM TWO TO FOUR YEARS, AND TO ANNEX DESCRIBED TERRITORY TO THE CORPORATE LIMITS OF THE TOWN OF BOLTON.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3 of the Charter of the Town of Watha, being Chapter 158 of the 1909 Private Laws, as amended by Chapter 884 of the 1989 Session Laws, reads as rewritten:

"Sec. 3. The elected officers of the town shall be a mayor and three ~~commissioners.~~commissioners, and they shall be elected by all the qualified voters of the entire town. In 2005, and quadrennially thereafter, the mayor and the town commissioners shall be elected for four-year terms or until their successors are elected and qualified. The commission's organizational meeting shall be fixed as provided in G.S. 160A-68."

SECTION 2. The corporate limits of the Town of Bolton are extended to include the following described territory:

TRACT ONE-EAST

BEGINNING at an OLD TOWN MONUMENT with N.C. Grid Coordinates: N=221,191.759 and E=2,176,127.352; and runs thence South 78 degrees, 29 minutes 59 seconds East 4,459.69 feet to a NEW TOWN MONUMENT; thence South 03 Degrees, 03 minutes, 55 seconds West 2,203.48 feet to another NEW TOWN MONUMENT; thence North 80 degrees 55 minutes 10 seconds West 439.00 feet to another NEW TOWN MONUMENT; thence South 08 degrees, 23 minutes, 54 seconds West 557.63 feet to another NEW TOWN MONUMENT; thence North 80 degrees, 19 minutes 08 seconds West 1,720.45 feet to another NEW TOWN MONUMENT; thence North 57 degrees, 08 minutes, 29 seconds West 2,811.07 feet to another NEW TOWN

MONUMENT; thence North 05 degrees 10 minutes, 46 seconds East 492.76 feet to an OLD TOWN MONUMENT; thence North 06 degrees 10 minutes 00 seconds East 471.07 feet to an OLD TOWN MONUMENT; thence South 88 degrees, 13 minutes, 35 seconds East 200 feet to an OLD TOWN MONUMENT; thence North 01 degrees, 46 minutes, 25 seconds East 804.81 feet to an OLD TOWN MONUMENT, the POINT AND PLACE OF BEGINNING, and being all of that 260.73 acre tract of land as shown on that Map entitled "Plat to Extend the East Corporate Limits of the TOWN OF BOLTON" Dated 7 March, 2005, by Billy M. Duncan, Land Surveyor and being recorded in the Register of Deeds Office, Columbus County, North Carolina, on the 23rd day of March, 2005, at 3:26:01 p.m. in Plat Book 79, Page 11. Reference is made to said recorded plat for a more particular and accurate description of the premises described herein.

TRACT TWO-WEST

BEGINNING at an OLD TOWN MONUMENT with the N.C. Grid Coordinates: N=208,233.482, E=2,175,586.827, said monument lying South 70 degrees 42 minutes, 35 seconds West 196.78 feet from N.C. Grid Monument "TON" with N.C. Grid coordinates: N=208,419.214, E=2,175,651.834; thence from said Beginning Point North 88 degrees, 22 minutes, 43 seconds West 604.31 feet to a NEW TOWN MONUMENT; thence North 15 degrees 17 minutes, 48 seconds West 2,336.48 feet to a NEW TOWN MONUMENT; thence North 71 degrees, 38 minutes, 14 seconds East 1,374.16 feet to an OLD TOWN MONUMENT, the Northwest corner of the 1915 Act to Incorporate the City of Bolton; thence with the OLD TOWN OF BOLTON LIMITS South 01 degrees, 46 minutes, 25 seconds West 2,705.00 feet to the OLD TOWN MONUMENT, the POINT AND PLACE OF BEGINNING; and being all of that 55.56 acre tract of land as shown on that map entitled "Plat to Extend the West Corporate Limits of the TOWN OF BOLTON" dated 7 March, 2005, by Billy M. Duncan, Land Surveyor, and being recorded in the Register of Deeds Office, Columbus County, N.C., on the 23rd day of March, 2005, at 3:26:15 p.m. in Plat Book 79, Page 12.
Reference is made to said recorded Plat for a more particular and accurate description of the premises described herein.

SECTION 3. This act becomes effective June 30, 2005.

SENATE BILL 388:
Watha Town Council/Bolton Annexation

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 22, 2005
Introduced by:	Sen. Soles	**Summary by:**	R. Erika Churchill
Version:	Second Edition		Committee Counsel

SUMMARY: Senate Bill 388 would amend the charter of the Town of Watha to provide that the Mayor and Commissioners shall serve 4 year terms, and that the commission's organizational meeting shall be fixed as provided in G.S. 160A-68, and annex certain described territory into the Town of Bolton.

Section 1.

CURRENT LAW AND BILL ANALYSIS: The Town of Watha was incorporated in 1909, but no terms were set for the mayor or the members of the governing board. The Mayor and Commissioners currently serve 2-year terms.

G.S. 160A-68 provides the general procedure for the organizational meeting of the town council following an election. The general provisions are:

- The town council may fix the date and time of the organization meeting, such time being after the results of the municipal election have been certified by the board of elections and no later than the first regular meeting in December of the municipal election year. If the council does not specify a date and time for the organizational meeting, the default is the first regular meeting in December of the municipal election year.
- The newly elected members of the council and mayor, if applicable, are to take the oath of office at the organizational meeting.

Section 1 of the bill would amend the town charter to provide for 4-year terms for the mayor and all council members. Additionally, the provisions of G.S. 160A-68 would apply to the organizational meeting of the council in municipal election years.

Section 2.

CURRENT LAW AND BILL ANALYSIS:

Section 2 of the bill would add certain described territory to the corporate boundaries of the Town of Bolton.

EFFECTIVE DATE: The act would become effective June 30, 2005.

S0388e2-SMST

Kory Goldsmith contributed substantially to this summary.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒House Committee Substitute for

SB 388 A BILL TO BE ENTITLED AN ACT AMENDING THE CHARTER OF THE TOWN OF WATHA TO EXTEND THE TERMS OF OFFICE FOR THE MAYOR AND TOWN COUNCIL FROM TWO TO FOUR YEARS, AND TO ANNEX DESCRIBED TERRITORY TO THE CORPORATE LIMITS OF THE TOWN OF BOLTON.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H **D**

HOUSE BILL 1084
Committee Substitute Favorable 4/21/05
PROPOSED COMMITTEE SUBSTITUTE H1084-CSRQ-35 [v.4]

6/9/2005 10:38:31 AM

Short Title: Expunge Nonviolent Felonies/Young Offenders. (Public)

Sponsors:

Referred to:

April 4, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A YOUTHFUL OFFENDER'S CRIMINAL RECORD MAY BE EXPUNGED OF NONVIOLENT FELONIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-149. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.**

(a) For purposes of this section, the term "nonviolent felony" means any felony except the following:

(1) A Class A through F felony.

(2) A felony that includes assault as an essential element of the offense; and

(3) A felony that is an offense for which the convicted offender must register under Article 27A of Chapter 14 of the General Statutes.

(b) Notwithstanding any other provision of law, if a person is convicted of more than one nonviolent felony in the same session of court, then the multiple nonviolent felony convictions shall be treated as one nonviolent felony conviction under this section, and the expunction order issued under this section shall provide that the multiple convictions shall be expunged from the person's record in accordance with this section.

(c) Whenever any person who had not yet attained the age of 18 years at the time of the offense and has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file a petition in the court where the person was convicted for expunction of the nonviolent felony from the person's criminal record. The petition cannot be filed earlier than two

years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The person shall also perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he or she has been of good behavior for the two-year period since the date of conviction of the nonviolent felony in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage that they know the character and reputation of the petitioner in the community in which he or she lives and that the petitioner's character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential records of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts to conduct the searches and report the findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him or her are outstanding.

(6) An affidavit by the petitioner that the petitioner has performed at least 100 hours of community service since the conviction for the nonviolent felony. The affidavit shall include a list of the community services performed, a list of the recipients of the services, and a detailed description of those services.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that the judge deems desirable.

(d) The court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information if the court finds all of the following after a hearing:

(1) The petitioner has remained of good behavior and has been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the nonviolent felony in question or any active sentence, period of probation or post-release supervision has been served, whichever is later.

(2) The petitioner has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state.

(3) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him or her.

(4) The petitioner was less than 18 years old at the time of the commission of the offense in question.

(5) The petitioner has performed at least 100 hours of community service since the time of the conviction.

(6) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction.

No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of the person for any purpose.

(e) The court shall also order that the nonviolent felony conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief, or head of any other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(f) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

(g) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in the clerk's county, file with the Administrative Office of the Courts the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.

(h) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the felony which is to be expunged under this section.

(i) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred dollars ($100.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 2. This act becomes effective December 1, 2005 and expires December 1, 2012.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1084
Committee Substitute Favorable 4/21/05

Short Title: Expunge Nonviolent Felonies/Young Offenders. (Public)

Sponsors:

Referred to:

April 4, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A YOUTHFUL OFFENDER'S CRIMINAL RECORD MAY BE EXPUNGED OF NONVIOLENT FELONIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-149. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.**

(a) For purposes of this section, the term "nonviolent felony" means any felony except the following:

(1) A Class A through E felony.

(2) A felony that includes assault as an essential element of the offense; and

(3) A felony that is an offense for which the convicted offender must register under Article 27A of Chapter 14 of the General Statutes.

(b) Notwithstanding any other provision of law, if a person is convicted of more than one nonviolent felony in the same session of court, then the multiple nonviolent felony convictions shall be treated as one nonviolent felony conviction under this section, and the expunction order issued under this section shall provide that the multiple convictions shall be expunged from the person's record in accordance with this section.

(c) Whenever any person who had not yet attained the age of 18 years at the time of the offense and has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file a petition in the court where the person was convicted for expunction of the nonviolent felony from the person's criminal record. The petition cannot be filed earlier than two years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The person shall

also perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the nonviolent felony in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage that they know the character and reputation of the petitioner in the community in which he or she lives and that the petitioner's character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expungements maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts to conduct the searches and report the findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him or her are outstanding.

(6) An affidavit by the petitioner that the petitioner has performed at least 100 hours of community service since the conviction for the nonviolent felony. The affidavit shall include a list of the community services performed, a list of the recipients of the services, and a detailed description of those services.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that the judge deems desirable.

(d) If the court, after a hearing, finds that the petitioner has remained of good behavior and has been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the nonviolent felony in question or any active sentence, period of probation or post-release supervision has been served, whichever is later, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him or her, the

petitioner was less than 18 years old at the time of the commission of the offense in question, and the petitioner has performed at least 100 hours of community service since the time of the conviction, then the court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of the person for any purpose.

(e) The court shall also order that the nonviolent felony conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief, or head of any other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(f) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged.

(g) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in the clerk's county, file with the Administrative Office of the Courts the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.

(h) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the felony which is to be expunged under this section.

(i) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred dollars ($100.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 2. This act becomes effective December 1, 2005.

HOUSE BILL 1084:
Expunge Nonviolent Felonies/Young Offenders

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 14, 2005
Introduced by:	Reps. Bordsen, Crawford	**Summary by:**	Drupti Chauhan
Version:	PCS to Second Edition H1084-CSRQ-35 [v.4]		

SUMMARY: The PCS for House Bill 1084 would provide for the expunction of criminal records for offenders who are under the age of 18 at the time of commission of a nonviolent felony. A waiting period of 2 years after the conviction or any period of probation, or time served for an active sentence, period of probation or post-supervised release (whichever is later); 100 hours of community service, no prior or subsequent felony or non-traffic misdemeanor offenses; and affidavits attesting to the petitioner's character are all required.

CURRENT LAW: Article 5 of the Criminal Procedure Act provides for the expunction of criminal records of certain criminal charges or convictions. Expunction is the process by which a record of criminal conviction is removed by order of the court, and the individual is restored to the status he or she occupied before the arrest or indictment. General Statute 15A-145 (Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors) allows a person convicted of a misdemeanor to file a petition for expunction of the misdemeanor from his or her criminal record if the person was under 18 at the time of a conviction or, in the case of a misdemeanor alcohol possession charge, the person was under 21 at the time of conviction. The petition may not be filed sooner than 2 years after the conviction or completion of probation and must include the following [1]:

1) an affidavit of good behavior for the two years following conviction, stating that the petitioner has not been convicted of any felony or non-traffic misdemeanor charge;

2) two affidavits of good character from persons unrelated to the petitioner;

3) a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted; and

4) affidavits of the clerk of superior court, chief of police, and sheriff of the county of the offense and where the petitioner resides showing that petitioner has not been convicted of a felony or non-traffic misdemeanor offense prior to or in the two years since the conviction in question.

If the court finds in favor of the petitioner the clerk of superior court and the appropriate law enforcement agencies must expunge the record of the conviction.

Other sections of Article 5 provide for "Expunction of records when charges are dismissed or there are finding of not guilty as a result of identity fraud"[2] and "Expunction of DNA records when charges are dismissed on appeal or pardon of innocence is granted."[3].

BILL ANALYSIS: The PCS to the bill would add a new section to Article 5 "Expunction of Records" of Chapter 15A "Criminal Procedure Act" of the General Statutes. The proposed G.S. 15A-149 would

[1] G.S. 15A-145(a)(1) through (4).
[2] G.S. 15A-147.
[3] G.S. 15A-148.

provide expunction of the criminal records of first time offenders who are under 18 years of age at the time of the commission of the nonviolent felony if there are no previous or subsequent felony or misdemeanor convictions, other than a traffic violation. The petitioner cannot have received a prior expunction. "Nonviolent felony" would include any felony ***except*** the following:

- A Class A through F felony;
- A felony that includes assault as an essential element of the offense; and
- A felony that is an offense for which the convicted offender must register under Article 27A of Chapter 14 of the General Statutes (sex offenders).

If the person is convicted of more than one nonviolent felony in the same session of court, the bill provides that the multiple nonviolent felony convictions are to be treated as one nonviolent felony conviction under the section and the expunction order is to provide that the multiple convictions are to be expunged.

The procedure to be followed by the petitioner is modeled along the lines of the existing procedures for expunction of records. The petition cannot be filed earlier than two years after the date of conviction or after the time when any active sentence, period of probation, or post-release supervision has been served, whichever occurs later. The petitioner is also required to perform at least 100 hours of community service before filing the petition for expunction.

The petition must contain at least the following:

1) An affidavit of good behavior by the petitioner for the 2 years following conviction, stating that the petitioner has not been convicted of any felony or non-traffic misdemeanor charge under the laws of the United States, this State or any other state during that time;

2) Two affidavits of good character from persons unrelated to petitioner;

3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted;

4) An application authorizing a State and national criminal record check by the Department of Justice with the results reported to the court;

5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding; and

6) An affidavit by the petitioner that he or she has performed at least 100 hours of community service since the conviction with a list of the community services performed, a list of the recipients of the services, and a detailed description of the services.

The petition is to be served on the district attorney who has 10 days to file any objections. The judge is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct. If the judge finds that the petitioner has met all of the requirements, the judge shall order that the petitioner be restored to the statute he or she had before the arrest or indictment. The judge shall also order that the nonviolent felony conviction be expunged from the records of the court and direct all law enforcement agencies to expunge their records, including the State Bureau of Investigation and the Federal Bureau of Investigation.

Any other applicable State or local government agency is directed to expunge from its records any entries made as a result of the conviction order expunged under this section. The agency is required to

also reverse any administrative actions taken against a person whose record is expunged under this section.

The clerk of superior court in each North Carolina county shall file with the Administrative Offices of the Court the names of those persons granted a discharge under the provisions of this section and the Administrative Offices of the Courts must maintain a confidential file containing the names of persons granted conditional discharges. This information can only be disclosed to judges of the General Court of Justice of North Carolina for the purpose of determining if any person charged with an offense has been previously given a discharge.

If a probation officer is assigned to the person eligible for expunction, the probation officer must notify the person of the provisions of this section. If no probation officer is assigned, then the court which heard the felony must provide notification of the possibility of expunction under this section.

The bill would set the filing fee for the expunction petition at $100.00 unless the petitioner was indigent. Fees collected would be deposited into the General Fund.

EFFECTIVE DATE: The bill would become effective December 1, 2005 and would expire December 1, 2012.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 20, 2005

TO: House Finance Committee

FROM: Chloe Gossage, Douglas Holbrook, and Aaron Paul
Fiscal Research Division

RE: PCS H1084-CSRQ-35 [v.4] – Expunge Nonviolent Felonies/Young Offenders

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:	$58,600	$40,500	$22,400	$22,400	$22,400
EXPENDITURES:					
Judicial Branch	$36,750	$26,442	$13,858	$13,858	$13,858
Justice	$64,303	$44,460	$24,618	$24,618	$24,618
TOTAL EXPENDITURES:	$101,053	$70,902	$38,476	$38,476	$38,476
POSITIONS (cumulative)-DOJ:	1	1	0.5	0.5	0.5

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch; Department of Justice

EFFECTIVE DATE: December 1, 2005

BILL SUMMARY: This bill would enact new G.S. 15A-149 to allow expunction of records for nonviolent felonies committed by first-time offenders who were under the age of 18 at the time of the conviction. In the second edition of this bill, a nonviolent felony was defined as any felony except a Class A through Class E felony, a felony with assault as an essential element of the offense, and a felony for which the convicted offender must register as a sex offender. This PCS also excludes Class F felonies from the definition of nonviolent felonies.

To be eligible for expunction under the bill, the offender must not have been previously convicted of any felony or misdemeanor other than a traffic violation, and must have remained of good behavior and been free of conviction of any felony or misdemeanor other than a traffic violation for two years from the date of conviction of the nonviolent felony to be expunged. This PCS additionally requires that the offender must not have previously been granted an expunction. A petition cannot be filed earlier than two years after the date of conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The offender must also perform 100 hours of community service before filing a petition. The provisions in this bill expire in seven years (December 1, 2012).

Source: Adapted from Administrative Office of the Courts, Research and Planning (04/27/05).

ASSUMPTIONS AND METHODOLOGY:

To estimate the number of individuals eligible to file a petition for expunction under this bill, the Administrative Office of the Courts (AOC) identified the number of defendants convicted of a single nonviolent felony while under the age of eighteen by counting the number of convictions recorded per defendant's name in each county. Using this method, AOC identified 12,056 defendants eligible for expunction due to this bill.[1]

As it would be unreasonable to assume that all 12,056 eligible individuals would petition for expunction, AOC estimated the percentage of this total that would file a petition by utilizing the petition rate for existing expunction provisions under G.S. 15A-145(a), which allows for expunction of non-traffic misdemeanors committed by offenders under age eighteen. In calendar year 2004, there were 244 petitions filed out of an estimated 6,900 eligible convictions, revealing that approximately 4 percent of eligible individuals actually sought to have their convictions expunged.

For the 12,056 existing convictions that would be eligible for expunction, AOC estimates that a greater proportion of individuals would seek expunction initially and at declining rates thereafter. However, each year AOC anticipates that an additional 725 convictions would become eligible for expunction. Of these, AOC estimates that 8 percent would seek expunction, resulting in an additional 58 petitions annually. Table 1 below outlines the total number of petitions that would be filed each year based on the estimated numbers of eligible convictions and the rate at which eligible individuals would seek expunction.

Table 1: Estimated Number of Expunction Petitions Filed

	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Existing Backlog of Convictions	12,056	12,056	12,056	12,056	12,056
Percentage Seeking Expunction	6%	4%	2%	2%	2%
Petitions	**723**	**482**	**241**	**241**	**241**
New Convictions	725	725	725	725	725
Percentage Seeking Expunction	8%	8%	8%	8%	8%
Petitions	**58**	**58**	**58**	**58**	**58**
Total Estimated Petitions	**781**	**540**	**299**	**299**	**299**

[1] To the extent that two individuals with identical names would appear to be one individual with multiple convictions, this approximation would underestimate the number of defendants eligible for expunction under this bill. However, to the extent that some individuals could have a single conviction in multiple counties, this approximation would be an overestimate.

Revenues

Under this bill there would be a $100 fee when filing a petition for expunction. AOC estimates that approximately one quarter of petitioners would be indigent and would thus not pay the fee when seeking expunction. Table 2 below outlines projected revenues if 75 percent of petitioners were to pay the $100 fee.

Table 2: Estimated Revenues Resulting from $100 Fee.

	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Total Estimated Petitions	781	540	299	299	299
Non-Indigent Petitions (75%)	586	405	224	224	224
Revenues	**$58,600**	**$40,500**	**$22,400**	**$22,400**	**$22,400**

Expenditures

Judicial Branch

Petitions filed as a result of this bill would lead to additional workload and costs for superior court and the Administrative Office of the Courts.

Superior Court: Clerks would devote time to receiving, filing, and processing petitions, as well as destroying and otherwise expunging court files and records. Additionally, the petitioner would pay a $100 fee when filing a petition, and clerks would incur time receiving and processing these payments or an affidavit of indigency if the petitioner is unable to pay. The petition must also be served on the district attorney, who would then have ten days to review and file an objection. Furthermore, the bill specifies that a hearing must be held and lists the findings that would justify expunction. Under current practice, most hearings are conducted in chambers or otherwise informally, and with rare exceptions, are uncontested. Nevertheless, expunction petitions due to this bill would require additional judge time to review affidavits and other documents, hear from the petitioner, make an evaluation, and issue an order. For cases that are contested or require closer scrutiny, significant judge time would be required.

Administrative Office of the Courts: To seek expunction under existing law, a person fills out an AOC form, which is sent to the SBI for a national record check and to the AOC to determine whether the person has previously had a record expunged. In 2004, AOC processed 6,297 of these requests. As under current law, this bill would require AOC to maintain a confidential file of expungements. Handling current expunction petitions requires approximately one-half of a position in order to look up the information, handle related communications with the clerk and SBI, answer citizen questions, and maintain the files. Also, AOC would incur costs for programming, development, production of forms, postage, copying, printing, mailing, and similar operating costs.

Table 3 on the next page outlines the additional costs that would be needed to process the estimated number of expunction petitions resulting from this bill each year. These figures represent additional resource costs for the Courts but, as they are formulated on fractional position estimates, do not represent the need for additional positions. The position and cost estimates are not changed with the slight reduction in petitions by excluding Class F felonies under the PCS.

Table 3: Estimated Judiciary Position and Operating Expenditures

	FY 05-06 781 Petitions		FY 06-07 540 Petitions		FY 07-08 to FY 09-10 299 Petitions	
	Positions	Cost	Positions	Cost	Positions	Cost
Deputy Clerks	0.20	$6,766	0.14	$4,736	0.08	$2,706
Superior Court Judges	0.11	$16,452	0.08	$11,965	0.04	$5,982
Assistant District Attorneys	0.11	$8,597	0.08	$6,252	0.04	$3,126
AOC Staff	0.07	$3,345	0.05	$2,389	0.03	$1,434
Operating Costs	-	$1,590	-	$1,100	-	$610
Total		**$36,750**		**$26,442**		**$13,858**

Department of Justice

The State Bureau of Investigation (SBI) in the Department of Justice is involved in the expunction process in two ways:

1. The SBI reviews applications for expunction to determine whether the applicant is eligible, and transmits that information to the Court system.
2. Upon a judicial order for expunction, the SBI removes information from its databases and forwards the expunction order to the Federal Bureau of Investigation.

The workload of four different positions in the SBI is affected by this bill – two processing assistants, a fingerprint technician supervisor, and an attorney. It requires a total of approximately 67 minutes of staff time to process an application and 172 minutes of staff time to process an expunction order. The SBI estimates that 87 percent of applications result in expunction orders. Using data and methodology from the Administrative Office of the Courts, we estimate the following:

Table 4: Estimated SBI Position and Operating Expenditures

	2005-06	2006-07	2007-08
Number of applications	781	540	299
Number of orders (87%)	679	470	260
Cost per Application	$27.79	$27.79	$27.79
Cost per Order	$61.24	$61.24	$61.24
Postage per Order	$1.27	$1.27	$1.27
TOTAL	**$64,303**	**$44,460**	**$24,618**
Positions required	**1.30**	**0.90**	**0.50**

The staff time required to process 781 applications is equivalent to one full-time position. Therefore, the box on the front page reflects one additional position required for the SBI in FY 2005-06. Position requirements will decrease in later years as workload declines.

SOURCES OF DATA: Administrative Office of the Courts, Department of Justice

TECHNICAL CONSIDERATIONS:

1. Effective date: This bill would be effective December 1, 2005. AOC notes that considerable preparation would be necessary to implement this bill, including hiring and training personnel, modifying computer programs, and coordination between AOC and the SBI to prepare for the

anticipated increase in petitions. AOC expects that an effective date no earlier than January 1, 2006 would be necessary to implement the bill.

2. Notice to Department of Correction and Division of Motor Vehicles: The bill does not include the Department of Correction or Division of Motor Vehicles among the agencies to whom the Clerk must send a certified copy of an expungement order. The mechanism by which DOC and DMV would receive notice of an expungement order is not specified.

3. Fee for Expungement. This bill sets a fee of $100 for expungements resulting from this legislation. Currently, the fee for expungement is $65. Senate Bill 622 (2005 Appropriations Act), which has passed the Senate and been referred to the House, would increase fees for expungements to $125.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 4

SENATE BILL 1126

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/5/05
Finance Committee Substitute Adopted 4/6/05
Fourth Edition Engrossed 4/11/05

Short Title: Amend Fishing License Requirements-2. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF THE COASTAL RECREATIONAL FISHING LICENSE, TO PROVIDE A SYSTEM OF UNIFIED LICENSES UNDER WHICH INDIVIDUALS MAY FISH THROUGHOUT THE STATE, AND TO AMEND CERTAIN STATUTES RELATED TO THE WILDLIFE RESOURCES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-174 reads as rewritten:

"**§ 113-174. Definitions.**

As used in this Article:

~~(1)~~ ~~"Commission" means the Marine Fisheries Commission.~~

(1a) "CRFL" means Coastal Recreational Fishing License.

(2) "Division" means the Division of Marine Fisheries in the Department of Environment and Natural Resources.

(2a) "For Hire Boat" means a charter boat, head boat, dive boat, or other boat hired to allow individuals to engage in recreational fishing.

(3) "North Carolina resident" means an individual who is a resident within the meaning of G.S. 113-130(4).

(4) "Recreational fishing" means any activity preparatory to, during, or subsequent to the taking of any ~~fish,~~finfish, the taking of which is subject to regulation by the Marine Fisheries Commission, by any ~~means:~~means if the purpose of the taking is to obtain finfish that are not to be sold. "Recreational fishing" does not include the taking of finfish:

a. ~~That does not constitute a~~ By a commercial fishing operation as defined in G.S. 113-168.

b. ~~Except as provided in~~For scientific purposes pursuant to G.S. 113-261.

c. Under a RCGL issued pursuant to G.S. 113-173.

~~(5) "SFL" means Saltwater Fishing License.~~"

SECTION 2. G.S. 113-174.1 reads as rewritten:

"**§ 113-174.1. ~~General~~ License required; general provisions governing licenses.**

(a) License Purchase Required to Engage in Recreational Fishing. – It is unlawful for any individual to engage in recreational fishing ~~in coastal~~ in:

(1) Coastal fishing waters that are not joint fishing waters without ~~having purchased~~ holding a current license ~~required by this Article.~~ issued under this Article or under Article 25A of this Chapter that authorizes the individual to engage in recreational fishing in coastal fishing waters.

(2) Joint fishing waters without holding a current license issued under this Article or under Article 21 or Article 25A of this Chapter that authorizes the individual to engage in recreational fishing in joint fishing waters.

(a1) It is unlawful for any individual to engage in recreational fishing without complying with ~~the provisions of this Article and rules adopted by the Commission under this Article.~~applicable requirements of this Article and Articles 21 and 25A of this Chapter and with applicable rules adopted by the Marine Fisheries Commission and the Wildlife Resources Commission.

(a2) The fourth day of July of each year is declared a free fishing day to promote the sport of fishing, and no license issued under this Article or Article 25A of this Chapter is required to fish in any of the public waters of the State on that day. All other laws and rules pertaining to recreational fishing still apply.

(b) Sale of Fish Prohibited. – A license issued under this Article or Article 25A of this Chapter does not authorize an individual who takes or lands any species of fish under the authority of the Marine Fisheries Commission to sell, offer for sale, barter, or exchange the fish for anything of value. Except as provided in G.S. 113-168.4, it is unlawful for any individual who takes or lands any species of fish under the authority of the Marine Fisheries Commission by any means to sell, offer for sale, barter, or exchange these fish for anything of value.

(c) Assignment and Transfer Prohibited. – It is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a license issued under this Article or Article 25A of this Chapter or to attempt to buy, sell, lend, borrow, assign, or otherwise transfer a license issued under this ~~Article.~~Article or Article 25A of this Chapter.

~~(d) General Enforcement. – It is unlawful for any individual to engage in recreational fishing in coastal fishing waters in the State without providing the individual's name and residence address upon the request of an inspector or other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.~~

~~(e) Enforcement for Charterboats and Headboats. – An inspector or other law enforcement officer may only verify the licensure of an individual fishing from a~~

~~charterboat or headboat after the charterboat or headboat has returned to shore and the individual has disembarked from the charterboat or headboat. Except as provided in G.S. 113-174.2(d), each individual on board a charterboat or headboat engaged in recreational fishing, other than crew members who do not engage in recreational fishing, must have purchased a current SFL issued pursuant to G.S. 113-174.2. An owner, operator, or crew member of a charterboat or headboat is not responsible for the licensure of a customer fishing from a charterboat or headboat.~~

(f) ~~Cancellation.~~Cancellation of Fraudulent License; Penalties. – The ~~Division~~ Wildlife Resources Commission may cancel a license issued by the Commission under this Article or Article 25A of this Chapter if the license was issued on the basis of false information supplied by the license applicant. The Division may cancel a For Hire Blanket CRFL issued under G.S. 113-174.3 if the license was issued on the basis of false information supplied by the license applicant. A cancelled license is void from the date of issuance. It is a Class 1 misdemeanor for an individual to knowingly do any of the following:

(1) Engage in any activity regulated under this Article with an improper, false, or altered license.

(2) Make any false, fraudulent, or misleading statement in applying for a license issued under this Article or Article 25A of this Chapter.

(3) Counterfeit, alter, or falsify any application or license issued under this Article or Article 25A of this Chapter.

(g) Reporting Requirements. – A person licensed under this Article or Article 25A of this Chapter shall comply with the biological data sampling and survey programs of the Marine Fisheries Commission and the Division.

(h) Replacement Licenses. – Upon receipt of a proper application together with a fee of five dollars ($5.00), the Wildlife Resources Commission may issue a new license to replace one that has been lost or destroyed before its expiration. The application must be on a form of the Wildlife Resources Commission setting forth information in sufficient detail to allow ready identification of the lost or destroyed license and ascertainment of the applicant's continued entitlement to it."

SECTION 3. G.S. 113-174.2 reads as rewritten:

"**§ 113-174.2. ~~Saltwater~~ Coastal Recreational Fishing License.**

~~(a) License Required. – Except as otherwise provided in this Article, it is unlawful for any individual to engage in recreational fishing in coastal fishing waters by means of recreational gear without having purchased a current SFL issued under this section. It is unlawful for any individual fishing under a SFL to possess fish in excess of recreational possession limits.~~

(a1) Authorization to Fish in Coastal and Joint Fishing Waters. – A CRFL issued under this section authorizes the licensee to engage in recreational fishing in coastal fishing waters, including joint fishing waters. A CRFL issued under this section does not authorize the licensee to fish in inland fishing waters.

~~(b) Purchase; Renewal. – Any license issued under this section may be purchased or renewed at designated offices of the Division; from the Division by mail, electronic~~

~~mail, the Internet, or telephone; or at locations designated by the North Carolina Saltwater Fishing Fund Board of Trustees.~~

(c) Types of ~~SFLs;~~CRFLs; Fees; Duration. – The ~~Division~~ Wildlife Resources Commission shall issue the following ~~SFLs:~~CRFLs:

(1) ~~One-year SFL.~~ Annual Resident CRFL. – $15.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State.

(1a) Annual Nonresident CRFL. – $30.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is not a resident of the State.

~~(2) Two-year SFL. – $30.00. This license is valid for a period of two years from the date of issuance.~~

~~(3) Three-year SFL. – $45.00. This license is valid for a period of three years from the date of issuance.~~

(4) ~~Seven-day SFL.~~Ten-Day Resident CRFL. – ~~$1.00.~~$5.00. This license is valid for a period of ~~seven consecutive days.~~10 consecutive days, as indicated on the license. ~~An individual may purchase this license only once in any 12-month period.~~ This license shall be issued only to an individual who is a resident of the State.

(4a) Ten-Day Nonresident CRFL. – $10.00. This license is valid for a period of 10 consecutive days, as indicated on the license. This license shall be issued only to an individual who is not a resident of the State.

~~(5) Subsistence SFL. – An applicant for a license under this subdivision shall provide to the Division a certification from the Department of Health and Human Services that the individual falls below the federal poverty level. A license issued under this subdivision shall be issued without charge and is valid for a period of one year from the date of issuance.~~

(6) Lifetime ~~SFL.~~CRFLs. – ~~This license is~~Except as provided in sub-subdivision j. of this subdivision, CRFLs issued under this subdivision are valid for the lifetime of the licensee. ~~The fee for the Lifetime SFL, based on the age of the prospective licensee as of the date on which the application is filed with the Division, is:~~

~~a. Younger than six years of age – $100.00~~

~~b. Six years of age to younger than 11 years of age – $150.00~~

~~c. 11 years of age to younger than 18 years of age – $200.00~~

~~d. 18 years of age or older – $500.00~~

e. Infant Lifetime CRFL. – $100.00. This license shall be issued only to an individual younger than one year of age.

f. Youth Lifetime CRFL. – $150.00. This license shall be issued only to an individual who is one year of age or older but younger than 12 years of age.

g. Resident Adult Lifetime CRFL. – $250.00. This license shall be issued only to an individual who is 12 years of age or older but younger than 70 years of age and who is a resident of the State.

h. Nonresident Adult Lifetime CRFL. – $500.00. This license shall be issued only to an individual who is 12 years of age or older and who is not a resident of the State.

i. Resident Elderly Lifetime CRFL. – $10.00. This license shall be issued only to an individual who is 70 years of age or older and who is a resident of the State.

j. Resident Disabled Veteran CRFL. – $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

k. Resident Totally Disabled CRFL. – $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration.

(d) Exemptions. – An individual ~~may engage in recreational fishing by means of recreational gear without having purchased a SFL~~is exempt from the license requirements of G.S. 113-174.1(a) if the individual ~~is~~ either:

(1) Is under 16 years of age.~~18 years of age or younger and is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.~~

(2) Holds any of the following licenses that were purchased prior to January 1, 2005:

a. Infant Lifetime Sportsman License issued under G.S. 113-270.1D(b)(1).

b. Youth Lifetime Sportsman License issued under G.S. 113-270.1D(b)(2).

c. Adult Resident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(3).

d. Nonresident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(4).

e. Age 70 Resident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(5).

f. Lifetime Resident Comprehensive Fishing License issued under G.S. 113-271(d)(3).

g. Lifetime Combination Hunting and Fishing License for Disabled Residents issued under G.S. 113-270.1C(b)(4).

h. Disabled Resident Sportsman License issued under G.S. 113-270.1D(b)(6).

(3) Holds any of the following licenses:

a. Lifetime Fishing License for the Legally Blind issued under G.S. 113-271(d)(7).

b. Adult Care Home Resident Fishing License issued under G.S. 113-271(d)(8)."

SECTION 4. Article 14B of Chapter 113 of the General Statutes is amended by adding two new sections to read:

"**§ 113-174.3. For Hire Blanket CRFL; enforcement.**

(a) License. – A person who operates a for hire boat may purchase a For Hire Blanket CRFL issued by the Division of Marine Fisheries. A For Hire Blanket CRFL authorizes all individuals on the for hire boat who do not hold a license issued under this Article or Article 25A of this Chapter to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. A For Hire Blanket CRFL does not authorize individuals on the for hire boat to engage in recreational fishing in joint fishing waters or inland fishing waters. This license is valid for a period of one year from the date of issuance. The fee for a For Hire Blanket CRFL is:

(1)	Vessel of 18 feet or less in length	$150.00.
(2)	Vessel of greater than 18 feet in length but 38 feet or less in length	$250.00.
(3)	Vessel of greater than 38 feet in length but 50 feet or less in length	$350.00.
(4)	Vessel of greater than 50 feet in length	$450.00.

(b) Enforcement. – An inspector or other law enforcement officer may only verify the licensure of a person who operates a for hire boat after the boat has returned to shore. An inspector or other law enforcement officer may only verify the licensure of an individual engaged in recreational fishing from a for hire boat after the boat has returned to shore and the individual has disembarked from the boat. Except as provided in this section and G.S. 113-174.2(d), each individual on board a for hire boat engaged in recreational fishing, other than crew members who do not engage in recreational fishing, must hold a license issued under this Article or Article 25A of this Chapter. An owner, operator, or crew member of a for hire boat is not responsible for the licensure of a customer fishing from the boat.

"**§ 113-174.4. Ocean Fishing Pier Blanket CRFL.**

Ocean Fishing Pier Blanket CRFL. – A person who owns or operates an ocean fishing pier and who charges a fee to allow a person to engage in recreational fishing from the pier may purchase an Ocean Fishing Pier Blanket CRFL issued by the Division of Marine Fisheries. An Ocean Fishing Pier Blanket CRFL authorizes all individuals who do not hold a license issued under this Article or Article 25A of this Chapter to engage in recreational fishing in coastal fishing waters while on the pier. This license is valid for a period of one year from the date of issuance. The fee for an Ocean Fishing Pier Blanket CRFL is four dollars ($4.00) per linear foot, to the nearest foot, that the pier extends into coastal fishing waters beyond the mean high waterline. The length of the pier shall be measured to include all extensions of the pier."

SECTION 5. G.S. 113-175 reads as rewritten:

"**§ 113-175. Definitions.**

As used in this Article:

~~(1) "Board of Trustees" means the Board of Trustees of the Fund.~~

(1a) "Endowment Fund" means the North Carolina Marine Resources Endowment Fund.

(1b) "Endowment investment income" means interest and other income earned from the investment of the principal of the Endowment Fund.

(1c) "Endowment license revenues" means the net proceeds from the sale of licenses issued under G.S. 113-174.2(c)(6) and a portion of the net proceeds from the sale of licenses issued under G.S. 113-351(c)(3) and (4). The apportionment of the net proceeds from the sale of licenses issued under G.S. 113-351(c)(3) and (4) shall be jointly determined by the Division of Marine Fisheries and the Wildlife Resources Commission. In the event that the Division of Marine Fisheries and the Wildlife Resources Commission cannot agree on the apportionment, the Governor is authorized to determine the apportionment.

(2) ~~"Fund"~~"Marine Resources Fund" means the North Carolina ~~Saltwater Fishing~~Marine Resources Fund.

(3) ~~"Investment"~~"Marine resources investment income" means interest earned from the investment of ~~license revenues and the proceeds of any gifts, grants, or contributions deposited in~~ the principal of the Marine Resources Fund.

(4) ~~"License"~~"Marine resources license revenues" means the net proceeds from the sale of ~~Saltwater Fishing Licenses~~licenses issued under ~~G.S. 113-174.2.~~Article 14B of this Chapter and a portion of the net proceeds from the sale of licenses issued under Article 25A of this Chapter, excluding endowment license revenues. The apportionment of the net proceeds from the sale of licenses issued under Article 25A of this Chapter shall be jointly determined by the Division of Marine Fisheries and the Wildlife Resources Commission. In the event that the Division of Marine Fisheries and the Wildlife Resources Commission cannot agree on the apportionment, the Governor is authorized to determine the apportionment. ~~The term includes funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced with license revenues and federal aid project reimbursements to the extent that license revenues originally funded the project for which the reimbursement is made.~~"

SECTION 6. G.S. 113-175.1 reads as rewritten:

"**§ 113-175.1. North Carolina ~~Saltwater Fishing Fund.~~Marine Resources Fund.**

(a) There is hereby established the North Carolina ~~Saltwater Fishing~~Marine Resources Fund as a nonreverting fund in the office of the State Treasurer. The purpose of the Marine Resources Fund is to enhance the ~~fishery~~ marine resources of the ~~State for commercial and recreational fishing.~~State. ~~License revenues and the proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion~~

~~in the Fund shall be deposited in the Fund.~~ The principal of the Marine Resources Fund shall consist of:

(1) Marine resources license revenues.

(2) Proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Marine Resources Fund.

(3) Funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced from funds disbursed from the Marine Resources Fund.

(4) Federal aid project reimbursements to the extent that funds disbursed from the Marine Resources Fund originally funded the project for which the reimbursement is made.

(b) The State Treasurer shall hold the Marine Resources Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall invest the assets of the Marine Resources Fund in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3. The State Treasurer shall disburse the principal of the Marine Resources Fund and marine resources investment income only upon the written direction of the Wildlife Resources Commission.

(c) The Wildlife Resources Commission may authorize the disbursement of the principal of the Marine Resources Fund and marine resources investment income only to manage, restore, develop, cultivate, conserve, and enhance the marine resources of the State. The Wildlife Resources Commission shall consult with the Marine Fisheries Commission and the Division of Marine Fisheries on the disbursement of the principal of the Marine Resources Fund and marine resources investment income."

SECTION 7. G.S. 113-175.2 is repealed.

SECTION 8. G.S. 113-175.3 is repealed.

SECTION 9. G.S. 113-175.4 is repealed.

SECTION 10. Article 14C of Chapter 113 of the General Statutes is amended by adding three new sections to read:

"**§ 113-175.5. North Carolina Marine Resources Endowment Fund.**

(a) There is hereby established the North Carolina Marine Resources Endowment Fund as a nonreverting fund in the office of the State Treasurer. The purpose of the Endowment Fund is to provide the citizens and residents of the State with the opportunity to invest in the future of the marine resources of the State. The principal of the Endowment Fund shall consist of:

(1) Endowment license revenues.

(2) Proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Endowment Fund.

(3) Funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced from endowment investment income.

(4) Federal aid project reimbursements to the extent that endowment investment income originally funded the project for which the reimbursement is made.

(5) Transfers to the Endowment Fund.

(6) Any endowment investment income, marine resources investment income, or marine resources license revenue that is credited to the Endowment Fund for the purpose of increasing the principal of the Endowment Fund.

(b) The State Treasurer shall hold the Endowment Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall invest the assets of the Endowment Fund in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3. The State Treasurer shall disburse the endowment investment income only upon the written direction of the Wildlife Resources Commission.

(c) The Endowment Fund is declared to constitute a special trust derived from a contractual relationship between the State and the members of the public whose investments contribute to the Endowment Fund. In recognition of this special trust, all of the following restrictions are placed on disbursement of funds held in the Endowment Fund:

(1) Any restrictions specified by the donors on the uses of income derived from gifts, grants, and voluntary contributions shall be respected but shall not be binding.

(2) No disbursements of the endowment investment income derived from the endowment license revenues generated by the sale of Infant Lifetime CRFLs under G.S. 113-174.2(c)(6)e., Youth Lifetime CRFLs under G.S. 113-174.2(c)(6)f., Infant Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses under G.S. 113-351(c)(3)a., or Youth Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses under G.S. 113-351(c)(3)b. shall be made for any purpose until the respective licensees attain the age of 16 years. The State Treasurer shall periodically make an actuarial determination as to the amount of endowment investment income within the Endowment Fund that remains encumbered by the restriction of this subdivision and the amount that is free of the restriction. The Executive Director of the Wildlife Resources Commission shall provide the State Treasurer with the information necessary to make this determination.

(3) No disbursement shall be made from the principal of the Endowment Fund except as otherwise provided by law.

(d) The Wildlife Resources Commission may authorize the disbursement of endowment investment income only to manage, restore, develop, cultivate, conserve, and enhance the marine resources of the State. The Wildlife Resources Commission shall consult with the Marine Fisheries Commission and the Division of Marine Fisheries on the disbursement of endowment investment income from the Marine Resources Endowment Fund.

(e) Expenditure of the endowment investment income shall be made through the State budget accounts of the Wildlife Resources Commission in accordance with the provisions of the Executive Budget Act. The Endowment Fund is subject to the

oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

"**§ 113-175.6. Marine Resources Committee.**

The Chair of the Wildlife Resources Commission shall designate five members of the Wildlife Resources Commission who shall constitute the Marine Resources Committee of the Wildlife Resources Commission. The Marine Resources Committee shall advise the Wildlife Resources Commission on the disbursement of funds from the Marine Resources Fund pursuant to G.S. 113-175.1 and on the disbursement of endowment investment income from the Marine Resources Endowment Fund pursuant to G.S. 113-175.5.

"**§ 113-175.7. Report.**

The Executive Director of the Wildlife Resources Commission shall submit to the Joint Legislative Commission on Seafood and Aquaculture by October 1 of each year a report on the Marine Resources Fund and the Marine Resources Endowment Fund that shall include the source and amounts of all moneys credited to each fund and the purpose and amount of all disbursements from each fund during the prior fiscal year."

SECTION 11. G.S. 113-270.1 reads as rewritten:

"**§ 113-270.1. License agents.**

(a) The Wildlife Resources Commission may by rule provide for the ~~annual~~ appointment of persons as license agents to sell licenses and permits ~~which it~~ that the Commission is authorized to issue by this Subchapter or by any other provisions of law. To facilitate the convenience of the public, the efficiency of administration, the need to keep statistics and records affecting the conservation of wildlife resources, boating, water safety, and other matters within the jurisdiction of the Wildlife Resources Commission, and the need to issue licenses and permits containing special restrictions, the Wildlife Resources Commission may issue licenses and permits in any particular category through:

(1) License agents.
(2) The Wildlife Resources Commission's headquarters.
(3) Employees of the Wildlife Resources Commission.
(4) Two or more such sources simultaneously.

(a1) When there are substantial reasons for differing treatment, the Wildlife Resources Commission may issue a type of license or permit by one method in one locality and by another method in another locality.

(b) License agents may deduct from the amount collected for each license or permit a fee of six percent (6%).

(b1) When licenses or permits are to be issued by license agents as provided by subsection (a) of this section, the Wildlife Resources Commission may adopt rules to provide for any of the following:

(1) Qualifications of the license agents.
(2) Duties of the license agents.
(3) Methods and procedures to ensure accountability and security for proceeds and unissued licenses and permits.

(4) Types and amounts of evidence that a license agent must submit to relieve the agent of responsibility for losses due to occurrences beyond the control of the agent.

(5) Any other reasonable requirement or condition that the Wildlife Resources Commission deems necessary to expedite and control the issuance of licenses and permits by license agents.

(b2) The Wildlife Resources Commission may adopt rules to authorize the Executive Director to take any of the following actions related to license agents:

(1) Select and appoint license agents in areas most convenient for the sale of licenses and permits.

(2) Limit the number of license agents in an area if necessary for efficiency of operation.

(3) Require prompt and accurate reporting and remittance of public funds or documents by license agents.

(4) Conduct periodic and special audits of accounts.

(5) Suspend or terminate the authorization of any license agent found to be noncompliant with rules adopted by the Wildlife Resources Commission or when State funds or property are reasonably believed to be in jeopardy.

(6) Require the immediate surrender of all equipment, forms, licenses, permits, records, and State funds and property, issued by or belonging to the Wildlife Resources Commission, in the event of the termination of a license agent.

(b3) The Wildlife Resources Commission is exempt from the contested case provisions of Chapter 150B of the General Statutes with respect to determinations of whether to authorize or terminate the authority of a person to sell licenses and permits as a license agent of the Wildlife Resources Commission.

(b4) If any check or bank account draft of any license agent for the issuance of licenses or permits shall be returned by the banking facility upon which the same is drawn for lack of funds, the license agent shall be liable to the Commission for a penalty of five percent (5%) of the amount of the check or bank account draft, but in no event shall the penalty be less than five dollars ($5.00) or more than two hundred dollars ($200.00). License agents shall be assessed a penalty of twenty-five percent (25%) of their issuing fee on all remittances to the Commission after the fifteenth day of the month immediately following the month of sale.

~~(c) The Wildlife Resources Commission may provide qualifications and standards concerning license agents and delegate to the Executive Director the task of appointment and supervision. Annual appointments run from May 1 to April 30 each year. The Wildlife Resources Commission may require license agents to post bonds, keep records and make reports concerning licenses and receipts, be subject to such audits and inspections as may be necessary, and pay a penalty of five percent (5%) on any worthless checks given the Wildlife Resources Commission. The minimum penalty for a worthless check, however, is five dollars ($5.00), and the maximum penalty is two hundred dollars ($200.00). The Wildlife Resources Commission shall require license~~

~~agents to pay penalties of twenty-five percent (25%) of the agents' fees on any license fees remitted to the Commission after the fifteenth day of the month immediately following the month of sale.~~

(d) ~~The Wildlife Resources Commission may make rules in implementing the authority granted in subsection (c), but it need not set out in its rules details as to forms of license, records and accounting procedures, and other reasonable requirements that may be administratively promulgated by employees of the Wildlife Resources Commission in implementation of the purposes of this Article in order for such administrative requirements to be deemed validly required.~~ It is a Class 1 misdemeanor for a license ~~agent:~~agent to do any of the following:

(1) ~~To withhold~~Withhold or misappropriate funds from the sale of ~~licenses;~~licenses or permits.

(2) ~~To falsify~~Falsify records of licenses ~~sold;~~or permits sold.

(3) ~~Wilfully~~ Willfully and knowingly ~~to~~ assist or allow a person to obtain a license or permit for which ~~he is ineligible;~~the person is ineligible.

(4) ~~Wilfully to~~Willfully issue a backdated ~~license;~~license or permit.

(5) ~~Wilfully on records or licenses to~~Willfully include false information or omit material information ~~as to:~~on records, licenses, or permits regarding either:

a. A person's entitlement to a particular ~~license; or~~license or permit.

b. The applicability or term of a particular ~~license; or~~license or permit.

(6) ~~To refuse to return all consigned licenses, or to remit the net value of consigned licenses sold or unaccounted for, upon demand from an authorized employee of the Wildlife Resources Commission.~~Charge or accept any additional fee, remuneration, or other item of value in association with any activity set out in subdivisions (1) through (5) of this subsection.

~~(e) The Executive Director may temporarily suspend, revoke, or refuse to renew a person's appointment as a license agent if he fails in a timely manner to submit required reports, remit moneys due the Wildlife Resources Commission, or otherwise comply with the qualifications and standards set by the Wildlife Resources Commission or with reasonable administrative directives of the Executive Director. The temporary suspension is effective immediately upon communication of that fact to the license agent or his representative handling the licenses. The communication as to suspension must state the grounds for suspension and that the license agent may request a hearing within five working days if he contests the grounds for suspension. If not in writing, the communication must be followed by written notice of suspension containing the same information. By personal service of an impoundment order upon a license agent or his representative handling the licenses, an employee or agent of the Wildlife Resources Commission may enter the premises and impound all licenses, moneys, record books, reports, license forms, and other documents, ledgers, and materials pertinent or apparently pertinent to the license agency being suspended. The Executive Director~~

~~must make the impounded property, or copies of it, available to the licensee during the period of temporary suspension.~~

~~(f) If a hearing is requested, it is before the Executive Director or his designee to be held at Raleigh or some other place convenient to the parties specified by the Executive Director. The temporary suspension remains in effect until the hearing, and after the hearing may be rescinded or continued in effect, as the facts warrant, in the discretion of the Executive Director. A temporary suspension may not last longer than 30 days, but additional suspensions may be imposed if at the end of the suspension period the license agent is still not in compliance with appropriate standards, qualifications, and administrative directives. A license agent may at any time after a hearing appeal his suspension to the Wildlife Resources Commission.~~

~~(g) Notice of revocation or nonrenewal of the appointment may be sent the license agent in lieu of or in addition to temporary suspension. The notice must state the grounds for termination of the appointment and the license agent's right to a hearing if he has not previously been afforded one. If the appointment is to be revoked, the notice must state the effective date and hour of revocation. If the appointment is not to be renewed, the notice must state that the appointment expires at midnight on April 30. If he has not been previously afforded a hearing, a license agent is entitled to a hearing within 14 days before the Executive Director or his designee to be held at Raleigh or some other place convenient to the parties specified by the Executive Director. After the hearing, the Executive Director, applying appropriate standards, must take the action with respect to the appointment as license agent that the facts warrant. If the Executive Director upholds the decision to terminate the appointment, a license agent may appeal his termination to the Wildlife Resources Commission. Pending the hearing and any appeal from it, the termination is held in abeyance, but no license sales may be made once the license agent's bond has expired.~~

~~(h) Upon termination of the appointment, the former agent must return to the Wildlife Resources Commission all record books, reports, license forms, moneys, and other property pertaining to the license agency, and must allow agents of the Wildlife Resources Commission to conduct necessary inspections and audits required in terminating the license agency. Each day's refusal after termination to return, upon demand, the record books, reports, license forms, moneys, and other property pertaining to the license agency is a separate offense. Each instance of refusal, after termination, to allow agents of the Wildlife Resources Commission to conduct necessary inspections and audits during regular business hours is a separate offense. A violation of this subsection is a Class 2 misdemeanor. Before termination, violations by license agents are punishable under G.S. 113-135, subsection (d) above, or other provision of this Subchapter, as appropriate.~~

~~(i) No person denied appointment or whose appointment was terminated under this section is eligible to apply again for an appointment as a license agent for two years. Upon application, the executive director may not grant the appointment as license agent unless the applicant produces clear evidence, convincing to the Executive Director, that he meets all standards and qualifications and will comply with all~~

~~requirements of statutes, rules, and reasonable administrative directives pertaining to license agents.~~

~~(j) The Executive Director or his designee holding any hearing under this section must keep a written record of evidence considered and findings made. Upon appeal to the Wildlife Resources Commission, the commission chairman or other presiding officer must cause such a written record of evidence and findings to be made and kept. Hearings and appeals under this section are internal matters concerning license agents of the Wildlife Resources Commission and are not governed by the North Carolina Administrative Procedure Act.~~"

SECTION 12. G.S. 113-270.1C reads as rewritten:

"**§ 113-270.1C. Combination hunting and inland fishing licenses.**

(a) The combination hunting and inland fishing licenses set forth in subsection (b) of this section entitle the ~~holder~~ licensee to take, except on game lands, all wild birds and wild animals, other than big game and waterfowl, by all lawful methods and in all open seasons, and to fish with hook and line in all inland and joint fishing waters, except public mountain trout waters. A combination hunting and inland fishing license issued under this section does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters.

(b) Combination hunting and inland fishing licenses issued by the Wildlife Resources Commission are:

(1) Resident Annual Combination Hunting and Inland Fishing License – $20.00. This license shall be issued only to an individual resident of the State.

(2), (3) Repealed by Session Laws 1997-326, s. 2.

~~(4) Lifetime Combination Hunting and Fishing License for Disabled Residents – $10.00. This license shall be issued only to (i) an individual resident of the State who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs, remaining valid for the lifetime of the individual so long as the individual remains fifty percent (50%) or more disabled; or (ii) an individual resident of the State who is totally disabled, remaining valid for the lifetime of the individual so long as the individual remains totally disabled. For purposes of this section, "totally disabled" means physically incapable of being gainfully employed. The application form for this license, to be provided by the Wildlife Resources Commission, allows a person to apply only for the fishing privileges conveyed by the license. This license entitles the holder to fish in public mountain trout waters as provided in G.S. 113-272(a).~~

(5) Resident Disabled Veteran Lifetime Combination Hunting and Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the

lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled. This license entitles the licensee to fish in public mountain trout waters as provided in G.S. 113-272(a).

(6) Resident Totally Disabled Lifetime Combination Hunting and Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration. This license remains valid for the lifetime of the licensee. This license entitles the licensee to fish in public mountain trout waters as provided in G.S. 113-272(a)."

SECTION 13. G.S. 113-270.1D reads as rewritten:

"**§ 113-270.1D. Sportsman licenses.**

(a) Annual Sportsman License – $40.00. This license shall be issued only to an individual resident of the State and entitles the ~~holder~~ licensee to take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands, and to fish with hook and line for all fish in all inland and joint fishing waters, including public mountain trout waters. An annual sportsman license issued under this subsection does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters.

(b) Lifetime Sportsman Licenses. ~~Lifetime~~ Except as provided in subdivision (7) of this subsection, lifetime sportsman licenses are valid for the lifetime of the ~~holders~~ licensees.~~and~~ Lifetime sportsman licenses entitle the ~~holders~~ licensees to take all wild animals and wild birds by all lawful methods in all open seasons, including the use of game lands, and to fish with hook and line for all fish in all inland and joint fishing waters, including public mountain trout waters. A lifetime sportsman license issued under this subsection does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. Lifetime sportsman licenses issued by the Wildlife Resources Commission are:

(1) Infant Lifetime Sportsman License – $200.00. This license shall be issued only to an individual under one year of age.

(2) Youth Lifetime Sportsman License – $350.00. This license shall be issued only to an individual under 12 years of age.

(3) Adult Resident Lifetime Sportsman License – $500.00. This license shall be issued only to an individual resident of the State.

(4) Nonresident Lifetime Sportsman License – $1,000. This license shall be issued only to an individual nonresident of the State.

(5) Age 70 Resident Lifetime Sportsman License – $10.00. This license shall be issued only to an individual resident of the State who is at least 70 years of age.

~~(6) Disabled Resident Sportsman License – $100.00. This license shall be issued only to (i) an individual resident of the State who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs, remaining valid for the lifetime of the individual so long as the individual remains fifty percent (50%)~~

~~or more disabled; or (ii) an individual resident of the State who is totally disabled, remaining valid for the lifetime of the individual so long as the individual remains totally disabled. For purposes of this section, "totally disabled" means physically incapable of being gainfully employed.~~

(7) Resident Disabled Veteran Lifetime Sportsman License – $100.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

(8) Resident Totally Disabled Lifetime Sportsman License – $100.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration."

SECTION 14. G.S. 113-271 reads as rewritten:

"**§ 113-271. Hook-and-line licenses in inland and joint fishing waters.**

(a) An inland hook-and-line fishing license issued under this section entitles the licensee to fish with hook and line in inland fishing waters and joint fishing waters. An inland hook-and-line fishing license issued under this section does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. An inland hook-and-line fishing license issued under subdivision (1), (3), (6a), (6b), (6c), or (9) of subsection (d) of this section entitles the licensee ~~All the hook-and-line fishing licenses set forth in subdivisions (1), (3), (7), and (9) of subsection (d) of this section entitle the holder~~ to fish with hook and line in public mountain trout waters.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 684, s. 4.

(c) Repealed by Session Laws 1979, c. 830, s. 1.

(d) The hook-and-line fishing licenses issued by the Wildlife Resources Commission are as follows:

(1) Resident Annual Comprehensive Inland Fishing License – $20.00. This license shall be issued only to an individual resident of the State.

(2) Resident State Inland Fishing License – $15.00. This license shall be issued only to an individual resident of the State.

(3) Lifetime Resident Comprehensive Inland Fishing License – $250.00. This license shall be issued only to an individual resident of the State and is valid for the lifetime of the ~~holder.~~licensee.

(4) Resident County Inland Fishing License – $10.00. This license shall be issued only to an individual resident of the State and is valid only within the county of residence of the ~~license holder.~~licensee.

(5) Nonresident State Inland Fishing License – $30.00. This license shall be issued to an individual nonresident of the State.

(6) Short-Term Inland Fishing Licenses. Short-term inland fishing licenses are valid only for the date or consecutive dates indicated on the

licenses. Short-term inland fishing licenses issued by the Wildlife Resources Commission are:

a. Resident ~~one-day~~10-day Inland Fishing License – $5.00. This license shall be issued only to a resident of the State.

b. Nonresident ~~one-day~~10-day Inland Fishing License – $10.00. This license shall be issued only to a nonresident of the State.

~~c. Nonresident three-day – $15.00. This license shall be issued only to a nonresident of the State.~~

(6a) Age 70 Resident Lifetime Inland Fishing License – $10.00. This license shall be issued only to an individual resident of the State who is at least 70 years of age.

(6b) Resident Disabled Veteran Lifetime Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

(6c) Resident Totally Disabled Lifetime Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration. This license remains valid for the lifetime of the licensee.

~~(7) Lifetime Fishing License for the Legally Blind – No charge. This license shall be issued only to an individual resident of the State who has been certified by the Department of Health and Human Services as a person whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential. This license is valid for the life of the individual so long as he remains legally blind.~~

~~(8) Adult Care Home Resident Fishing License – No charge. This license shall be issued only to an individual resident of the State who resides in an adult care home as defined in G.S. 131D-2(a)(3) or G.S. 131E-101(4). This license is valid for the life of the individual so long as the individual remains a resident of an adult care home.~~

(9) Special Guest Inland Fishing License – $50.00. This license shall be issued only to the owner or lessee of private property bordering inland or joint fishing waters, including public mountain trout waters, and entitles ~~persons~~ individuals to fish from the shore or any pier or dock originating from the property without any additional fishing license. This license is applicable only to private property and private docks and piers and is not valid for any public property, pier, or dock nor for any private property, pier, or dock operated for any commercial purpose whatsoever. The guest fishing license shall not be in force unless displayed on the premises of the property and only entitles fishing without additional license to ~~persons~~ individuals fishing from

the licensed property and then only when fishing within the private property lines. The guest fishing license is not transferable as to person or location."

SECTION 15. G.S. 113-272.3(c) reads as rewritten:

"(c) Lifetime licenses are issued from the Wildlife Resources Commission headquarters. Each application for an Infant Lifetime Sportsman or Youth Lifetime Sportsman License must be accompanied by a certified copy of the birth ~~certificate~~ certificate, adoption order containing the date of birth, or other proof of age satisfactory to the Commission, of the individual to be named as the ~~license holder.~~licensee."

SECTION 16. G.S. 113-275(c1) reads as rewritten:

"(c1) Upon receipt of a proper application together with a fee of ~~two~~ five dollars ~~($2.00),~~($5.00), the Wildlife Resources Commission may issue a new license or permit to replace one that has been lost or destroyed before its expiration. The application must be on a form of the Wildlife Resources Commission setting forth information in sufficient detail to allow ready identification of the lost or destroyed license or permit and ascertainment of the applicant's continued entitlement to it."

SECTION 17. G.S. 113-276(e) is repealed.

SECTION 18. G.S. 113-276(j) reads as rewritten:

"(j) A migrant farm worker who has in his possession a temporary certification of his status as such by the Rural Employment Service of the North Carolina Employment Security Commission on a form provided by the Wildlife Resources Commission is entitled to the privileges of a resident of the State and of the county indicated on such certification during the term thereof for the purposes ~~of:~~of

~~(1)~~ ~~Purchasing~~purchasing and using the resident fishing licenses provided by G.S. 113-271(d)(2), (4), and ~~(6)a.; and~~(6)a.

~~(2) Utilizing the natural bait exemption in subsection (e) above.~~"

SECTION 19. G.S. 113-276(m) reads as rewritten:

"(m) ~~Notwithstanding any other provision of law, the~~ The fourth day of July of each year is declared a free fishing day to promote the sport of fishing and no hook-and-line fishing license is required to fish in any of the public waters of the State on ~~this~~ that day. All other laws and rules pertaining to hook-and-line fishing still apply."

SECTION 20. G.S. 113-276.1 reads as rewritten:

"**§ 113-276.1. Regulatory authority of Wildlife Resources Commission as to license requirements and exemptions.**

(a) In its discretion and in accordance with the best interests of the conservation of wildlife resources, the Wildlife Resources Commission may implement the provisions of this Article with rules that:

(1) [Reserved.]

(2) Regulate license requirements and exemptions applying to the taking of wildlife on particular waters forming or lying across a county boundary where there may be confusion as to the location of the boundary, hardship imposed as to the location of the boundary, or difficulty of administering or enforcing the law with respect to the actual boundary location.

(3) Require persons subject to license requirements, and persons exempt from license requirements, to carry, display, or produce identification that may be necessary to substantiate the person's entitlement to a particular license or to a particular exemption from license requirements.

(4) Require individuals aboard vessels or carrying weapons or other gear that may be used to take wildlife resources, and in an area at a time wildlife resources may be taken, to exhibit identification that includes the individual's name and current address. More than one piece of identification, including a vehicle driver license, may be required to be exhibited, if available.

(5) Implement a system of tagging and reporting fur-bearing animals and big game. Upon the implementation of a tagging system for any species of fur-bearing animal, the Wildlife Resources Commission may charge a reasonable fee to defray its costs, not to exceed two dollars twenty-five cents ($2.25) per tag, for each tag furnished. The price of the big game hunting license includes the cost of big game tags.

(b) Except as provided in this subsection, the Wildlife Resources Commission shall not disclose personal information provided by an applicant for a license issued under Article 14B, Article 21, or Article 25A of Chapter 113 of the General Statutes. The Wildlife Resources Commission shall disclose to the Division of Marine Fisheries and the Marine Fisheries Commission information on the holders of licenses issued under Article 14B and Article 25A of Chapter 113 of the General Statutes."

SECTION 21. G.S. 113-296(b) reads as rewritten:

"(b) In order to be eligible for participation in the Disabled Sportsman Program established by this section, ~~a person~~an individual must be able to certify through competent medical evidence one of the following disabilities:

(1) ~~Amputation of~~Missing fifty percent (50%) or more of one or more ~~limbs;~~limbs, whether by amputation or natural causes.

(2) Paralysis of one or more ~~limbs;~~limbs.

(3) Dysfunction of one or more limbs rendering the ~~person~~ individual unable to perform the tasks of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a ~~cane;~~cane.

(4) Disease, injury, or defect confining the ~~person~~ individual to a wheelchair, walker, or ~~crutches;~~crutches.

(5) Legal ~~deafness; or~~deafness.

(6) Legal blindness, for purposes of participation in disabled fishing only.

The disability must be permanent, and ~~a person~~an individual loses eligibility to participate in the Disabled Sportsman Program when the specified disability ceases to exist."

SECTION 22. Subchapter IV of Chapter 113 of the General Statutes is amended by adding a new Article to read:

"Article 25A.

"Unified Licenses.

"**§ 113-351. Unified hunting and fishing licenses; subsistence license waiver.**

(a) Definitions. – The definitions set out in G.S. 113-174 apply to this Article.

(b) General Provisions Governing Licenses and Waivers. – The general provisions governing licenses set out in G.S. 113-174.1 apply to licenses and waivers issued under this section.

(c) Types of Unified Hunting and Fishing Licenses; Fees; Duration. – The Wildlife Resources Commission shall issue the following Unified Hunting and Fishing Licenses:

(1) Annual Resident Unified Sportsman/Coastal Recreational Fishing License. – $55.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State. This license authorizes the licensee to take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands; to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters; and to engage in recreational fishing in coastal fishing waters.

(2) Annual Resident Unified Inland/Coastal Recreational Fishing License. – $35.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State. This license authorizes the licensee to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters, and to engage in recreational fishing in coastal fishing waters.

(3) Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses. – Except as provided in sub-subdivisions f., h., and i. of this subdivision, a license issued under this subdivision is valid for the lifetime of the licensee. A license issued under this subdivision authorizes the licensee to take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands; to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters; and to engage in recreational fishing in coastal fishing waters.

a. Infant Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $275.00. This license shall be issued only to an individual who is younger than one year of age.

b. Youth Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $450.00. This license shall be issued only to an individual who is one year of age or older but younger than 12 years of age.

c. Resident Adult Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $675.00. This license shall be

issued only to an individual who is 12 years of age or older but younger than 70 years of age and who is a resident of the State.

d. Nonresident Adult Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $1,350. This license shall be issued only to an individual who is 12 years of age or older and who is not a resident of the State.

e. Resident Elderly Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $20.00. This license shall be issued only to an individual who is 70 years of age or older and who is a resident of the State.

f. Resident Disabled Veteran Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $110.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

g. Resident Totally Disabled Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $110.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration.

h. Resident Legally Blind Lifetime Unified Sportsman/Coastal Recreational Fishing License. – No charge. This license shall be issued only to an individual who is a resident of the State and who has been certified by the Department of Health and Human Services as an individual whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential. This license remains valid for the lifetime of the licensee so long as the licensee remains legally blind.

i. Resident Adult Care Home Lifetime Unified Sportsman/Coastal Recreational Fishing License. – No charge. This license shall be issued only to an individual who is a resident of the State and who resides in an adult care home as defined in G.S. 131D-2(a)(1b) or G.S. 131E-101(1). This license remains valid for the lifetime of the licensee so long as the licensee remains a resident of an adult care home.

(4) Lifetime Unified Inland/Coastal Recreational Fishing License. – $450.00. This license is valid for the lifetime of the licensee and authorizes the licensee to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters, and to engage in recreational fishing in coastal fishing waters.

(d) Resident Subsistence Unified Inland/Coastal Recreational Fishing License Waiver. – A county department of social services shall issue a Resident Subsistence Unified Inland/Coastal Recreational Fishing License Waiver to an individual who receives benefits from Medicaid, Food Stamps, or Work First Family Assistance through the county department of social services and who requests a waiver. County departments of social services shall supply the Wildlife Resources Commission with the name, mailing address, and telephone number of each individual who receives a waiver. This waiver shall be issued at no charge. This waiver is valid for a period of one year from the date of issuance. This waiver shall be issued only to an individual who is a resident of the State. This waiver authorizes the waiver holder to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, except for public mountain trout waters, and to engage in recreational fishing in coastal fishing waters."

SECTION 23. G.S. 143B-289.52(h) reads as rewritten:

"(h) Neither the Commission nor the ~~Department~~ Division may disclose personal information provided by an applicant for a license issued under Article ~~14A or~~ 14B of Chapter 113 of the General Statutes. Neither the Commission nor the Division may disclose information on license holders provided by the Wildlife Resources Commission pursuant to G.S. 113-276.1(b)."

SECTION 24. G.S. 150B-1(e) is amended by adding a new subdivision to read:

"(e) Exemptions From Contested Case Provisions. – The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

...

(15) The Wildlife Resources Commission with respect to determinations of whether to authorize or terminate the authority of a person to sell licenses and permits as a license agent of the Wildlife Resources Commission."

SECTION 25. Sections 3, 4, 9, 10, 11, and 12 of S.L. 2004-187 are repealed.

SECTION 26. Section 15 of S.L. 2004-187 reads as rewritten:

"**SECTION 15.** ~~Sections 2, 3, and 4~~Section 2 of this act ~~become~~ becomes effective ~~January~~ March 1, 2006. All other sections of this act become effective when the act becomes law."

SECTION 27. The General Assembly finds that individuals who purchased certain lifetime licenses issued by the Wildlife Resources Commission prior to January 1, 2005, had a reasonable expectation that these lifetime licenses would authorize these licensees to engage in recreational fishing throughout the State and that these licensees would not be required to purchase any additional license to engage in recreational fishing in coastal waters during the lifetime of the licensee. In recognition of this expectation, the General Assembly has provided in G.S. 113-174.2(d), as enacted by Section 3 of this act, that the holders of these lifetime licenses are exempt from the license requirement for engaging in recreational fishing in coastal fishing waters that was established in S.L. 2004-187. The General Assembly further finds that, because the

holders of these lifetime licenses will be authorized to take marine resources from the coastal fishing waters of the State under the provisions of this act, it is appropriate that a portion of the revenues derived from the sale of these lifetime licenses should be transferred to the Marine Resources Endowment Fund so that the endowment investment income generated by the transferred license revenues will be used to manage, restore, develop, cultivate, conserve, and enhance the marine resources of the State. The General Assembly specifically finds that this transfer of funds is consistent with the overall spirit, intent, and purpose underlying the creation of the Wildlife Endowment Fund and the Marine Resources Endowment Fund. Therefore, in accordance with G.S. 143-250.1(d)(3), the State Treasurer shall transfer the sum of three million dollars ($3,000,000) from the Wildlife Endowment Fund to the Marine Resources Endowment Fund. This transfer shall be made in five equal installments of six hundred thousand dollars ($600,000) on the first day of March in 2006, 2007, 2008, 2009, and 2010.

SECTION 28.(a) The Wildlife Resources Commission shall adopt rules to provide for the following:

(1) Qualifications of license agents.
(2) Duties of license agents.
(3) Methods and procedures to ensure accountability and security for proceeds and unissued licenses and permits.
(4) Types and amounts of evidence that a license agent must submit to relieve the agent of responsibility for losses due to occurrences beyond the control of the agent.
(5) Any other reasonable requirement or condition that the Wildlife Resources Commission deems necessary to expedite and control the issuance of licenses and permits by license agents.

SECTION 28.(b) The Wildlife Resources Commission shall adopt rules to authorize the Executive Director to take the following actions related to license agents:

(1) Select and appoint license agents in areas most convenient for the sale of licenses and permits.
(2) Limit the number of license agents in an area if necessary for efficiency of operation.
(3) Require prompt and accurate reporting and remittance of public funds or documents by license agents.
(4) Conduct periodic and special audits of accounts.
(5) Suspend or terminate the authorization of any license agent found to be noncompliant with rules adopted by the Wildlife Resources Commission or when State funds or property are reasonably believed to be in jeopardy.
(6) Require the immediate surrender of all equipment, forms, licenses, permits, records, and State funds and property, issued by or belonging to the Wildlife Resources Commission, in the event of the termination of a license agent.

SECTION 29. The first report required pursuant to G.S. 113-175.7, as enacted by Section 10 of this act, is due by October 1, 2006.

SECTION 30. The repeal by this act of the statutory authority of the Wildlife Resources Commission to issue a type of license shall not affect the authority of an individual to whom a license of that type is issued prior to the effective date of the repeal to engage in the activity that the repealed license type authorizes so long as the license is otherwise valid.

SECTION 31. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

SECTION 32. Sections 5, 6, 7, 8, 9, 10, 19, 20, 23, 25, 26, 28, 29, 30, 31, and 32 of this act are effective when this act becomes law. Sections 15, 16, 21, and 24 of this act become effective January 1, 2006. Sections 1, 2, 3, 4, 12, 13, 14, 17, 18, 22, and 27 of this act become effective March 1, 2006. Section 11 of this act is effective on the date that all rules adopted by the Wildlife Resources Commission pursuant to Section 28 of this act become effective, except that G.S. 113-270.1(b3) and (b4) become effective January 1, 2006. Section 28 of this act expires on the date that all rules adopted by the Wildlife Resources Commission pursuant to Section 28 of this act become effective.

North Carolina General Assembly

House Committee on Finance

Minutes

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June 28, 2005

The House Committee on Finance met on Tuesday, June 28, 2005 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Howard, Gibson, Luebke, McComas, and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives Blackwood, Blust, Bordsen, Capps, Carney, England, Faison, Fisher, Folwell, Glazier, Hackney, Holliman, Lewis, McGee, Rayfield, Underhill, Vinson, Walend, and Wiley. An Ex-Officio member present was Representative Cunningham. Also present were Sergeant-at-Arms Bill Freeman, Fred Hines, Dusty Rhodes, and Walter Spell. Staff persons present included Rodney Bizzell, Brenna Erford, Ashley Huffstetler, and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2.**

Chairman McComas called the meeting to order at 8:32 am and recognized the eight (8) pages present: (1) Timberly Butler of Sampson County, sponsored by Representative Bell; (2) Tierra Butler of Sampson County, sponsored by Representative Bell; (3) Antwan Bynum of Edgecombe County, sponsored by Speaker Farmer-Butterfield; (4) Samantha Gardner of Johnston County, sponsored by Representative Daughtry; (5) Jessica James of Guilford County, sponsored by Representative Jones; (6) DeOndra Peterson of Sampson County, sponsored by Representative Bell; (7) Brandon Raspberry of Lenoir County, sponsored by Representative Wainwright; and (8) Thomas Thurman of Mecklenburg County, sponsored by Representative Blackwood.

Chairman McComas first recognized Representative Gibson who moved for the adoption of the proposed committee substitute for the Committee's consideration for **SB 1126 – AMEND FISHING LICENSE REQUIREMENTS** (see **attachment 3**). The motion was adopted. Representative Gibson was then recognized to explain the bill and reported to the Committee that he and other legislators had been working on this legislation for over eight years. He explained that the bill would amend various coastal and inland fishing license statutes and establish a unified fishing license that authorizes fishing in inland, joint, and coastal fishing waters. He stated that the bill also established a new Marine Fisheries Commission and expanded the enforcement authority of Marine Inspectors. Chairman McComas then recognized Jeff Hudson of Research who explained the differences between the Senate bill and the House Proposed Committee Substitute, which are listed in the Bill Summary (see attachment 3).

Following the explanation, Chairman McComas recognized Dan Whittle of Environmental Defense who spoke in support of the bill. He stated that the bill strengthens legislation passed last year and increases the revenue for environmental protection and preservation. Mike Ward of Coastal Conservation Association was recognized next and spoke as an advocate for the bill. He stated that the bill would provide more funding for environmental protection and a greater ability to

collect useful data. Chairman McComas then recognized Jerry Shill of the NC Fishers' Association who opposed the blanket provisions contained in the bill because he did not believe that a fish stock problem existed in North Carolina. T.J. Williams of NC Waterman United was then recognized and stated that his organization no longer opposed the bill.

Chairman McComas then acknowledged questions from Committee members. Representative Underhill was recognized and asked what would happen if the 12 voting members of the Marine Fisheries Commission tied a vote. Chairman McComas responded by stating that if a tie occurs then the motion fails. Representative Rayfield was recognized and asked for a comparison of the fee contained in this bill with other states. Jeff Hudson of Research was recognized and reported that North Carolina would be somewhere in the middle. Representative Gibson was also recognized and added that without the passage of this bill, North Carolina would be one of the only states on the Atlantic and Gulf of Mexico without a unified fishing license. Representative Lewis was then recognized by the Chair and asked Representative Gibson if this bill would allow a person to buy one license that covers fishing and hunting across the State. Representative Gibson responded in the affirmative. Representative Lewis then announced his complete support for the bill. Chairman McComas then recognized Representative Ross who moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill.

Following the motion, Representative Wainwright was recognized to send forth an amendment (see **attachment 4**) increasing the number of appointments to the Marine Fisheries Commission from 12 to 13 members. The amendment would also change the apportionment of appointments providing the Governor with nine appointments, Speaker of the House with two appointments, and the President Pro Tem of the Senate with two appointments. Representative Gibson was recognized and stated that he personally opposed the amendment but, in the spirit of cooperation, asked the Committee to support it. Representative Wainwright then moved for the amendment's adoption. Representative Hackney was then recognized and expressed concerns about the make-up of the Commission because he believed there were too many members coming from the coastal regions of the state. Representative Luebke was then recognized and stated his opposition to the amendment because the Executive branch is given more appointments then the combined number from the General Assembly. In response, Representative Wainwright was recognized and spoke of the need for this amendment in order for the bill to receive greater support in the Governor's Office. As there was no further debate, Chairman McComas called the motion to adopt the Wainwright amendment to a vote and the amendment was adopted.

Chairman McComas then again recognized Representative Ross who restated her motion of a favorable report to the proposed committee substitute, incorporating the adopted Wainwright amendment, and an unfavorable report to the original bill. Seeing no further discussion, Chairman McComas then called the motion to a vote, and it carried with no known objection.

As the Committee's time had then expired due to the impending House session, Chairman McComas adjourned the meeting at 9:09 am.

Respectfully submitted,

Representative Danny McComas
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. Senate Bill 1126 (and related materials)
4. Wainwright Amendment on SB 1126 - **ADOPTED**
5. House Bill 1084 (and related materials) – (NOT DISCUSSED)

ATTACHMENT 1

AGENDA

House Finance Committee

June 28, 2005
8:30 a.m.
Room 544 LOB
Chaired by: Rep. McComas

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard
Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order

Introduction of Pages

Bills:

HB 1084 **EXPUNGE NONVIOLENT FELONIES/YOUNG OFFENDERS**
Rep. Bordsen

SB 1126 **AMEND FISHING LICENSE REQUIREMENTS-2** *Sen. Albertson*

Adjournment

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, June 28, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 1084 – EXPUNGE NONVIOLENT FELONIES/YOUNG OFFENDERS – Rep. Bordsen

SB 1126 – AMEND FISHING LICENSE REQUIREMENTS-2 – Sen. Albertson

Respectfully,
Representatives Alexander, Gibson, Howard,
Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **9:20 a.m.** on **June 23, 2005**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

ATTACHMENT 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 28, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Molly Ryan	NCSBA
Erin Wynia	NCGA
Suzanne Kelly	GA
Lawrence Davis	CCA
Stephanie Simpson	NCAR
Ken McHan	D.O.R.
	DENR
	DOAC

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 28, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dick Hamilton	NCWRC
Gordon Myers	NCWRC
Eddie Caldwell	NC Sheriffs Assn.
ANN LANE	DWQ
DAVID BARNES	Poyner Spruill LLP
Henry Hufham	N.R.S.D.A.
MIKE WATERS	NCRPA
Clark Leonard	Intern - Rep. Dewey Hill
Rich Wilds	NCGA Intern
Dan Whittle	ENV. Defense
Patricia Reuter	NLACC
Elizabeth Dalton	
Roz Smith	NCCOC

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 28, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
MIKE WARD	CCA - RALEIGH NC
[signature]	NCWA
Jimmy Johnson	Marine Fisheries Commission
Martha Ann McConnell	Carolinas Healthcare
Russ Dubisky	CCPS
Tom Bean	NC Envir Defense Wildlife Federation
Roy Lowe	CCA, NC
Jessy Schill	NCFA
SEAN McKeon	NCFA
Erin Kenney	NC Conservation Network
Shanna Beaton	NCWRC

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 28, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Holly Howington	intern, Rep Eddins

VISITOR REGISTRATION SHEET

Finance — 6-28-05

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Mel Broughton	CCA
Sheryl Stevens	OSBM
Dave Hawkins	CCA
Mike Ogden	Covenant w/ NC children
Jan Cox	DA-21
Mel Chilton	NCVAN
Will Morgan	
Jeffery Walston	DOA-YA16
Johanna Reese	DENR
BRIAN LEWIS	Covenant w/ NC's Children
Mike Rieder	Haven House
Lee Hoke	NCCH
Peg Dorer	Conf. of DAs
[illegible]	NCRA
[illegible] Powell	ACC
[illegible] HARGROVE	DJJ
[illegible]	SBE/DPI
Luther Penny	CCA-NC
Robin Smith	DENR
Jann [illegible]	NCFDA
John McKee	Gov Office
Katherine Lewis	Electric Cities

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1126

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/5/05
Finance Committee Substitute Adopted 4/6/05
Fourth Edition Engrossed 4/11/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1126-CSSB-31 [v.23]

6/22/2005 1:14:54 PM

Short Title: Implement CRFL/Amend Fisheries Laws. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF THE COASTAL RECREATIONAL FISHING LICENSE, TO EXEMPT FROM COASTAL RECREATIONAL FISHING LICENSE REQUIREMENTS ONLY THOSE INDIVIDUALS WHO ARE UNDER 16 YEARS OF AGE OR WHO HOLD CERTAIN LICENSES ISSUED BY THE WILDLIFE RESOURCES COMMISSION THAT WERE PURCHASED PRIOR TO JANUARY 1, 2005, TO REPEAL THE NATURAL BAIT EXEMPTION FROM HOOK-AND-LINE FISHING LICENSE REQUIREMENTS, TO PROVIDE FOR A STATEWIDE SUBSISTENCE FISHING LICENSE, TO PROHIBIT THE WILDLIFE RESOURCES COMMISSION FROM DISCLOSING PERSONAL IDENTIFYING INFORMATION OF LICENSEES AND OTHERS UNDER CERTAIN CIRCUMSTANCES, TO AMEND VARIOUS STATUTES RELATED TO THE WILDLIFE RESOURCES COMMISSION, TO PROVIDE A SYSTEM OF UNIFIED LICENSES UNDER WHICH INDIVIDUALS MAY FISH THROUGHOUT THE STATE, TO RECONSTITUTE THE MARINE FISHERIES COMMISSION, TO AUTHORIZE THE NEW MARINE FISHERIES COMMISSION TO DISBURSE FISHING LICENSE REVENUES AND INVESTMENT INCOME TO MANAGE THE MARINE RESOURCES OF THE STATE, TO AUTHORIZE MARINE INSPECTORS TO ACCEPT DEPUTIZATION FROM THE NATIONAL MARINE FISHERIES SERVICE, AND TO PROVIDE MARINE INSPECTORS WITH THE SAME ENFORCEMENT AUTHORITY AS WILDLIFE PROTECTORS.

The General Assembly of North Carolina enacts:

PART I. AMEND FISHING LICENSE REQUIREMENTS

SECTION 1.1. The title of Article 14B of Chapter 113 of the General Statutes reads as rewritten:

"Article 14B.

~~Saltwater~~ Coastal Recreational Fishing Licenses."

SECTION 1.2. G.S. 113-174 reads as rewritten:

"**§ 113-174. Definitions.**

As used in this Article:

~~(1) "Commission" means the Marine Fisheries Commission.~~

(1a) "CRFL" means Coastal Recreational Fishing License.

(2) "Division" means the Division of Marine Fisheries in the Department of Environment and Natural Resources.

(2a) "For Hire Boat" means a charter boat, head boat, dive boat, or other boat hired to allow individuals to engage in recreational fishing.

(3) "North Carolina resident" means an individual who is a resident within the meaning of G.S. 113-130(4).

(4) "Recreational fishing" means any activity preparatory to, during, or subsequent to the taking of any ~~fish,~~finfish or bivalve, the taking of which is subject to regulation by the Marine Fisheries Commission, by any ~~means:~~means if the purpose of the taking is to obtain finfish or bivalves that are not to be sold. "Recreational fishing" does not include the taking of finfish or bivalves:

a. ~~That does not constitute a~~ By a commercial fishing operation as defined in G.S. 113-168.

b. ~~Except as provided in~~For scientific purposes pursuant to G.S. 113-261.

c. Under a RCGL issued pursuant to G.S. 113-173.

~~(5) "SFL" means Saltwater Fishing License.~~"

SECTION 1.3. G.S. 113-174.1 reads as rewritten:

"**§ 113-174.1. ~~General~~ License required; general provisions governing licenses.**

(a) License ~~Purchase~~ Required to Engage in Recreational Fishing. – It is unlawful for any individual to engage in recreational fishing ~~in coastal~~ in:

(1) Coastal fishing waters that are not joint fishing waters without ~~having purchased~~ holding a current license ~~required by this Article.~~ issued under this Article or under Article 25A of this Chapter that authorizes the individual to engage in recreational fishing in coastal fishing waters.

(2) Joint fishing waters without holding a current license issued under this Article or under Article 21 or Article 25A of this Chapter that authorizes the individual to engage in recreational fishing in joint fishing waters.

(a1) Compliance with Applicable Laws. – It is unlawful for any individual to engage in recreational fishing without complying with ~~the provisions of this Article and~~

~~rules adopted by the Commission under this Article.~~applicable requirements of this Article and Articles 21 and 25A of this Chapter and with applicable rules adopted by the Marine Fisheries Commission and the Wildlife Resources Commission.

(a2) Fourth of July Free Fishing Day. – The fourth day of July of each year is declared a free fishing day to promote the sport of fishing, and no license issued under this Article or Article 25A of this Chapter is required to fish in any of the public waters of the State on that day. All other laws and rules pertaining to recreational fishing apply.

(b) Sale of Fish Prohibited. – A license issued under this Article or Article 25A of this Chapter does not authorize an individual who takes or lands any species of fish under the authority of the Marine Fisheries Commission to sell, offer for sale, barter, or exchange the fish for anything of value. Except as provided in G.S. 113-168.4, it is unlawful for any individual who takes or lands any species of fish under the authority of the Marine Fisheries Commission by any means to sell, offer for sale, barter, or exchange these fish for anything of value.

(c) Assignment and Transfer Prohibited. – It is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a license issued under this Article or Article 25A of this Chapter or to attempt to buy, sell, lend, borrow, assign, or otherwise transfer a license issued under this ~~Article.~~Article or Article 25A of this Chapter.

~~(d) General Enforcement. – It is unlawful for any individual to engage in recreational fishing in coastal fishing waters in the State without providing the individual's name and residence address upon the request of an inspector or other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.~~

~~(e) Enforcement for Charterboats and Headboats. – An inspector or other law enforcement officer may only verify the licensure of an individual fishing from a charterboat or headboat after the charterboat or headboat has returned to shore and the individual has disembarked from the charterboat or headboat. Except as provided in G.S. 113-174.2(d), each individual on board a charterboat or headboat engaged in recreational fishing, other than crew members who do not engage in recreational fishing, must have purchased a current SFL issued pursuant to G.S. 113-174.2. An owner, operator, or crew member of a charterboat or headboat is not responsible for the licensure of a customer fishing from a charterboat or headboat.~~

(f) ~~Cancellation.~~Cancellation of Fraudulent License; Penalties. – The ~~Division~~ Wildlife Resources Commission may cancel a license issued by the Commission under this Article or Article 25A of this Chapter if the license was issued on the basis of false information supplied by the license applicant. The Division may cancel a For Hire Blanket CRFL issued under G.S. 113-174.3 or an Ocean Fishing Pier Blanket CRFL issued under G.S. 113-174.4 if the license was issued on the basis of false information supplied by the license applicant. A cancelled license is void from the date of issuance. It is a Class 1 misdemeanor for an individual to knowingly do any of the following:

(1) Engage in any activity regulated under this Article with an improper, false, or altered license.

(2) Make any false, fraudulent, or misleading statement in applying for a license issued under this Article or Article 25A of this Chapter.

(3) Counterfeit, alter, or falsify any application or license issued under this Article or Article 25A of this Chapter.

(g) Reporting Requirements. – A person licensed under this Article or Article 25A of this Chapter shall comply with the biological data sampling and survey programs of the Marine Fisheries Commission and the Division.

(h) Replacement Licenses. – Upon receipt of a proper application together with a fee of five dollars ($5.00), the Wildlife Resources Commission or the Division may issue a new license to replace one issued by the respective agency that has been lost or destroyed before its expiration. The application must be on a form of the Wildlife Resources Commission or the Division setting forth information in sufficient detail to allow ready identification of the lost or destroyed license and ascertainment of the applicant's continued entitlement to it."

SECTION 1.4. G.S. 113-174.2 reads as rewritten:

"**§ 113-174.2. ~~Saltwater~~ Coastal Recreational Fishing License.**

~~(a) License Required. – Except as otherwise provided in this Article, it is unlawful for any individual to engage in recreational fishing in coastal fishing waters by means of recreational gear without having purchased a current SFL issued under this section. It is unlawful for any individual fishing under a SFL to possess fish in excess of recreational possession limits.~~

(a1) Authorization to Fish in Coastal and Joint Fishing Waters. – A CRFL issued under this section authorizes the licensee to engage in recreational fishing in coastal fishing waters, including joint fishing waters. A CRFL issued under this section does not authorize the licensee to fish in inland fishing waters.

~~(b) Purchase; Renewal. – Any license issued under this section may be purchased or renewed at designated offices of the Division; from the Division by mail, electronic mail, the Internet, or telephone; or at locations designated by the North Carolina Saltwater Fishing Fund Board of Trustees.~~

(c) Types of ~~SFLs;~~CRFLs; Fees; Duration. – The ~~Division~~ Wildlife Resources Commission shall issue the following ~~SFLs:~~CRFLs:

(1) ~~One-year SFL.~~ Annual Resident CRFL. – $15.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State.

(1a) Annual Nonresident CRFL. – $30.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is not a resident of the State.

~~(2) Two-year SFL. – $30.00. This license is valid for a period of two years from the date of issuance.~~

~~(3) Three-year SFL. – $45.00. This license is valid for a period of three years from the date of issuance.~~

(4) ~~Seven-day SFL.~~Ten-Day Resident CRFL. – ~~$1.00.~~$5.00. This license is valid for a period of ~~seven consecutive days.~~10 consecutive days, as indicated on the license. ~~An individual may purchase this license only once in any 12-month period.~~ This license shall be issued only to an individual who is a resident of the State.

(4a) Ten-Day Nonresident CRFL. – $10.00. This license is valid for a period of 10 consecutive days, as indicated on the license. This license shall be issued only to an individual who is not a resident of the State.

~~(5) Subsistence SFL. An applicant for a license under this subdivision shall provide to the Division a certification from the Department of Health and Human Services that the individual falls below the federal poverty level. A license issued under this subdivision shall be issued without charge and is valid for a period of one year from the date of issuance.~~

(6) Lifetime ~~SFL.~~CRFLs. – ~~This license is~~Except as provided in sub-subdivision j. of this subdivision, CRFLs issued under this subdivision are valid for the lifetime of the licensee. ~~The fee for the Lifetime SFL, based on the age of the prospective licensee as of the date on which the application is filed with the Division, is:~~

~~a. Younger than six years of age $100.00~~

~~b. Six years of age to younger than 11 years of age $150.00~~

~~c. 11 years of age to younger than 18 years of age $200.00~~

~~d. 18 years of age or older $500.00~~

e. Infant Lifetime CRFL. – $100.00. This license shall be issued only to an individual younger than one year of age.

f. Youth Lifetime CRFL. – $150.00. This license shall be issued only to an individual who is one year of age or older but younger than 12 years of age.

g. Resident Adult Lifetime CRFL. – $250.00. This license shall be issued only to an individual who is 12 years of age or older but younger than 70 years of age and who is a resident of the State.

h. Nonresident Adult Lifetime CRFL. – $500.00. This license shall be issued only to an individual who is 12 years of age or older and who is not a resident of the State.

i. Resident Elderly Lifetime CRFL. – $10.00. This license shall be issued only to an individual who is 70 years of age or older and who is a resident of the State.

j. Resident Disabled Veteran CRFL. – $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

k. Resident Totally Disabled CRFL. – $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration.

(d) Exemptions. – An individual ~~may engage in recreational fishing by means of recreational gear without having purchased a SFL~~is exempt from the license requirements of G.S. 113-174.1(a) if the individual ~~is~~ either:

(1) Is under 16 years of age.~~18 years of age or younger and is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.~~

(2) Holds any of the following licenses that were purchased prior to January 1, 2005:

a. Infant Lifetime Sportsman License issued under G.S. 113-270.1D(b)(1).

b. Youth Lifetime Sportsman License issued under G.S. 113-270.1D(b)(2).

c. Adult Resident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(3).

d. Nonresident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(4).

e. Age 70 Resident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(5).

f. Lifetime Resident Comprehensive Fishing License issued under G.S. 113-271(d)(3).

g. Lifetime Combination Hunting and Fishing License for Disabled Residents issued under G.S. 113-270.1C(b)(4).

h. Disabled Resident Sportsman License issued under G.S. 113-270.1D(b)(6).

(3) Holds any of the following licenses:

a. Lifetime Fishing License for the Legally Blind issued under G.S. 113-271(d)(7).

b. Adult Care Home Resident Fishing License issued under G.S. 113-271(d)(8)."

SECTION 1.5. Article 14B of Chapter 113 of the General Statutes is amended by adding two new sections to read:

"**§ 113-174.3. For Hire Blanket CRFL.**

(a) License. – A person who operates a for hire boat may purchase a For Hire Blanket CRFL issued by the Division. A For Hire Blanket CRFL authorizes all individuals on the for hire boat who do not hold a license issued under this Article or Article 25A of this Chapter to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. A For Hire Blanket CRFL does not authorize individuals to engage in recreational fishing in joint fishing waters or inland fishing waters. This license is valid for a period of one year from the date of issuance. The fee for a For Hire Blanket CRFL is:

(1) Three hundred dollars ($300.00) for a vessel captained by an individual who holds a certification from the United States Coast Guard to carry six or fewer passengers.

(2) Four hundred dollars ($400.00) for a vessel captained by an individual who holds a certification from the United States Coast Guard to carry greater than six passengers.

(b) Implementation. – Except as provided in this section and G.S. 113-174.2(d), each individual on board a for hire boat engaged in recreational fishing, other than crew members who do not engage in recreational fishing, must hold a license issued under this Article or Article 25A of this Chapter. An owner, operator, or crew member of a for hire boat is not responsible for the licensure of a customer fishing from the boat.

"**§ 113-174.4. Ocean Fishing Pier Blanket CRFL.**

Ocean Fishing Pier Blanket CRFL. – A person who owns or operates an ocean fishing pier and who charges a fee to allow a person to engage in recreational fishing from the pier may purchase an Ocean Fishing Pier Blanket CRFL issued by the Division. An Ocean Fishing Pier Blanket CRFL authorizes all individuals who do not hold a license issued under this Article or Article 25A of this Chapter to engage in recreational fishing in coastal fishing waters while on the pier. This license is valid for a period of one year from the date of issuance. The fee for an Ocean Fishing Pier Blanket CRFL is four dollars ($4.00) per linear foot, to the nearest foot, that the pier extends into coastal fishing waters beyond the mean high waterline. The length of the pier shall be measured to include all extensions of the pier."

SECTION 1.6. G.S. 113-270.1C reads as rewritten:

"§ **113-270.1C. Combination hunting and inland fishing licenses.**

(a) The combination hunting and inland fishing licenses set forth in subsection (b) of this section entitle the ~~holder~~ licensee to take, except on game lands, all wild birds and wild animals, other than big game and waterfowl, by all lawful methods and in all open seasons, and to fish with hook and line in all inland and joint fishing waters, except public mountain trout waters. A combination hunting and inland fishing license issued under this section does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters.

(b) Combination hunting and inland fishing licenses issued by the Wildlife Resources Commission are:

(1) Resident Annual Combination Hunting and Inland Fishing License – $20.00. This license shall be issued only to an individual resident of the State.

(2), (3) Repealed by Session Laws 1997-326, s. 2.

~~(4) Lifetime Combination Hunting and Fishing License for Disabled Residents – $10.00. This license shall be issued only to (i) an individual resident of the State who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs, remaining valid for the lifetime of the individual so long as the individual remains fifty percent (50%) or more disabled; or (ii) an individual resident of the State who is totally disabled, remaining valid for the lifetime of the individual so long as the individual remains totally disabled. For purposes of this section, "totally disabled" means physically incapable of being gainfully~~

~~employed. The application form for this license, to be provided by the Wildlife Resources Commission, allows a person to apply only for the fishing privileges conveyed by the license. This license entitles the holder to fish in public mountain trout waters as provided in G.S. 113-272(a).~~

(5) Resident Disabled Veteran Lifetime Combination Hunting and Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled. This license entitles the licensee to fish in public mountain trout waters as provided in G.S. 113-272(a).

(6) Resident Totally Disabled Lifetime Combination Hunting and Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration. This license remains valid for the lifetime of the licensee. This license entitles the licensee to fish in public mountain trout waters as provided in G.S. 113-272(a)."

SECTION 1.7. G.S. 113-270.1D reads as rewritten:

"**§ 113-270.1D. Sportsman licenses.**

(a) Annual Sportsman License – $40.00. This license shall be issued only to an individual resident of the State and entitles the ~~holder~~ licensee to take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands, and to fish with hook and line for all fish in all inland and joint fishing waters, including public mountain trout waters. An annual sportsman license issued under this subsection does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters.

(b) Lifetime Sportsman Licenses. ~~Lifetime~~ Except as provided in subdivision (7) of this subsection, lifetime sportsman licenses are valid for the lifetime of the ~~holders~~ licensees.~~and~~ Lifetime sportsman licenses entitle the ~~holders~~ licensees to take all wild animals and wild birds by all lawful methods in all open seasons, including the use of game lands, and to fish with hook and line for all fish in all inland and joint fishing waters, including public mountain trout waters. A lifetime sportsman license issued under this subsection does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. Lifetime sportsman licenses issued by the Wildlife Resources Commission are:

(1) Infant Lifetime Sportsman License – $200.00. This license shall be issued only to an individual under one year of age.

(2) Youth Lifetime Sportsman License – $350.00. This license shall be issued only to an individual under 12 years of age.

(3) Adult Resident Lifetime Sportsman License – $500.00. This license shall be issued only to an individual resident of the State.

(4) Nonresident Lifetime Sportsman License – $1,000. This license shall be issued only to an individual nonresident of the State.

(5) Age 70 Resident Lifetime Sportsman License – $10.00. This license shall be issued only to an individual resident of the State who is at least 70 years of age.

~~(6) Disabled Resident Sportsman License – $100.00. This license shall be issued only to (i) an individual resident of the State who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs, remaining valid for the lifetime of the individual so long as the individual remains fifty percent (50%) or more disabled; or (ii) an individual resident of the State who is totally disabled, remaining valid for the lifetime of the individual so long as the individual remains totally disabled. For purposes of this section, "totally disabled" means physically incapable of being gainfully employed.~~

(7) Resident Disabled Veteran Lifetime Sportsman License – $100.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

(8) Resident Totally Disabled Lifetime Sportsman License – $100.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration."

SECTION 1.8. G.S. 113-271 reads as rewritten:

"**§ 113-271. Hook-and-line licenses in inland and joint fishing waters.**

(a) An inland hook-and-line fishing license issued under this section entitles the licensee to fish with hook and line in inland fishing waters and joint fishing waters. An inland hook-and-line fishing license issued under this section does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. An inland hook-and-line fishing license issued under subdivision (1), (3), (6a), (6b), (6c), or (9) of subsection (d) of this section entitles the licensee ~~All the hook-and-line fishing licenses set forth in subdivisions (1), (3), (7), and (9) of subsection (d) of this section entitle the holder~~ to fish with hook and line in public mountain trout waters.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 684, s. 4.

(c) Repealed by Session Laws 1979, c. 830, s. 1.

(d) The hook-and-line fishing licenses issued by the Wildlife Resources Commission are as follows:

(1) Resident Annual Comprehensive Inland Fishing License – $20.00. This license shall be issued only to an individual resident of the State.

(2) Resident State Inland Fishing License – $15.00. This license shall be issued only to an individual resident of the State.

(3) Lifetime Resident Comprehensive Inland Fishing License – $250.00. This license shall be issued only to an individual resident of the State and is valid for the lifetime of the ~~holder.~~licensee.

(4) Resident County Inland Fishing License – $10.00. This license shall be issued only to an individual resident of the State and is valid only within the county of residence of the ~~license holder.~~licensee.

(5) Nonresident State Inland Fishing License – $30.00. This license shall be issued to an individual nonresident of the State.

(6) Short-Term Inland Fishing Licenses. Short-term inland fishing licenses are valid only for the date or consecutive dates indicated on the licenses. Short-term inland fishing licenses issued by the Wildlife Resources Commission are:

a. Resident ~~one-day~~10-day Inland Fishing License – $5.00. This license shall be issued only to a resident of the State.

b. Nonresident ~~one-day~~10-day Inland Fishing License – $10.00. This license shall be issued only to a nonresident of the State.

~~c. Nonresident three-day – $15.00. This license shall be issued only to a nonresident of the State.~~

(6a) Age 70 Resident Lifetime Inland Fishing License – $10.00. This license shall be issued only to an individual resident of the State who is at least 70 years of age.

(6b) Resident Disabled Veteran Lifetime Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

(6c) Resident Totally Disabled Lifetime Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration. This license remains valid for the lifetime of the licensee.

~~(7) Lifetime Fishing License for the Legally Blind – No charge. This license shall be issued only to an individual resident of the State who has been certified by the Department of Health and Human Services as a person whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential. This license is valid for the life of the individual so long as he remains legally blind.~~

~~(8) Adult Care Home Resident Fishing License – No charge. This license shall be issued only to an individual resident of the State who resides in an adult care home as defined in G.S. 131D-2(a)(3) or G.S. 131E-101(4). This license is valid for the life of the individual so long as the individual remains a resident of an adult care home.~~

(9) Special Guest Inland Fishing License – $50.00. This license shall be issued only to the owner or lessee of private property bordering inland or joint fishing waters, including public mountain trout waters, and entitles ~~persons~~ individuals to fish from the shore or any pier or dock originating from the property without any additional fishing license. This license is applicable only to private property and private docks and piers and is not valid for any public property, pier, or dock nor for any private property, pier, or dock operated for any commercial purpose whatsoever. The guest fishing license shall not be in force unless displayed on the premises of the property and only entitles fishing without additional license to ~~persons~~ individuals fishing from the licensed property and then only when fishing within the private property lines. The guest fishing license is not transferable as to person or location."

SECTION 1.9. G.S. 113-272.3(c) reads as rewritten:

"(c) Lifetime licenses are issued from the Wildlife Resources Commission headquarters. Each application for an Infant Lifetime Sportsman or Youth Lifetime Sportsman License must be accompanied by a certified copy of the birth ~~certificate~~ certificate, adoption order containing the date of birth, or other proof of age satisfactory to the Commission, of the individual to be named as the ~~license holder.~~licensee."

SECTION 1.10. G.S. 113-275(c1) reads as rewritten:

"(c1) Upon receipt of a proper application together with a fee of ~~two~~ five dollars ~~($2.00),~~($5.00), the Wildlife Resources Commission may issue a new license or permit to replace one that has been lost or destroyed before its expiration. The application must be on a form of the Wildlife Resources Commission setting forth information in sufficient detail to allow ready identification of the lost or destroyed license or permit and ascertainment of the applicant's continued entitlement to it."

SECTION 1.11. G.S. 113-276(e) is repealed.

SECTION 1.12. G.S. 113-276(j) reads as rewritten:

"(j) A migrant farm worker who has in his possession a temporary certification of his status as such by the Rural Employment Service of the North Carolina Employment Security Commission on a form provided by the Wildlife Resources Commission is entitled to the privileges of a resident of the State and of the county indicated on such certification during the term thereof for the purposes ~~of:~~of

~~(1)~~ ~~Purchasing~~purchasing and using the resident fishing licenses provided by G.S. 113-271(d)(2), (4), and ~~(6)a.; and~~(6)a.

~~(2) Utilizing the natural bait exemption in subsection (e) above.~~"

SECTION 1.13. G.S. 113-276(m) reads as rewritten:

"(m) ~~Notwithstanding any other provision of law, the~~ The fourth day of July of each year is declared a free fishing day to promote the sport of fishing and no hook-and-line fishing license is required to fish in any of the public waters of the State on ~~this~~ that day. All other laws and rules pertaining to hook-and-line fishing ~~still~~ apply."

SECTION 1.14. G.S. 113-276 is amended by adding a new subsection to read:

"(n) The Wildlife Resources Commission may adopt rules to exempt individuals who participate in organized fishing events held in inland or joint fishing waters from recreational fishing license requirements for the specified time and place of the event when the purpose of the event is consistent with the conservation objectives of the Commission."

SECTION 1.15. G.S. 113-296(b) reads as rewritten:

"(b) In order to be eligible for participation in the Disabled Sportsman Program established by this section, ~~a person~~an individual must be able to certify through competent medical evidence one of the following disabilities:

(1) ~~Amputation of~~Missing fifty percent (50%) or more of one or more ~~limbs;~~limbs, whether by amputation or natural causes.

(2) Paralysis of one or more ~~limbs;~~limbs.

(3) Dysfunction of one or more limbs rendering the ~~person~~ individual unable to perform the tasks of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a ~~cane;~~cane.

(4) Disease, injury, or defect confining the ~~person~~ individual to a wheelchair, walker, or ~~crutches;~~crutches.

(5) Legal ~~deafness; or~~deafness.

(6) Legal blindness, for purposes of participation in disabled fishing only.

The disability must be permanent, and ~~a person~~an individual loses eligibility to participate in the Disabled Sportsman Program when the specified disability ceases to exist."

SECTION 1.16. Subchapter IV of Chapter 113 of the General Statutes is amended by adding a new Article to read:

"Article 25A.

"Unified Licenses.

"**§ 113-351. Unified hunting and fishing licenses; subsistence license waiver.**

(a) Definitions. – The definitions set out in G.S. 113-174 apply to this Article.

(b) General Provisions Governing Licenses and Waivers. – The general provisions governing licenses set out in G.S. 113-174.1 apply to licenses and waivers issued under this section.

(c) Types of Unified Hunting and Fishing Licenses; Fees; Duration. – The Wildlife Resources Commission shall issue the following Unified Hunting and Fishing Licenses:

(1) Annual Resident Unified Sportsman/Coastal Recreational Fishing License. – $55.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State. This license authorizes the licensee to take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands; to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters; and to engage in recreational fishing in coastal fishing waters.

(2) Annual Resident Unified Inland/Coastal Recreational Fishing License. – $35.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State. This license authorizes the licensee to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters, and to engage in recreational fishing in coastal fishing waters.

(3) Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses. – Except as provided in sub-subdivision f. of this subdivision, a license issued under this subdivision is valid for the lifetime of the licensee. A license issued under this subdivision authorizes the licensee to take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands; to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters; and to engage in recreational fishing in coastal fishing waters.

a. Infant Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $275.00. This license shall be issued only to an individual who is younger than one year of age.

b. Youth Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $450.00. This license shall be issued only to an individual who is one year of age or older but younger than 12 years of age.

c. Resident Adult Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $675.00. This license shall be issued only to an individual who is 12 years of age or older but younger than 70 years of age and who is a resident of the State.

d. Nonresident Adult Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $1,350. This license shall be issued only to an individual who is 12 years of age or older and who is not a resident of the State.

e. Resident Elderly Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $20.00. This license shall be issued only to an individual who is 70 years of age or older and who is a resident of the State.

f. Resident Disabled Veteran Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $110.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

g. Resident Totally Disabled Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $110.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration.

(4) Lifetime Unified Inland/Coastal Recreational Fishing Licenses. – Except as provided in sub-subdivisions b. and c. of this subdivision, a license issued under this subdivision is valid for the lifetime of the licensee. A license issued under this subdivision authorizes the licensee to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters, and to engage in recreational fishing in coastal fishing waters.

a. Lifetime Unified Inland/Coastal Recreational Fishing License. – $450.00.

b. Resident Legally Blind Lifetime Unified Inland/Coastal Recreational Fishing License. – No charge. This license shall be issued only to an individual who is a resident of the State and who has been certified by the Department of Health and Human Services as an individual whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential. This license remains valid for the lifetime of the licensee so long as the licensee remains legally blind.

c. Resident Adult Care Home Lifetime Unified Inland/Coastal Recreational Fishing License. – No charge. This license shall be issued only to an individual who is a resident of the State and who resides in an adult care home as defined in G.S. 131D-2(a)(1b) or G.S. 131E-101(1). This license remains valid for the lifetime of the licensee so long as the licensee remains a resident of an adult care home.

(d) Resident Subsistence Unified Inland/Coastal Recreational Fishing License. – $1.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State. This license authorizes the licensee to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, except for public mountain trout waters, and to engage in recreational fishing in coastal fishing waters. An applicant for a license issued under this subsection shall provide to a designated license agent a certification from the county department of social services that the applicant is currently enrolled and receives benefits from at least one of the eligible social service programs listed on an application developed by the Division of Marine Fisheries and the Wildlife Resources Commission."

SECTION 1.17. Article 24 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-254.5. Disclosure of personal identifying information.**

(a) Personal identifying information obtained by the Commission from an applicant for a license, title, permit, or registration issued by the Commission, from a consumer who purchases or subscribes to a good or service offered by the Commission, or from a donor in connection with any gift to the Commission is confidential under G.S. 132-1.2 and shall only be disclosed by the Commission as provided in this section.

(b) Personal identifying information obtained from the holder of a license issued under Article 14B or Article 25A of Chapter 113 of the General Statutes shall be disclosed to the Division of Marine Fisheries and the Marine Fisheries Commission.

(c) Personal identifying information may be disclosed to any officer, employee, or authorized representative of any federal, state, or local government agency if disclosure is necessary to carry out a proper function of the Commission or other agency.

(d) As used in this section, "personal identifying information" includes a person's mailing address, residence address, date of birth, telephone number, electronic mail address, driver license number, and social security number."

SECTION 1.18. Sections 3, 4, 9, 10, 11, and 12 of S.L. 2004-187 are repealed.

SECTION 1.19. Section 15 of S.L. 2004-187 reads as rewritten:

"**SECTION 15.** ~~Sections 2, 3, and 4~~Section 2 of this act ~~become~~ becomes effective January 1, ~~2006.~~2007. All other sections of this act become effective when the act becomes law."

SECTION 1.20. The repeal by this act of the statutory authority of the Wildlife Resources Commission to issue a type of license shall not affect the authority of an individual to whom a license of that type is issued prior to the effective date of the repeal to engage in the activity that the repealed license type authorizes so long as the license is otherwise valid.

SECTION 1.21. G.S. 113-130(4) is amended by adding a new subdivision to read:

"f. Students. – Nonresident students attending a university, college, or community college in the State."

PART II. MARINE RESOURCES FUND AND MARINE RESOURCES ENDOWMENT FUND

SECTION 2.1. The title of Article 14C of Chapter 113 of the General Statutes reads as rewritten:

"Article 14C.

~~North Carolina Saltwater Fishing~~Marine Resources Fund and Marine Resources Endowment Fund."

SECTION 2.2. G.S. 113-175 reads as rewritten:

"**§ 113-175. Definitions.**

As used in this Article:

~~(1) "Board of Trustees" means the Board of Trustees of the Fund.~~

(1a) "Endowment Fund" means the North Carolina Marine Resources Endowment Fund.

(1b) "Endowment investment income" means interest and other income earned from the investment of the principal of the Endowment Fund.

(1c) "Endowment license revenues" means the net proceeds from the sale of licenses issued under G.S. 113-174.2(c)(6) and a portion of the net proceeds from the sale of licenses issued under G.S. 113-351(c)(3) and (4). The apportionment of the net proceeds from the sale of licenses issued under G.S. 113-351(c)(3) and (4) shall be jointly determined by the Division of Marine Fisheries and the Wildlife Resources Commission. In the event that the Division of Marine Fisheries and the Wildlife Resources Commission cannot agree on the apportionment, the Governor is authorized to determine the apportionment.

(2) ~~"Fund"~~"Marine Resources Fund" means the North Carolina ~~Saltwater Fishing~~Marine Resources Fund.

(3) ~~"Investment"~~"Marine resources investment income" means interest earned from the investment of ~~license revenues and the proceeds of any gifts, grants, or contributions deposited in~~ the principal of the Marine Resources Fund.

(4) ~~"License"~~"Marine resources license revenues" means the net proceeds from the sale of ~~Saltwater Fishing Licenses~~licenses issued under ~~G.S. 113-174.2.~~Article 14B of this Chapter and a portion of the net proceeds from the sale of licenses issued under Article 25A of this Chapter, excluding endowment license revenues. The apportionment of the net proceeds from the sale of licenses issued under Article 25A of this Chapter shall be jointly determined by the Division of Marine Fisheries and the Wildlife Resources Commission. In the event that the Division of Marine Fisheries and the Wildlife Resources Commission cannot agree on the apportionment, the Governor is authorized to determine the apportionment. ~~The term includes funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced with license revenues and federal aid project reimbursements to the extent that license revenues originally funded the project for which the reimbursement is made.~~"

SECTION 2.3. G.S. 113-175.1 reads as rewritten:

"**§ 113-175.1. North Carolina ~~Saltwater Fishing Fund.~~Marine Resources Fund.**

(a) There is hereby established the North Carolina ~~Saltwater Fishing~~Marine Resources Fund as a nonreverting special revenue fund in the office of the State Treasurer. The purpose of the Marine Resources Fund is to enhance the ~~fishery~~ marine resources of the ~~State for commercial and recreational fishing.~~State. ~~License revenues and the proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Fund shall be deposited in the Fund.~~ The principal of the Marine Resources Fund shall consist of:

(1) Marine resources license revenues.

(2) Proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Marine Resources Fund.

(3) Funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced from funds disbursed from the Marine Resources Fund.

(4) Federal aid project reimbursements to the extent that funds disbursed from the Marine Resources Fund originally funded the project for which the reimbursement is made.

(b) The State Treasurer shall hold the Marine Resources Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall invest the assets of the Marine Resources Fund in accordance with the provisions of G.S. 147 69.2 and ~~G.S. 147-69.3.~~ G.S. 147 69.3 and all marine resources investment income shall be deposited to the credit of the Marine Resources Fund. The State Treasurer shall disburse the principal of the Marine Resources Fund and marine resources investment income only upon the written direction of the Marine Fisheries Commission.

(c) The Marine Fisheries Commission may authorize the disbursement of the principal of the Marine Resources Fund and marine resources investment income only to manage, restore, develop, cultivate, conserve, and enhance the marine resources of the State. Expenditure of the assets of the Marine Resources Fund shall be made through the State budget accounts of the Division of Marine Fisheries in accordance with the provisions of the Executive Budget Act. The Marine Resources Fund is subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

SECTION 2.4. G.S. 113-175.2 is repealed.

SECTION 2.5. G.S. 113-175.3 is repealed.

SECTION 2.6. G.S. 113-175.4 is repealed.

SECTION 2.7. Article 14C of Chapter 113 of the General Statutes is amended by adding three new sections to read:

"**§ 113-175.5. North Carolina Marine Resources Endowment Fund.**

(a) There is hereby established the North Carolina Marine Resources Endowment Fund as a nonreverting special revenue fund in the office of the State Treasurer. The purpose of the Endowment Fund is to provide the citizens and residents of the State with the opportunity to invest in the future of the marine resources of the State. The principal of the Endowment Fund shall consist of:

(1) Endowment license revenues.

(2) Proceeds of any gifts, grants, or contributions to the State that are specifically designated for inclusion in the Endowment Fund.

(3) Proceeds of any gifts, grants, or contributions to the Marine Fisheries Commission or the Division of Marine Fisheries that are not specifically designated for another purpose.

(4) Funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced from endowment investment income.

(5) Federal aid project reimbursements to the extent that endowment investment income originally funded the project for which the reimbursement is made.

(6) Transfers to the Endowment Fund.

(7) Any endowment investment income or marine resources license revenue that is credited to the Endowment Fund for the purpose of increasing the principal of the Endowment Fund.

(b) The State Treasurer shall hold the Endowment Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall invest the assets of the Endowment Fund in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3. The State Treasurer shall disburse the endowment investment income only upon the written direction of the Marine Fisheries Commission.

(c) Subject to the limitations set out in subsection (d) of this section, the Marine Fisheries Commission may authorize the disbursement of endowment investment income only to manage, protect, restore, develop, cultivate, conserve, and enhance the marine resources of the State.

(d) The Endowment Fund is declared to constitute a special trust derived from a contractual relationship between the State and the members of the public whose investments contribute to the Endowment Fund. In recognition of this special trust, all of the following limitations are placed on disbursement of funds held in the Endowment Fund:

(1) Any restrictions specified by the donors on the uses of income derived from gifts, grants, and voluntary contributions shall be respected but shall not be binding.

(2) No disbursements of the endowment investment income derived from the endowment license revenues generated by the sale of Infant Lifetime CRFLs under G.S. 113-174.2(c)(6)e., Youth Lifetime CRFLs under G.S. 113-174.2(c)(6)f., Infant Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses under G.S. 113-351(c)(3)a., or Youth Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses under G.S. 113-351(c)(3)b. shall be made for any purpose until the respective licensees attain the age of 16 years. The State Treasurer shall periodically make an actuarial determination as to the amount of endowment investment income within the Endowment Fund that remains encumbered by the restriction of this subdivision and the amount that is free of the restriction. The Executive Director of the Wildlife Resources Commission shall provide the State Treasurer with the information necessary to make this determination.

(3) No disbursement shall be made from the principal of the Endowment Fund except as otherwise provided by law.

(e) Expenditure of the endowment investment income shall be made through the State budget accounts of the Division of Marine Fisheries in accordance with the provisions of the Executive Budget Act. The Endowment Fund is subject to the

oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

"**§ 113-175.6. Marine Resources Committee.**

(a) The Marine Resources Committee shall consist of five members of the Marine Fisheries Commission appointed by the Chair of the Marine Fisheries Commission as follows:

(1) The Fisheries Director, shall be an ex officio voting member of the Marine Resources Committee and shall serve as the Chair of the Marine Resources Committee.

(2) One member of the Marine Fisheries appointed to the Commission pursuant to subdivision (1), (5), or (9) of subsection (a) of G.S. 143B-289.69.

(3) One member of the Marine Fisheries appointed to the Commission pursuant to subdivision (2), (6), or (10) of subsection (a) of G.S. 143B-289.69.

(4) One member of the Marine Fisheries appointed to the Commission pursuant to subdivision (3), (7), or (11) of subsection (a) of G.S. 143B-289.69.

(5) One member of the Marine Fisheries appointed to the Commission pursuant to subdivision (4), (8), or (12) of subsection (a) of G.S. 143B-289.69.

(b) In making appointments to the Marine Resources Committee, the Chair of the Marine Fisheries Commission shall provide for fair geographic representation on the Committee.

(c) The Marine Resources Committee shall advise the Marine Fisheries Commission on the disbursement of funds from the Marine Resources Fund pursuant to G.S. 113-175.1 and on the disbursement of endowment investment income from the Endowment Fund pursuant to G.S. 113-175.5.

"**§ 113-175.7. Report.**

The Chair of the Marine Fisheries Commission shall submit to the Joint Legislative Commission on Seafood and Aquaculture by October 1 of each year a report on the Marine Resources Fund and the Endowment Fund that shall include the source and amounts of all moneys credited to each fund and the purpose and amount of all disbursements from each fund during the prior fiscal year."

SECTION 2.8. The first report required pursuant to G.S. 113-175.7, as enacted by Section 2.7 of this act, is due by October 1, 2006.

SECTION 2.9. The General Assembly finds that individuals who purchased certain lifetime licenses issued by the Wildlife Resources Commission prior to January 1, 2005, had a reasonable expectation that these lifetime licenses would authorize these licensees to engage in recreational fishing throughout the State and that these licensees would not be required to purchase any additional license to engage in recreational fishing in coastal waters during the lifetime of the licensee. In recognition of this expectation, the General Assembly has provided in G.S. 113-174.2(d), as enacted by Section 1.4 of this act, that the holders of these lifetime licenses are exempt from the

license requirement for engaging in recreational fishing in coastal fishing waters that was established in S.L. 2004-187. The General Assembly further finds that, because the holders of these lifetime licenses will be authorized to take marine resources from the coastal fishing waters of the State under the provisions of this act, it is appropriate that a portion of the revenues derived from the sale of these lifetime licenses should be transferred to the Marine Resources Endowment Fund so that the endowment investment income generated by the transferred license revenues will be used to manage, restore, develop, cultivate, conserve, and enhance the marine resources of the State. The General Assembly specifically finds that this transfer of funds is consistent with the overall spirit, intent, and purpose underlying the creation of the Wildlife Endowment Fund and the Marine Resources Endowment Fund. Therefore, in accordance with G.S. 143-250.1(d)(3), the State Treasurer shall transfer the sum of three million dollars ($3,000,000) from the Wildlife Endowment Fund to the Marine Resources Endowment Fund. This transfer shall be made in five equal installments of six hundred thousand dollars ($600,000) on the first day of March in 2006, 2007, 2008, 2009, and 2010.

SECTION 2.10.(a) The Wildlife Resources Commission may disburse up to one million dollars ($1,000,000) from the Wildlife Resources Fund to implement this act.

SECTION 2.10.(b) The State Treasurer shall transfer a sum equal to the sum of funds disbursed pursuant to subsection (a) of this section from the Marine Resources Fund to the Wildlife Resources Fund on July 1, 2010.

PART III. WILDLIFE RESOURCES COMMISSION LICENSE AGENTS

SECTION 3.1.(a) The Wildlife Resources Commission shall adopt rules to provide for the following:

(1) Qualifications of license agents.
(2) Duties of license agents.
(3) Methods and procedures to ensure accountability and security for proceeds and unissued licenses and permits.
(4) Types and amounts of evidence that a license agent must submit to relieve the agent of responsibility for losses due to occurrences beyond the control of the agent.
(5) Any other reasonable requirement or condition that the Wildlife Resources Commission deems necessary to expedite and control the issuance of licenses and permits by license agents.

SECTION 3.1.(b) The Wildlife Resources Commission shall adopt rules to authorize the Executive Director to take the following actions related to license agents:

(1) Select and appoint license agents in areas most convenient for the sale of licenses and permits.
(2) Limit the number of license agents in an area if necessary for efficiency of operation.

(3) Require prompt and accurate reporting and remittance of public funds or documents by license agents.
(4) Conduct periodic and special audits of accounts.
(5) Suspend or terminate the authorization of any license agent found to be noncompliant with rules adopted by the Wildlife Resources Commission or when State funds or property are reasonably believed to be in jeopardy.
(6) Require the immediate surrender of all equipment, forms, licenses, permits, records, and State funds and property, issued by or belonging to the Wildlife Resources Commission, in the event of the termination of a license agent.

SECTION 3.2. G.S. 113-270.1 reads as rewritten:

"**§ 113-270.1. License agents.**

(a) The Wildlife Resources Commission may by rule provide for the ~~annual~~ appointment of persons as license agents to sell licenses and permits ~~which it~~ that the Commission is authorized to issue by this Subchapter or by any other provisions of law. To facilitate the convenience of the public, the efficiency of administration, the need to keep statistics and records affecting the conservation of wildlife resources, boating, water safety, and other matters within the jurisdiction of the Wildlife Resources Commission, and the need to issue licenses and permits containing special restrictions, the Wildlife Resources Commission may issue licenses and permits in any particular category through:

(1) License agents.
(2) The Wildlife Resources Commission's headquarters.
(3) Employees of the Wildlife Resources Commission.
(4) Two or more such sources simultaneously.

(a1) When there are substantial reasons for differing treatment, the Wildlife Resources Commission may issue a type of license or permit by one method in one locality and by another method in another locality.

(b) License agents may deduct from the amount collected for each license or permit a fee of six percent (6%).

(b1) When licenses or permits are to be issued by license agents as provided by subsection (a) of this section, the Wildlife Resources Commission may adopt rules to provide for any of the following:

(1) Qualifications of the license agents.
(2) Duties of the license agents.
(3) Methods and procedures to ensure accountability and security for proceeds and unissued licenses and permits.
(4) Types and amounts of evidence that a license agent must submit to relieve the agent of responsibility for losses due to occurrences beyond the control of the agent.
(5) Any other reasonable requirement or condition that the Wildlife Resources Commission deems necessary to expedite and control the issuance of licenses and permits by license agents.

(b2) The Wildlife Resources Commission may adopt rules to authorize the Executive Director to take any of the following actions related to license agents:

(1) Select and appoint license agents in areas most convenient for the sale of licenses and permits.

(2) Limit the number of license agents in an area if necessary for efficiency of operation.

(3) Require prompt and accurate reporting and remittance of public funds or documents by license agents.

(4) Conduct periodic and special audits of accounts.

(5) Suspend or terminate the authorization of any license agent found to be noncompliant with rules adopted by the Wildlife Resources Commission or when State funds or property are reasonably believed to be in jeopardy.

(6) Require the immediate surrender of all equipment, forms, licenses, permits, records, and State funds and property, issued by or belonging to the Wildlife Resources Commission, in the event of the termination of a license agent.

(b3) The Wildlife Resources Commission is exempt from the contested case provisions of Chapter 150B of the General Statutes with respect to determinations of whether to authorize or terminate the authority of a person to sell licenses and permits as a license agent of the Wildlife Resources Commission.

(b4) If any check or bank account draft of any license agent for the issuance of licenses or permits shall be returned by the banking facility upon which the same is drawn for lack of funds, the license agent shall be liable to the Commission for a penalty of five percent (5%) of the amount of the check or bank account draft, but in no event shall the penalty be less than five dollars ($5.00) or more than two hundred dollars ($200.00). License agents shall be assessed a penalty of twenty-five percent (25%) of their issuing fee on all remittances to the Commission after the fifteenth day of the month immediately following the month of sale.

~~(c) The Wildlife Resources Commission may provide qualifications and standards concerning license agents and delegate to the Executive Director the task of appointment and supervision. Annual appointments run from May 1 to April 30 each year. The Wildlife Resources Commission may require license agents to post bonds, keep records and make reports concerning licenses and receipts, be subject to such audits and inspections as may be necessary, and pay a penalty of five percent (5%) on any worthless checks given the Wildlife Resources Commission. The minimum penalty for a worthless check, however, is five dollars ($5.00), and the maximum penalty is two hundred dollars ($200.00). The Wildlife Resources Commission shall require license agents to pay penalties of twenty-five percent (25%) of the agents' fees on any license fees remitted to the Commission after the fifteenth day of the month immediately following the month of sale.~~

~~(d) The Wildlife Resources Commission may make rules in implementing the authority granted in subsection (c), but it need not set out in its rules details as to forms of license, records and accounting procedures, and other reasonable requirements that~~

~~may be administratively promulgated by employees of the Wildlife Resources Commission in implementation of the purposes of this Article in order for such administrative requirements to be deemed validly required.~~ It is a Class 1 misdemeanor for a license ~~agent:~~agent to do any of the following:

(1) ~~To withhold~~Withhold or misappropriate funds from the sale of ~~licenses;~~licenses or permits.

(2) ~~To falsify~~Falsify records of licenses ~~sold;~~or permits sold.

(3) ~~Wilfully~~ Willfully and knowingly ~~to~~ assist or allow a person to obtain a license or permit for which ~~he is ineligible;~~the person is ineligible.

(4) ~~Wilfully to~~Willfully issue a backdated ~~license;~~license or permit.

(5) ~~Wilfully on records or licenses to~~Willfully include false information or omit material information ~~as to:~~on records, licenses, or permits regarding either:

a. A person's entitlement to a particular ~~license; or~~license or permit.

b. The applicability or term of a particular ~~license; or~~license or permit.

(6) ~~To refuse to return all consigned licenses, or to remit the net value of consigned licenses sold or unaccounted for, upon demand from an authorized employee of the Wildlife Resources Commission.~~Charge or accept any additional fee, remuneration, or other item of value in association with any activity set out in subdivisions (1) through (5) of this subsection.

~~(e) The Executive Director may temporarily suspend, revoke, or refuse to renew a person's appointment as a license agent if he fails in a timely manner to submit required reports, remit moneys due the Wildlife Resources Commission, or otherwise comply with the qualifications and standards set by the Wildlife Resources Commission or with reasonable administrative directives of the Executive Director. The temporary suspension is effective immediately upon communication of that fact to the license agent or his representative handling the licenses. The communication as to suspension must state the grounds for suspension and that the license agent may request a hearing within five working days if he contests the grounds for suspension. If not in writing, the communication must be followed by written notice of suspension containing the same information. By personal service of an impoundment order upon a license agent or his representative handling the licenses, an employee or agent of the Wildlife Resources Commission may enter the premises and impound all licenses, moneys, record books, reports, license forms, and other documents, ledgers, and materials pertinent or apparently pertinent to the license agency being suspended. The Executive Director must make the impounded property, or copies of it, available to the licensee during the period of temporary suspension.~~

~~(f) If a hearing is requested, it is before the Executive Director or his designee to be held at Raleigh or some other place convenient to the parties specified by the Executive Director. The temporary suspension remains in effect until the hearing, and after the hearing may be rescinded or continued in effect, as the facts warrant, in the~~

discretion of the Executive Director. A temporary suspension may not last longer than 30 days, but additional suspensions may be imposed if at the end of the suspension period the license agent is still not in compliance with appropriate standards, qualifications, and administrative directives. A license agent may at any time after a hearing appeal his suspension to the Wildlife Resources Commission.

(g) Notice of revocation or nonrenewal of the appointment may be sent the license agent in lieu of or in addition to temporary suspension. The notice must state the grounds for termination of the appointment and the license agent's right to a hearing if he has not previously been afforded one. If the appointment is to be revoked, the notice must state the effective date and hour of revocation. If the appointment is not to be renewed, the notice must state that the appointment expires at midnight on April 30. If he has not been previously afforded a hearing, a license agent is entitled to a hearing within 14 days before the Executive Director or his designee to be held at Raleigh or some other place convenient to the parties specified by the Executive Director. After the hearing, the Executive Director, applying appropriate standards, must take the action with respect to the appointment as license agent that the facts warrant. If the Executive Director upholds the decision to terminate the appointment, a license agent may appeal his termination to the Wildlife Resources Commission. Pending the hearing and any appeal from it, the termination is held in abeyance, but no license sales may be made once the license agent's bond has expired.

(h) Upon termination of the appointment, the former agent must return to the Wildlife Resources Commission all record books, reports, license forms, moneys, and other property pertaining to the license agency, and must allow agents of the Wildlife Resources Commission to conduct necessary inspections and audits required in terminating the license agency. Each day's refusal after termination to return, upon demand, the record books, reports, license forms, moneys, and other property pertaining to the license agency is a separate offense. Each instance of refusal, after termination, to allow agents of the Wildlife Resources Commission to conduct necessary inspections and audits during regular business hours is a separate offense. A violation of this subsection is a Class 2 misdemeanor. Before termination, violations by license agents are punishable under G.S. 113-135, subsection (d) above, or other provision of this Subchapter, as appropriate.

(i) No person denied appointment or whose appointment was terminated under this section is eligible to apply again for an appointment as a license agent for two years. Upon application, the executive director may not grant the appointment as license agent unless the applicant produces clear evidence, convincing to the Executive Director, that he meets all standards and qualifications and will comply with all requirements of statutes, rules, and reasonable administrative directives pertaining to license agents.

(j) The Executive Director or his designee holding any hearing under this section must keep a written record of evidence considered and findings made. Upon appeal to the Wildlife Resources Commission, the commission chairman or other presiding officer must cause such a written record of evidence and findings to be made and kept. Hearings and appeals under this section are internal matters concerning license agents of

~~the Wildlife Resources Commission and are not governed by the North Carolina Administrative Procedure Act.~~"

SECTION 3.3. G.S. 150B-1(e) is amended by adding a new subdivision to read:

"(e) Exemptions From Contested Case Provisions. – The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

...

(15) The Wildlife Resources Commission with respect to determinations of whether to authorize or terminate the authority of a person to sell licenses and permits as a license agent of the Wildlife Resources Commission."

PART IV. ESTABLISH NEW MARINE FISHERIES COMMISSION

SECTION 4.1. Part 5D of Article 7 of Chapter 143B of the General Statutes is repealed.

SECTION 4.2. Article 7 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 5E. Marine Fisheries Commission.

"**§ 143B-289.65. Definitions.**

(a) As used in this part:

(1) "Commission" means the Marine Fisheries Commission.

(2) "Department" means the Department of Environment and Natural Resources.

(3) "Fisheries Director" means the Director of the Division of Marine Fisheries of the Department of Environment and Natural Resources.

(4) "Secretary" means the Secretary of Environment and Natural Resources.

(b) The definitions set out in G.S. 113-129 and G.S. 113-130 shall apply throughout this Part.

"**§ 143B-289.66. Marine Fisheries Commission – creation; purposes.**

(a) There is hereby created the Marine Fisheries Commission in the Department of Environment and Natural Resources.

(b) The functions, purposes, and duties of the Commission are to:

(1) Manage, restore, develop, cultivate, conserve, protect, and regulate the marine and estuarine resources within its jurisdiction, as described in G.S. 113-132.

(2) Implement the laws relating to coastal fisheries, coastal fishing, shellfish, crustaceans, and other marine and estuarine resources enacted by the General Assembly by the adoption of rules and policies, to provide a sound, constructive, comprehensive, continuing, and economical coastal fisheries program directed by citizens who are

knowledgeable in the protection, restoration, proper use, and management of marine and estuarine resources.

(3) Implement management measures regarding ocean and marine fisheries in the Atlantic Ocean consistent with the authority conferred on the State by the United States.

(4) Advise the State regarding ocean and marine fisheries within the jurisdiction of the Atlantic States Marine Fisheries Compact, the South Atlantic Fishery Management Council, the Mid-Atlantic Fishery Management Council, and other similar organizations established to manage or regulate fishing in the Atlantic Ocean.

"**§ 143B-289.67. Marine Fisheries Commission – powers and duties.**

(a) The Commission shall adopt rules to be followed in the management, protection, preservation, and enhancement of the marine and estuarine resources within its jurisdiction, as described in G.S. 113-132, including commercial and sports fisheries resources. The Commission shall have the power and duty:

(1) To authorize, license, regulate, prohibit, prescribe, or restrict all forms of marine and estuarine resources in coastal fishing waters with respect to:

a. Time, place, character, or dimensions of any methods or equipment that may be employed in taking fish.

b. Seasons for taking fish.

c. Size limits on and maximum quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold, or given away.

(2) To provide fair regulation of commercial and recreational fishing groups in the interest of the public.

(3) To adopt rules and take all steps necessary to develop and improve mariculture, including the cultivation, harvesting, and marketing of shellfish and other marine resources in the State, involving the use of public grounds and private beds as provided in G.S. 113-201.

(4) To close areas of public bottoms under coastal fishing waters for such time as may be necessary in any program of propagation of shellfish as provided in G.S. 113-204.

(5) In the interest of conservation of the marine and estuarine resources of the State, to institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of the State registered with the Department as provided in G.S. 113-206(d).

(6) To make reciprocal agreements with other jurisdictions respecting any of the matters governed in this Subchapter as provided by G.S. 113-223.

(7) To adopt relevant provisions of federal laws and regulations as State rules pursuant to G.S. 113-228.

(8) To delegate to the Fisheries Director the authority by proclamation to suspend or implement, in whole or in part, a particular rule of the

Commission that may be affected by variable conditions as provided in G.S. 113-221.1.

(9) To comment on and otherwise participate in the determination of permit applications received by State agencies that may have an effect on the marine and estuarine resources of the State.

(10) To adopt Fishery Management Plans as provided in G.S. 113-182.1, to establish a Priority List to determine the order in which Fishery Management Plans are developed, to establish a Schedule for the development and adoption of each Fishery Management Plan, and to establish guidance criteria as to the contents of Fishery Management Plans.

(11) To approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8.

(12) Except as may otherwise be provided, to make the final agency decision in all contested cases involving matters within the jurisdiction of the Commission.

(13) To adopt rules to define fishing gear as either recreational gear or commercial gear.

(14) To authorize the disbursement of the assets of the Marine Resources Fund established pursuant to G.S. 113-175.1 to manage, protect, restore, develop, cultivate, conserve, and enhance the marine resources of the State.

(15) To authorize the disbursement of the endowment investment income of the Marine Resources Endowment Fund established pursuant to G.S. 113-175.5 to manage, protect, restore, develop, cultivate, conserve, and enhance the marine resources of the State.

(b) The Commission shall have the power and duty to establish standards and adopt rules:

(1) To implement the provisions of Subchapter IV of Chapter 113 as provided in G.S. 113-134.

(2) To manage the disposition of confiscated property as set forth in G.S. 113-137.

(3) To govern all license requirements prescribed in Article 14A of Chapter 113 of the General Statutes.

(4) To regulate the importation and exportation of fish, and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of the State as provided in G.S. 113-170.

(5) To regulate the possession, transportation, and disposition of seafood, as provided in G.S. 113-170.4.

(6) To regulate the disposition of the young of edible fish, as provided by G.S. 113-185.

(7) To manage the leasing of public grounds for mariculture, including oysters and clam production, as provided in G.S. 113-202.

(8) To govern the utilization of private fisheries, as provided in G.S. 113-205.

(9) To impose further restrictions upon the throwing of fish offal in any coastal fishing waters, as provided in G.S. 113-265.

(10) To regulate the location and utilization of artificial reefs in coastal waters.

(11) To regulate the placement of nets and other sports or commercial fishing apparatus in coastal fishing waters with regard to navigational or recreational safety as well as from a conservation standpoint.

(c) The Commission is authorized to authorize, license, prohibit, prescribe, or restrict:

(1) The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities.

(2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to carry out its duties.

(d) The Commission may adopt rules required by the federal government for grants-in-aid for coastal resource purposes that may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from federal grants-in-aid.

(e) The Commission may regulate participation in a fishery that is subject to a federal fishery management plan if that plan imposes a quota on the State for the harvest or landing of fish in the fishery. If the Commission regulates participation in a fishery under this subsection, the Division may issue a license to participate in the fishery to a person who:

(1) Held a valid license issued by the Division to harvest, land, or sell fish during at least two of the three license years immediately preceding the date adopted by the Commission to determine participation in the fishery; and

(2) Participated in the fishery during at least two of those license years by landing in the State at least the minimum number of pounds of fish adopted by the Commission to determine participation in the fishery.

(f) The Commission may adopt rules to implement or comply with a fishery management plan adopted by the Atlantic States Marine Fisheries Commission or adopted by the United States Secretary of Commerce pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801, et seq. Notwithstanding G.S. 150B-21.1(a), the Commission may adopt temporary rules under this subsection at any time within six months of the adoption or amendment of a fishery management plan or the notification of a change in management measures needed to remain in compliance with a fishery management plan.

(g) The Commission shall adopt rules as provided in this Chapter. All rules adopted by the Commission shall be enforced by the Department.

(h) As a quasi-judicial agency, the Commission, in accordance with Article IV, Section 3 of the Constitution of North Carolina, has those judicial powers reasonably necessary to accomplish the purposes for which it was created.

(i) Personal identifying information obtained by the Commission or Division from the Wildlife Resources Commission pursuant to G.S. 143-254.5(b), from an applicant for a license issued under G.S. 113-174.3 or G.S. 113-174.4, or from a person complying with a biological data sampling or survey program under G.S. 113-174.1 is confidential under G.S. 132-1.2 and shall only be disclosed as provided in this section. The Commission or Division may disclose personal identifying information to any officer, employee, or authorized representative of any federal, state, or local government agency if disclosure is necessary to carry out a proper function of the Commission, Division, or other agency. As used in this section, "personal identifying information" includes a person's mailing address, residence address, date of birth, telephone number, electronic mail address, driver license number, and social security number.

(j) The Commission may adopt rules to exempt individuals who participate in organized fishing events held in coastal or joint fishing waters from recreational fishing license requirements for the specified time and place of the event when the purpose of the event is consistent with the conservation objectives of the Commission.

"**§ 143B-289.68. Marine Fisheries Commission – quasi-judicial powers; procedures.**

(a) With respect to those matters within its jurisdiction, the Commission shall exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. This section and any rules adopted by the Commission shall govern the following proceedings:

(1) Exceptions to recommended decisions in contested cases shall be filed with the Secretary within 30 days of the receipt by the Secretary of the official record from the Office of Administrative Hearings, unless additional time is allowed by the Chair of the Commission.

(2) Oral arguments by the parties may be allowed by the Chair of the Commission upon request of the parties.

(3) Deliberations of the Commission shall be conducted in its public meeting unless the Commission determines that consultation with its counsel should be held in a closed session pursuant to G.S. 143-318.11.

(b) The final agency decision in contested cases that arise from civil penalty assessments shall be made by the Commission. In the evaluation of each violation, the Commission shall recognize that harm to the marine and estuarine resources within its jurisdiction, as described in G.S. 113-132, arising from the violation of a statute or rule enacted or adopted to protect those resources may be immediately observed through damaged resources or may be incremental or cumulative with no damage that can be immediately observed or documented. Penalties up to the maximum authorized may be based on any one or combination of the following factors:

(1) The degree and extent of harm to the marine and estuarine resources within the jurisdiction of the Commission, as described in

G.S. 113-132; to the public health; or to private property resulting from the violation.

(2) The frequency and gravity of the violation.

(3) The cost of rectifying the damage.

(4) Whether the violation was committed willfully or intentionally.

(5) The prior record of the violator in complying or failing to comply with programs over which the Commission has regulatory authority.

(6) The cost to the State of the enforcement procedures.

(c) The Chair shall appoint a Committee on Civil Penalty Remissions from the members of the Commission. No member of the Committee on Civil Penalty Remissions may hear or vote on any matter in which the member has an economic interest. The Committee on Civil Penalty Remissions shall make the final agency decision on remission requests. In determining whether a remission request will be approved, the Committee shall consider the recommendation of the Secretary and the following factors:

(1) Whether one or more of the civil penalty assessment factors in subsection (b) of this section were wrongly applied to the detriment of the petitioner.

(2) Whether the violator promptly abated continuing environmental damage resulting from the violation.

(3) Whether the violation was inadvertent.

(4) Whether the violator had been assessed civil penalties for any previous violations.

(5) Whether payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(d) The Committee on Civil Penalty Remissions may remit the entire amount of the penalty only when the violator has not been assessed civil penalties for previous violations and when payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(e) If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary of Environment and Natural Resources shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.

(f) The Secretary may delegate his powers and duties under this section to the Fisheries Director.

"**§ 143B-289.69. Marine Fisheries Commission – members; appointment; term; oath; ethical standards; removal; compensation; staff.**

(a) Members, Selection. – The Commission shall consist of thirteen members as follows:

(1) One person appointed by the Governor who is actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of annual earned income from taking and selling fishery resources in coastal fishing

waters of the State. The spouse of a commercial fisherman who meets the criteria of this subdivision may be appointed under this subdivision.

(2) One person appointed by the Governor who is actively engaged in recreational fishing in the coastal fishing waters of the State. An appointee under this subdivision may not derive more than ten percent (10%) of annual earned income from sports fishing activities.

(3) One person appointed by the Governor who is a fisheries scientist having special training and expertise in marine and estuarine fisheries biology, ecology, population dynamics, water quality, habitat protection, or similar knowledge. A person appointed under this subdivision may not receive more than ten percent (10%) of annual earned income from either the commercial or recreational fishing industries, including the processing and distribution of seafood.

(4) One person appointed by the Governor who has general knowledge of and experience related to subjects and persons regulated by the Commission.

(5) One person appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate who is actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of annual earned income from taking and selling fishery resources in coastal fishing waters of the State. The spouse of a commercial fisherman who meets the criteria of this subdivision may be appointed under this subdivision.

(6) One person appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate who is actively engaged in recreational fishing in the coastal fishing waters of the State. An appointee under this subdivision may not derive more than ten percent (10%) of annual earned income from sports fishing activities.

(7) One person appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate who is a fisheries scientist having special training and expertise in marine and estuarine fisheries biology, ecology, population dynamics, water quality, habitat protection, or similar knowledge. A person appointed under this subdivision may not receive more than ten percent (10%) of annual earned income from either the commercial or recreational fishing industries, including the processing and distribution of seafood.

(8) One person appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate who has general knowledge of and experience related to subjects and persons regulated by the Commission.

(9) One person appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives who is actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of annual earned income from taking and selling fishery resources in coastal fishing waters of the State. The spouse of a commercial fisherman who meets the criteria of this subdivision may be appointed under this subdivision.

(10) One person appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives who is actively engaged in recreational fishing in the coastal fishing waters of the State. An appointee under this subdivision may not derive more than ten percent (10%) of annual earned income from sports fishing activities.

(11) One person appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives who is a fisheries scientist having special training and expertise in marine and estuarine fisheries biology, ecology, population dynamics, water quality, habitat protection, or similar knowledge. A person appointed under this subdivision may not receive more than ten percent (10%) of annual earned income from either the commercial or recreational fishing industries, including the processing and distribution of seafood.

(12) One person appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives who has general knowledge of and experience related to subjects and persons regulated by the Commission.

(13) The Fisheries Director shall serve as an ex officio, nonvoting member of the Commission.

(b) Residential Qualifications. – For purposes of providing regional representation on the Commission, the following four regions of the State are designated: (i) Northeast Coastal Region comprised of Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax, Hertford, Martin, Northampton, Pasquotank, Perquimans, Tyrrell, and Washington Counties; (ii) Central Coastal Region comprised of Beaufort, Carteret, Craven, Hyde, Jones, and Pamlico Counties; (iii) Southeast Coastal Region comprised of Bladen, Brunswick, Columbus, New Hanover, Onslow, and Pender Counties; and (iv) Inland Region comprised of the counties not included the three coastal regions. Each appointing entity shall appoint at least one member from each of the four regions of the State.

(c) Additional Considerations. – In making appointments to the Commission, the appointing entities shall provide for appropriate representation of women and minorities on the Commission.

(d) Terms. – The term of office of appointed members of the Commission is three years. A member may be reappointed to any number of successive three-year terms. Upon the expiration of a three-year term, a member shall continue to serve until a

successor is appointed and duly qualified as provided by G.S. 128-7. The term of members appointed under subdivisions (2), (8), (9), and (11) of subsection (a) of this section shall expire on 30 June of years evenly divisible by three. The term of members appointed under subdivisions (3), (4), (5), and (6) of subsection (a) of this section shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. The term of members appointed under subdivisions (1), (7), (10) and (12) of subsection (a) of this section shall expire on 30 June of years that follow by one year those years that are evenly divisible by three.

(e) Vacancies. – An appointment to fill a vacancy shall be for the unexpired balance of the term.

(f) Oath of Office. – Each member of the Commission, before assuming the duties of office, shall take an oath of office as provided in Chapter 11 of the General Statutes.

(g) Ethical Standards. –

(1) Disclosure statements. – Any person under consideration for appointment to the Commission shall provide both a financial disclosure statement and a potential bias disclosure statement to the Governor. A financial disclosure statement shall include statements of the nominee's financial interests in and related to State fishery resources use, licenses issued by the Division of Marine Fisheries held by the nominee or any business in which the nominee has a financial interest, and uses made by the nominee or by any business in which the nominee has a financial interest of the regulated resources. A potential bias disclosure statement shall include a statement of the nominee's membership or other affiliation with, including offices held, in societies, organizations, or advocacy groups pertaining to the management and use of the State's coastal fishery resources. Disclosure statements shall be treated as public records under Chapter 132 of the General Statutes and shall be updated on an annual basis.

(2) Voting/conflict of interest. – A member of the Commission shall not vote on any issue before the Commission that would have a "significant and predictable effect" on the member's financial interest. For purposes of this subdivision, "significant and predictable effect" means there is or may be a close causal link between the decision of the Commission and an expected disproportionate financial benefit to the member that is shared only by a minority of persons within the same industry sector or gear group. A member of the Commission shall also abstain from voting on any petition submitted by an advocacy group of which the member is an officer or sits as a member of the advocacy group's board of directors. A member of the Commission shall not use the member's official position as a member of the Commission to secure any special privilege or exemption of substantial value for any person. No member of the Commission shall, by the member's conduct, create an appearance that any person could

improperly influence the member in the performance of the member's official duties.

(3) Regular attendance. – It shall be the duty of each member of the Commission to regularly attend meetings of the Commission.

(h) Removal. – The Governor may remove, as provided in G.S. 143B-13, any member of the Commission for misfeasance, malfeasance, or nonfeasance.

(i) Office May Be Held Concurrently With Others. – The office of member of the Commission may be held concurrently with any other elected or appointed office, as authorized by Article VI, Section 9, of the Constitution of North Carolina.

(j) Compensation. – Members of the Commission who are State officers or employees shall receive no per diem compensation for serving on the Commission, but shall be reimbursed for their expenses in accordance with G.S. 138-6. Members of the Commission who are full-time salaried public officers or employees other than State officers or employees shall receive no per diem compensation for serving on the Commission, but shall be reimbursed for their expenses in accordance with G.S. 138-6 in the same manner as State officers or employees. All other Commission members shall receive per diem compensation and reimbursement in accordance with the compensation rate established in G.S. 93B-5.

(k) Staff. – All clerical and other services required by the Commission shall be supplied by the Fisheries Director and the Department.

(l) Legal Services. – The Attorney General shall: (i) act as attorney for the Commission; (ii) at the request of the Commission, initiate actions in the name of the Commission; and (iii) represent the Commission in any appeal or other review of any order of the Commission.

"**§ 143B-289.70. Marine Fisheries Commission – officers; organization; seal.**

(a) The Governor shall appoint a member of the Commission to serve as Chair. The Chair shall serve at the pleasure of the Governor. The Commission shall elect one of its members to serve as Vice-Chair. The Vice-Chair shall serve a one-year term beginning 1 July and ending 30 June of the following year. The Vice-Chair may serve any number of consecutive terms.

(b) The Chair shall guide and coordinate the activities of the Commission in fulfilling its duties as set out in this Article. The Chair shall report to and advise the Governor and the Secretary on the activities of the Commission, on marine and estuarine conservation matters, and on all marine fisheries matters.

(c) The Commission shall determine its organization and procedure in accordance with the provisions of this Article. The provisions of the most recent edition of Robert's Rules of Order shall govern any procedural matter for which no other provision has been made.

(d) The Commission may adopt a common seal and may alter it as necessary.

"**§ 143B-289.71. Marine Fisheries Commission – meetings; quorum.**

(a) The Commission shall meet at least once each calendar quarter and may hold additional meetings at any time and place within the State at the call of the Chair or upon the written request of at least four members. The Commission shall hold at least one meeting each calendar year in each region designated in G.S. 143B-289.69.

(b) (1) Seven members of the Commission shall constitute a quorum for the transaction of business.

(2) A quorum of the Commission may transact business only if one member, other than the Chair, appointed pursuant to subdivision (1), (5), or (9) of G.S. 143B-289.69(a) and one member, other than the Chair, appointed pursuant to subdivision (2), (6), or (10) of G.S. 143B-289.69(a) are present.

(c) If the Commission is unable to transact business because the requirements of subdivision (2) of subsection (b) of this section are not met, the Chair shall call another meeting of the Commission within 30 days and shall place on the agenda for that meeting every matter with respect to which the Commission was unable to transact business. Six members of the Commission shall constitute a quorum for the transaction of business at a meeting called under this subsection. The requirements of subdivision (2) of subsection (b) of this section shall not apply to a meeting called under this subsection.

"**§ 143B-289.72. Marine Fisheries Commission – advisory committees established; members; selection; duties.**

(a) The Commission shall be assisted in the performance of its duties by four standing advisory committees and four regional advisory committees. Each standing and regional advisory committee shall consist of no more than 11 members. The Chair of the Commission shall designate one member of each advisory committee to serve as Chair of the committee. Members shall serve staggered three-year terms as determined by the Commission. The Commission shall establish other policies and procedures for standing and regional advisory committees that are consistent with those governing the Commission as set out in this Part.

(b) The Chair of the Commission shall appoint the following standing advisory committees:

(1) The Finfish Committee, which shall consider matters concerning finfish.

(2) The Crustacean Committee, which shall consider matters concerning shrimp and crabs.

(3) The Shellfish Committee, which shall consider matters concerning oysters, clams, scallops, and other molluscan shellfish.

(4) The Habitat and Water Quality Committee, which shall consider matters concerning habitat and water quality that may affect coastal fisheries resources.

(c) Each standing advisory committee shall be composed of commercial and recreational fishermen, scientists, and other persons who have expertise in the matters to be considered by the advisory committee to which they are appointed. In making appointments to advisory committees, the Chair of the Commission shall ensure that both commercial and recreational fishing interests are fairly represented and shall consider for appointment persons who are recommended by groups representing commercial fishing interests, recreational fishing interests, environmental protection and conservation interests, and other groups interested in coastal fisheries management.

(d) Each standing advisory committee shall review all matters referred to the committee by the Commission and shall make findings and recommendations on these matters. A standing advisory committee may, on its own motion, make findings and recommendations as to any matter related to its subject area. The Commission, in the performance of its duties, shall consider all findings and recommendations submitted by standing advisory committees.

(e) The Chair of the Commission shall appoint a regional advisory committee for each of the four regions designated in G.S. 143B-289.69(b). In making appointments to regional advisory committees, the Chair of the Commission shall ensure that both commercial and recreational fishing interests are fairly represented.

"**§ 143B-289.73. Conservation Fund; Commission may accept gifts.**

(a) The Commission may accept gifts, donations, or contributions from any sources. These funds shall be held in a separate account and used solely for the purposes of marine and estuarine conservation and management. These funds shall be administered by the Commission and shall be used for marine and estuarine resources management, including education about the importance of conservation, in a manner consistent with marine and estuarine conservation management principles.

(b) The Commission is hereby authorized to issue and sell appropriate emblems by which to identify recipients thereof as contributors to a special marine and estuarine resources Conservation Fund that shall be made available to the Commission for conservation, protection, enhancement, preservation, and perpetuation of marine and estuarine species that may be endangered or threatened with extinction and for education about these issues. The special Conservation Fund is subject to oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. Emblems of different sizes, shapes, types, or designs may be used to recognize contributions in different amounts, but no emblem shall be issued for a contribution amounting in value to less than five dollars ($5.00).

"**§ 143B-289.74. Article subject to Chapter 113.**

Nothing in this Part shall be construed to affect the jurisdictional division between the Marine Fisheries Commission and the Wildlife Resources Commission contained in Subchapter IV of Chapter 113 of the General Statutes or in any way to alter or abridge the powers and duties of the two agencies conferred in that Subchapter.

"**§ 143B-289.75. Jurisdictional questions.**

In the event of any question arising between the Wildlife Resources Commission and the Marine Fisheries Commission or between the Department of Environment and Natural Resources and the Marine Fisheries Commission as to any duty, responsibility, or authority imposed upon any of these bodies by law or with respect to conflict involving rules or administrative practices, the question or conflict shall be resolved by the Governor, whose decision shall be binding."

SECTION 4.3. G.S. 113-128(5a) reads as rewritten:

"(5a) Marine Fisheries Commission. – The Marine Fisheries Commission of the Department as established by Part ~~5D~~ 5E of Article 7 of Chapter 143B of the General Statutes."

SECTION 4.4. G.S. 113-136(b) reads as rewritten:

"(b) The jurisdiction of inspectors extends to all matters within the jurisdiction of the Department set out in this Subchapter, Part ~~5D~~ 5E of Article 7 of Chapter 143B of the General Statutes, Article 5 of Chapter 76 of the General Statutes, and Article 2 of Chapter 77 of the General Statutes, and to all other matters within the jurisdiction of the Department which it directs inspectors to enforce. In addition, inspectors have jurisdiction over all offenses involving property of or leased to or managed by the Department in connection with the conservation of marine and estuarine resources."

SECTION 4.5. G.S. 120-123(53) reads as rewritten:

"(53) The North Carolina Marine Fisheries Commission as established by ~~G.S. 143B-289.51.~~G.S. 143B-289.66."

SECTION 4.6. G.S. 113-182.1(a) reads as rewritten:

"(a) The Department shall prepare proposed Fishery Management Plans for adoption by the Marine Fisheries Commission for all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources. Proposed Fishery Management Plans shall be developed in accordance with the Priority List, Schedule, and guidance criteria established by the Marine Fisheries Commission under ~~G.S. 143B-289.52.~~G.S. 143B-289.67."

SECTION 4.7. G.S. 113-182.1(c1) reads as rewritten:

"(c1) The Department shall consult with the regional advisory committees established pursuant to ~~G.S. 143B-289.57(e)~~G.S. 143B-289.72(e) regarding the preparation of each Fishery Management Plan. Before submission of a plan for review by the Joint Legislative Commission on Seafood and ~~Aquaculture or the Environmental Review Commission,~~Aquaculture, the Department shall review any comment or recommendation regarding the plan that a regional advisory committee submits to the Department within the time limits established in the Schedule for the development and adoption of Fishery Management Plans ~~established by G.S. 143B-289.52.~~adopted pursuant to G.S. 143B-289.67. The Commission shall consult with the regional advisory committees regarding the development of any temporary management measure that the Commission determines to be necessary to ensure the viability of the species or fishery while the plan is being developed and regarding the development of any management measure to implement the plan. Before the Commission adopts a temporary management measure or a management measure to implement a plan, the Commission shall review any comment or recommendation regarding the management measure that a regional advisory committee submits to the Commission."

SECTION 4.8. G.S. 113-191(d) reads as rewritten:

"(d) In determining the amount of the penalty, the Secretary shall consider the factors set out in ~~G.S. 143B-289.53(b).~~G.S. 143B-289.68(b). The procedures set out in ~~G.S. 143B-289.53~~G.S. 143B-289.68 shall apply to civil penalty assessments that are presented to the Commission for final agency decision."

SECTION 4.9. G.S. 113-191(f) reads as rewritten:

"(f) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless filed within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a

stipulation of the facts on which the assessment was based. Consistent with the limitations in ~~G.S. 143B-289.53(c),~~G.S. 143B-289.68(c), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Marine Fisheries Commission appointed pursuant to ~~G.S. 143B-289.53(c).~~G.S. 143B-289.68(c)."

SECTION 4.10. G.S. 113-200(e1) reads as rewritten:

"(e1) Grants Committee. – The Grants Committee shall consist of eleven members as follows:

(1) Three employees of the Sea Grant College Program, appointed by the Director of the Sea Grant College Program.

(2) Two employees of the Division of Marine Fisheries, appointed by the Fisheries Director.

(3) Two members of the Marine Fisheries Commission, appointed by the Chair of the Marine Fisheries Commission.

(4) One member of the Northeast Regional Advisory Committee established pursuant to ~~G.S. 143B-289.57(e),~~G.S. 143B-289.72(e), appointed by the Northeast Regional Advisory Committee.

(5) One member of the Central Regional Advisory Committee established pursuant to ~~G.S. 143B-289.57(e),~~G.S. 143B-289.72(e), appointed by the Central Regional Advisory Committee.

(6) One member of the Southeast Regional Advisory Committee established pursuant to ~~G.S. 143B-289.57(e),~~G.S. 143B-289.72(e), appointed by the Southeast Regional Advisory Committee.

(7) One member of the Inland Regional Advisory Committee established pursuant to ~~G.S. 143B-289.57(e),~~G.S. 143B-289.72(e), appointed by the Inland Regional Advisory Committee."

SECTION 4.11. The records, personnel, property, unexpended balances of appropriations, allocations, and other funds, including the functions of budgeting and purchasing, heretofore vested in the Marine Fisheries Commission created under Part 5D of Article 7 of Chapter 143B of the General Statutes, repealed by Section 4.1. of this act, are transferred to the Marine Fisheries Commission created under Part 5E of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 4.2. of this act. All rules, decisions, and actions, heretofore adopted, made, or taken by the Marine Fisheries Commission created under Part 5 of Article 7 of Chapter 143B of the General Statutes, repealed by Section 1 of Chapter 641 of the 1987 Session Laws; all rules, decisions, and actions, heretofore adopted, made, or taken by the Marine Fisheries Commission created under Part 5A of Article 7 of Chapter 143B of the General Statutes, repealed by Section 6.3 of S.L. 1997-400; and all rules, decisions, and actions, heretofore adopted, made, or taken by the Marine Fisheries Commission created under Part 5D of Article 7 of Chapter 143B of the General Statutes, repealed by Section 4.1. of this act, that have not been heretofore repealed or rescinded shall continue in effect until repealed or rescinded by the Marine Fisheries Commission created under Part 5E of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 4.2. of this act.

SECTION 4.12. In order to establish a schedule of staggered terms of three years for the Marine Fisheries Commission, the terms of members of the Commission initially filling positions established by subdivisions (2), (8), (9), and (11) of subsection (a) of G.S. 143B-289.69, as enacted by Section 4.2. of this act, shall begin on the date the member is appointed and duly qualified and shall expire on June 30, 2010; the terms of members of the Commission initially filling positions established by subdivisions (3), (4), (5), and (6) of subsection (a) of G.S. 143B-289.69, as enacted by Section 4.2. of this act, shall begin on the date the member is appointed and duly qualified and shall expire on June 30, 2009; the terms of members of the Commission initially filling positions established by subdivisions (1), (7), (10), and (12) of subsection (a) of G.S. 143B-289.69, as enacted by Section 4.2. of this act, shall begin on the date the member is appointed and duly qualified and shall expire on June 30, 2008.

PART V. ENFORCEMENT OF MARINE RESOURCES LAWS

SECTION 5.1.(a) G.S. 113-134.1 reads as rewritten:

"**§ 113-134.1. Jurisdiction over marine fisheries resources in Atlantic ~~Ocean.~~Ocean; delegation of law enforcement powers from the National Marine Fisheries Service.**

(a) The Marine Fisheries Commission is directed to exercise all regulatory authority over the conservation of marine fisheries resources in the Atlantic Ocean to the seaward extent of the State jurisdiction over the resources as now or hereafter defined. Marine fisheries inspectors may enforce these regulations and all other provisions of law applicable under the authority granted in this section in the same manner and with the same powers elsewhere granted them as enforcement officers.

(b) If authorized by the Fisheries Director or a designee of the Fisheries Director, an inspector may accept delegation of law enforcement powers from the National Marine Fisheries Service of the United States Department of Commerce over matters within the jurisdiction of the Service. For purposes of this subsection, the office of inspector may be held concurrently with any other elected or appointed office, as authorized by Section 9 of Article VI of the Constitution of North Carolina."

SECTION 5.1.(b) If the Division of Marine Fisheries of the Department of Environment and Natural Resources enters into a Joint Enforcement Agreement with the National Marine Fisheries Service of the United States Department of Commerce, the Division shall, within six months of entering into the Agreement, report to the Joint Legislative Commission on Seafood and Aquaculture and the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources on the provisions of the Agreement. The Division of Marine Fisheries shall also report on the implementation of the Agreement to the Joint Legislative Commission on Seafood and Aquaculture and the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources no later than November 1 of each year.

SECTION 5.2. G.S. 113-136(d1) reads as rewritten:

"(d1) In addition to law enforcement authority granted elsewhere, an inspector or ~~a~~ protector has the authority to enforce criminal laws under either of the following circumstances:

(1) When the inspector or protector has probable cause to believe that a person committed a criminal offense in ~~his~~ the presence of the inspector or protector and at the time of the violation the inspector or protector is engaged in the enforcement of laws otherwise within ~~his~~ ~~jurisdiction; or~~the jurisdiction of the inspector or protector.

(2) When the inspector or protector is asked to provide temporary assistance by the head of a State or local law enforcement agency or ~~his~~ the designee of the head of a State or local law enforcement agency and the request is within the scope of the agency's subject matter jurisdiction. When acting pursuant to this subdivision an inspector or protector shall not be considered an officer, employee, or agent for the State or local law enforcement agency or designee asking for temporary assistance.

(d2) ~~While~~ When acting pursuant to ~~this subsection, a~~ subsection (d1) of this section, an inspector or protector shall have the same powers invested in law enforcement officers by statute or common law. ~~When acting pursuant to (2) of this subsection a protector shall not be considered an officer, employee, or agent for the state or local law enforcement agency or designee asking for temporary assistance.~~ Nothing in ~~this~~ subsection (d1) of this section shall be construed to expand the authority of inspectors or protectors to initiate or conduct an independent investigation into violations of criminal laws outside the scope of their subject matter or territorial jurisdiction."

PART VI. MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

SECTION 6.1. The headings to the Parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

SECTION 6.2. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

SECTION 6.3. Sections 1.13, 1.14 1.17, 1.18, 1.19, 1.20, 5.1, 6.1, 6.2, and 6.3 of this act are effective when this act becomes law. Section 2.10 of this act becomes effective July 1, 2005. Sections 1.9, 1.10, 1.15, 1.21, 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, and 5.2 of this act become effective January 1, 2006. Section 3.3 of this act becomes effective January 1, 2006, and applies to determinations made on or after that date. Sections 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.11, 1.12, and 1.16 of this act become effective January 1, 2007. Section 3.1 of this act is effective when this act becomes law and expires on the date that all rules adopted by the Wildlife Resources Commission pursuant to Section 3.1 become

effective. The Chair of the Wildlife Resources Commission shall notify the Revisor of Statutes when all rules adopted by the Wildlife Resources Commission pursuant to Section 3.1 of this act become effective. Section 3.2 of this act becomes effective on the date that all rules adopted by the Wildlife Resources Commission pursuant to Section 3.1 of this act become effective, except that G.S. 113-270.1(b3) and (b4) become effective January 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 4

SENATE BILL 1126

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/5/05
Finance Committee Substitute Adopted 4/6/05
Fourth Edition Engrossed 4/11/05

Short Title: Amend Fishing License Requirements-2. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF THE COASTAL RECREATIONAL FISHING LICENSE, TO PROVIDE A SYSTEM OF UNIFIED LICENSES UNDER WHICH INDIVIDUALS MAY FISH THROUGHOUT THE STATE, AND TO AMEND CERTAIN STATUTES RELATED TO THE WILDLIFE RESOURCES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-174 reads as rewritten:

"**§ 113-174. Definitions.**

As used in this Article:

~~(1)~~ ~~"Commission" means the Marine Fisheries Commission.~~

(1a) "CRFL" means Coastal Recreational Fishing License.

(2) "Division" means the Division of Marine Fisheries in the Department of Environment and Natural Resources.

(2a) "For Hire Boat" means a charter boat, head boat, dive boat, or other boat hired to allow individuals to engage in recreational fishing.

(3) "North Carolina resident" means an individual who is a resident within the meaning of G.S. 113-130(4).

(4) "Recreational fishing" means any activity preparatory to, during, or subsequent to the taking of any ~~fish,~~finfish, the taking of which is subject to regulation by the Marine Fisheries Commission, by any ~~means:~~means if the purpose of the taking is to obtain finfish that are not to be sold. "Recreational fishing" does not include the taking of finfish:

a. ~~That does not constitute a~~ By a commercial fishing operation as defined in G.S. 113-168.

b. ~~Except as provided in~~For scientific purposes pursuant to G.S. 113-261.

c. Under a RCGL issued pursuant to G.S. 113-173.

~~(5) "SFL" means Saltwater Fishing License.~~"

SECTION 2. G.S. 113-174.1 reads as rewritten:

"**§ 113-174.1. ~~General~~ License required; general provisions governing licenses.**

(a) License Purchase Required to Engage in Recreational Fishing. – It is unlawful for any individual to engage in recreational fishing ~~in coastal~~ in:

(1) Coastal fishing waters that are not joint fishing waters without ~~having purchased~~ holding a current license ~~required by this Article.~~ issued under this Article or under Article 25A of this Chapter that authorizes the individual to engage in recreational fishing in coastal fishing waters.

(2) Joint fishing waters without holding a current license issued under this Article or under Article 21 or Article 25A of this Chapter that authorizes the individual to engage in recreational fishing in joint fishing waters.

(a1) It is unlawful for any individual to engage in recreational fishing without complying with ~~the provisions of this Article and rules adopted by the Commission under this Article.~~applicable requirements of this Article and Articles 21 and 25A of this Chapter and with applicable rules adopted by the Marine Fisheries Commission and the Wildlife Resources Commission.

(a2) The fourth day of July of each year is declared a free fishing day to promote the sport of fishing, and no license issued under this Article or Article 25A of this Chapter is required to fish in any of the public waters of the State on that day. All other laws and rules pertaining to recreational fishing still apply.

(b) Sale of Fish Prohibited. – A license issued under this Article or Article 25A of this Chapter does not authorize an individual who takes or lands any species of fish under the authority of the Marine Fisheries Commission to sell, offer for sale, barter, or exchange the fish for anything of value. Except as provided in G.S. 113-168.4, it is unlawful for any individual who takes or lands any species of fish under the authority of the Marine Fisheries Commission by any means to sell, offer for sale, barter, or exchange these fish for anything of value.

(c) Assignment and Transfer Prohibited. – It is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a license issued under this Article or Article 25A of this Chapter or to attempt to buy, sell, lend, borrow, assign, or otherwise transfer a license issued under this ~~Article.~~Article or Article 25A of this Chapter.

~~(d) General Enforcement. – It is unlawful for any individual to engage in recreational fishing in coastal fishing waters in the State without providing the individual's name and residence address upon the request of an inspector or other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.~~

~~(e) Enforcement for Charterboats and Headboats. – An inspector or other law enforcement officer may only verify the licensure of an individual fishing from a~~

~~charterboat or headboat after the charterboat or headboat has returned to shore and the individual has disembarked from the charterboat or headboat. Except as provided in G.S. 113-174.2(d), each individual on board a charterboat or headboat engaged in recreational fishing, other than crew members who do not engage in recreational fishing, must have purchased a current SFL issued pursuant to G.S. 113-174.2. An owner, operator, or crew member of a charterboat or headboat is not responsible for the licensure of a customer fishing from a charterboat or headboat.~~

(f) ~~Cancellation.~~Cancellation of Fraudulent License; Penalties. – The ~~Division~~ Wildlife Resources Commission may cancel a license issued by the Commission under this Article or Article 25A of this Chapter if the license was issued on the basis of false information supplied by the license applicant. The Division may cancel a For Hire Blanket CRFL issued under G.S. 113-174.3 if the license was issued on the basis of false information supplied by the license applicant. A cancelled license is void from the date of issuance. It is a Class 1 misdemeanor for an individual to knowingly do any of the following:

(1) Engage in any activity regulated under this Article with an improper, false, or altered license.

(2) Make any false, fraudulent, or misleading statement in applying for a license issued under this Article or Article 25A of this Chapter.

(3) Counterfeit, alter, or falsify any application or license issued under this Article or Article 25A of this Chapter.

(g) Reporting Requirements. – A person licensed under this Article or Article 25A of this Chapter shall comply with the biological data sampling and survey programs of the Marine Fisheries Commission and the Division.

(h) Replacement Licenses. – Upon receipt of a proper application together with a fee of five dollars ($5.00), the Wildlife Resources Commission may issue a new license to replace one that has been lost or destroyed before its expiration. The application must be on a form of the Wildlife Resources Commission setting forth information in sufficient detail to allow ready identification of the lost or destroyed license and ascertainment of the applicant's continued entitlement to it."

SECTION 3. G.S. 113-174.2 reads as rewritten:

"**§ 113-174.2. ~~Saltwater~~ Coastal Recreational Fishing License.**

~~(a) License Required. – Except as otherwise provided in this Article, it is unlawful for any individual to engage in recreational fishing in coastal fishing waters by means of recreational gear without having purchased a current SFL issued under this section. It is unlawful for any individual fishing under a SFL to possess fish in excess of recreational possession limits.~~

(a1) Authorization to Fish in Coastal and Joint Fishing Waters. – A CRFL issued under this section authorizes the licensee to engage in recreational fishing in coastal fishing waters, including joint fishing waters. A CRFL issued under this section does not authorize the licensee to fish in inland fishing waters.

~~(b) Purchase; Renewal. – Any license issued under this section may be purchased or renewed at designated offices of the Division; from the Division by mail, electronic~~

~~mail, the Internet, or telephone; or at locations designated by the North Carolina Saltwater Fishing Fund Board of Trustees.~~

(c) Types of ~~SFLs;~~CRFLs; Fees; Duration. – The ~~Division~~ Wildlife Resources Commission shall issue the following ~~SFLs:~~CRFLs:

(1) ~~One-year SFL.~~ Annual Resident CRFL. – $15.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State.

(1a) Annual Nonresident CRFL. – $30.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is not a resident of the State.

~~(2) Two-year SFL. – $30.00. This license is valid for a period of two years from the date of issuance.~~

~~(3) Three-year SFL. – $45.00. This license is valid for a period of three years from the date of issuance.~~

(4) ~~Seven-day SFL.~~Ten-Day Resident CRFL. – ~~$1.00.~~$5.00. This license is valid for a period of ~~seven consecutive days.~~10 consecutive days, as indicated on the license. ~~An individual may purchase this license only once in any 12-month period.~~ This license shall be issued only to an individual who is a resident of the State.

(4a) Ten-Day Nonresident CRFL. – $10.00. This license is valid for a period of 10 consecutive days, as indicated on the license. This license shall be issued only to an individual who is not a resident of the State.

~~(5) Subsistence SFL. – An applicant for a license under this subdivision shall provide to the Division a certification from the Department of Health and Human Services that the individual falls below the federal poverty level. A license issued under this subdivision shall be issued without charge and is valid for a period of one year from the date of issuance.~~

(6) Lifetime ~~SFL.~~CRFLs. – ~~This license is~~Except as provided in sub-subdivision j. of this subdivision, CRFLs issued under this subdivision are valid for the lifetime of the licensee. ~~The fee for the Lifetime SFL, based on the age of the prospective licensee as of the date on which the application is filed with the Division, is:~~

~~a. Younger than six years of age – $100.00~~

~~b. Six years of age to younger than 11 years of age – $150.00~~

~~c. 11 years of age to younger than 18 years of age – $200.00~~

~~d. 18 years of age or older – $500.00~~

e. Infant Lifetime CRFL. – $100.00. This license shall be issued only to an individual younger than one year of age.

f. Youth Lifetime CRFL. – $150.00. This license shall be issued only to an individual who is one year of age or older but younger than 12 years of age.

g. Resident Adult Lifetime CRFL. – $250.00. This license shall be issued only to an individual who is 12 years of age or older but younger than 70 years of age and who is a resident of the State.

h. Nonresident Adult Lifetime CRFL. – $500.00. This license shall be issued only to an individual who is 12 years of age or older and who is not a resident of the State.

i. Resident Elderly Lifetime CRFL. – $10.00. This license shall be issued only to an individual who is 70 years of age or older and who is a resident of the State.

j. Resident Disabled Veteran CRFL. – $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

k. Resident Totally Disabled CRFL. – $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration.

(d) Exemptions. – An individual ~~may engage in recreational fishing by means of recreational gear without having purchased a SFL~~is exempt from the license requirements of G.S. 113-174.1(a) if the individual ~~is~~ either:

(1) Is under 16 years of age.~~18 years of age or younger and is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.~~

(2) Holds any of the following licenses that were purchased prior to January 1, 2005:

a. Infant Lifetime Sportsman License issued under G.S. 113-270.1D(b)(1).

b. Youth Lifetime Sportsman License issued under G.S. 113-270.1D(b)(2).

c. Adult Resident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(3).

d. Nonresident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(4).

e. Age 70 Resident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(5).

f. Lifetime Resident Comprehensive Fishing License issued under G.S. 113-271(d)(3).

g. Lifetime Combination Hunting and Fishing License for Disabled Residents issued under G.S. 113-270.1C(b)(4).

h. Disabled Resident Sportsman License issued under G.S. 113-270.1D(b)(6).

(3) Holds any of the following licenses:

a. Lifetime Fishing License for the Legally Blind issued under G.S. 113-271(d)(7).

b. Adult Care Home Resident Fishing License issued under G.S. 113-271(d)(8)."

SECTION 4. Article 14B of Chapter 113 of the General Statutes is amended by adding two new sections to read:

"**§ 113-174.3. For Hire Blanket CRFL; enforcement.**

(a) License. – A person who operates a for hire boat may purchase a For Hire Blanket CRFL issued by the Division of Marine Fisheries. A For Hire Blanket CRFL authorizes all individuals on the for hire boat who do not hold a license issued under this Article or Article 25A of this Chapter to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. A For Hire Blanket CRFL does not authorize individuals on the for hire boat to engage in recreational fishing in joint fishing waters or inland fishing waters. This license is valid for a period of one year from the date of issuance. The fee for a For Hire Blanket CRFL is:

(1)	Vessel of 18 feet or less in length	$150.00.
(2)	Vessel of greater than 18 feet in length but 38 feet or less in length	$250.00.
(3)	Vessel of greater than 38 feet in length but 50 feet or less in length	$350.00.
(4)	Vessel of greater than 50 feet in length	$450.00.

(b) Enforcement. – An inspector or other law enforcement officer may only verify the licensure of a person who operates a for hire boat after the boat has returned to shore. An inspector or other law enforcement officer may only verify the licensure of an individual engaged in recreational fishing from a for hire boat after the boat has returned to shore and the individual has disembarked from the boat. Except as provided in this section and G.S. 113-174.2(d), each individual on board a for hire boat engaged in recreational fishing, other than crew members who do not engage in recreational fishing, must hold a license issued under this Article or Article 25A of this Chapter. An owner, operator, or crew member of a for hire boat is not responsible for the licensure of a customer fishing from the boat.

"**§ 113-174.4. Ocean Fishing Pier Blanket CRFL.**

Ocean Fishing Pier Blanket CRFL. – A person who owns or operates an ocean fishing pier and who charges a fee to allow a person to engage in recreational fishing from the pier may purchase an Ocean Fishing Pier Blanket CRFL issued by the Division of Marine Fisheries. An Ocean Fishing Pier Blanket CRFL authorizes all individuals who do not hold a license issued under this Article or Article 25A of this Chapter to engage in recreational fishing in coastal fishing waters while on the pier. This license is valid for a period of one year from the date of issuance. The fee for an Ocean Fishing Pier Blanket CRFL is four dollars ($4.00) per linear foot, to the nearest foot, that the pier extends into coastal fishing waters beyond the mean high waterline. The length of the pier shall be measured to include all extensions of the pier."

SECTION 5. G.S. 113-175 reads as rewritten:

"**§ 113-175. Definitions.**

As used in this Article:

~~(1) "Board of Trustees" means the Board of Trustees of the Fund.~~

(1a) "Endowment Fund" means the North Carolina Marine Resources Endowment Fund.

(1b) "Endowment investment income" means interest and other income earned from the investment of the principal of the Endowment Fund.

(1c) "Endowment license revenues" means the net proceeds from the sale of licenses issued under G.S. 113-174.2(c)(6) and a portion of the net proceeds from the sale of licenses issued under G.S. 113-351(c)(3) and (4). The apportionment of the net proceeds from the sale of licenses issued under G.S. 113-351(c)(3) and (4) shall be jointly determined by the Division of Marine Fisheries and the Wildlife Resources Commission. In the event that the Division of Marine Fisheries and the Wildlife Resources Commission cannot agree on the apportionment, the Governor is authorized to determine the apportionment.

(2) ~~"Fund"~~"Marine Resources Fund" means the North Carolina ~~Saltwater Fishing~~Marine Resources Fund.

(3) ~~"Investment"~~"Marine resources investment income" means interest earned from the investment of ~~license revenues and the proceeds of any gifts, grants, or contributions deposited in~~ the principal of the Marine Resources Fund.

(4) ~~"License"~~"Marine resources license revenues" means the net proceeds from the sale of ~~Saltwater Fishing Licenses~~licenses issued under ~~G.S. 113-174.2.~~Article 14B of this Chapter and a portion of the net proceeds from the sale of licenses issued under Article 25A of this Chapter, excluding endowment license revenues. The apportionment of the net proceeds from the sale of licenses issued under Article 25A of this Chapter shall be jointly determined by the Division of Marine Fisheries and the Wildlife Resources Commission. In the event that the Division of Marine Fisheries and the Wildlife Resources Commission cannot agree on the apportionment, the Governor is authorized to determine the apportionment. ~~The term includes funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced with license revenues and federal aid project reimbursements to the extent that license revenues originally funded the project for which the reimbursement is made.~~"

SECTION 6. G.S. 113-175.1 reads as rewritten:

"**§ 113-175.1. North Carolina ~~Saltwater Fishing Fund.~~Marine Resources Fund.**

(a) There is hereby established the North Carolina ~~Saltwater Fishing~~Marine Resources Fund as a nonreverting fund in the office of the State Treasurer. The purpose of the Marine Resources Fund is to enhance the ~~fishery~~ marine resources of the ~~State for commercial and recreational fishing.~~State. ~~License revenues and the proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion~~

~~in the Fund shall be deposited in the Fund.~~ The principal of the Marine Resources Fund shall consist of:

(1) Marine resources license revenues.

(2) Proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Marine Resources Fund.

(3) Funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced from funds disbursed from the Marine Resources Fund.

(4) Federal aid project reimbursements to the extent that funds disbursed from the Marine Resources Fund originally funded the project for which the reimbursement is made.

(b) The State Treasurer shall hold the Marine Resources Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall invest the assets of the Marine Resources Fund in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3. The State Treasurer shall disburse the principal of the Marine Resources Fund and marine resources investment income only upon the written direction of the Wildlife Resources Commission.

(c) The Wildlife Resources Commission may authorize the disbursement of the principal of the Marine Resources Fund and marine resources investment income only to manage, restore, develop, cultivate, conserve, and enhance the marine resources of the State. The Wildlife Resources Commission shall consult with the Marine Fisheries Commission and the Division of Marine Fisheries on the disbursement of the principal of the Marine Resources Fund and marine resources investment income."

SECTION 7. G.S. 113-175.2 is repealed.

SECTION 8. G.S. 113-175.3 is repealed.

SECTION 9. G.S. 113-175.4 is repealed.

SECTION 10. Article 14C of Chapter 113 of the General Statutes is amended by adding three new sections to read:

"**§ 113-175.5. North Carolina Marine Resources Endowment Fund.**

(a) There is hereby established the North Carolina Marine Resources Endowment Fund as a nonreverting fund in the office of the State Treasurer. The purpose of the Endowment Fund is to provide the citizens and residents of the State with the opportunity to invest in the future of the marine resources of the State. The principal of the Endowment Fund shall consist of:

(1) Endowment license revenues.

(2) Proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Endowment Fund.

(3) Funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced from endowment investment income.

(4) Federal aid project reimbursements to the extent that endowment investment income originally funded the project for which the reimbursement is made.

(5) Transfers to the Endowment Fund.

(6) Any endowment investment income, marine resources investment income, or marine resources license revenue that is credited to the Endowment Fund for the purpose of increasing the principal of the Endowment Fund.

(b) The State Treasurer shall hold the Endowment Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall invest the assets of the Endowment Fund in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3. The State Treasurer shall disburse the endowment investment income only upon the written direction of the Wildlife Resources Commission.

(c) The Endowment Fund is declared to constitute a special trust derived from a contractual relationship between the State and the members of the public whose investments contribute to the Endowment Fund. In recognition of this special trust, all of the following restrictions are placed on disbursement of funds held in the Endowment Fund:

(1) Any restrictions specified by the donors on the uses of income derived from gifts, grants, and voluntary contributions shall be respected but shall not be binding.

(2) No disbursements of the endowment investment income derived from the endowment license revenues generated by the sale of Infant Lifetime CRFLs under G.S. 113-174.2(c)(6)e., Youth Lifetime CRFLs under G.S. 113-174.2(c)(6)f., Infant Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses under G.S. 113-351(c)(3)a., or Youth Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses under G.S. 113-351(c)(3)b. shall be made for any purpose until the respective licensees attain the age of 16 years. The State Treasurer shall periodically make an actuarial determination as to the amount of endowment investment income within the Endowment Fund that remains encumbered by the restriction of this subdivision and the amount that is free of the restriction. The Executive Director of the Wildlife Resources Commission shall provide the State Treasurer with the information necessary to make this determination.

(3) No disbursement shall be made from the principal of the Endowment Fund except as otherwise provided by law.

(d) The Wildlife Resources Commission may authorize the disbursement of endowment investment income only to manage, restore, develop, cultivate, conserve, and enhance the marine resources of the State. The Wildlife Resources Commission shall consult with the Marine Fisheries Commission and the Division of Marine Fisheries on the disbursement of endowment investment income from the Marine Resources Endowment Fund.

(e) Expenditure of the endowment investment income shall be made through the State budget accounts of the Wildlife Resources Commission in accordance with the provisions of the Executive Budget Act. The Endowment Fund is subject to the

oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

"**§ 113-175.6. Marine Resources Committee.**

The Chair of the Wildlife Resources Commission shall designate five members of the Wildlife Resources Commission who shall constitute the Marine Resources Committee of the Wildlife Resources Commission. The Marine Resources Committee shall advise the Wildlife Resources Commission on the disbursement of funds from the Marine Resources Fund pursuant to G.S. 113-175.1 and on the disbursement of endowment investment income from the Marine Resources Endowment Fund pursuant to G.S. 113-175.5.

"**§ 113-175.7. Report.**

The Executive Director of the Wildlife Resources Commission shall submit to the Joint Legislative Commission on Seafood and Aquaculture by October 1 of each year a report on the Marine Resources Fund and the Marine Resources Endowment Fund that shall include the source and amounts of all moneys credited to each fund and the purpose and amount of all disbursements from each fund during the prior fiscal year."

SECTION 11. G.S. 113-270.1 reads as rewritten:

"**§ 113-270.1. License agents.**

(a) The Wildlife Resources Commission may by rule provide for the ~~annual~~ appointment of persons as license agents to sell licenses and permits ~~which it~~ that the Commission is authorized to issue by this Subchapter or by any other provisions of law. To facilitate the convenience of the public, the efficiency of administration, the need to keep statistics and records affecting the conservation of wildlife resources, boating, water safety, and other matters within the jurisdiction of the Wildlife Resources Commission, and the need to issue licenses and permits containing special restrictions, the Wildlife Resources Commission may issue licenses and permits in any particular category through:

(1) License agents.
(2) The Wildlife Resources Commission's headquarters.
(3) Employees of the Wildlife Resources Commission.
(4) Two or more such sources simultaneously.

(a1) When there are substantial reasons for differing treatment, the Wildlife Resources Commission may issue a type of license or permit by one method in one locality and by another method in another locality.

(b) License agents may deduct from the amount collected for each license or permit a fee of six percent (6%).

(b1) When licenses or permits are to be issued by license agents as provided by subsection (a) of this section, the Wildlife Resources Commission may adopt rules to provide for any of the following:

(1) Qualifications of the license agents.
(2) Duties of the license agents.
(3) Methods and procedures to ensure accountability and security for proceeds and unissued licenses and permits.

(4) Types and amounts of evidence that a license agent must submit to relieve the agent of responsibility for losses due to occurrences beyond the control of the agent.

(5) Any other reasonable requirement or condition that the Wildlife Resources Commission deems necessary to expedite and control the issuance of licenses and permits by license agents.

(b2) The Wildlife Resources Commission may adopt rules to authorize the Executive Director to take any of the following actions related to license agents:

(1) Select and appoint license agents in areas most convenient for the sale of licenses and permits.

(2) Limit the number of license agents in an area if necessary for efficiency of operation.

(3) Require prompt and accurate reporting and remittance of public funds or documents by license agents.

(4) Conduct periodic and special audits of accounts.

(5) Suspend or terminate the authorization of any license agent found to be noncompliant with rules adopted by the Wildlife Resources Commission or when State funds or property are reasonably believed to be in jeopardy.

(6) Require the immediate surrender of all equipment, forms, licenses, permits, records, and State funds and property, issued by or belonging to the Wildlife Resources Commission, in the event of the termination of a license agent.

(b3) The Wildlife Resources Commission is exempt from the contested case provisions of Chapter 150B of the General Statutes with respect to determinations of whether to authorize or terminate the authority of a person to sell licenses and permits as a license agent of the Wildlife Resources Commission.

(b4) If any check or bank account draft of any license agent for the issuance of licenses or permits shall be returned by the banking facility upon which the same is drawn for lack of funds, the license agent shall be liable to the Commission for a penalty of five percent (5%) of the amount of the check or bank account draft, but in no event shall the penalty be less than five dollars ($5.00) or more than two hundred dollars ($200.00). License agents shall be assessed a penalty of twenty-five percent (25%) of their issuing fee on all remittances to the Commission after the fifteenth day of the month immediately following the month of sale.

~~(c) The Wildlife Resources Commission may provide qualifications and standards concerning license agents and delegate to the Executive Director the task of appointment and supervision. Annual appointments run from May 1 to April 30 each year. The Wildlife Resources Commission may require license agents to post bonds, keep records and make reports concerning licenses and receipts, be subject to such audits and inspections as may be necessary, and pay a penalty of five percent (5%) on any worthless checks given the Wildlife Resources Commission. The minimum penalty for a worthless check, however, is five dollars ($5.00), and the maximum penalty is two hundred dollars ($200.00). The Wildlife Resources Commission shall require license~~

~~agents to pay penalties of twenty-five percent (25%) of the agents' fees on any license fees remitted to the Commission after the fifteenth day of the month immediately following the month of sale.~~

(d) ~~The Wildlife Resources Commission may make rules in implementing the authority granted in subsection (c), but it need not set out in its rules details as to forms of license, records and accounting procedures, and other reasonable requirements that may be administratively promulgated by employees of the Wildlife Resources Commission in implementation of the purposes of this Article in order for such administrative requirements to be deemed validly required.~~ It is a Class 1 misdemeanor for a license ~~agent:~~agent to do any of the following:

(1) ~~To withhold~~Withhold or misappropriate funds from the sale of ~~licenses;~~licenses or permits.

(2) ~~To falsify~~Falsify records of licenses ~~sold;~~or permits sold.

(3) ~~Wilfully~~ Willfully and knowingly ~~to~~ assist or allow a person to obtain a license or permit for which ~~he is ineligible;~~the person is ineligible.

(4) ~~Wilfully to~~Willfully issue a backdated ~~license;~~license or permit.

(5) ~~Wilfully on records or licenses to~~Willfully include false information or omit material information ~~as to:~~on records, licenses, or permits regarding either:

a. A person's entitlement to a particular ~~license; or~~license or permit.

b. The applicability or term of a particular ~~license; or~~license or permit.

(6) ~~To refuse to return all consigned licenses, or to remit the net value of consigned licenses sold or unaccounted for, upon demand from an authorized employee of the Wildlife Resources Commission.~~Charge or accept any additional fee, remuneration, or other item of value in association with any activity set out in subdivisions (1) through (5) of this subsection.

~~(e) The Executive Director may temporarily suspend, revoke, or refuse to renew a person's appointment as a license agent if he fails in a timely manner to submit required reports, remit moneys due the Wildlife Resources Commission, or otherwise comply with the qualifications and standards set by the Wildlife Resources Commission or with reasonable administrative directives of the Executive Director. The temporary suspension is effective immediately upon communication of that fact to the license agent or his representative handling the licenses. The communication as to suspension must state the grounds for suspension and that the license agent may request a hearing within five working days if he contests the grounds for suspension. If not in writing, the communication must be followed by written notice of suspension containing the same information. By personal service of an impoundment order upon a license agent or his representative handling the licenses, an employee or agent of the Wildlife Resources Commission may enter the premises and impound all licenses, moneys, record books, reports, license forms, and other documents, ledgers, and materials pertinent or apparently pertinent to the license agency being suspended. The Executive Director~~

~~must make the impounded property, or copies of it, available to the licensee during the period of temporary suspension.~~

~~(f) If a hearing is requested, it is before the Executive Director or his designee to be held at Raleigh or some other place convenient to the parties specified by the Executive Director. The temporary suspension remains in effect until the hearing, and after the hearing may be rescinded or continued in effect, as the facts warrant, in the discretion of the Executive Director. A temporary suspension may not last longer than 30 days, but additional suspensions may be imposed if at the end of the suspension period the license agent is still not in compliance with appropriate standards, qualifications, and administrative directives. A license agent may at any time after a hearing appeal his suspension to the Wildlife Resources Commission.~~

~~(g) Notice of revocation or nonrenewal of the appointment may be sent the license agent in lieu of or in addition to temporary suspension. The notice must state the grounds for termination of the appointment and the license agent's right to a hearing if he has not previously been afforded one. If the appointment is to be revoked, the notice must state the effective date and hour of revocation. If the appointment is not to be renewed, the notice must state that the appointment expires at midnight on April 30. If he has not been previously afforded a hearing, a license agent is entitled to a hearing within 14 days before the Executive Director or his designee to be held at Raleigh or some other place convenient to the parties specified by the Executive Director. After the hearing, the Executive Director, applying appropriate standards, must take the action with respect to the appointment as license agent that the facts warrant. If the Executive Director upholds the decision to terminate the appointment, a license agent may appeal his termination to the Wildlife Resources Commission. Pending the hearing and any appeal from it, the termination is held in abeyance, but no license sales may be made once the license agent's bond has expired.~~

~~(h) Upon termination of the appointment, the former agent must return to the Wildlife Resources Commission all record books, reports, license forms, moneys, and other property pertaining to the license agency, and must allow agents of the Wildlife Resources Commission to conduct necessary inspections and audits required in terminating the license agency. Each day's refusal after termination to return, upon demand, the record books, reports, license forms, moneys, and other property pertaining to the license agency is a separate offense. Each instance of refusal, after termination, to allow agents of the Wildlife Resources Commission to conduct necessary inspections and audits during regular business hours is a separate offense. A violation of this subsection is a Class 2 misdemeanor. Before termination, violations by license agents are punishable under G.S. 113-135, subsection (d) above, or other provision of this Subchapter, as appropriate.~~

~~(i) No person denied appointment or whose appointment was terminated under this section is eligible to apply again for an appointment as a license agent for two years. Upon application, the executive director may not grant the appointment as license agent unless the applicant produces clear evidence, convincing to the Executive Director, that he meets all standards and qualifications and will comply with all~~

~~requirements of statutes, rules, and reasonable administrative directives pertaining to license agents.~~

~~(j) The Executive Director or his designee holding any hearing under this section must keep a written record of evidence considered and findings made. Upon appeal to the Wildlife Resources Commission, the commission chairman or other presiding officer must cause such a written record of evidence and findings to be made and kept. Hearings and appeals under this section are internal matters concerning license agents of the Wildlife Resources Commission and are not governed by the North Carolina Administrative Procedure Act.~~"

SECTION 12. G.S. 113-270.1C reads as rewritten:

"**§ 113-270.1C. Combination hunting and inland fishing licenses.**

(a) The combination hunting and inland fishing licenses set forth in subsection (b) of this section entitle the ~~holder~~ licensee to take, except on game lands, all wild birds and wild animals, other than big game and waterfowl, by all lawful methods and in all open seasons, and to fish with hook and line in all inland and joint fishing waters, except public mountain trout waters. A combination hunting and inland fishing license issued under this section does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters.

(b) Combination hunting and inland fishing licenses issued by the Wildlife Resources Commission are:

(1) Resident Annual Combination Hunting and Inland Fishing License – $20.00. This license shall be issued only to an individual resident of the State.

(2), (3) Repealed by Session Laws 1997-326, s. 2.

~~(4) Lifetime Combination Hunting and Fishing License for Disabled Residents – $10.00. This license shall be issued only to (i) an individual resident of the State who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs, remaining valid for the lifetime of the individual so long as the individual remains fifty percent (50%) or more disabled; or (ii) an individual resident of the State who is totally disabled, remaining valid for the lifetime of the individual so long as the individual remains totally disabled. For purposes of this section, "totally disabled" means physically incapable of being gainfully employed. The application form for this license, to be provided by the Wildlife Resources Commission, allows a person to apply only for the fishing privileges conveyed by the license. This license entitles the holder to fish in public mountain trout waters as provided in G.S. 113-272(a).~~

(5) Resident Disabled Veteran Lifetime Combination Hunting and Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the

lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled. This license entitles the licensee to fish in public mountain trout waters as provided in G.S. 113-272(a).

(6) Resident Totally Disabled Lifetime Combination Hunting and Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration. This license remains valid for the lifetime of the licensee. This license entitles the licensee to fish in public mountain trout waters as provided in G.S. 113-272(a)."

SECTION 13. G.S. 113-270.1D reads as rewritten:

"**§ 113-270.1D. Sportsman licenses.**

(a) Annual Sportsman License – $40.00. This license shall be issued only to an individual resident of the State and entitles the ~~holder~~ licensee to take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands, and to fish with hook and line for all fish in all inland and joint fishing waters, including public mountain trout waters. An annual sportsman license issued under this subsection does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters.

(b) Lifetime Sportsman Licenses. ~~Lifetime~~ Except as provided in subdivision (7) of this subsection, lifetime sportsman licenses are valid for the lifetime of the ~~holders~~ licensees.~~and~~ Lifetime sportsman licenses entitle the ~~holders~~ licensees to take all wild animals and wild birds by all lawful methods in all open seasons, including the use of game lands, and to fish with hook and line for all fish in all inland and joint fishing waters, including public mountain trout waters. A lifetime sportsman license issued under this subsection does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. Lifetime sportsman licenses issued by the Wildlife Resources Commission are:

(1) Infant Lifetime Sportsman License – $200.00. This license shall be issued only to an individual under one year of age.

(2) Youth Lifetime Sportsman License – $350.00. This license shall be issued only to an individual under 12 years of age.

(3) Adult Resident Lifetime Sportsman License – $500.00. This license shall be issued only to an individual resident of the State.

(4) Nonresident Lifetime Sportsman License – $1,000. This license shall be issued only to an individual nonresident of the State.

(5) Age 70 Resident Lifetime Sportsman License – $10.00. This license shall be issued only to an individual resident of the State who is at least 70 years of age.

~~(6) Disabled Resident Sportsman License – $100.00. This license shall be issued only to (i) an individual resident of the State who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs, remaining valid for the lifetime of the individual so long as the individual remains fifty percent (50%)~~

~~or more disabled; or (ii) an individual resident of the State who is totally disabled, remaining valid for the lifetime of the individual so long as the individual remains totally disabled. For purposes of this section, "totally disabled" means physically incapable of being gainfully employed.~~

(7) Resident Disabled Veteran Lifetime Sportsman License – $100.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

(8) Resident Totally Disabled Lifetime Sportsman License – $100.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration."

SECTION 14. G.S. 113-271 reads as rewritten:

"**§ 113-271. Hook-and-line licenses in inland and joint fishing waters.**

(a) An inland hook-and-line fishing license issued under this section entitles the licensee to fish with hook and line in inland fishing waters and joint fishing waters. An inland hook-and-line fishing license issued under this section does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. An inland hook-and-line fishing license issued under subdivision (1), (3), (6a), (6b), (6c), or (9) of subsection (d) of this section entitles the licensee ~~All the hook-and-line fishing licenses set forth in subdivisions (1), (3), (7), and (9) of subsection (d) of this section entitle the holder~~ to fish with hook and line in public mountain trout waters.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 684, s. 4.

(c) Repealed by Session Laws 1979, c. 830, s. 1.

(d) The hook-and-line fishing licenses issued by the Wildlife Resources Commission are as follows:

(1) Resident Annual Comprehensive Inland Fishing License – $20.00. This license shall be issued only to an individual resident of the State.

(2) Resident State Inland Fishing License – $15.00. This license shall be issued only to an individual resident of the State.

(3) Lifetime Resident Comprehensive Inland Fishing License – $250.00. This license shall be issued only to an individual resident of the State and is valid for the lifetime of the ~~holder.~~licensee.

(4) Resident County Inland Fishing License – $10.00. This license shall be issued only to an individual resident of the State and is valid only within the county of residence of the ~~license holder.~~licensee.

(5) Nonresident State Inland Fishing License – $30.00. This license shall be issued to an individual nonresident of the State.

(6) Short-Term Inland Fishing Licenses. Short-term inland fishing licenses are valid only for the date or consecutive dates indicated on the

licenses. Short-term inland fishing licenses issued by the Wildlife Resources Commission are:

a. Resident ~~one-day~~10-day Inland Fishing License – $5.00. This license shall be issued only to a resident of the State.

b. Nonresident ~~one-day~~10-day Inland Fishing License – $10.00. This license shall be issued only to a nonresident of the State.

~~c. Nonresident three-day – $15.00. This license shall be issued only to a nonresident of the State.~~

(6a) Age 70 Resident Lifetime Inland Fishing License – $10.00. This license shall be issued only to an individual resident of the State who is at least 70 years of age.

(6b) Resident Disabled Veteran Lifetime Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

(6c) Resident Totally Disabled Lifetime Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration. This license remains valid for the lifetime of the licensee.

~~(7) Lifetime Fishing License for the Legally Blind – No charge. This license shall be issued only to an individual resident of the State who has been certified by the Department of Health and Human Services as a person whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential. This license is valid for the life of the individual so long as he remains legally blind.~~

~~(8) Adult Care Home Resident Fishing License – No charge. This license shall be issued only to an individual resident of the State who resides in an adult care home as defined in G.S. 131D-2(a)(3) or G.S. 131E-101(4). This license is valid for the life of the individual so long as the individual remains a resident of an adult care home.~~

(9) Special Guest Inland Fishing License – $50.00. This license shall be issued only to the owner or lessee of private property bordering inland or joint fishing waters, including public mountain trout waters, and entitles ~~persons~~ individuals to fish from the shore or any pier or dock originating from the property without any additional fishing license. This license is applicable only to private property and private docks and piers and is not valid for any public property, pier, or dock nor for any private property, pier, or dock operated for any commercial purpose whatsoever. The guest fishing license shall not be in force unless displayed on the premises of the property and only entitles fishing without additional license to ~~persons~~ individuals fishing from

the licensed property and then only when fishing within the private property lines. The guest fishing license is not transferable as to person or location."

SECTION 15. G.S. 113-272.3(c) reads as rewritten:

"(c) Lifetime licenses are issued from the Wildlife Resources Commission headquarters. Each application for an Infant Lifetime Sportsman or Youth Lifetime Sportsman License must be accompanied by a certified copy of the birth ~~certificate~~ certificate, adoption order containing the date of birth, or other proof of age satisfactory to the Commission, of the individual to be named as the ~~license holder.~~licensee."

SECTION 16. G.S. 113-275(c1) reads as rewritten:

"(c1) Upon receipt of a proper application together with a fee of ~~two~~ five dollars ~~($2.00),~~($5.00), the Wildlife Resources Commission may issue a new license or permit to replace one that has been lost or destroyed before its expiration. The application must be on a form of the Wildlife Resources Commission setting forth information in sufficient detail to allow ready identification of the lost or destroyed license or permit and ascertainment of the applicant's continued entitlement to it."

SECTION 17. G.S. 113-276(e) is repealed.

SECTION 18. G.S. 113-276(j) reads as rewritten:

"(j) A migrant farm worker who has in his possession a temporary certification of his status as such by the Rural Employment Service of the North Carolina Employment Security Commission on a form provided by the Wildlife Resources Commission is entitled to the privileges of a resident of the State and of the county indicated on such certification during the term thereof for the purposes ~~of:~~of

~~(1)~~ ~~Purchasing~~purchasing and using the resident fishing licenses provided by G.S. 113-271(d)(2), (4), and ~~(6)a.; and~~(6)a.

~~(2) Utilizing the natural-bait exemption in subsection (e) above.~~"

SECTION 19. G.S. 113-276(m) reads as rewritten:

"(m) ~~Notwithstanding any other provision of law, the~~ The fourth day of July of each year is declared a free fishing day to promote the sport of fishing and no hook-and-line fishing license is required to fish in any of the public waters of the State on ~~this~~ that day. All other laws and rules pertaining to hook-and-line fishing still apply."

SECTION 20. G.S. 113-276.1 reads as rewritten:

"**§ 113-276.1. Regulatory authority of Wildlife Resources Commission as to license requirements and exemptions.**

(a) In its discretion and in accordance with the best interests of the conservation of wildlife resources, the Wildlife Resources Commission may implement the provisions of this Article with rules that:

(1) [Reserved.]

(2) Regulate license requirements and exemptions applying to the taking of wildlife on particular waters forming or lying across a county boundary where there may be confusion as to the location of the boundary, hardship imposed as to the location of the boundary, or difficulty of administering or enforcing the law with respect to the actual boundary location.

(3) Require persons subject to license requirements, and persons exempt from license requirements, to carry, display, or produce identification that may be necessary to substantiate the person's entitlement to a particular license or to a particular exemption from license requirements.

(4) Require individuals aboard vessels or carrying weapons or other gear that may be used to take wildlife resources, and in an area at a time wildlife resources may be taken, to exhibit identification that includes the individual's name and current address. More than one piece of identification, including a vehicle driver license, may be required to be exhibited, if available.

(5) Implement a system of tagging and reporting fur-bearing animals and big game. Upon the implementation of a tagging system for any species of fur-bearing animal, the Wildlife Resources Commission may charge a reasonable fee to defray its costs, not to exceed two dollars twenty-five cents ($2.25) per tag, for each tag furnished. The price of the big game hunting license includes the cost of big game tags.

(b) Except as provided in this subsection, the Wildlife Resources Commission shall not disclose personal information provided by an applicant for a license issued under Article 14B, Article 21, or Article 25A of Chapter 113 of the General Statutes. The Wildlife Resources Commission shall disclose to the Division of Marine Fisheries and the Marine Fisheries Commission information on the holders of licenses issued under Article 14B and Article 25A of Chapter 113 of the General Statutes."

SECTION 21. G.S. 113-296(b) reads as rewritten:

"(b) In order to be eligible for participation in the Disabled Sportsman Program established by this section, ~~a person~~an individual must be able to certify through competent medical evidence one of the following disabilities:

(1) ~~Amputation of~~Missing fifty percent (50%) or more of one or more ~~limbs;~~limbs, whether by amputation or natural causes.

(2) Paralysis of one or more ~~limbs;~~limbs.

(3) Dysfunction of one or more limbs rendering the ~~person~~ individual unable to perform the tasks of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a ~~cane;~~cane.

(4) Disease, injury, or defect confining the ~~person~~ individual to a wheelchair, walker, or ~~crutches;~~crutches.

(5) Legal ~~deafness; or~~deafness.

(6) Legal blindness, for purposes of participation in disabled fishing only.

The disability must be permanent, and ~~a person~~an individual loses eligibility to participate in the Disabled Sportsman Program when the specified disability ceases to exist."

SECTION 22. Subchapter IV of Chapter 113 of the General Statutes is amended by adding a new Article to read:

"Article 25A.

"Unified Licenses.

"§ 113-351. Unified hunting and fishing licenses; subsistence license waiver.

(a) Definitions. – The definitions set out in G.S. 113-174 apply to this Article.

(b) General Provisions Governing Licenses and Waivers. – The general provisions governing licenses set out in G.S. 113-174.1 apply to licenses and waivers issued under this section.

(c) Types of Unified Hunting and Fishing Licenses; Fees; Duration. – The Wildlife Resources Commission shall issue the following Unified Hunting and Fishing Licenses:

(1) Annual Resident Unified Sportsman/Coastal Recreational Fishing License. – $55.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State. This license authorizes the licensee to take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands; to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters; and to engage in recreational fishing in coastal fishing waters.

(2) Annual Resident Unified Inland/Coastal Recreational Fishing License. – $35.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State. This license authorizes the licensee to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters, and to engage in recreational fishing in coastal fishing waters.

(3) Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses. – Except as provided in sub-subdivisions f., h., and i. of this subdivision, a license issued under this subdivision is valid for the lifetime of the licensee. A license issued under this subdivision authorizes the licensee to take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands; to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters; and to engage in recreational fishing in coastal fishing waters.

a. Infant Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $275.00. This license shall be issued only to an individual who is younger than one year of age.

b. Youth Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $450.00. This license shall be issued only to an individual who is one year of age or older but younger than 12 years of age.

c. Resident Adult Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $675.00. This license shall be

issued only to an individual who is 12 years of age or older but younger than 70 years of age and who is a resident of the State.

d. Nonresident Adult Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $1,350. This license shall be issued only to an individual who is 12 years of age or older and who is not a resident of the State.

e. Resident Elderly Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $20.00. This license shall be issued only to an individual who is 70 years of age or older and who is a resident of the State.

f. Resident Disabled Veteran Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $110.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

g. Resident Totally Disabled Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $110.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration.

h. Resident Legally Blind Lifetime Unified Sportsman/Coastal Recreational Fishing License. – No charge. This license shall be issued only to an individual who is a resident of the State and who has been certified by the Department of Health and Human Services as an individual whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential. This license remains valid for the lifetime of the licensee so long as the licensee remains legally blind.

i. Resident Adult Care Home Lifetime Unified Sportsman/Coastal Recreational Fishing License. – No charge. This license shall be issued only to an individual who is a resident of the State and who resides in an adult care home as defined in G.S. 131D-2(a)(1b) or G.S. 131E-101(1). This license remains valid for the lifetime of the licensee so long as the licensee remains a resident of an adult care home.

(4) Lifetime Unified Inland/Coastal Recreational Fishing License. – $450.00. This license is valid for the lifetime of the licensee and authorizes the licensee to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters, and to engage in recreational fishing in coastal fishing waters.

(d) Resident Subsistence Unified Inland/Coastal Recreational Fishing License Waiver. – A county department of social services shall issue a Resident Subsistence Unified Inland/Coastal Recreational Fishing License Waiver to an individual who receives benefits from Medicaid, Food Stamps, or Work First Family Assistance through the county department of social services and who requests a waiver. County departments of social services shall supply the Wildlife Resources Commission with the name, mailing address, and telephone number of each individual who receives a waiver. This waiver shall be issued at no charge. This waiver is valid for a period of one year from the date of issuance. This waiver shall be issued only to an individual who is a resident of the State. This waiver authorizes the waiver holder to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, except for public mountain trout waters, and to engage in recreational fishing in coastal fishing waters."

SECTION 23. G.S. 143B-289.52(h) reads as rewritten:

"(h) Neither the Commission nor the ~~Department~~ Division may disclose personal information provided by an applicant for a license issued under Article ~~14A or~~ 14B of Chapter 113 of the General Statutes. Neither the Commission nor the Division may disclose information on license holders provided by the Wildlife Resources Commission pursuant to G.S. 113-276.1(b)."

SECTION 24. G.S. 150B-1(e) is amended by adding a new subdivision to read:

"(e) Exemptions From Contested Case Provisions. – The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

...

(15) The Wildlife Resources Commission with respect to determinations of whether to authorize or terminate the authority of a person to sell licenses and permits as a license agent of the Wildlife Resources Commission."

SECTION 25. Sections 3, 4, 9, 10, 11, and 12 of S.L. 2004-187 are repealed.

SECTION 26. Section 15 of S.L. 2004-187 reads as rewritten:

"**SECTION 15.** ~~Sections 2, 3, and 4~~Section 2 of this act ~~become~~ becomes effective ~~January~~ March 1, 2006. All other sections of this act become effective when the act becomes law."

SECTION 27. The General Assembly finds that individuals who purchased certain lifetime licenses issued by the Wildlife Resources Commission prior to January 1, 2005, had a reasonable expectation that these lifetime licenses would authorize these licensees to engage in recreational fishing throughout the State and that these licensees would not be required to purchase any additional license to engage in recreational fishing in coastal waters during the lifetime of the licensee. In recognition of this expectation, the General Assembly has provided in G.S. 113-174.2(d), as enacted by Section 3 of this act, that the holders of these lifetime licenses are exempt from the license requirement for engaging in recreational fishing in coastal fishing waters that was established in S.L. 2004-187. The General Assembly further finds that, because the

holders of these lifetime licenses will be authorized to take marine resources from the coastal fishing waters of the State under the provisions of this act, it is appropriate that a portion of the revenues derived from the sale of these lifetime licenses should be transferred to the Marine Resources Endowment Fund so that the endowment investment income generated by the transferred license revenues will be used to manage, restore, develop, cultivate, conserve, and enhance the marine resources of the State. The General Assembly specifically finds that this transfer of funds is consistent with the overall spirit, intent, and purpose underlying the creation of the Wildlife Endowment Fund and the Marine Resources Endowment Fund. Therefore, in accordance with G.S. 143-250.1(d)(3), the State Treasurer shall transfer the sum of three million dollars ($3,000,000) from the Wildlife Endowment Fund to the Marine Resources Endowment Fund. This transfer shall be made in five equal installments of six hundred thousand dollars ($600,000) on the first day of March in 2006, 2007, 2008, 2009, and 2010.

SECTION 28.(a) The Wildlife Resources Commission shall adopt rules to provide for the following:

(1) Qualifications of license agents.
(2) Duties of license agents.
(3) Methods and procedures to ensure accountability and security for proceeds and unissued licenses and permits.
(4) Types and amounts of evidence that a license agent must submit to relieve the agent of responsibility for losses due to occurrences beyond the control of the agent.
(5) Any other reasonable requirement or condition that the Wildlife Resources Commission deems necessary to expedite and control the issuance of licenses and permits by license agents.

SECTION 28.(b) The Wildlife Resources Commission shall adopt rules to authorize the Executive Director to take the following actions related to license agents:

(1) Select and appoint license agents in areas most convenient for the sale of licenses and permits.
(2) Limit the number of license agents in an area if necessary for efficiency of operation.
(3) Require prompt and accurate reporting and remittance of public funds or documents by license agents.
(4) Conduct periodic and special audits of accounts.
(5) Suspend or terminate the authorization of any license agent found to be noncompliant with rules adopted by the Wildlife Resources Commission or when State funds or property are reasonably believed to be in jeopardy.
(6) Require the immediate surrender of all equipment, forms, licenses, permits, records, and State funds and property, issued by or belonging to the Wildlife Resources Commission, in the event of the termination of a license agent.

SECTION 29. The first report required pursuant to G.S. 113-175.7, as enacted by Section 10 of this act, is due by October 1, 2006.

SECTION 30. The repeal by this act of the statutory authority of the Wildlife Resources Commission to issue a type of license shall not affect the authority of an individual to whom a license of that type is issued prior to the effective date of the repeal to engage in the activity that the repealed license type authorizes so long as the license is otherwise valid.

SECTION 31. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

SECTION 32. Sections 5, 6, 7, 8, 9, 10, 19, 20, 23, 25, 26, 28, 29, 30, 31, and 32 of this act are effective when this act becomes law. Sections 15, 16, 21, and 24 of this act become effective January 1, 2006. Sections 1, 2, 3, 4, 12, 13, 14, 17, 18, 22, and 27 of this act become effective March 1, 2006. Section 11 of this act is effective on the date that all rules adopted by the Wildlife Resources Commission pursuant to Section 28 of this act become effective, except that G.S. 113-270.1(b3) and (b4) become effective January 1, 2006. Section 28 of this act expires on the date that all rules adopted by the Wildlife Resources Commission pursuant to Section 28 of this act become effective.

SENATE BILL 1126:
Amend Fisheries License Requirements & Laws.

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 28, 2005
Introduced by:	Sen. Albertson	**Summary by:**	Jeff Hudson
Version:	PCS to Fourth Edition S1126-CSSB-31 [v.23]		Staff Attorney

SUMMARY: The Proposed Committee Substitute for Senate Bill 1126 (PCS) would amend various coastal and inland fishing license statutes; establish a unified fishing license that authorizes fishing in inland, joint, and coastal fishing waters; establish a new Marine Fisheries Commission, and expand the enforcement authority of Marine Inspectors.

PART I. AMEND FISHING LICENSE REQUIREMENTS

CURRENT LAW: Under current law, an individual is required to hold a license issued by the Wildlife Resources Commission (WRC) to fish with hook and line in all inland and joint waters. Under S.L. 2004-187, effective January 1, 2006, an individual will be required to hold a license issued by the Division of Marine Fisheries to engage in recreational fishing in coastal fishing waters by means of recreational gear.

BILL ANALYSIS: The PCS would make a number of changes to the inland and coastal fishing license statutes as follows:

Sections 1.1 – 1.5: Amend Coastal Recreational Fishing Licenses (CRFL).
(A CRFL authorizes recreational fishing in coastal and joint waters)
License Types

- Annual Resident CRFL – $15.00.
- Annual Nonresident CRFL – $30.00.
- 10-day Resident CRFL – $5.00.
- 10-day Nonresident CRFL – $10.00.
- Various Lifetime CRFL's – Fees vary.

Exemptions for individuals who:

- Are under 16 years of age.
- Hold a Lifetime Resident Comprehensive Fishing License or a Lifetime Sportsman License purchased prior to January 1, 2005. (also exempts certain individuals who hold Lifetime CRFL's for disabled veterans, totally disabled individuals, legally blind individuals, and adult care home residents).

Optional For Hire Blanket CRFL (annual license that authorizes all individuals aboard a for hire boat to fish without an individual CRFL) – Fees are based on the number of passengers and range from $300.00 to $400.00.
Optional Ocean Fishing Pier Blanket CRFL (annual license that authorizes all individuals on the pier to fish without an individual CRFL) – The fee is $4.00 per linear foot.

Sections 1.6 – 1.15: Amend Inland Fishing Licenses.
(An Inland Fishing License authorizes recreational fishing in inland and joint waters)

- Makes technical, conforming, and clarifying changes requested by WRC.
- Repeals home county/natural bait exemption from inland fishing license requirements.

- Authorizes the WRC to adopt rules to exempt individuals who are participating in an organized fishing event from recreational fishing license requirements.

Section 1.16: Establish Unified Fishing Licenses.
(A Unified License authorizes fishing in coastal, joint, and inland waters).

- Annual Resident Unified Sportsman/CRFL (hunting and fishing) – $55.00.
- Annual Resident Unified Inland/CRFL (fishing only) – $35.00.
- Various Lifetime Unified Sportsman/CRFL's (hunting and fishing). – Fees vary.
- Lifetime Unified Inland/CRFL (fishing only) – $450.00.
- Resident Subsistence Unified Inland/Coastal Recreational Fishing Voucher (fishing only) – $1.00.

Sections 1.17 – 1.21: Miscellaneous licensing provisions.

- Prohibits WRC from disclosing personal identifying information except under certain circumstances.
- Provides that the repeal of statutory authority for certain licenses doesn't invalidate licenses that have already been issued under that authority.
- Makes conforming changes to licensing laws.
- Provides that nonresident students who attend school full-time in the State will be treated as residents under the marine and wildlife resources statutes. This would allow these nonresident students to purchase hunting and fishing licenses at the resident rate.

PART II. MARINE RESOURCES FUND AND MARINE RESOURCES ENDOWMENT FUND

Sections 2.1 – 2.10: Abolish Board of Trustees; create Marine Resources Fund and Marine Resources Endowment Fund; funds disbursed by Marine Fisheries Commission.
The PCS would make the following changes to the way in which license revenues are held and disbursed:

- Abolishes Board of Trustees of Saltwater Fishing Fund
- Converts Saltwater Fishing Fund into Marine Resources Fund to hold license revenues from non-lifetime licenses.
- Establishes Marine Resources Endowment Fund to hold license revenues from lifetime licenses.
- Provides that the Marine Fisheries Commission (MFC) may disburse funds from the Marine Resources Fund and investment income from the Marine Resources Endowment Fund to manage, protect, restore, develop, cultivate, conserve, and enhance State marine resources.
- Authorizes the Chair of the MFC to designate 5 members of the MFC to advise the MFC on the disbursement of funds.
- Directs the Chair of the MFC to report to the Joint Legislative Commission on Seafood and Aquaculture on the Marine Resources Fund and the Marine Resources Endowment Fund.
- Transfers the sum of $3,000,000 from the Wildlife Endowment Fund to the Marine Resources Endowment fund over a period of 5 years.
- Provides that the WRC may disburse up to $1,000,000 to implement this act, to be reimbursed from the Marine Resources Fund on July 1, 2010.

PART III. WILDLIFE RESOURCES COMMISSION LICENSE AGENTS

Sections 3.1 – 3.3: Wildlife Resources Commission license agents.
The PCS would amend laws governing the designation and oversight of WRC license agents.

PART IV. ESTABLISH NEW MARINE FISHERIES COMMISSION

CURRENT LAW: Under current law, the MFC is composed of nine members appointed by the Governor. Three of the members of the MFC must be involved in the commercial fishing industry, three members must be involved in recreational fishing or the sports fishing industry, one member must be a fisheries scientist, and two members must have general knowledge related to marine resources. The MFC must have at least one member from each of the three coastal regions of the State.

BILL ANALYSIS: The PCS would replace the existing MFC with a new MFC as follows:

Sections 4.1 and 4.2: Repeal existing and establish new MFC.
The PCS would repeal the statutes that authorize the existing MFC and would establish a new MFC. The structure, powers, and duties of the new MFC would be the same as those of the existing MFC except that the new MFC would be:

- Composed of 13 members; four appointed by the Governor, four appointed upon recommendation of the President Pro Tempore of the Senate, four appointed by the Speaker of the House of Representatives, and the Fisheries Director, who would serve as a nonvoting, ex officio member. Each of the appointing officers would appoint a member involved in commercial fishing, a member involved in recreational fishing, a fisheries scientist, and a member with general knowledge related to marine resources. Each of the appointing officers must appoint at least one member from the four regions of the State (three coastal regions and the inland region).
- Responsible for disbursing funds from the Marine Resources Fund and the Marine Resources Endowment Fund to manage, protect, restore, develop, cultivate, conserve, and enhance State marine resources.
- Prohibited from disclosing personal identifying information related to recreational fishing, but could disclose such information related to commercial fishing.
- Authorized to adopt rules to exempt individuals who are participating in an organized fishing event from recreational fishing license requirements.

Sections 4.3 – 4.12: Conforming and transitional changes.

PART V. ENFORCEMENT OF MARINE RESOURCES LAWS

Sections 5.1. Authorize enforcement of federal laws by Marine Inspectors.
The PCS would specifically authorize Marine Inspectors to accept delegation of law enforcement powers from the National Marine Fisheries Service in the United States Department of Commerce (NMFS). The PCS would also provide that if the Division enters into a Joint Enforcement Agreement with NMFS, the Division will report to the Joint Legislative Commission on Seafood and Aquaculture and the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources on the substance and implementation of the Agreement.

Section 5.2: Expand enforcement authority of Marine Inspectors.
The PCS would authorize Marine Inspectors to enforce criminal laws and assist other State and local law enforcement agencies to the same extent the Wildlife Protectors can.

PART VI. MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

Sections 6.1 – 6.3: Provide that the licensing provisions become effective January 1, 2007.

MAIN DIFFERENCES BETWEEN SENATE BILL 1126, 4TH EDITION AND PROPOSED COMMITTEE SUBSTITUTE

(Implement CRFL/Amend Fisheries Laws.)

Prepared by Jeff Hudson, Staff Attorney, June 28, 2005

	Senate Bill 1126, 4th Edition	PCS S1126-CSSB-31 [v.23]
Coastal Recreational Fishing License (CRFL) Requirement	Requires license for taking finfish in coastal fishing waters.	Requires license for taking finfish and bivalves in coastal fishing waters.
For Hire Blanket CRFL Fees	Based on length of vessel.	Based on number of passengers.
For Hire Blanket CRFL Enforcement	Can only verify licensure after boat has reached shore and individuals have disembarked from boat.	No provision.
Subsistence License	Free.	$1.00 Fee.
Disbursement of Funds	Authorizes the Wildlife Resources Commission (WRC) to disburse funds from the Marine Resources Fund and Marine Resources Endowment Fund.	Authorizes the Marine Fisheries Commission (MFC) to disburse funds from the Marine Resources Fund and Marine Resources Endowment Fund.
Reconstitute Marine Fisheries Commission	No provision.	Repeals the statutes that established the existing MFC and establishes a new MFC.
Federal Deputization of Marine Inspectors	No provision.	Authorizes Marine Inspectors to accept delegation of law enforcement powers from the United States National Marine Fisheries Service.
Expand Enforcement Powers of Marine Inspectors	No provision.	Authorizes Marine Inspectors to enforce criminal laws and assist other State and local law enforcement agencies to the same extent that Wildlife Protectors can.
Effective Date of License Requirement	March 1, 2006.	January 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 22, 2004

TO: Representative Pryor Gibson

FROM: Jennifer Haygood
Fiscal Research Division

RE: PCS S1126-CSSB-31

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
Note: Below estimates represent the change between current law and this PCS. See Table 10 for an estimate of total revenues generated by CRFL sales.					
REVENUES					
Marine Resources Fund	($5.7 m)	($9.9) m	$1.82 m	$1.83 m	$1.85 m
Marine Res. Endowment	$600,000	$1.03 m	$1.84 m	$1.84 m	$1.84 m
Wildlife Fund	$12,338	$283,467	$744,442	$744,442	$744,442
Wildlife Endowment	($600,000)	($600,000)	($600,000)	($600,000)	($600,000)
Discounted Unified Lic.*	$0	$33,748	$96,483	$96,556	$96,643
Total Net Revenues	**($5.68 m)**	**($9.19 m)**	**$3.90 m**	**$3.91 m**	**$3.91 m**
EXPENDITURES					
Wildlife Resources Comm.	$500,000	$978,162	$2.90 m	$2.90 m	$2.91 m
Division of Marine Fisheries	$12,600	$12,600	$12,600	$12,600	$12,600
County Depts. of Soc. Services	No estimate available, impact expected				
Dept. of Correction	Exact amount cannot be determined; no substantial impact anticipated				
Judicial Branch	Exact amount cannot be determined; no substantial impact anticipated				
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Wildlife Resources Commission, Dept. of Environment and Natural Resources-Division of Marine Fisheries, County Depts. of Social Services

EFFECTIVE DATE: License requirements effective January 1, 2007.

*Bill does not state into which fund these revenues are deposited.

BILL SUMMARY:

Amends Article 14B of G.S. Chapter 113 relating to Coastal Recreational Fishing Licenses (for coastal and joint waters) to provide that annual licenses are $15 for residents and $30 for nonresidents, and 10-day licenses are $5 for residents and $10 for nonresidents. Lifetime licenses, for-hire blanket licenses, and ocean fishing pier blanket licenses are available as well. Exempt from license requirements are children under 16 years old, holders of certain lifetime licenses acquired before January 1, 2005, and certain disabled individuals.

Amends Article 21 of G.S. Chapter 113 and GS 113-196(b) regarding inland fishing licenses, to repeal home county/natural bait exemption, prohibit disclosure of license applicants' personal information, and make clarifying and technical changes.

Enacts Article 25A of G.S. Chapter 113 to establish unified fishing licenses for hunting and for fishing in coastal, joint, and inland waters. The PCS includes the creation of a $1 resident subsistence unified inland/coastal recreational fishing license for residents currently enrolled in certain social services programs. Prohibits WRC from disclosing applicants' personal information and allows disclosure of information about commercial license applicants.

Amends Article 14C of G.S. Chapter 113 (NC Saltwater Fishing Fund) to abolish board of trustees and converts the Fund into a Marine Resources Fund and Marine Resources Endowment Fund, to which the license fees will be credited. Provides for five annual transfers of $600,000 each from the Wildlife Endowment Fund to the Marine Resources Endowment Fund.

This PCS includes five fiscally significant changes from the fourth edition of SB 1126: 1) the PCS includes a Resident Subsistence Unified License that costs $1; 2) it changes the For Hire Blanket License fee schedule, 3) it designates that the Marine Fisheries Commission is authorized to direct the disbursement of CRFL funds to manage marine resources; 4) it repeals Part 5D of Article 7 of Chapter 143B, thus repealing the current Marine Fisheries Commission statutes, and creates a new Marine Fisheries Commission that includes an additional three voting members; and 5) it authorizes Marine Patrol Officers to accept delegation of law enforcement powers from the National Marine Fisheries Service.

ASSUMPTIONS AND METHODOLOGY:

Revenues:

Coastal Recreational Fishing License Revenues: This PCS includes several changes to existing law that impact the amount of revenue generated from the sale of CRFLs. To determine the net impact of this bill on coastal recreational fishing license (CRFL) revenues, it is necessary to 1) calculate the amount of revenue generated under current law, 2) calculate the amount of revenue generated under this bill, and 3) calculate the difference.

The amount of revenue generated by the sale of CRFLs depends on the license fees, the number of licenses sold, and the type of licenses sold. Table 1 summarizes the CRFL fees in current law and those proposed by this PCS. The bill also creates unified hunting and fishing licenses, which are summarized in Table 2.

Table 1: Proposed Changes to Short-Term and Annual CRFL Fees

Current			Proposed		
	Resident	Nonresident		Resident	Nonresident
Seven-day license	$1	$1	Ten-day license	$5	$10
Annual license	$15	$15	Annual license	$15	$30
Lifetime Licenses					
< 6 years old	$100	$100	Infant (<1 year)	$100	$100
6 - 11 years old	$150	$150	Youth (1-11 years old)	$150	$150
11 - 18 years old	$200	$200	Adult (12-69 years old)	$250	$500
> 18 years old	$500	$500	Elderly (70 + years old)	$10	N/A
			Disabled Vet	$10	N/A
			Total Disabled	$10	N/A
Replacement License	N/A	N/A	Replacement License	$5	$5

Table 2: Proposed Unified Licenses

	Resident	Nonresident
Annual Licenses		
Resident Unified Sportsman/Coastal Recreational Fishing	$55	N/A
Resident Unified Inland/Coastal Recreational Fishing	$35	N/A
Subsistence Unified Inland/Coastal Recreational Fishing	$1	N/A
Lifetime Licenses		
Infant Unified Sportsman/Coastal Recreational Fishing	$275	$275
Youth Unified Sportsman/Coastal Recreational Fishing	$450	$450
Adult Unified Sportsman/Coastal Recreational Fishing	$675	$1,350
Elderly Unified Sportsman/Coastal Recreational Fishing	$20	N/A
Disabled Vet Unified Sportsman/Coastal Recreational Fishing	$110	N/A
Totally Disabled Unified Sportsman/Coastal Recreational Fishing	$110	N/A
Legally Blind Unified Sportsman/Coastal Recreational Fishing	$0	N/A
Resident Adult Care Home Unified Sportsman/Coastal Recreational Fishing	$0	N/A
Unified Inland/Coastal Recreational Fishing	$450	N/A

To determine the number of persons subject to CRFL fees, it is necessary to first estimate the number of coastal recreational anglers in North Carolina. Although there is no precise data at this time, the best estimate available is based on an annual Marine Recreational Fishery Statistics survey compiled by the Division of Marine Fisheries (DMF). Table 3 summarizes the results of this annual survey over the last four years.

Table 3: Estimated Number of Marine Recreational Anglers in NC, 2000-2003

	State Residents	Nonresidents	Total Anglers
2000	607,946	1,203,779	1,811,725
2001	696,583	1,281,925	1,978,508
2002	634,345	1,120,938	1,755,283
2003	808,984	1,278,804	2,087,788
4 Year Average	686,965	1,221,362	1,908,326
Percentage	36%	64%	

Based on the four-year average number of estimated marine anglers, there are 1,908,326 recreational coastal anglers in North Carolina. However, there are a number of provisions in the bill that reduce the number of anglers subject to the CRFL fees. Current law exempts anglers age 18 and younger that are currently enrolled in school and are making progress towards obtaining a high school diploma or its equivalent from saltwater fishing license requirements. Since there is no way to verify a person's enrollment in school for enforcement purposes, this fiscal note assumes that all anglers age 18 and younger are exempt. Based on the Marine Recreational Fishery Statistics survey, approximately 8.5% of coastal anglers are age 18 or under, reducing the number of potential licensees by 162,208.

Current law also provides for a free subsistence license for residents that fall below the federal poverty level. According to 2000 census data, 12.5% of North Carolinians fall beneath this threshold. Table 4 summarizes the adjustments necessary to determine the number of license sales in each year. This table assumes that 64% of licenses are sold to nonresidents and 36% of licenses are sold to residents, based on the Marine Recreational Fishery Statistics survey data in Table 3.

Table 4: Estimated Number of CRFLs Sold Under Current Law

Total # of anglers	1,908,326
less exempted youth (8.5%)	(162,208)
Anglers requiring an individual CRFL	1,746,118
Nonresident Sales	***1,117,516***
Residents	628,603
less those eligible for subsistence license (12.5%)	(78,575)
Resident Sales	***550,027***
Total Sales	**1,667,543**

Table 5 summarizes the estimated revenue generated by the sale of CRFLs under the current law. This revenue estimate assumes the following:

1. Even though the total number of anglers varies from year to year, the average has remained relatively stable at approximately 1.9 million anglers since 2000. Consequently, no growth is assumed in projecting future license sales.

2. License sales are to begin January 1, 2006. Consequently, license revenue for the last six months of FY 2005-2006 is estimated to be 35% of the annual amount to align with current marine license sales.

3. The distribution of resident license sales is assumed to be the following: 7-day licenses: 10%, annual licenses: 89%, lifetime licenses: 1%.

4. The distribution of nonresident license sales is assumed to be the following: 7-day licenses: 89%, annual licenses: 10%, lifetime licenses: 1%.

5. The distribution of lifetime license sales is based on experience gained from WRC lifetime license sales.

Age Distribution	Percent of Total Lifetime Sales
0-6 years of age	27%
6-11 years of age	4%
11-17 years of age	2%
18 years and older	67%

Table 5: Estimated Revenues Generated by Sale of CRFLs Under Current Law

	Fee	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Short-term and Annual License Sales						
Resident						
7-day license	$1	$19,251	$55,003	$55,003	$55,003	$55,003
Annual	$15	$2,570,002	$7,342,864	$7,342,864	$7,342,864	$7,342,864
Non Resident						
10-day license	$1	$348,106	$994,589	$994,589	$994,589	$994,589
Annual	$15	$586,696	$1,676,274	$1,676,274	$1,676,274	$1,676,274
Subtotal		**3,524,055**	**10,068,729**	**10,068,729**	**10,068,729**	**10,068,729**
Lifetime License Sales						
0-6 years of age	$100	$157,583	$450,237	$450,237	$450,237	$450,237
6-11 years of age	$150	$35,018	$100,053	$100,053	$100,053	$100,053
11-17 years of age	$200	$23,346	$66,702	$66,702	$66,702	$66,702
18 years and older	$500	$1,955,194	$5,586,269	$5,586,269	$5,586,269	$5,586,269
Subtotal		***$2,171,141***	***$6,203,260***	***$6,203,260***	***$6,203,260***	***$6,203,260***
Total		**$5,695,196**	**$16,271,989**	**$16,271,989**	**$16,271,989**	**$16,271,989**

In contrast, this PCS would change the CRFL youth exemption to anglers under 16 years of age. Based on data from the Marine Recreational Fishery Statistics survey, 7.3% of coastal anglers would fall under this youth exemption. Note that the 1.2% of anglers between the ages of 16 and 18 would no longer be exempt from CRFL requirements.

The bill also exempts holders of a Wildlife Resources Commission (WRC) Lifetime Resident Comprehensive Fishing License or a Lifetime Sportsman License ("WRC lifetime license holders") purchased prior to January 1, 2005 from CRFL requirements. As of January 1, 2005, 222,347 persons held WRC lifetime licenses: 44,161 under 16 and 178,186 age 16 and older. The number of WRC lifetime license holders age 16 and older constitutes the potential pool of exemptions, since youth under 16 are already exempt. This pool of WRC lifetime license holders that would otherwise have been subject to CRFL fees, however, will not remain static over time. WRC lifetime license holders who are currently under 16 will be added to the pool as they age out of the CRFL youth exemption. Assuming an even age distribution, this fiscal note assumes that 2,760 (44,161 youth license holders divided by 16 years) will added to pool each year for the next 16 years. Furthermore, a number of persons will be removed from the pool each year due to attrition (i.e. death, etc.). This fiscal note assumes that attrition will be 2% in FY 2005-06 and will increase 0.25% each year thereafter. Note that, due to attrition, the impact of this exemption will diminish over time and eventually be eliminated. Finally the pool must be adjusted for those WRC lifetime license holders that do not saltwater fish. A WRC survey of these license holders suggests that 38% do not saltwater fish, and therefore, would not be subject to CRFL requirements. Table 6 summarizes the number of WRC lifetime license holders in the exempt pool in each year.

Table 6: Estimated Number of WRC Lifetime License Holders Exempt from CRFL Fees

	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Previous # of WRC lifetime license holders over 16	178,186	177,382	176,151	174,507	172,468
Less attrition	(3,564)	(3,991)	(4,404)	(4,799)	(5,174)
Plus those who have aged out of youth exemption	2,760	2,760	2,760	2,760	2,760
Current # of adult WRC lifetime license holders	177,382	176,151	174,507	172,468	170,054
Less those not coastal anglers (38%)	N/A*	(66,937)	(66,313)	(65,538)	(64,621)
# exempt from CRFL fees	**N/A***	**109,214**	**108,195**	**106,930**	**105,434**

*Not applicable since CRFL is not required until January 1, 2007.

SB 1126 establishes a For Hire Blanket license that would cover anglers fishing from any for hire boat (i.e. charter/head/dive boat). While additional revenue will be generated from the sale of these new licenses, coastal anglers that do not fish using a means other than a for hire boat would no longer have to purchase an individual CRFL. Data from the Marine Recreational Fishery Statistics survey indicates that 3% of fishing trips are on charter/head/dive boats (see Table 7). This fiscal note assumes that 3% of anglers fish use a for hire boat, 80% of which do not fish using another means.

Table 7: Estimated Marine Recreational Fishing Trips in NC, 2000-2003

	Beach/Bank	Charter Boats	Man-Made	Private Boats	Total
2000	2,136,284	183,219	1,665,748	2,105,734	6,090,985
2001	2,409,723	197,710	1,809,738	2,142,621	6,559,792
2002	1,973,242	181,073	1,396,937	2,011,633	5,562,885
2003	2,056,347	170,235	2,228,386	2,134,535	6,589,503
4 Year Average	2,143,899	183,059	1,775,202	2,098,631	6,200,791
Percentage	35%	3%	29%	34%	

Even though the For Hire Blanket license is optional, a survey of for hire boat captains conducted by the DMF indicated strong support for a blanket licenses. Consequently, this fiscal note assumes that all for hire boats will purchase a blanket license. Based on DMF For Hire Boat registration information, there are 739 for hire boats in North Carolina. Table 8 summarizes the blanket license fee schedule and the distribution of vessels among these fee categories.

Table 8: Number of For Hire Boats by Vessel Length

	Proposed Fee	# of For Hire Boats
Vessel certified to carry 6 or fewer passengers	$300	699
Vessel certified to carry greater than 6 passengers	$400	40
Total		739

The bill also provides that a person who owns or operates an ocean fishing pier and charges a fee to allow persons to engage in recreational fishing from pier may purchase an Ocean Fishing Pier Blanket CRFL issued by Division of Marine Fisheries. This CRFL would permit all individuals who do not hold an individual license to engage in recreational fishing in coastal fishing waters while on a pier that owns a blanket license. In fiscal year 2004, Division of Marine Fisheries (DMF) issued 26 Ocean Fishing Pier licenses. Under this bill, piers participating in the blanket license program would be required to comply with DMF reporting requirements. A 2004 DMF survey of pier owners indicated that 53% of pier owners would favor a blanket license if they were required to keep a list. Consequently, this fiscal note assumes that 14 piers will purchase a blanket license. The bill includes a fee of $4 per linear foot, to the nearest foot, that the pier extends into coastal fishing waters beyond the mean high waterline. The average pier is 714 feet long.

While additional revenue will be generated from the sale of these pier blanket licenses, coastal anglers that only fish from a pier with a blanket license would no longer have to purchase an individual CRFL. Data from the Marine Recreational Fishery Statistics survey indicates that 29% of fishing trips are from piers and other man-made structures (see Table 7). This fiscal note assumes that 29% of anglers fish from a pier, 53% of which will fish from a pier with a blanket license. Of those anglers that fish from a pier with a blanket license, 20% will not fish using another means, and, therefore, will be not be required to purchase a individual CRFL.

Finally, the bill also provides for a $1 Subsistence Unified Inland/Coastal Recreational Fishing License for individuals who receive benefits from Medicaid, Food Stamps, or Work First through the County Department of Social Services. Based on census poverty rates, this fiscal note will assume that 12.5% of residents will qualify for this free voucher, and therefore, not be subject to CRFL fees.

Table 9 summarizes the adjustments necessary to determine the number of anglers subject to regular CRFL fees after accounting for these various provisions. Based on data from the Marine Recreational Fishery Statistics survey presented in Table 3, this table assumes that 36% of coastal anglers are state residents and 64% are nonresidents.

Table 9: Estimated Number of Marine Recreational Anglers Subject to CRFL Fees

	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Total # of anglers	0	1,908,326	1,908,326	1,908,326	1,908,326
less exempted youth	0	(139,308)	(139,308)	(139,308)	(139,308)
less exempt WRC lifetime license holders	0	(109,214)	(108,195)	(106,930)	(105,434)
Subtotal	*0*	*1,659,804*	*1,660,824*	*1,662,088*	*1,663,584*
less # of exclusive charterboat anglers	0	(39,835)	(39,860)	(39,890)	(39,926)
less # of anglers that only fish from a pier w/ blanket license	0	(51,022)	(51,054)	(51,093)	(51,139)
Anglers requiring an individual CRFL	*0*	*1,568,947*	*1,569,910*	*1,571,105*	*1,572,520*
Nonresident Sales	***0***	***1,004,126***	***1,004,742***	***1,005,507***	***1,006,413***
Residents	0	564,821	565,168	565,598	566,107
less those eligible for subsistence license	0	(70,603)	(70,646)	(70,700)	(70,763)
Resident Sales	***0***	***494,218***	***494,522***	***494,898***	***495,344***
Total Sales	**0**	**1,498,344**	**1,499,264**	**1,500,405**	**1,501,756**

Table 10 summarizes the estimated revenue generated by the sale of CRFLs under this PCS. This revenue estimate assumes the following:

1. Even though the total number of anglers varies from year to year, the average has remained relatively stable at approximately 1.9 million anglers since 2000. Consequently, no growth is assumed in projecting future license sales.

2. License sales are assumed to begin January 1, 2007, the licensing requirement effective date. Consequently, license revenue for the last six months of FY 2006-2007 is estimated to be 35% of the annual amount to align with current marine license sales.

3. The distribution of resident license sales is assumed to be following: 10-day licenses: 10%, annual licenses: 89%, lifetime licenses: 1%.

4. The distribution of nonresident license sales is assumed to be the following: 10-day licenses: 89%, annual licenses: 10%, lifetime licenses: 1%.

5. The distribution of lifetime license sales is based on experience gained from WRC lifetime license sales.

Lifetime License	% of Total Lifetime Sales
Infant (< 1 year old)	24%
Youth (1-12 years old)	5%
Adult (12+ years old)	24%
Resident Elderly (70+ years)	40%
Resident Disabled Vet/Totally Disabled	7%
Legally Blind/Adult Care Home Resident	0.2%

6. Residents will purchase 97% of the Adult Lifetime Licenses, and nonresident will purchase 3%, based on WRC's experience with sales of resident and nonresident lifetime sportsman licenses.

7. The bill states that the apportionment of the net proceeds of unified license sales shall be jointly determined by the DMF and the WRC. The Unified Inland/CRFL and Unified Infant, Youth, and Adult Sportsman/CRFL offer around a 10% discount, while the other unified licenses do not. For the unified licenses that do not offer a discount, this fiscal note assumes that the allocation between the relevant marine resources fund and the wildlife fund will mirror the amount that would have been generated to each fund if the person had purchased each license separately. Consequently, the sale of non-discounted unified licenses will be treated as if each privilege granted by the unified license had been purchased separately.

8. A survey of coastal anglers by DMF revealed that 11% of coastal anglers also hold a WRC lifetime license, 68% of which hold a WRC Lifetime Sportsman license. Consequently, it is assumed that 11% of coastal anglers interested in obtaining a lifetime CRFL will purchase a unified license and that 68% of this group will purchase a Unified Sportsman/CRFL. In accordance with the above assumption, it is unclear where the revenue generated by the sale of discounted unified lifetime licenses will be deposited and how much will be used for marine resource purposes. Therefore, the additional revenue generated from the sale of discounted unified licenses will be calculated separately.

9. This bill directs Wildlife Resources Commission to sell all CRFL licenses—except For Hire and Pier Blanket licenses, which would be sold through the DMF—through its existing license sale system. This system allows for licenses to be sold through WRC license agents or directly from WRC via phone or internet. License agents are allowed to retain a 6% commission on all licenses they sell. Based on WRC license sales experience, this fiscal note assumes that 93% of license sales will be through WRC license agents.

Table 10: Estimated Revenues Generated by Sale of CRFLs Under PCS

	Fee	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Short-Term and Annual Licenses						
Resident						
10-day license	$5	$0	$86,488	$247,261	$247,449	$247,672
Annual	$15	$0	$2,309,235	$6,601,865	$6,606,890	$6,612,839
Annual Subsistence	$1	$0	$24,711	$70,646	$70,700	$70,763
Non Resident						
10-day license	$10	$0	$3,127,852	$8,942,208	$8,949,015	$8,957,073
Annual	$30	$0	$1,054,332	$3,014,227	$3,016,522	$3,019,238
Subtotal		$0	$6,602,618	$18,876,207	$18,890,575	$18,907,586
Less License Agent Commission		$0	($368,426)	($1,053,292)	($1,054,094)	($1,055,043)
Subtotal		*$0*	*$6,234,192*	*$17,822,915*	*$17,836,481*	*$17,852,542*
For Hire Blanket License Sales						
Vessel certified for 6 or fewer passengers	$300	$0	$73,395	$209,700	$209,700	$209,700
Vessel certified for > 6 passengers	$400	$0	$5,600	$16,000	$16,000	$16,000
Subtotal		*$0*	*$78,995*	*$225,700*	*$225,700*	*$225,700*
Pier Blanket License Sales						
14 piers w/ avg. length of 714 feet	$4/ft	*$0*	*$13,994*	*$39,984*	*$39,984*	*$39,984*
Short-Term and Annual Licenses Subtotal		***$0***	***$6,327,182***	***$18,088,599***	***$18,102,165***	***$18,118,226***
Lifetime Licenses (less Discounted Unified License Sales)						
Infant	$100	$0	$112,016	$320,243	$320,487	$320,775
Youth	$150	$0	$35,005	$100,076	$100,152	$100,242
Adult						
Resident	$250	$0	$271,639	$776,589	$777,180	$777,880
Nonresident	$500	$0	$16,802	$48,036	$48,073	$48,116
Elderly	$10	$0	$20,977	$59,971	$60,016	$60,070
Disabled Vet/Total Disabled	$10	$0	$3,566	$10,195	$10,203	$10,212
Subtotal		$0	$460,006	$1,315,110	$1,316,111	$1,317,296
Less License Agent Commission		$0	($25,668)	($73,383)	($73,439)	($73,505)
Lifetime License Subtotal		**$0**	**$434,338**	**$1,241,726**	**$1,242,672**	**$1,243,791**
Discounted Unified License Sales	**Net fee***					
Lifetime Inland/Saltwater	$100	$0	$9,784	$27,970	$27,992	$28,017
Infant Unified Sportsman/CRFL	$75	$0	$7,017	$20,060	$20,075	$20,093
Youth Unified Sportsman/CRFL	$100	$0	$2,079	$5,944	$5,948	$5,954
Adult Unified Sportsman/CRFL						
Resident	$175	$0	$15,881	$45,402	$45,437	$45,478
Nonresident	$350	$0	$982	$2,808	$2,811	$2,813
Subtotal		$0	$35,743	$102,185	$102,262	$102,354
Less License Agent Commission		$0	($1,994)	($5,702)	($5,706)	($5,711)
Discounted Unified License Subtotal		***$0***	***$33,748***	***$96,483***	***$96,556***	***$96,643***
Total		**0**	**6,795,267**	**19,426,808**	**19,441,392**	**19,458,660**

* Fiscal note assumes that the 10% discount offered on some unified licenses is not significant enough to induce additional persons to purchase an inland fishing or sportsman privilege. Rather, the unified licenses would be purchased only by those that would have intended to buy a lifetime CRFL and WRC license separately if a unified license was not offered. Consequently, the revenue generated by the WRC privilege included in the unified license would not represent additional revenue to the State. The net fee represents the total unified license fee less the cost of the Wildlife privilege had it been purchased separately.

Inland Fishing License Revenues: The bill also includes changes that impact the amount of inland fishing license revenue generated. Currently, WRC offers a resident one-day inland fishing license for $5, a nonresident one-day inland fishing license for $10, and a nonresident three-day inland fishing license for $15. The bill eliminates these three licenses and replaces them with a resident 10-day license for $5 and nonresident 10-day license for $10. This fiscal note assumes that all persons currently purchasing a one- or three-day license would purchase a 10-day license under this bill. Since the fee structures for one-day and 10-day licenses are identical, there is no revenue impact from those no longer purchasing the one-day licenses. However, WRC will lose $5 in revenue for each three-day license no longer sold. Last fiscal year, WRC sold 17,154 of these three-day licenses. The bill also increases the license replacement fee from $2 to $5. For the past two years, WRC has replaced an average of 11,750 licenses per year.

The bill repeals the statutes that exempt persons fishing in their home county using natural bait from WRC inland fishing license requirements. There is no precise data on the number of North Carolina residents fishing under this exemption. However, a 2001 national survey estimated that 675,000 NC residents age 16 years and older fished in North Carolina during 2001. In 2001, 553,708 persons held inland fishing licenses. After accounting for these licensed anglers and the 20,000 people that WRC estimates fish in private ponds, the remaining 101,300 inland fishermen would now be required to have an inland fishing license. However, SB 1126 provides for a free Subsistence Unified Inland/Coastal Recreational Fishing Voucher for individuals who received benefits from Medicaid, Food Stamps, or Work First through the County Department of Social Services. Based on census poverty rates, this fiscal note will assume that 12.5% of residents will qualify for this free voucher, and therefore, not be subject to WRC inland fishing license fees. Table 11 summarizes the adjustments necessary to estimate the additional number of inland fishing licenses that would be sold as a result of this bill.

Table 11: Estimated Number of Additional Inland Fishing Licenses Sold Under SB 1126

Estimated total # of inland fishermen	675,000
less licensed inland fishermen	(553,700)
less anglers fishing in private ponds	(20,000)
Estimated # of inland fishermen requiring license	101,300
less those eligible for subsistence voucher	(12,663)
Additional Inland Fishing License Sales	**88,638**

WRC receives federal Wallop-Breaux monies based on the number of licensed inland fishermen. The Commission expects to receive an additional $0.50 per additional license sold as a result of the repealed natural bait exemption.

Table 12 estimates the revenue generated by these additional licenses based on the following assumptions:

1. Based on WRC assumptions, the additional inland fishing licenses purchased will be distributed per the following percentages: 50% purchase a county inland fishing license, 35% purchase the 10-day fishing license, and 15% purchase an annual inland fishing license.

2. WRC will sell replacement licenses at the same level as recent years. The number of ten-day licenses sold in lieu of the abolished three-day license will be at the same level as three-day license sales in recent years.

3. The provisions that repeal the natural bait exemption and abolish the three-day license are effective January 1, 2007. The change in the replacement license fee is effective January 1, 2006. The projected impact of these provisions on license sale revenues for the last six months of the fiscal year is estimated to be 35% of the annual amount.

4. This fiscal note assumes that 93% of license sales will be through WRC license agents, which retain a 6% sales commission.

Table 12: Estimated Change in Inland Fishing License Revenues

	Per Unit Amount	# of Units	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
County Inland Fishing	$10	44,319	$0	$155,116	$443,188	$443,188	$443,188
10-day Inland Fishing	$5	31,023	$0	$54,290	$155,116	$155,116	$155,116
Annual Inland Fishing	$15	13,296	$0	$69,802	$199,434	$199,434	$199,434
Add'l Sales Subtotal			***$0***	***$279,208***	***$797,738***	***$797,738***	***$797,738***
WRC agent commission			$0	($16,752)	($47,864)	($47,864)	($47,864)
Add'l. replacement license rev.	$3	11,750	$12,338	$35,250	$35,250	$35,250	$35,250
Abolished 3-day license	($5)	17,000	$0	($29,750)	($85,000)	($85,000)	($85,000)
Add'l. Wallop-Breaux funds	$0.50	88,638	$0	$15,512	$44,319	$44,319	$44,319
Total Revenue Impact			**$12,338**	**$283,467**	**$744,442**	**$744,442**	**$744,442**

Summary of Impact on Individual Funds: Current law states that all saltwater fishing license revenue shall be deposited into the Saltwater Fishing Fund. The bill renames this fund the Marine Resources Fund and establishes a new Marine Resources Endowment Fund. Instead of all CRFL revenue being deposited into one fund, the bill directs short-term and annual CRFL license revenue be deposited into the Marine Resources Fund and lifetime CRFL license revenue be deposited into the Marine Resources Endowment Fund. The bill also states that $600,000 per year for five years shall be transferred from the Wildlife Endowment Fund to the Marine Resources Endowment Fund. Table 13 summarizes the net impact of this PCS on each fund.

Table 13: Estimated Revenue Impact of SB 1126

	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Marine Resources Fund (aka Saltwater Fishing Fund)					
Short-term and Annual Revenues Generated Under PCS	$0	$6,327,182	$18,088,599	$18,102,165	$18,118,226
Less Short-term and Annual Revenues Generated Under Current Law	($3,524,055)	($10,068,729)	($10,068,729)	($10,068,729)	($10,068,729)
Less Lifetime Revenues Generated Under Current Law	($2,171,141)	($6,203,260)	($6,203,260)	($6,203,260)	($6,203,260)
Net Impact	**($5,695,196)**	**($9,944,807)**	**$1,816,610**	**$1,830,176**	**$1,846,237**
Marine Resources Endowment Fund					
Lifetime License Revenues Generated Under SB 1126	$0	$434,338	$1,241,726	$1,242,672	$1,243,791
Transfer from Wildlife Endowment Fund	$600,000	$600,000	$600,000	$600,000	$600,000
Net Impact	**$600,000**	**$1,034,338**	**$1,841,726**	**$1,842,672**	**$1,843,791**
Wildlife Fund					
Change in Inland Fishing License Revenues	**$12,338**	**$283,467**	**$744,442**	**$744,442**	**$744,442**
Wildlife Endowment Fund					
Transfer to Marine Resources Endowment	**($600,000)**	**($600,000)**	**($600,000)**	**($600,000)**	**($600,000)**
Discounted Unified License Revenues					
Destination of revenues to be determined	**$0**	**$33,748**	**$96,483**	**$96,556**	**$96,643**
Total Net Impact	**($5,682,859)**	**($9,193,254)**	**$3,899,261**	**$3,913,845**	**$3,931,113**

Other Potential Revenues: Currently, NC Marine Patrol officers have enforcement authority out 200 miles in most fisheries under state and federal law. Their enforcement authority beyond three miles, however, is limited to North Carolina registered vessels. This PCS allows Marine Patrol officers to accept delegation of law enforcement powers from the Natural Marine Fisheries Service (NMFS) over matters within the jurisdiction of the Service. This change would allow the State to enter into a Joint Enforcement Agreement (JEA) with the NFMS and allow NC Marine Patrol officers to take enforcement actions against out-of-state vessels in areas beyond three miles.

If the State enters into a JEA with the NFMS, it will be eligible to receive federal funds to implement the agreement. In the past, approximately $15 million dollars of federal funding has been divided among those states that have entered into agreements. At present, North Carolina is the only coastal state that does not have a JEA with the NMFS. The amount of federal funding that the State would receive would depend on the details of the JEA; however, the NC Division of Marine Fisheries estimates that the State would have received around $750,000 this year, if it had been able to enter into an agreement.

Expenditures:

Wildlife Resources Commission: The bill calls for WRC to sell all individual CRFLs through its existing license sale system. To modify this system, WRC estimates that it would require approximately $500,000 for start-up costs, including $250,000 for new agent equipment and training, $100,000 for application changes, $50,000 for project management, and $100,000 for upgraded servers and hardware. Additionally, WRC expects to incur a per license transaction cost of approximately $1.50 - $2.00, depending on the volume of license sales. This per license transaction cost would apply both to the new CRFLs sold through the system and the additional inland fishing license sales expected as a result of the repeal of the natural bait exemption. Table 14 summarizes WRC's expected expenditures assuming: 1) a transaction cost of $1.75 per license and 2) license sales in FY 06-07 will only be 35% of expected annual sales due to the January 1, 2007 effective date.

Table 14: Estimated WRC Expenditures

	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Start-Up Costs	$500,000				
Transaction Costs ($1.75/per license)	$0	$987,162	$2,902,458	$2,904,550	$2,907,025
Total WRC Costs	$500,000	$987,162	$2,902,458	$2,904,550	$2,907,025

Division of Marine Fisheries: The Division of Marine Fisheries will sell the For Hire and Ocean Fishing Pier Blanket CRFLs. They do not anticipate any additional significant expenditures to sell these licenses. The Division would face additional expenses related to the three additional Marine Fisheries Commission members included in this PCS. Based on a survey of current Marine Fisheries Commission member expenses for the past two years, it is estimated that each additional member added to the Commission will incur approximately $4200 annually in additional per diem and travel expenses.

County Departments of Social Services: The bill states that County Departments of Social Services shall issue a certification to individuals eligible for the Resident Subsistence Unified Inland/CRFL that states that the individual is currently enrolled and receives benefits from at least one of the eligible social service programs listed on an application developed by the Division of Marine Fisheries and the Wildlife Resources Commission. At this time, there is no estimate on the cost of implementing this provision.

Department of Correction: The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

During FY 2003-04 there were 220 convictions for fishing license violations under Chapter 113. Because this bill would create new Class 1, 2, and 3 misdemeanor offenses and amend offenses enacted in Session Law 2004-187, which is not effective until January 1, 2006, the Sentencing

Commission has no historical data from which to estimate the impact that this bill might have on prison population.

For the offense classes impacted by this bill, only Class 1 misdemeanants falling in Prior Conviction Level III are eligible for sentences longer than ninety days, and many eligible offenders receive shorter sentences. Consequently, any convictions resulting from this legislation are not expected to significantly impact prison population.

In FY 2003-04, 19 percent of Class 1, 15 percent of Class 2, and 23 percent of Class 3 misdemeanants received active sentences. DOC reimburses the county for housing offenders sentenced to between thirty and ninety days at a rate of $18 per offender per day. Sentences for Class 1 and Class 2 misdemeanors may exceed thirty days and in FY 2003-04 averaged 43 and 23 days respectively. Because Class 3 misdemeanors carry a maximum sentence of twenty days, local jails would incur the cost of housing all Class 3 misdemeanants.

In FY 2003-04, 81 percent of Class 1, 86 percent of Class 2, and 77 percent of Class 3 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Corrections (DCC) would incur costs of $1.87 per offender per day. Offenders sentenced to community service would cost $0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

Judicial Branch: For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Because this bill would create new criminal offenses and expand the scope of existing offenses, AOC cannot estimate the number of additional Class 1, 2, and 3 misdemeanor charges that might result from this legislation. AOC estimates the cost to dispose of one misdemeanor charge by class and settlement method as shown in the table below. Based on past rates of case disposal, the majority of any new charges resulting from this bill that are not dismissed are likely to be settled by plea.

Per Charge Misdemeanor Settlement Costs

Method of Settlement:	***Trial***			***Guilty Plea***
	Court/Attorney Costs	Indigent Defense	Total	-
Class 1	*$1,891*	*$1,333*	*$3,224*	*$284*
Class 2	*$1,373*	*$949*	*$2,322*	*$268*
Class 3	*$1,373*	*$949*	*$2,322*	*$272*

SOURCES OF DATA: Wildlife Resources Commission, Division of Marine Fisheries, US Census, Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission

TECHNICAL CONSIDERATIONS: This bill does not apportion the net proceeds from the sale of unified licenses; it states that this apportionment shall be jointly determined by DMF and WRC.

In the event that the DMF and WRC cannot agree, the Governor is authorized to determine the apportionment. Consequently, the specific destination of the unified license fees cannot be determined.

ATTACHMENT 4

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1126

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

S1126-ASB-20 [v.1]

Date June 28 ,2005

Comm. Sub. [YES]
Amends Title [NO]
PCS S1126-CSSB-31 [v.23]

Representative Wainwright

moves to amend the bill on page 19, lines 3 through 21,
by rewriting those lines to read:

"'**§ 113-175.6. Marine Resources Committee.**

(a) The Marine Resources Committee shall consist of five members of the Marine Fisheries Commission appointed by the Chair of the Marine Fisheries Commission as follows:

(1) The Fisheries Director, shall be an ex officio voting member of the Marine Resources Committee and shall serve as the Chair of the Marine Resources Committee.

(2) One member of the Marine Fisheries appointed to the Commission pursuant to subdivision (1), (2), (3), or (10) of subsection (a) of G.S. 143B-289.69.

(3) One member of the Marine Fisheries appointed to the Commission pursuant to subdivision (4), (5), (6), or (12) of subsection (a) of G.S. 143B-289.69.

(4) One member of the Marine Fisheries appointed to the Commission pursuant to subdivision (7) or (8) of subsection (a) of G.S. 143B-289.69.

(5) One member of the Marine Fisheries appointed to the Commission pursuant to subdivision (9), (11), or (13) of subsection (a) of G.S. 143B-289.69.";

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1126

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

S1126-ASB-20 [v.1]

on page 30, line 37 through page 33, line 8,
by rewriting those lines to read:

"'**§ 143B-289.69. Marine Fisheries Commission – members; appointment; term; oath; ethical standards; removal; compensation; staff.**

(a) Members, Selection. – The Commission shall consist of fourteen members as follows:

(1) One person appointed by the Governor who is actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of annual earned income from taking and selling fishery resources in coastal fishing waters of the State. The spouse of a commercial fisherman who meets the criteria of this subdivision may be appointed under this subdivision.

(2) One person appointed by the Governor who is actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of annual earned income from taking and selling fishery resources in coastal fishing waters of the State. The spouse of a commercial fisherman who meets the criteria of this subdivision may be appointed under this subdivision.

(3) One person appointed by the Governor who is actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of annual earned income from taking and selling fishery resources in coastal fishing waters of the State. The spouse of a commercial fisherman who meets the criteria of this subdivision may be appointed under this subdivision.

(4) One person appointed by the Governor who is actively engaged in recreational fishing in the coastal fishing waters of the State. An appointee under this subdivision may not derive more than ten percent (10%) of annual earned income from sports fishing activities.

(5) One person appointed by the Governor who is actively engaged in recreational fishing in the coastal fishing waters of the State. An appointee under this subdivision may not derive more than ten percent (10%) of annual earned income from sports fishing activities.

(6) One person appointed by the Governor who is actively engaged in recreational fishing in the coastal fishing waters of the State. An appointee under this subdivision may not derive more than ten percent (10%) of annual earned income from sports fishing activities.

(7) One person appointed by the Governor who is a fisheries scientist having special training and expertise in marine and estuarine fisheries biology, ecology, population dynamics, water quality, habitat protection, or similar knowledge. A person appointed under this subdivision may not receive more than ten percent (10%) of annual earned income from either the commercial or recreational fishing industries, including the processing and distribution of seafood.

(8) One person appointed by the Governor who is a fisheries scientist having special training and expertise in marine and estuarine fisheries biology, ecology, population dynamics, water quality, habitat protection, or similar knowledge. A person appointed under this subdivision may not receive more than ten percent (10%) of annual earned income from either the commercial or recreational fishing industries, including the processing and distribution of seafood.

(9) One person appointed by the Governor who has general knowledge of and experience related to subjects and persons regulated by the Commission.

(10) One person appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate who is actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of annual earned income from taking and selling fishery resources in coastal fishing waters of the State. The spouse of a commercial fisherman who meets the criteria of this subdivision may be appointed under this subdivision.

(11) One person appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate who has general knowledge of and experience related to subjects and persons regulated by the Commission.

(12) One person appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives who is actively engaged in recreational fishing in the coastal fishing waters of the State. An appointee under this subdivision may not derive more than ten percent (10%) of annual earned income from sports fishing activities.

(13) One person appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives who has general knowledge of and experience related to subjects and persons regulated by the Commission.

(14) The Fisheries Director shall serve as an ex officio, nonvoting member of the Commission.

(b) Residential Qualifications. – For purposes of providing regional representation on the Commission, the following four regions of the State are designated: (i) Northeast Coastal Region comprised of Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax, Hertford, Martin, Northampton, Pasquotank, Perquimans, Tyrrell, and Washington Counties; (ii) Central Coastal Region comprised of Beaufort, Carteret, Craven, Hyde, Jones, and Pamlico Counties; (iii) Southeast Coastal Region comprised of Bladen, Brunswick, Columbus, New Hanover, Onslow, and Pender Counties; and (iv) Inland Region comprised of the counties not included the three coastal regions. The Governor shall appoint at least two members from each of the four regions of the State. The members appointed pursuant to subdivisions (10) and (11) of subsection (a) of this section shall not be from the same region of the State. The members appointed pursuant to subdivisions (12) and (13) of subsection (a) of this section shall not be from the same region of the State.

(c) Additional Considerations. – In making appointments to the Commission, the appointing entities shall provide for appropriate representation of women and minorities on the Commission.

(d) Terms. – The term of office of appointed members of the Commission is three years. A member may be reappointed to any number of successive three-year terms. Upon the expiration of a three-year term, a member shall continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7. The term of members appointed under subdivisions (1), (4), (7), (8), and (9) of subsection (a) of this section shall expire on 30 June of years evenly divisible by three. The term of members appointed under subdivisions (2), (5), (11), and (13) of subsection (a) of this section shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. The term of members appointed under subdivisions (3), (6), (10), and (12) of subsection (a) of this section shall expire on 30 June of years that follow by one year those years that are evenly divisible by three.";

on page 34, line 40 through page 35, line 15,
by rewriting those lines to read:

"'**§ 143B-289.71. Marine Fisheries Commission – meetings; quorum.**

(a) The Commission shall meet at least once each calendar quarter and may hold additional meetings at any time and place within the State at the call of the Chair or upon the written request of at least four members. The Commission shall hold at least one meeting each calendar year in each region designated in G.S. 143B-289.69.

(b) (1) Eight members of the Commission shall constitute a quorum for the transaction of business.

(2) A quorum of the Commission may transact business only if one member, other than the Chair, appointed pursuant to subdivision (1), (2), (3), or (10) of G.S. 143B-289.69(a) and one member, other than the Chair, appointed pursuant to subdivision (4), (5), (6), or (12) of G.S. 143B-289.69(a) are present.

(c) If the Commission is unable to transact business because the requirements of subdivision (2) of subsection (b) of this section are not met, the Chair shall call another meeting of the Commission within 30 days and shall place on the agenda for that meeting every matter with respect to which the Commission was unable to transact business. Seven members of the Commission shall constitute a quorum for the transaction of business at a meeting called under this subsection. The requirements of

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1126

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

S1126-ASB-20 [v.1]

subdivision (2) of subsection (b) of this section shall not apply to a meeting called under this subsection."; and

on page 39, lines 1 through 12,
by rewriting those lines to read:

"**SECTION 4.12.** In order to establish a schedule of staggered terms of three years for the Marine Fisheries Commission, the terms of members of the Commission initially filling positions established by subdivisions (1), (4), (7), (8), and (9) of subsection (a) of G.S. 143B-289.69, as enacted by Section 4.2. of this act, shall begin on the date the member is appointed and duly qualified and shall expire on June 30, 2010; the terms of members of the Commission initially filling positions established by subdivisions (2), (5), (11), and (13) of subsection (a) of G.S. 143B-289.69, as enacted by Section 4.2. of this act, shall begin on the date the member is appointed and duly qualified and shall expire on June 30, 2009; the terms of members of the Commission initially filling positions established by subdivisions (3), (6), (10), and (12) of subsection (a) of G.S. 143B-289.69, as enacted by Section 4.2. of this act, shall begin on the date the member is appointed and duly qualified and shall expire on June 30, 2008.".

SIGNED Duncan Dunwright
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute # 2 for

SB 1126 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF THE COASTAL RECREATIONAL FISHING LICENSE, TO PROVIDE A SYSTEM OF UNIFIED LICENSES UNDER WHICH INDIVIDUALS MAY FISH THROUGHOUT THE STATE, AND TO AMEND CERTAIN STATUTES RELATED TO THE WILDLIFE RESOURCES COMMISSION.

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill 2.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H D

HOUSE BILL 1084
Committee Substitute Favorable 4/21/05
PROPOSED COMMITTEE SUBSTITUTE H1084-CSRQ-35 [v.4]

6/9/2005 10:38:31 AM

Short Title: Expunge Nonviolent Felonies/Young Offenders. (Public)

Sponsors:

Referred to:

April 4, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A YOUTHFUL OFFENDER'S CRIMINAL RECORD MAY BE EXPUNGED OF NONVIOLENT FELONIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-149. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.**

(a) For purposes of this section, the term "nonviolent felony" means any felony except the following:

(1) A Class A through F felony.

(2) A felony that includes assault as an essential element of the offense; and

(3) A felony that is an offense for which the convicted offender must register under Article 27A of Chapter 14 of the General Statutes.

(b) Notwithstanding any other provision of law, if a person is convicted of more than one nonviolent felony in the same session of court, then the multiple nonviolent felony convictions shall be treated as one nonviolent felony conviction under this section, and the expunction order issued under this section shall provide that the multiple convictions shall be expunged from the person's record in accordance with this section.

(c) Whenever any person who had not yet attained the age of 18 years at the time of the offense and has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file a petition in the court where the person was convicted for expunction of the nonviolent felony from the person's criminal record. The petition cannot be filed earlier than two

years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The person shall also perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he or she has been of good behavior for the two-year period since the date of conviction of the nonviolent felony in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage that they know the character and reputation of the petitioner in the community in which he or she lives and that the petitioner's character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential records of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts to conduct the searches and report the findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him or her are outstanding.

(6) An affidavit by the petitioner that the petitioner has performed at least 100 hours of community service since the conviction for the nonviolent felony. The affidavit shall include a list of the community services performed, a list of the recipients of the services, and a detailed description of those services.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that the judge deems desirable.

(d) The court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information if the court finds all of the following after a hearing:

(1) The petitioner has remained of good behavior and has been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the nonviolent felony in question or any active sentence, period of probation or post-release supervision has been served, whichever is later.

(2) The petitioner has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state.

(3) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him or her.

(4) The petitioner was less than 18 years old at the time of the commission of the offense in question.

(5) The petitioner has performed at least 100 hours of community service since the time of the conviction.

(6) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction.

No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of the person for any purpose.

(e) The court shall also order that the nonviolent felony conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief, or head of any other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(f) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

(g) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in the clerk's county, file with the Administrative Office of the Courts the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.

(h) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the felony which is to be expunged under this section.

(i) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred dollars ($100.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 2. This act becomes effective December 1, 2005 and expires December 1, 2012.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1084
Committee Substitute Favorable 4/21/05

Short Title: Expunge Nonviolent Felonies/Young Offenders. (Public)

Sponsors:

Referred to:

April 4, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A YOUTHFUL OFFENDER'S CRIMINAL RECORD MAY BE EXPUNGED OF NONVIOLENT FELONIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-149. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.**

(a) For purposes of this section, the term "nonviolent felony" means any felony except the following:

(1) A Class A through E felony.

(2) A felony that includes assault as an essential element of the offense; and

(3) A felony that is an offense for which the convicted offender must register under Article 27A of Chapter 14 of the General Statutes.

(b) Notwithstanding any other provision of law, if a person is convicted of more than one nonviolent felony in the same session of court, then the multiple nonviolent felony convictions shall be treated as one nonviolent felony conviction under this section, and the expunction order issued under this section shall provide that the multiple convictions shall be expunged from the person's record in accordance with this section.

(c) Whenever any person who had not yet attained the age of 18 years at the time of the offense and has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file a petition in the court where the person was convicted for expunction of the nonviolent felony from the person's criminal record. The petition cannot be filed earlier than two years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The person shall

also perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the nonviolent felony in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage that they know the character and reputation of the petitioner in the community in which he or she lives and that the petitioner's character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expungements maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts to conduct the searches and report the findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him or her are outstanding.

(6) An affidavit by the petitioner that the petitioner has performed at least 100 hours of community service since the conviction for the nonviolent felony. The affidavit shall include a list of the community services performed, a list of the recipients of the services, and a detailed description of those services.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that the judge deems desirable.

(d) If the court, after a hearing, finds that the petitioner has remained of good behavior and has been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the nonviolent felony in question or any active sentence, period of probation or post-release supervision has been served, whichever is later, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him or her, the

petitioner was less than 18 years old at the time of the commission of the offense in question, and the petitioner has performed at least 100 hours of community service since the time of the conviction, then the court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of the person for any purpose.

(e) The court shall also order that the nonviolent felony conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief, or head of any other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(f) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged.

(g) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in the clerk's county, file with the Administrative Office of the Courts the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.

(h) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the felony which is to be expunged under this section.

(i) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred dollars ($100.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 2. This act becomes effective December 1, 2005.

HOUSE BILL 1084:
Expunge Nonviolent Felonies/Young Offenders

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 14, 2005
Introduced by:	Reps. Bordsen, Crawford	**Summary by:**	Drupti Chauhan
Version:	PCS to Second Edition H1084-CSRQ-35 [v.4]		

SUMMARY: The PCS for House Bill 1084 would provide for the expunction of criminal records for offenders who are under the age of 18 at the time of commission of a nonviolent felony. A waiting period of 2 years after the conviction or any period of probation, or time served for an active sentence, period of probation or post-supervised release (whichever is later); 100 hours of community service, no prior or subsequent felony or non-traffic misdemeanor offenses; and affidavits attesting to the petitioner's character are all required.

CURRENT LAW: Article 5 of the Criminal Procedure Act provides for the expunction of criminal records of certain criminal charges or convictions. Expunction is the process by which a record of criminal conviction is removed by order of the court, and the individual is restored to the status he or she occupied before the arrest or indictment. General Statute 15A-145 (Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors) allows a person convicted of a misdemeanor to file a petition for expunction of the misdemeanor from his or her criminal record if the person was under 18 at the time of a conviction or, in the case of a misdemeanor alcohol possession charge, the person was under 21 at the time of conviction. The petition may not be filed sooner than 2 years after the conviction or completion of probation and must include the following [1]:

1) an affidavit of good behavior for the two years following conviction, stating that the petitioner has not been convicted of any felony or non-traffic misdemeanor charge;

2) two affidavits of good character from persons unrelated to the petitioner;

3) a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted; and

4) affidavits of the clerk of superior court, chief of police, and sheriff of the county of the offense and where the petitioner resides showing that petitioner has not been convicted of a felony or non-traffic misdemeanor offense prior to or in the two years since the conviction in question.

If the court finds in favor of the petitioner the clerk of superior court and the appropriate law enforcement agencies must expunge the record of the conviction.

Other sections of Article 5 provide for "Expunction of records when charges are dismissed or there are finding of not guilty as a result of identity fraud"[2] and "Expunction of DNA records when charges are dismissed on appeal or pardon of innocence is granted."[3].

BILL ANALYSIS: The PCS to the bill would add a new section to Article 5 "Expunction of Records" of Chapter 15A "Criminal Procedure Act" of the General Statutes. The proposed G.S. 15A-149 would

[1] G.S. 15A-145(a)(1) through (4).
[2] G.S. 15A-147.
[3] G.S. 15A-148.

provide expunction of the criminal records of first time offenders who are under 18 years of age at the time of the commission of the nonviolent felony if there are no previous or subsequent felony or misdemeanor convictions, other than a traffic violation. The petitioner cannot have received a prior expunction. "Nonviolent felony" would include any felony ***except*** the following:

- A Class A through F felony;
- A felony that includes assault as an essential element of the offense; and
- A felony that is an offense for which the convicted offender must register under Article 27A of Chapter 14 of the General Statutes (sex offenders).

If the person is convicted of more than one nonviolent felony in the same session of court, the bill provides that the multiple nonviolent felony convictions are to be treated as one nonviolent felony conviction under the section and the expunction order is to provide that the multiple convictions are to be expunged.

The procedure to be followed by the petitioner is modeled along the lines of the existing procedures for expunction of records. The petition cannot be filed earlier than two years after the date of conviction or after the time when any active sentence, period of probation, or post-release supervision has been served, whichever occurs later. The petitioner is also required to perform at least 100 hours of community service before filing the petition for expunction.

The petition must contain at least the following:

1) An affidavit of good behavior by the petitioner for the 2 years following conviction, stating that the petitioner has not been convicted of any felony or non-traffic misdemeanor charge under the laws of the United States, this State or any other state during that time;

2) Two affidavits of good character from persons unrelated to petitioner;

3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted;

4) An application authorizing a State and national criminal record check by the Department of Justice with the results reported to the court;

5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding; and

6) An affidavit by the petitioner that he or she has performed at least 100 hours of community service since the conviction with a list of the community services performed, a list of the recipients of the services, and a detailed description of the services.

The petition is to be served on the district attorney who has 10 days to file any objections. The judge is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct. If the judge finds that the petitioner has met all of the requirements, the judge shall order that the petitioner be restored to the statute he or she had before the arrest or indictment. The judge shall also order that the nonviolent felony conviction be expunged from the records of the court and direct all law enforcement agencies to expunge their records, including the State Bureau of Investigation and the Federal Bureau of Investigation.

Any other applicable State or local government agency is directed to expunge from its records any entries made as a result of the conviction order expunged under this section. The agency is required to

also reverse any administrative actions taken against a person whose record is expunged under this section.

The clerk of superior court in each North Carolina county shall file with the Administrative Offices of the Court the names of those persons granted a discharge under the provisions of this section and the Administrative Offices of the Courts must maintain a confidential file containing the names of persons granted conditional discharges. This information can only be disclosed to judges of the General Court of Justice of North Carolina for the purpose of determining if any person charged with an offense has been previously given a discharge.

If a probation officer is assigned to the person eligible for expunction, the probation officer must notify the person of the provisions of this section. If no probation officer is assigned, then the court which heard the felony must provide notification of the possibility of expunction under this section.

The bill would set the filing fee for the expunction petition at $100.00 unless the petitioner was indigent. Fees collected would be deposited into the General Fund.

EFFECTIVE DATE: The bill would become effective December 1, 2005 and would expire December 1, 2012.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 20, 2005

TO: House Finance Committee

FROM: Chloe Gossage, Douglas Holbrook, and Aaron Paul
Fiscal Research Division

RE: PCS H1084-CSRQ-35 [v.4] – Expunge Nonviolent Felonies/Young Offenders

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:	$58,600	$40,500	$22,400	$22,400	$22,400
EXPENDITURES:					
Judicial Branch	$36,750	$26,442	$13,858	$13,858	$13,858
Justice	$64,303	$44,460	$24,618	$24,618	$24,618
TOTAL EXPENDITURES:	$101,053	$70,902	$38,476	$38,476	$38,476
POSITIONS (cumulative)-DOJ:	1	1	0.5	0.5	0.5

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch; Department of Justice

EFFECTIVE DATE: December 1, 2005

BILL SUMMARY: This bill would enact new G.S. 15A-149 to allow expunction of records for nonviolent felonies committed by first-time offenders who were under the age of 18 at the time of the conviction. In the second edition of this bill, a nonviolent felony was defined as any felony except a Class A through Class E felony, a felony with assault as an essential element of the offense, and a felony for which the convicted offender must register as a sex offender. This PCS also excludes Class F felonies from the definition of nonviolent felonies.

To be eligible for expunction under the bill, the offender must not have been previously convicted of any felony or misdemeanor other than a traffic violation, and must have remained of good behavior and been free of conviction of any felony or misdemeanor other than a traffic violation for two years from the date of conviction of the nonviolent felony to be expunged. This PCS additionally requires that the offender must not have previously been granted an expunction. A petition cannot be filed earlier than two years after the date of conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The offender must also perform 100 hours of community service before filing a petition. The provisions in this bill expire in seven years (December 1, 2012).

Source: Adapted from Administrative Office of the Courts, Research and Planning (04/27/05).

ASSUMPTIONS AND METHODOLOGY:

To estimate the number of individuals eligible to file a petition for expunction under this bill, the Administrative Office of the Courts (AOC) identified the number of defendants convicted of a single nonviolent felony while under the age of eighteen by counting the number of convictions recorded per defendant's name in each county. Using this method, AOC identified 12,056 defendants eligible for expunction due to this bill.[1]

As it would be unreasonable to assume that all 12,056 eligible individuals would petition for expunction, AOC estimated the percentage of this total that would file a petition by utilizing the petition rate for existing expunction provisions under G.S. 15A-145(a), which allows for expunction of non-traffic misdemeanors committed by offenders under age eighteen. In calendar year 2004, there were 244 petitions filed out of an estimated 6,900 eligible convictions, revealing that approximately 4 percent of eligible individuals actually sought to have their convictions expunged.

For the 12,056 existing convictions that would be eligible for expunction, AOC estimates that a greater proportion of individuals would seek expunction initially and at declining rates thereafter. However, each year AOC anticipates that an additional 725 convictions would become eligible for expunction. Of these, AOC estimates that 8 percent would seek expunction, resulting in an additional 58 petitions annually. Table 1 below outlines the total number of petitions that would be filed each year based on the estimated numbers of eligible convictions and the rate at which eligible individuals would seek expunction.

Table 1: Estimated Number of Expunction Petitions Filed

	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Existing Backlog of Convictions	12,056	12,056	12,056	12,056	12,056
Percentage Seeking Expunction	6%	4%	2%	2%	2%
Petitions	**723**	**482**	**241**	**241**	**241**
New Convictions	725	725	725	725	725
Percentage Seeking Expunction	8%	8%	8%	8%	8%
Petitions	**58**	**58**	**58**	**58**	**58**
Total Estimated Petitions	**781**	**540**	**299**	**299**	**299**

[1] To the extent that two individuals with identical names would appear to be one individual with multiple convictions, this approximation would underestimate the number of defendants eligible for expunction under this bill. However, to the extent that some individuals could have a single conviction in multiple counties, this approximation would be an overestimate.

Revenues

Under this bill there would be a $100 fee when filing a petition for expunction. AOC estimates that approximately one quarter of petitioners would be indigent and would thus not pay the fee when seeking expunction. Table 2 below outlines projected revenues if 75 percent of petitioners were to pay the $100 fee.

Table 2: Estimated Revenues Resulting from $100 Fee.

	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Total Estimated Petitions	781	540	299	299	299
Non-Indigent Petitions (75%)	586	405	224	224	224
Revenues	**$58,600**	**$40,500**	**$22,400**	**$22,400**	**$22,400**

Expenditures

Judicial Branch

Petitions filed as a result of this bill would lead to additional workload and costs for superior court and the Administrative Office of the Courts.

Superior Court: Clerks would devote time to receiving, filing, and processing petitions, as well as destroying and otherwise expunging court files and records. Additionally, the petitioner would pay a $100 fee when filing a petition, and clerks would incur time receiving and processing these payments or an affidavit of indigency if the petitioner is unable to pay. The petition must also be served on the district attorney, who would then have ten days to review and file an objection. Furthermore, the bill specifies that a hearing must be held and lists the findings that would justify expunction. Under current practice, most hearings are conducted in chambers or otherwise informally, and with rare exceptions, are uncontested. Nevertheless, expunction petitions due to this bill would require additional judge time to review affidavits and other documents, hear from the petitioner, make an evaluation, and issue an order. For cases that are contested or require closer scrutiny, significant judge time would be required.

Administrative Office of the Courts: To seek expunction under existing law, a person fills out an AOC form, which is sent to the SBI for a national record check and to the AOC to determine whether the person has previously had a record expunged. In 2004, AOC processed 6,297 of these requests. As under current law, this bill would require AOC to maintain a confidential file of expungements. Handling current expunction petitions requires approximately one-half of a position in order to look up the information, handle related communications with the clerk and SBI, answer citizen questions, and maintain the files. Also, AOC would incur costs for programming, development, production of forms, postage, copying, printing, mailing, and similar operating costs.

Table 3 on the next page outlines the additional costs that would be needed to process the estimated number of expunction petitions resulting from this bill each year. These figures represent additional resource costs for the Courts but, as they are formulated on fractional position estimates, do not represent the need for additional positions. The position and cost estimates are not changed with the slight reduction in petitions by excluding Class F felonies under the PCS.

Table 3: Estimated Judiciary Position and Operating Expenditures

	FY 05-06 781 Petitions		FY 06-07 540 Petitions		FY 07-08 to FY 09-10 299 Petitions	
	Positions	Cost	Positions	Cost	Positions	Cost
Deputy Clerks	0.20	$6,766	0.14	$4,736	0.08	$2,706
Superior Court Judges	0.11	$16,452	0.08	$11,965	0.04	$5,982
Assistant District Attorneys	0.11	$8,597	0.08	$6,252	0.04	$3,126
AOC Staff	0.07	$3,345	0.05	$2,389	0.03	$1,434
Operating Costs	-	$1,590	-	$1,100	-	$610
Total		**$36,750**		**$26,442**		**$13,858**

Department of Justice

The State Bureau of Investigation (SBI) in the Department of Justice is involved in the expunction process in two ways:

1. The SBI reviews applications for expunction to determine whether the applicant is eligible, and transmits that information to the Court system.
2. Upon a judicial order for expunction, the SBI removes information from its databases and forwards the expunction order to the Federal Bureau of Investigation.

The workload of four different positions in the SBI is affected by this bill – two processing assistants, a fingerprint technician supervisor, and an attorney. It requires a total of approximately 67 minutes of staff time to process an application and 172 minutes of staff time to process an expunction order. The SBI estimates that 87 percent of applications result in expunction orders. Using data and methodology from the Administrative Office of the Courts, we estimate the following:

Table 4: Estimated SBI Position and Operating Expenditures

	2005-06	2006-07	2007-08
Number of applications	781	540	299
Number of orders (87%)	679	470	260
Cost per Application	$27.79	$27.79	$27.79
Cost per Order	$61.24	$61.24	$61.24
Postage per Order	$1.27	$1.27	$1.27
TOTAL	**$64,303**	**$44,460**	**$24,618**
Positions required	**1.30**	**0.90**	**0.50**

The staff time required to process 781 applications is equivalent to one full-time position. Therefore, the box on the front page reflects one additional position required for the SBI in FY 2005-06. Position requirements will decrease in later years as workload declines.

SOURCES OF DATA: Administrative Office of the Courts, Department of Justice

TECHNICAL CONSIDERATIONS:

1. Effective date: This bill would be effective December 1, 2005. AOC notes that considerable preparation would be necessary to implement this bill, including hiring and training personnel, modifying computer programs, and coordination between AOC and the SBI to prepare for the

anticipated increase in petitions. AOC expects that an effective date no earlier than January 1, 2006 would be necessary to implement the bill.

2. Notice to Department of Correction and Division of Motor Vehicles: The bill does not include the Department of Correction or Division of Motor Vehicles among the agencies to whom the Clerk must send a certified copy of an expungement order. The mechanism by which DOC and DMV would receive notice of an expungement order is not specified.

3. Fee for Expungement. This bill sets a fee of $100 for expungements resulting from this legislation. Currently, the fee for expungement is $65. Senate Bill 622 (2005 Appropriations Act), which has passed the Senate and been referred to the House, would increase fees for expungements to $125.

North Carolina General Assembly

House Committee on Finance

Minutes

~

June 30, 2005

The House Committee on Finance met on Thursday, June 30, 2005 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Luebke, and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Blust, Bordsen, Capps, Carney, Dockham, England, Faison, Fisher, Folwell, Glazier, Goforth, Hackney, Holliman, Insko, Jones, Lewis, Lucas, McGee, Rayfield, Underhill, Vinson, Walend, and Wiley. Also present were Sergeant-at-Arms Bill Freeman, Fred Hines, Dusty Rhodes, Bill Sullivan, and Walter Spell. Staff persons present included Cindy Avrette, Rodney Bizzell, Brenna Erford, Ashley Huffstetler, and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2.**

Chairwoman Howard called the meeting to order at 8:31 am and recognized the six (6) pages present: (1) Amber Rollins of Rutherford County, sponsored by Representative England; (2) Anne-Tyson Vance of Iredell County, sponsored by Representative Howard; (3) Wesley Bell of Moore County, sponsored by Representative Morgan; (4) Thomas Thurman of Mecklenburg County, sponsored by Representative Blackwood; (5) Sarah Lineberry of Wake County, sponsored by Speaker Black; and (6) Susan Creasy of Forsyth County, sponsored by Representative Folwell.

The first bill under the Committee's consideration was **SB 92 – WATAUGA DIST. U OCC. TAX** (see **attachment 3**). Chairwoman Howard first recognized Representative Gibson who sent forth a technical amendment (see **attachment 4**) and moved for its adoption. Seeing no further discussion, Chairwoman Howard called the motion to a vote and the amendment was adopted. Senator Garwood, the bill sponsor, was then recognized and explained that the bill would create a new taxing district in Watauga County consisting of the unincorporated areas of the county and authorize that district to levy a room occupancy tax of up to six percent. This bill would also amend the local government bidding requirements statute to provide that Watauga County and the Town of Boone need not comply with the formal bidding requirements for construction and repair work to develop Anne Marie Park Drive if the work is performed by force account qualified labor and the total cost does not exceed $750,000. Senator Garwood also reported that the bill had received a favorable report from the House Finance Subcommittee on Occupancy Tax. Following the explanation, Representative Gibson moved that a new committee substitute, incorporating his amendment, be given a favorable report and an unfavorable report as to the original bill. As there was no further debate, Chairwoman Howard called the motion to a vote, and it carried by consent.

The following bill considered by the Committee was **HB 1051 – MACON-JACKSON REGIONAL AIRPORT AUTHORITY** (see **attachment 5**). Chairwoman Howard first recognized Representative Hill who moved the adoption of the proposed committee substitute for

the Committee's consideration. The motion was adopted. Representative Hill was recognized again and sent forth an amendment (see **attachment 6**) reducing from seven (7) to five (5) the members of the Jackson County Airport Authority. After Representative Hill moved for the amendment's adoption, Chairwoman Howard called for further discussion. Seeing none, she called the motion to a vote and the amendment was adopted. Chairwoman Howard then recognized Representative Haire who explained that the bill authorizes the formation of the Macon-Jackson Regional Airport Authority if the Boards of County Commissioners of both Macon and Jackson Counties decide to appoint members to the proposed Airport Authority. The bill also bans most fixed wing or rotary wing commercial flights from Macon County or Jackson County unless they originate or terminate from an FAA approved airport.

Following the explanation, Chairwoman Howard recognized Representative Holliman who reported that he had heard of some opposition to the bill. Representative Haire was then recognized and stated that he was not aware of the current opposition to this bill. Chairwoman Howard then recognized Representative Alexander who said that she has heard from pilots who are concerned that this bill could cause the airports to lose federal funding. Representative Haire was recognized to respond and stated that the bill does not dissolve either airport. Both airports would be allowed to remain open with approval of the County Commissioners and federal funding would not necessarily be lost. Representative Underhill was then recognized and moved that the proposed committee substitute, incorporating the amendment, be given a favorable report and an unfavorable report as to the original bill. Chairwoman Howard then recognized Representative Luebke who reported that he has heard some concerns from Tom McClure, the Chairman of the Jackson County Airport Authority. Representative Haire was then recognized and stated that the opposition has been settled by the adopted amendment that reduces the board members from seven (7) to five (5). He reported that the opposition still did not like the bill but that they could live with it in its current form. As there was no further debate, Chairwoman Howard called the Underhill motion to a vote it carried without objection.

Chairwoman Howard then referred House Bill 580 – BELMONT & TROUTMAN OCCUPANCY TAX – to the Subcommittee on Occupancy Tax.

The final bill considered by the Committee was **HB 1084 – EXPUNGE NONVIOLENT FELONIES/YOUNG OFFENDERS** (see **attachment 7**), which was previously discussed during the House Finance Committee meeting on June 21. Chairwoman Howard first recognized Representative Weiss who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Representative Bordsen was then recognized and briefly explained the bill again before the Committee. She explained that the bill allows for the expunction of a nonviolent felony for youths who commit such crimes while under the age of 18. Expunction would only be granted if the individual remains free of non-traffic felony and misdemeanor offenses for two years after conviction, parole, or active sentence, whichever is greater. Following the explanation, Representative Wainwright was recognized and asked if opponents of this bill believe that sixteen and seventeen-year-olds cannot make the same mistakes that a fifteen-year-old can. Chairwoman Howard recognized Representative Bordson who agreed with Representative Wainwright and reported that North Carolina is the only state left in the nation that treats sixteen and seventeen year olds as adults under the criminal code.

Representative Jones was then recognized and asked if this bill had been heard in another committee and why this bill was in the Finance Committee. To respond, Representative Bordsen was recognized and stated that the bill had received unanimous support from the House Judiciary II Committee and is under the Finance Committee's consideration because of a fee requested by the Administrative Office of the Courts. Chairwoman Howard then recognized Representative Jones

who moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Following the motion, Representative Holliman was recognized and shared his belief that young people should be given a second chance. Chairwoman Howard then recognized Representative Hill who was concerned by a list of organizations opposing the bill (see **attachment 8**). He stated that he was interested in hearing from some of the organizations in opposition to the proposed legislation. Representative Daughtridge was then recognized and emphasized the need for employers to know a person's background. He explained how this bill thwarts the intentions of other bills that provide for criminal background checks. Representative Daughtridge then proceeded with a list of bills that have been filed this session that relate to criminal background checks.

Chairwoman Howard then recognized Representative Capps who referred to the comments of Colon Willoughby, the District Attorney of Wake County, who previously spoke in opposition to the bill at the June 21 Finance Committee meeting. Representative Capps echoed Mr. Willoughby's statement that this bill would expunge too many crimes. Representative Capps then read a long list of violent crimes that could be expunged under the bill. He concluded by saying that he opposes the bill and believes the State should not support this bill just because other states have passed similar legislation. Chairwoman Howard then recognized Representative Womble who eloquently emphasized the goodness of this bill. He stated that this bill could help North Carolina become more compassionate to its youth. Representative Womble also reported that he has been contacted by none of the organizations listed in opposition to the bill. Chairwoman Howard then recognized Representative Underhill who reported a conversation that she had had with a Sheriff in North Carolina who was in support of the bill. She continued by saying that she was not persuaded by the opposition list because the list did not accurately reflect the attitudes of the members of each organization.

Representative Glazier was then recognized and stated that he admired Representative Bordsen's courage in bringing this bill forward. According to Representative Glazier, this bill is economically and morally in the State's best interest. However, he stated that it may be beneficial to add another level of transition for ages sixteen to seventeen by exempting expunction to felonies A-F, instead of felonies A-E. Representative Glazier then sent forth an amendment (see **attachment 9**) providing this change in the bill and moved for its adoption. Chairwoman Howard then recognized Representative Bordsen who stated her support for the amendment if it would help to move the bill forward. Seeing no further discussion, Chairwoman Howard then called the Glazier motion to a vote, and the amendment was adopted. Representative Ross was then recognized and said that this bill would not create a "cake walk" for young people desiring expunction. The bill would require the oversight of the District Attorney and a Judge during the expunction process. Representative Capps was then recognized and acknowledged that Representative Glazier's amendment was an improvement to the bill and inquired of staff to provide him with a list of crimes that would no longer be expunged under the amendment.

Chairwoman Howard then recognized Mike Reeder from the Haven House, which deals with troubled youth on a daily basis. Mr. Reeder announced his support for the bill and shared some examples of cases where this bill could have helped individual youth. Eddie Caldwell from the NC Sheriff's Association was then recognized and stated his opposition to the bill. Mr. Caldwell then said that he believes the bill should be studied before being passed by the General Assembly. Chairwoman Howard then recognized Hugh Tilson of the NC Hospital Association who stated that his organization opposes the bill because hospitals need to be given accurate information when doing background checks on potential employees. Stephanie Simpson of the NC Realtors' Association was recognized and announced her organization's opposition to the bill because employers in the real estate industry need to know the complete background of an applicant who is

involved in brokering deals and handling transactions involving large sums of money. Chairwoman Howard then recognized Pete Powell from the Administrative Office of the Courts who stated his belief that all problems with the bill had been addressed except one. He then emphasized the need for an appropriation to the Administrative Office of the Courts because this bill acts as an unfunded mandate to his office. Representative Jones was then recognized and moved for a favorable report to the proposed committee substitute, incorporating the Glazier amendment, and an unfavorable report to the original bill. As there was no further debate, Chairwoman Howard called the motion to a vote, and it carried by a majority.

As there was no further business before the Committee, Chairwoman Howard then adjourned the meeting at 9:51 am.

Respectfully submitted,

Representative Julia Howard
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. Senate Bill 92 (and related materials)
4. Gibson Amendment on Senate Bill 92 - **ADOPTED**
5. House Bill 1051 (and related materials)
6. Hill Amendment on HB 1051 - **ADOPTED**
7. House Bill 1084 (and related materials)
8. List of Organizations Opposing HB 1084
9. Glazier Amendment on HB 1084 - **ADOPTED**
10. Senate Bill 369 (and related materials) - (REMOVED FROM CALENDAR)

AGENDA

House Finance Committee

ATTACHMENT 1

June 30, 2005
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Howard

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard

Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order

Introduction of Pages

Bills:

HB 1051 **MACON-JACKSON REGIONAL AIRPORT AUTHORITY**
Reps. Haire & West

HB 1084 **EXPUNGE NONVIOLENT FELONIES/YOUNG OFFENDERS**
Rep. Bordsen

SB 92 **WATAUGA DISTRICT U OCCUPANCY TAX** *Sen. Garwood*

SB 369 **FRANKLIN COUNTY OCCUPANCY TAX** *Sen. D. Berger*

Adjournment

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Thursday, June 30, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 1051 – MACON-JACKSON REGIONAL AIRPORT AUTHORITY – Reps. Haire & West

HB 1084 – EXPUNGE NONVIOLENT FELONIES/YOUNG OFFENDERS – Rep. Bordsen

SB 92 – WATAUGA DISTRICT U OCCUPANCY TAX – Sen. Garwood

SB 569 – FRANKLIN COUNTY OCCUPANCY TAX – Sen. D. Berger

Respectfully,
Representatives Alexander, Gibson, Howard,
Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **10:22 a.m.** on **June 29, 2005**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

ATTACHMENT 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 30, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kevin Leonard	JCSR
Newton Craver	NCBA
Grace Sampson	NCBA
R Scott Addison	NCBA - Bank of Granite
Mark Lewis	NCBA - Bank of NC
Paul Stock	NC Bankers
Darrell Fowler	NCBA - New Century Bank
Drew Honeycutt	NCBA
Andy Romanet	NCLM
Estherina Davis	Electricities of NC
Mel I. Chilton	NCVAN

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jami Fitzgerald	NCFPC
Jeffrey Watson	DOA-4-H
Rich Webb	NCGA Intern
Kathy Hawkins	Progress Energy
Patricia Romero	NAFCC
Leonie Winniel	NCSBA
Mary Donny	VFF
Christine Craig	WakeMed
Roz Sawyer	NC CCC
PB Powell	AOC
BRIAN LEWIS	Covenant w/ NC's Children

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Russ Dubisky	CCPS
Eddie Caldwell	NC Sheriffs Assn.
Mike Riedel	Covenant with NC Children
Mary Rae	NCAE
Mark Benson	Capitol Tax
Stephanie Dorko	Charlotte Chamber
Ken McHow	D.O.R.
Lee Hunter	JCLH
Amy Hobbs	HANC
Chip Killian	Nelson-Mullins
John Snow	Strib

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 30, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	Poyner + Spruill
[signature]	NASW-NC
[signature]	NCACCT
[signature]	NCFPC
[signature]	NCACC
[signature]	AT&S
[signature]	NCRA - NCWH
[signature]	Smith Anderson
[signature]	GPM ; [illegible]
[signature]	NCFA

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 92
Finance Committee Substitute Adopted 5/12/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S92-CSMBx-26 [v.2]

6/28/2005 1:45:33 PM

Short Title: Watauga Dist. U Occ. Tax/Force Account Limit. (Local)

Sponsors:

Referred to:

February 9, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE WATAUGA COUNTY TO LEVY AN OCCUPANCY TAX IN A TAX DISTRICT COMPRISING THE UNINCORPORATED AREAS OF THE COUNTY AND TO INCREASE THE FORCE ACCOUNT LIMIT FOR WATAUGA COUNTY AND THE TOWN OF BOONE FOR DEVELOPMENT OF ANNE MARIE DRIVE PARK.

The General Assembly of North Carolina enacts:

PART I. WATAUGA COUNTY DISTRICT U OCCUPANCY TAX.

SECTION 1. Watauga County District U Created. – Watauga County District U is created as a taxing district. Its jurisdiction consists of that part of Watauga County that is located outside of incorporated areas within the county. Watauga County District U is a body politic and corporate and has the power to carry out the provisions of this act. The Watauga County Board of Commissioners shall serve ex officio as the governing body of the district, and the officers of the county shall serve as the officers of the governing body of the district. A simple majority of the governing body constitutes a quorum, and approval by a majority of those present is sufficient to determine any matter before the governing body, if a quorum is present.

SECTION 2. Authorization and Scope. – The governing body of Watauga County District U may levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the district that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales or room occupancy tax. This tax does not apply to accommodations furnished by charitable, educational, or religious institutions or nonprofit organizations when furnished in furtherance of their nonprofit purpose.

SECTION 3. Administration. – A tax levied under this act shall be levied, administered, collected, and repealed as provided in G.S. 153A-155 as if Watauga County District U were a county. The penalties provided in G.S. 153A-155 apply to a tax levied under this act.

SECTION 4. Distribution and Use of Tax Revenue. – Watauga County District U shall, on a quarterly basis, distribute the net proceeds of the occupancy tax to the Watauga County District U Tourism Development Authority created pursuant to Section 5 of this act. The Authority shall use at least two-thirds of the proceeds distributed to it to promote travel and tourism in the district and shall use the remainder for tourism-related expenditures in the district. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of the jurisdiction of Watauga County District U. None of the proceeds may be used to promote travel or tourism in areas within Watauga County that are outside of the district or for tourism-related expenditures in the county that are outside of the district.

The following definitions apply in this act:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

SECTION 5.(a) Watauga County District U Tourism Development Authority. – Appointment and Membership. – The Watauga County Board of Commissioners shall adopt a resolution creating the Watauga County District U Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the district, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the district. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Watauga County shall be the ex officio finance officer of the Authority.

SECTION 5.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 4 of this act. The Authority shall promote travel and tourism in the district and make tourism-related expenditures in the district.

SECTION 5.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Watauga County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

SECTION 6. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Anson, Brunswick, Buncombe, Cabarrus, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Granville, Halifax, Madison, Montgomery, Nash, New Hanover, Pasquotank, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, to Watauga District U, and to the Township of Averasboro in Harnett County."

PART II. FORCE ACCOUNT LIMIT.

SECTION 7. G.S. 143-135 reads as rewritten:

"**§ 143-135. Limitation of application of Article.**

Except for the provisions of G.S. 143-129 requiring bids for the purchase of apparatus, supplies, materials or equipment, this Article shall not apply to construction or repair work undertaken by the State or by subdivisions of the State of North Carolina (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the agency concerned and (ii) when either the total cost of the project, including without limitation all direct and indirect costs of labor, services, materials, supplies and equipment, does not exceed ~~one hundred twenty-five thousand dollars ($125,000) or the total cost of labor on the project does not exceed fifty thousand dollars ($50,000).~~ seven hundred and fifty thousand dollars $750,000. This force account work shall be subject to the approval of the Director of the Budget in the case of State agencies, of the responsible commission, council, or board in the case of subdivisions of the State. Complete and accurate records of the entire cost of such work, including without limitation, all direct and indirect costs of labor, services, materials, supplies and equipment performed and furnished in the prosecution and completion thereof, shall be maintained by such agency, commission, council or board for the inspection by the general public. Construction or repair work undertaken pursuant to this section shall not be divided for the purposes of evading the provisions of this Article."

SECTION 8. Section 7 of this act applies only to a joint project between Watauga County and the Town of Boone to develop Anne Marie Drive Park.

SECTION 9. Section 7 of this act applies to Watauga County and the Town of Boone only.

PART III. EFFECTIVE DATE.

SECTION 10. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 92
Finance Committee Substitute Adopted 5/12/05

Short Title: Watauga District U Occupancy Tax. (Local)

Sponsors:

Referred to:

February 9, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE WATAUGA COUNTY TO LEVY AN OCCUPANCY TAX IN A TAX DISTRICT COMPRISING THE UNINCORPORATED AREAS OF THE COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Watauga County District U Created. – Watauga County District U is created as a taxing district. Its jurisdiction consists of that part of Watauga County that is located outside of incorporated areas within the county. Watauga County District U is a body politic and corporate and has the power to carry out the provisions of this act. The Watauga County Board of Commissioners shall serve ex officio as the governing body of the district, and the officers of the county shall serve as the officers of the governing body of the district. A simple majority of the governing body constitutes a quorum, and approval by a majority of those present is sufficient to determine any matter before the governing body, if a quorum is present.

SECTION 2. Authorization and Scope. – The governing body of Watauga County District U may levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the district that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales or room occupancy tax. This tax does not apply to accommodations furnished by charitable, educational, or religious institutions or nonprofit organizations when furnished in furtherance of their nonprofit purpose.

SECTION 3. Administration. – A tax levied under this act shall be levied, administered, collected, and repealed as provided in G.S. 153A-155 as if Watauga County District U were a county. The penalties provided in G.S. 153A-155 apply to a tax levied under this act.

SECTION 4. Distribution and Use of Tax Revenue. – Watauga County District U shall, on a quarterly basis, distribute the net proceeds of the occupancy tax to the Watauga County District U Tourism Development Authority created pursuant to

Section 5 of this act. The Authority shall use at least two-thirds of the proceeds distributed to it to promote travel and tourism in the district and shall use the remainder for tourism-related expenditures in the district. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of the jurisdiction of Watauga County District U. None of the proceeds may be used to promote travel or tourism in areas within Watauga County that are outside of the district or for tourism-related expenditures in the county that are outside of the district.

The following definitions apply in this act:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

SECTION 5.(a) Watauga County District U Tourism Development Authority. – Appointment and membership. – The Watauga County Board of Commissioners shall adopt a resolution creating the Watauga County District U Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the district, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the district. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Watauga County shall be the ex officio finance officer of the Authority.

SECTION 5.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 4 of this act. The Authority shall promote travel and tourism in the district and make tourism-related expenditures in the district.

SECTION 5.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Watauga County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

SECTION 6. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Anson, Brunswick, Buncombe, Cabarrus, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Durham, Granville, Madison, Montgomery, Nash, New Hanover, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, to Watauga District U, and to the Township of Averasboro in Harnett County."

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

Senate Bill 92:
Watauga Dist. U Occ. Tax/Force Account Limit.

BILL ANALYSIS

Committee: House Finance
Date: June 30, 2005
Version: PCS to 2nd Edition
S92-CSMBx-26

Sponsor: Senator Garwood
Analysis by: Ashley Huffstetler
Staff Attorney

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 92 would create a new taxing district in Watauga County consisting of the unincorporated areas of the county and authorize that district to levy a room occupancy tax of up to 6%. It would also amend the local government bidding requirements statute to provide that Watauga County and the Town of Boone need not comply with the formal bidding requirements for construction and repair work to develop Anne Marie Park Drive if the work is performed by force account qualified labor and the total cost of the project does not exceed $750,000.***

OCCUPANCY TAX

CURRENT LAW: Watauga County does not currently have authority to levy a room occupancy tax, although the towns of Beech Mountain, Blowing Rock, and Seven Devils, which are partly located in Watauga County, and Boone, which is entirely located in Watauga County, do have authority to levy a room occupancy tax.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 92 would create a new taxing district in Watauga County consisting of the unincorporated areas of the county to be named "Watauga County District U." The Watauga County Board of Commissioners would serve ex officio as the governing body of the district. The district would be authorized to levy a room occupancy tax of up to 6% and remit the net proceeds, on a quarterly basis, to a Tourism Development Authority established under this act. The tax proceeds may be used only for the direct benefit of the Watauga County District U. The administrative and use provisions of this bill conform to the guidelines adopted by the House Finance Committee for occupancy tax legislation.

The chart below details the House Occupancy Tax Guidelines:

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least ¾ of the members must be currently active in the promotion of travel and tourism in the county and ½ of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

FORCE ACCOUNT LABOR

CURRENT LAW: The main competitive bidding requirements for local governments are found in Article 8 of Chapter 143. These statutes apply to the expenditure of public money within established dollar limits and for two categories of contracts: (1) contracts for the purchase of apparatus, supplies, materials, or equipment, and (2) contracts for construction or repair work. The second category (contracts for construction or repair work) includes construction of roads, utilities, buildings, and other infrastructure.

Formal bidding for construction or repair work does not apply to work undertaken by the local government when (1) the work is performed by force account qualified labor on the permanent payroll, and (2) either the cost of the project does not exceed $125,000 or the total cost of labor does not exceed $50,000. "Force account labor" is the use of public employees to do the construction or repair work.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 92 amends G.S. 143-135 to provide that formal bidding for construction and repair work does not apply to work undertaken by Watauga County or the Town of Boone on a joint project to develop Ann Marie Drive Park when (1) the work is performed by force account qualified labor on the payroll, and (2) the cost of the project does not exceed $750,000.

PCS CHANGES

The PCS to the 2nd Edition adds the force account labor provision (Part II) to the bill. It does not make any substantive changes to the authorization for levy of the occupancy tax in the unincorporated areas of Watauga County.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: May 11, 2005

TO: Senator Garwood

FROM: Rodney Bizzell
Fiscal Research Division

RE: Senate Bill 92 (Unknown Edition)

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund		No General Fund Impact			
Watauga District U	**$262,800**	**$268,844**	**$274,759**	**$280,254**	**$285,859**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Watauga District U

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:
The Proposed Committee Substitute for Senate Bill 92 would create a new taxing district in Watauga County consisting of the unincorporated areas of the county and authorize that district to levy a room occupancy tax of up to 6%. The district would be authorized to levy a room occupancy tax of up to 6% and remit the net proceeds, on a quarterly basis, to a Tourism Development Authority established under this act. The Authority would be required to use at least two-thirds of the proceeds to promote travel and tourism and to use the remainder for tourism-related expenditures. The tax proceeds may be used only for the direct benefit of the Watauga County District U.

ASSUMPTIONS AND METHODOLOGY:
According to the Watauga County Manager, the area that would comprise Watauga District U includes approximately 600 rooms in bed and breakfasts, cabins and condominiums that are for rent. Because many of these are rented on a seasonal basis, the average occupancy rate is assumed to be 20%. Assuming an average room rental rate of $100 suggests the following revenue stream:

Year	Amount	Each 1%
2005-06	$262,800	43,800
2006-07	$268,844	44,807
2007-08	$274,759	45,793
2008-09	$280,254	46,709
2009-10	$285,859	47,643

Because no historic data is available, the General Consumer Price Index estimated rate of increase is used to estimate future growth in occupancy tax receipts.

SOURCES OF DATA: Watauga County

TECHNICAL CONSIDERATIONS: None

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 4

EDITION No. PCS to 2nd Ed.

H. B. No. _____ DATE 6/30/2005

S. B. No. 92 Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE yes

Rep.) Gibson
Sen.)

1 moves to amend the bill on page 3, line 17

2 ( ) WHICH CHANGES THE TITLE

3 by adding the word "County" between the

4 words "Watauga" and "District.".

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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

SB 92 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE WATAUGA COUNTY TO LEVY AN OCCUPANCY TAX IN A TAX DISTRICT COMPRISING THE UNINCORPORATED AREAS OF THE COUNTY.

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1051
PROPOSED COMMITTEE SUBSTITUTE H1051-CSLK-21 [v.2]

5/27/2005 3:44:10 PM

Short Title: Macon-Jackson Regional Airport Authority. (Local)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO ENABLE THE CREATION OF A MACON-JACKSON REGIONAL AIRPORT AUTHORITY; TO LIMIT OPERATIONS OF SOME FIXED AND ROTARY WING AIRCRAFT; AND TO CHANGE THE MEMBERSHIP OF THE JACKSON COUNTY AIRPORT AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. There is hereby created the "Macon-Jackson Regional Airport Authority" (for brevity hereinafter referred to as the "Airport Authority"), which shall be a body both corporate and politic, having the powers and jurisdiction hereinafter enumerated and such other and additional powers as shall be conferred upon it by general law and future acts of the General Assembly.

SECTION 2. The Airport Authority shall consist of not less than five and not more than nine members. The exact provisions relating to the appointment, terms, succession, removal, and vacancies of members, and other similar matters shall be jointly determined and adopted by a resolution of the board of county commissioners of each county.

Each member shall take and subscribe before the Clerk of Court of Macon County or the Clerk of Court of Jackson County, depending on the member's residence, an oath of office and file that oath with the board of county commissioners of both counties. Membership on the Airport Authority and the Macon County Board of Commissioners or the Jackson County Board of Commissioners shall not constitute dual office holding within the meaning of Section 9 of Article VI of the North Carolina Constitution.

SECTION 3. The Airport Authority may adopt suitable bylaws for its management. The members of the Airport Authority may receive compensation, per diem, or otherwise as the Macon County Board of Commissioners and the Jackson County Board of Commissioners from time to time jointly determine. Members shall be allowed and paid their actual expenses incurred in transacting the business and at the instance of the Airport Authority. Members of the Airport Authority shall not be

personally liable for their acts as members of the Airport Authority, except for acts resulting from misfeasance or malfeasance.

SECTION 4(a). The Airport Authority shall constitute a body, both corporate and politic, and shall have the following powers and authority:

(1) To purchase, acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports and landing fields for the use of airplanes and other aircraft within the limits of the counties and for this purpose to purchase, improve, own, hold, lease, or operate real or personal property. The Airport Authority may exercise these powers alone or in conjunction with the counties of Macon and Jackson.

(2) To sue and be sued in the name of the Airport Authority, to make contracts and hold any personal property necessary for the exercise of the powers of the Airport Authority, and acquire by purchase, lease, or otherwise any existing lease, leasehold right, or other interest in any existing airport located in the county.

(3) To charge and collect reasonable and adequate fees and rents for the use of airport property or for services rendered in the operation of the airport.

(4) To make all reasonable rules and regulations it deems necessary for the proper maintenance, use, operation, and control of the airport, including public safety, and provide penalties for the violation of these rules and regulations; provided, the rules and regulations and schedules of fees not be in conflict with the laws of North Carolina and the regulations of the Federal Aviation Administration. The Airport Authority may administer and enforce any airport zoning regulations adopted by the counties of Macon or Jackson depending on the location of the airport.

(5) To issue bonds pursuant to Article 5 of Chapter 159 of the General Statutes.

(6) To sell, lease, or otherwise dispose of any property, real or personal, belonging to the Airport Authority, according to the procedures described in Article 12 of Chapter 160A of the General Statutes, but no sale of real property shall be made without the approval of the board of commissioners of the county in which the real property is located.

(7) To purchase any insurance that the Federal Aviation Administration or the Airport Authority shall deem necessary. The Airport Authority shall be responsible for any and all insurance claims or liabilities.

(8) To deposit or invest and reinvest any of its funds as provided by the Local Government Finance Act, as it may be amended from time to time, for the deposit or investment of unit funds.

(9) To purchase any of its outstanding bonds or notes.

(10) To operate, own, lease, control, regulate, or grant to others, for a period not to exceed 20 years, the right to operate on any airport

premises restaurants, snack bars, vending machines, food and beverage dispensing outlets, rental car services, catering services, novelty shops, insurance sales, advertising media, merchandising outlets, motels, hotels, barbershops, automobile parking and storage facilities, automobile service establishments, and all other types of facilities as may be directly or indirectly related to the maintenance and furnishing to the general public of a complete air terminal installation.

(11) To contract with persons, firms, or corporations for terms not to exceed 20 years, for the operation of airline-scheduled passenger and freight flights, nonscheduled flights, and any other airplane activities not inconsistent with the grant agreements under which the airport property is held.

(12) To erect and construct buildings, hangars, shops, and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; to lease these improvements and facilities for a term or terms not to exceed 20 years; to borrow money for use in making and paying for these improvements and facilities, secured by and on the credit only of the lease agreements in respect to these improvements and facilities, and to pledge and assign the leases and lease agreements as security for the authorized loans.

(13) Subject to the limitations set out in this act, to have all the same power and authority granted to cities and counties pursuant to Chapter 63 of the General Statutes, Aeronautics.

(14) To have a corporate seal, which may be altered at will.

SECTION 4(b). The Airport Authority shall possess the same exemptions in respect to payment of taxes and license fees and be eligible for sales and use tax refunds to the same extent as provided for municipal corporations by the laws of the State of North Carolina.

SECTION 5. The Airport Authority may acquire from the counties by agreement with the counties, and the counties may grant and convey, either by gift or for such consideration as the county may deem wise, any real or personal property which it now owns or may hereafter acquire, including nontax monies, and which may be necessary for the construction, operation, and maintenance of any airport located in the counties.

SECTION 6. Any lands acquired, owned, controlled, or occupied by the Airport Authority shall be, and are declared to be, acquired, owned, controlled, and occupied for a public purpose.

SECTION 7. Private property needed by the Airport Authority for any airport, landing field, or as facilities of an airport or landing field, may be acquired by gift or devise, or may be acquired by private purchase or by the exercise of eminent domain pursuant to Chapter 40A of the General Statutes, as a local public condemnor, including the provisions of G.S. 40A-42. If property acquired by gift, devise, purchase, or condemnation has a burial ground or graveyard, then it shall be lawful for the Airport

Authority, after 30 days' notice to the surviving spouse or next of kin of the deceased buried there or the person in control of the graves, if they are known, to remove the interred body and reinter the body in another cemetery in Macon County or Jackson County. If no surviving spouse or next of kin or person in control can be found, then the Airport Authority may advertise for four consecutive weeks in a newspaper published in Macon County and Jackson County of the intended removal of the graves. The removal shall then be conducted under the supervision of the Clerk of the Superior Court of Macon County or the Clerk of the Superior Court of Jackson County or his or her representative. The expense of the removal shall be borne by the Airport Authority.

SECTION 8. The Airport Authority shall make an annual report to the Macon County Board of Commissioners and the Jackson County Board of Commissioners setting forth in detail the operations and transactions conducted by it pursuant to this act. The Airport Authority shall not have the power to pledge the credit of Macon County or Jackson County, or any subdivision thereof, or to impose any obligation on Macon County or Jackson County, or any of its subdivisions, except when that power is expressly granted by statute.

SECTION 9. Subject to the limitations as set out in this act, all rights and powers given and granted to counties or municipalities by general law, which may now be in effect, or enacted in the future, relating to the development, regulation, and control of municipal airports and the regulation of aircraft are now concurrently vested in the Airport Authority. The Macon County Board of Commissioners and the Jackson County Board of Commissioners may delegate its powers under these acts to the Airport Authority, and the Airport Authority shall have concurrent rights with Macon County and Jackson County to control, regulate, and provide for the development of aviation in Macon County or Jackson County.

SECTION 10. The Airport Authority may contract with and accept grants from the Federal Aviation Administration, the State of North Carolina, or any of the agencies or representatives of either of said governmental bodies relating to the purchase of land and air easements and to the grading, constructing, equipping, improving, maintaining, or operating of an airport or its facilities or both.

SECTION 11. The Airport Authority may employ or contract with any agents, engineers, attorneys, and other persons whose services may be deemed by the Airport Authority to be necessary and useful in carrying out the provisions of Sections 1 through 10 of this act.

SECTION 12. The Macon County Board of Commissioners and the Jackson County Board of Commissioners may appropriate funds derived from any source including ad valorem taxes to carry out the provisions of this act in any proportion or upon any basis as may be determined by the Macon County Board of Commissioners or the Jackson County Board of Commissioners. The Macon County Board of Commissioners and the Jackson County Board of Commissioners may provide county services to the Airport Authority upon any basis as may be determined by the Macon County Board of Commissioners or the Jackson County Board of Commissioners.

SECTION 13. The Airport Authority may expend the funds that are appropriated by the county for joint airport purposes and may pledge the credit of the Airport Authority to the extent of the appropriated funds.

SECTION 14. The Airport Authority shall elect from among its members a chair and other officers at its initial meeting and then biennially thereafter. Officers shall be eligible to succeed themselves in office and to serve consecutive terms at the will of the members of the Airport Authority. A majority of the Airport Authority shall control its decisions. Each member of the Airport Authority, including the chair, shall have one vote. The Airport Authority shall meet at the places and times designated by the chair.

SECTION 15. If an airport established pursuant to this act ceases to be operated by the Airport Authority, or if any property acquired pursuant to this act for airport purposes is abandoned, then the title to that real or personal property, or rights under any existing lease, shall revert to and vest in the county in which the property is located; and on the sale of that property, the proceeds shall vest in the county in which the property is located.

SECTION 16. The powers granted to the Airport Authority shall not be effective until the members of the Airport Authority have been appointed by the Macon County Board of Commissioners and the Jackson County Board of Commissioners, acting jointly, and nothing in this act shall require either board of commissioners to make the initial appointments. It is the intent of this act to enable but not to require the formation of the Macon-Jackson Regional Airport Authority.

SECTION 17. Upon the creation of the Macon-Jackson Regional Airport Authority, either county may elect to dissolve its current county Airport Authority. The dissolution may be effectuated by a resolution of the board of county commissioners following a public hearing held on the matter, or by a resolution of the board of county commissioners ratifying a favorable binding referendum on the question of the dissolution. The referendum on the dissolution may be held at the same time as any other state or county primary, election, special election, or referendum.

SECTION 18. No fixed wing or rotary wing commercial flights may originate or terminate in Macon County or Jackson County unless they originate or terminate from an airport approved by the Federal Aviation Authority and operated pursuant to Chapter 63 of the General Statutes. This section shall not apply to fixed wing or rotary wing aircraft operated by or at the direction of governmental agencies or providing medical air services.

SECTION 19. (a) Section 2 of S.L. 1997-22 reads as rewritten:

"Section 2. The Airport Authority shall consist of ~~six~~ seven members, who shall be residents of Jackson County and who shall be appointed to staggered terms of six years by the Jackson County Board of Commissioners. Members may succeed themselves in office and serve more than one term. Two initial appointments to the Airport Authority shall be for two years, two initial appointments to the Airport Authority shall be for four years, and the remaining two initial appointments to the Airport Authority shall be for six years. When vacancies occur in the membership of the Airport Authority, for any reason, the remaining members of the Airport Authority shall submit a list of two or more candidates to the Jackson County Board of

Commissioners who shall select one from that list to fill the unexpired term of the vacant office. Each member shall take and subscribe before the Clerk of Superior Court of Jackson County an oath of office and file the same with the Jackson County Board of Commissioners. Membership on the Jackson County Board of Commissioners and the Airport Authority shall not constitute double office holding within the meaning of Article VI, Section 9 of the Constitution of North Carolina."

(b) The new member of the Jackson County Airport Authority created by enactment subsection (a) of this section shall be appointed in the same manner used for filling vacancies in the membership of the existing Airport Authority.

SECTION 20. If any one or more sections, clauses, sentences, or parts of this act shall be adjudged invalid, such judgment shall not affect, impair, or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provisions held invalid, and the inapplicability or invalidity of any section, clause, sentence, or part of this act in one or more instances or circumstances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

SECTION 21. Sections 1 through 17 of this act shall expire on January 1, 2007, if the Macon County Board of County Commissioners and the Jackson County Board of County Commissioners have not appointed members of the Macon-Jackson Regional Airport Authority prior to that date.

SECTION 22. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1051

Short Title:	Macon-Jackson Regional Airport Authority.	(Local)
Sponsors:	Representatives Haire and West (Primary Sponsors).	
Referred to:	Finance.	

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO CONSOLIDATE THE EXISTING MACON COUNTY AIRPORT AUTHORITY AND THE EXISTING JACKSON COUNTY AIRPORT AUTHORITY TO CREATE A NEW MACON-JACKSON REGIONAL AIRPORT AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. S.L. 1999-238 reads as rewritten:

"Section 1. There is hereby created the ~~"Macon County~~"Macon-Jackson Regional Airport Authority" (for brevity hereinafter referred to as the "Airport Authority"), which shall be a body both corporate and politic, having the powers and jurisdiction hereinafter enumerated and such other and additional powers as shall be conferred upon it by general law and future acts of the General Assembly.

Section 2. The Airport Authority shall consist of five members, who shall be residents of Macon County or Jackson County and who shall be appointed to staggered terms of six years by agreement of the Macon County Board of Commissioners and the Jackson County Board of Commissioners. Members may succeed themselves in office and serve more than one term. Two initial appointments to the Airport Authority shall be for two years, two initial appointments to the Airport Authority shall be for four years, and the remaining initial appointment to the Airport Authority shall be for six years.

When vacancies occur in the membership of the Airport Authority, for any reason, the remaining members of the Airport Authority shall submit a list of two or more candidates to the Macon County Board of Commissioners and the Jackson County Board of Commissioners. The ~~Board~~ Boards of Commissioners shall either jointly select one from that list to fill the unexpired term of the vacant office or shall request that the Airport Authority submit additional candidates. The Airport Authority shall submit additional candidates upon request until the ~~Board~~ Boards of Commissioners ~~selects~~ select a member from the candidates submitted.

Each member shall take and subscribe before the Clerk of Superior Court of Macon County or the Clerk of the Superior Court of Jackson County, depending on the member's residence, an oath of office and file the same with the Macon County Board of Commissioners. Membership on the Macon County Board of Commissioners or the Jackson County Board of Commissioners and the Airport Authority shall not constitute double office holding within the meaning of Article VI, Section 9, of the Constitution of North Carolina.

Section 3. The Airport Authority may adopt suitable bylaws for its management. The members of the Airport Authority may receive compensation, per diem, or otherwise as the Macon County Board of Commissioners and the Jackson County Board of Commissioners from time to time ~~determines.~~jointly determine. Members shall be allowed and paid their actual expenses incurred in transacting the business and at the instance of the Airport Authority. Members of the Airport Authority shall not be personally liable for their acts as members of the Airport Authority, except for acts resulting from misfeasance or malfeasance.

Section 4.(a) The Airport Authority shall constitute a body, both corporate and politic, and shall have the following powers and authority:

(1) To purchase, acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports and landing fields for the use of airplanes and other aircraft within the limits of the county and for this purpose to purchase, improve, own, hold, lease, or operate real or personal property. The Airport Authority may exercise these powers alone or in conjunction with the ~~County~~ counties of ~~Macon.~~Macon and Jackson.

(2) To sue and be sued in the name of the Airport Authority, to make contracts and hold any personal property necessary for the exercise of the powers of the Airport Authority, and acquire by purchase, lease, or otherwise any existing lease, leasehold right, or other interest in any existing airport located in the county.

(3) To charge and collect reasonable and adequate fees and rents for the use of airport property or for services rendered in the operation of the airport.

(4) To make all reasonable rules and regulations it deems necessary for the proper maintenance, use, operation, and control of the airport, including public safety, and provide penalties for the violation of these rules and regulations; provided, the rules and regulations and schedules of fees not be in conflict with the laws of North Carolina and the regulations of the Federal Aviation Administration. The Airport Authority may administer and enforce any airport zoning regulations adopted by the ~~County~~ counties of ~~Macon.~~Macon or Jackson depending on the location of the airport.

(5) To issue bonds pursuant to Article 5 of Chapter 159 of the General Statutes.

(6) To sell, lease, or otherwise dispose of any property, real or personal, belonging to the Airport Authority, according to the procedures described in Article 12 of Chapter 160A of the General Statutes, but no sale of real property shall be made without the approval of the ~~Macon County~~ Board of ~~Commissioners.~~Commissioners of the county in which the real property is located.

(7) To purchase any insurance that the Federal Aviation Administration or the Airport Authority shall deem necessary. The Airport Authority shall be responsible for any and all insurance claims or liabilities.

(8) To deposit or invest and reinvest any of its funds as provided by the Local Government Finance Act, as it may be amended from time to time, for the deposit or investment of unit funds.

(9) To purchase any of its outstanding bonds or notes.

(10) To operate, own, lease, control, regulate, or grant to others, for a period not to exceed 20 years, the right to operate on any airport premises restaurants, snack bars, vending machines, food and beverage dispensing outlets, rental car services, catering services, novelty shops, insurance sales, advertising media, merchandising outlets, motels, hotels, barbershops, automobile parking and storage facilities, automobile service establishments, and all other types of facilities as may be directly or indirectly related to the maintenance and furnishing to the general public of a complete air terminal installation.

(11) To contract with persons, firms, or corporations for terms not to exceed 20 years, for the operation of airline-scheduled passenger and freight flights, nonscheduled flights, and any other airplane activities not inconsistent with the grant agreements under which the airport property is held.

(12) To erect and construct buildings, hangars, shops, and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; to lease these improvements and facilities for a term or terms not to exceed 20 years; to borrow money for use in making and paying for these improvements and facilities, secured by and on the credit only of the lease agreements in respect to these improvements and facilities, and to pledge and assign the leases and lease agreements as security for the authorized loans.

(13) Subject to the limitations set out in this act, to have all the same power and authority granted to cities and counties pursuant to Chapter 63 of the General Statutes, Aeronautics.

(14) To have a corporate seal, which may be altered at will.

Section 4.(b) The Airport Authority shall possess the same exemptions in respect to payment of taxes and license fees and be eligible for sales and use tax refunds to the same extent as provided for municipal corporations by the laws of the State of North Carolina.

Section 5. The Airport Authority may acquire from the ~~county,~~ counties by agreement with the ~~county,~~counties, and the ~~county~~ counties may grant and convey, either by gift or for such consideration as the county may deem wise, any real or personal property which it now owns or may hereafter acquire, including nontax monies, and which may be necessary for the construction, operation, and maintenance of any airport located in the ~~county.~~counties.

Section 6. Any lands acquired, owned, controlled, or occupied by the Airport Authority shall be, and are declared to be, acquired, owned, controlled, and occupied for a public purpose.

Section 7. Private property needed by the Airport Authority for any airport, landing field, or as facilities of an airport or landing field, may be acquired by gift or devise, or may be acquired by private purchase or by the exercise of eminent domain pursuant to Chapter 40A of the General Statutes, as a local public condemnor, including the provisions of G.S. 40A-42. If property acquired by gift, devise, purchase, or condemnation has a burial ground or graveyard, then it shall be lawful for the Airport Authority, after 30 days' notice to the surviving spouse or next of kin of the deceased buried there or the person in control of the graves, if they are known, to remove the interred body and reinter the body in another cemetery in Macon County or Jackson County. If no surviving spouse or next of kin or person in control can be found, then the Airport Authority may advertise for four consecutive weeks in a newspaper published in Macon County and Jackson County of the intended removal of the graves. The removal shall then be conducted under the supervision of the Clerk of the Superior Court of Macon County or the Clerk of the Superior Court of Jackson County or his or her representative. The expense of the removal shall be borne by the Airport Authority.

Section 8. The Airport Authority shall make an annual report to the Macon County Board of Commissioners and the Jackson County Board of Commissioners setting forth in detail the operations and transactions conducted by it pursuant to this act. The Airport Authority shall not have the power to pledge the credit of Macon County or Jackson County, or any subdivision thereof, or to impose any obligation on Macon County or Jackson County, or any of its subdivisions, except when that power is expressly granted by statute.

Section 9. Subject to the limitations as set out in this act, all rights and powers given and granted to counties or municipalities by general law, which may now be in effect, or enacted in the future, relating to the development, regulation, and control of municipal airports and the regulation of aircraft are now concurrently vested in the Airport Authority. The Macon County Board of Commissioners and the Jackson County Board of Commissioners may delegate its powers under these acts to the Airport Authority, and the Airport Authority shall have concurrent rights with Macon County and Jackson County to control, regulate, and provide for the development of aviation in Macon County or Jackson County.

Section 10. The Airport Authority may contract with and accept grants from the Federal Aviation Administration, the State of North Carolina, or any of the agencies or representatives of either of said governmental bodies relating to the purchase of land

and air easements and to the grading, constructing, equipping, improving, maintaining, or operating of an airport or its facilities or both.

Section 11. The Airport Authority may employ or contract with any agents, engineers, attorneys, and other persons whose services may be deemed by the Airport Authority to be necessary and useful in carrying out the provisions of Sections 1 through 10 of this act.

Section 12. The Macon County Board of Commissioners and the Jackson County Board of Commissioners may appropriate funds derived from any source including ad valorem taxes to carry out the provisions of this act in any proportion or upon any basis as may be determined by the Macon County Board of Commissioners or the Jackson County Board of Commissioners. The Macon County Board of Commissioners and the Jackson County Board of Commissioners may provide county services to the Airport Authority upon any basis as may be determined by the Macon County Board of Commissioners or the Jackson County Board of Commissioners.

Section 13. The Airport Authority may expend the funds that are appropriated by the county for joint airport purposes and may pledge the credit of the Airport Authority to the extent of the appropriated funds.

Section 14. The Airport Authority shall elect from among its members a chair and other officers at its initial meeting and then biennially thereafter. Officers shall be eligible to succeed themselves in office and to serve consecutive terms at the will of the members of the Airport Authority. A majority of the Airport Authority shall control its decisions. Each member of the Airport Authority, including the chair, shall have one vote. The Airport Authority shall meet at the places and times designated by the chair.

Section 15. If an airport established pursuant to this act ceases to be operated by the Airport Authority, or if any property acquired pursuant to this act for airport purposes is abandoned, then the title to that real or personal property, or rights under any existing lease, shall revert to and vest in the County of Macon and on the sale of that property, the proceeds shall vest totally in the County of Macon.

Section 16. The powers granted to the Airport Authority shall not be effective until the members of the Airport Authority have been appointed by the Macon County Board of Commissioners and the Jackson County Board of Commissioners, acting jointly, and nothing in this act shall require ~~the~~ either Board of Commissioners to make the initial appointments. It is the intent of this act to enable but not to require the formation of the ~~Macon County~~ Macon-Jackson Regional Airport Authority. Upon appointment of the members of the Macon-Jackson Regional Airport Authority, the Macon County Airport Authority and the Jackson County Airport Authority, if in existence, are dissolved.

Section 17. If any one or more sections, clauses, sentences, or parts of this act shall be adjudged invalid, such judgment shall not affect, impair, or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provisions held invalid, and the inapplicability or invalidity of any section, clause, sentence, or part of this act in one or more instances or circumstances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Section 18. Chapter 955 of the 1989 Session Laws, except for Section 10 is repealed.

Section 19. This act is effective when it becomes law."

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

HOUSE BILL 1051:
Macon-Jackson Regional Airport Authority

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Haire and West
Date:	June 30, 2005	**Analysis by:**	Martha Walston
Version:	1st Edition		Committee Counsel
	H1051-CSLK-21		

SUMMARY: House Bill 1051 is a local bill that authorizes the formation of the Macon-Jackson Regional Airport Authority if the Boards of County Commissioners of Macon and Jackson Counties decide to appoint members to the proposed Airport Authority. The bill also bans most fixed wing or rotary wing commercial flights from Macon County or Jackson County unless they originate or terminate from an FAA approved airport.

House Bill 1051 also increases the membership of the Jackson County Airport Authority from six to seven members.

The original version of House Bill 1051 would have consolidated the existing Macon County Airport Authority and the existing Jackson County Airport Authority to create a new Macon-Jackson Regional Airport Authority.

BILL ANALYSIS: In 1997, the General Assembly enacted legislation enabling the Jackson County Board of Commissioners to establish the Jackson County Airport Authority. In 1989, the General Assembly enacted legislation enabling the Macon County Board of Commissioners to establish the Macon County Airport Authority and allowing the Rutherford Airport Authority to lease land to the State for a period not to exceed 30 years. In 1999, the General Assembly repealed the 1989 legislation, except for the language affecting the Rutherford Airport Authority and enacted legislation authorizing the establishment of the Macon County Airport Authority. The 1999 legislation changed the number of members of the Authority, and added to the powers of the Authority.

House Bill 1051 would authorize the Boards of County Commissioners of Macon and Jackson Counties to form the Macon-Jackson Regional Airport Authority possessing the same powers that the separate county airport authorities currently have. Upon creation of the proposed Authority, each County's Board of Commissioners may elect to dissolve its existing county airport authority. The Bill would also prohibit fixed wing or rotary wing commercial flights from originating or terminating in Macon or Jackson County unless the flights originate or terminate from an airport approved by the Federal Aviation Authority and operated under Chapter 63 (Aeronautics) of the General Statutes. Fixed wing or rotary wing aircraft operated by or at the direction of governmental agencies or providing medical air services would be exempt from this prohibition.

House Bill 1051 provides that the authorization to create the Macon-Jackson Regional Airport Authority will expire January 1, 2007, if the Macon and Jackson County Boards of Commissioners have not appointed members of the new Authority by that date.

House Bill 1051 increases the membership of the Jackson county Airport Authority from six to seven members.

BACKGROUND: On March and April of 2005, the Jackson County Board of Commissioners and Macon County Board of Commissioners adopted resolutions requesting the General Assembly to enact legislation enabling the creation of the Macon-Jackson Regional Airport Authority. According to the resolutions, the Jackson County Airport has a runway length of only 3003 feet and the topography limits further expansion of the Jackson County Airport or extension of the runway. The Macon County Airport has a runway length of 4400 feet, and there are plans to extend the runway to accommodate larger business-class jet aircraft. The Macon County Airport is only 30 miles from the Jackson County Airport and is an alternate local airport for Jackson County. The availability of the longer runway enhances the business climate in both counties and the entire southwestern mountain region, and a shared commitment of local resources will promote efficiency by eliminating the duplication of airport services and enhancing the overall level of airport services available to the southwestern mountain region.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 6

EDITION No. _____

H. B. No. 1051 DATE 6/30/05

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

COMMITTEE SUBSTITUTE H 1051-CSLK-21

Rep.) Hill
)
Sen.) _____

1 moves to amend the bill on page 5, line 36

2 ( ) WHICH CHANGES THE TITLE

3 by deleting "seven" and substituting "five".

4 _____

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17 _____

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19 _____

SIGNED Doug Hill

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 1051 A BILL TO BE ENTITLED AN ACT TO CONSOLIDATE THE EXISTING MACON COUNTY AIRPORT AUTHORITY AND THE EXISTING JACKSON COUNTY AIRPORT AUTHORITY TO CREATE A NEW MACON-JACKSON REGIONAL AIRPORT AUTHORITY.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1084
Committee Substitute Favorable 4/21/05
PROPOSED COMMITTEE SUBSTITUTE H1084-CSRQ-35 [v.4]

6/9/2005 10:38:31 AM

Short Title: Expunge Nonviolent Felonies/Young Offenders. (Public)

Sponsors:

Referred to:

April 4, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A YOUTHFUL OFFENDER'S CRIMINAL RECORD MAY BE EXPUNGED OF NONVIOLENT FELONIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-149. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.**

(a) For purposes of this section, the term "nonviolent felony" means any felony except the following:

(1) A Class A through F felony.

(2) A felony that includes assault as an essential element of the offense; and

(3) A felony that is an offense for which the convicted offender must register under Article 27A of Chapter 14 of the General Statutes.

(b) Notwithstanding any other provision of law, if a person is convicted of more than one nonviolent felony in the same session of court, then the multiple nonviolent felony convictions shall be treated as one nonviolent felony conviction under this section, and the expunction order issued under this section shall provide that the multiple convictions shall be expunged from the person's record in accordance with this section.

(c) Whenever any person who had not yet attained the age of 18 years at the time of the offense and has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file a petition in the court where the person was convicted for expunction of the nonviolent felony from the person's criminal record. The petition cannot be filed earlier than two

years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The person shall also perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he or she has been of good behavior for the two-year period since the date of conviction of the nonviolent felony in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage that they know the character and reputation of the petitioner in the community in which he or she lives and that the petitioner's character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential records of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts to conduct the searches and report the findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him or her are outstanding.

(6) An affidavit by the petitioner that the petitioner has performed at least 100 hours of community service since the conviction for the nonviolent felony. The affidavit shall include a list of the community services performed, a list of the recipients of the services, and a detailed description of those services.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that the judge deems desirable.

(d) The court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information if the court finds all of the following after a hearing:

(1) The petitioner has remained of good behavior and has been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the nonviolent felony in question or any active sentence, period of probation or post-release supervision has been served, whichever is later.

(2) The petitioner has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state.

(3) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him or her.

(4) The petitioner was less than 18 years old at the time of the commission of the offense in question.

(5) The petitioner has performed at least 100 hours of community service since the time of the conviction.

(6) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction.

No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of the person for any purpose.

(e) The court shall also order that the nonviolent felony conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief, or head of any other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(f) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

(g) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in the clerk's county, file with the Administrative Office of the Courts the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.

(h) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the felony which is to be expunged under this section.

(i) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred dollars ($100.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 2. This act becomes effective December 1, 2005 and expires December 1, 2012.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1084
Committee Substitute Favorable 4/21/05

Short Title: Expunge Nonviolent Felonies/Young Offenders. (Public)

Sponsors:

Referred to:

April 4, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A YOUTHFUL OFFENDER'S CRIMINAL RECORD MAY BE EXPUNGED OF NONVIOLENT FELONIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-149. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.**

(a) For purposes of this section, the term "nonviolent felony" means any felony except the following:

(1) A Class A through E felony.

(2) A felony that includes assault as an essential element of the offense; and

(3) A felony that is an offense for which the convicted offender must register under Article 27A of Chapter 14 of the General Statutes.

(b) Notwithstanding any other provision of law, if a person is convicted of more than one nonviolent felony in the same session of court, then the multiple nonviolent felony convictions shall be treated as one nonviolent felony conviction under this section, and the expunction order issued under this section shall provide that the multiple convictions shall be expunged from the person's record in accordance with this section.

(c) Whenever any person who had not yet attained the age of 18 years at the time of the offense and has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file a petition in the court where the person was convicted for expunction of the nonviolent felony from the person's criminal record. The petition cannot be filed earlier than two years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The person shall

also perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the nonviolent felony in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage that they know the character and reputation of the petitioner in the community in which he or she lives and that the petitioner's character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expungements maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts to conduct the searches and report the findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him or her are outstanding.

(6) An affidavit by the petitioner that the petitioner has performed at least 100 hours of community service since the conviction for the nonviolent felony. The affidavit shall include a list of the community services performed, a list of the recipients of the services, and a detailed description of those services.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that the judge deems desirable.

(d) If the court, after a hearing, finds that the petitioner has remained of good behavior and has been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the nonviolent felony in question or any active sentence, period of probation or post-release supervision has been served, whichever is later, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him or her, the

petitioner was less than 18 years old at the time of the commission of the offense in question, and the petitioner has performed at least 100 hours of community service since the time of the conviction, then the court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of the person for any purpose.

(e) The court shall also order that the nonviolent felony conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief, or head of any other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(f) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged.

(g) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in the clerk's county, file with the Administrative Office of the Courts the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.

(h) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the felony which is to be expunged under this section.

(i) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred dollars ($100.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 2. This act becomes effective December 1, 2005.

HOUSE BILL 1084:
Expunge Nonviolent Felonies/Young Offenders

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 14, 2005
Introduced by:	Reps. Bordsen, Crawford	**Summary by:**	Drupti Chauhan
Version:	PCS to Second Edition H1084-CSRQ-35 [v.4]		

SUMMARY: The PCS for House Bill 1084 would provide for the expunction of criminal records for offenders who are under the age of 18 at the time of commission of a nonviolent felony. A waiting period of 2 years after the conviction or any period of probation, or time served for an active sentence, period of probation or post-supervised release (whichever is later); 100 hours of community service, no prior or subsequent felony or non-traffic misdemeanor offenses; and affidavits attesting to the petitioner's character are all required.

CURRENT LAW: Article 5 of the Criminal Procedure Act provides for the expunction of criminal records of certain criminal charges or convictions. Expunction is the process by which a record of criminal conviction is removed by order of the court, and the individual is restored to the status he or she occupied before the arrest or indictment. General Statute 15A-145 (Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors) allows a person convicted of a misdemeanor to file a petition for expunction of the misdemeanor from his or her criminal record if the person was under 18 at the time of a conviction or, in the case of a misdemeanor alcohol possession charge, the person was under 21 at the time of conviction. The petition may not be filed sooner than 2 years after the conviction or completion of probation and must include the following [1]:

1) an affidavit of good behavior for the two years following conviction, stating that the petitioner has not been convicted of any felony or non-traffic misdemeanor charge;

2) two affidavits of good character from persons unrelated to the petitioner;

3) a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted; and

4) affidavits of the clerk of superior court, chief of police, and sheriff of the county of the offense and where the petitioner resides showing that petitioner has not been convicted of a felony or non-traffic misdemeanor offense prior to or in the two years since the conviction in question.

If the court finds in favor of the petitioner the clerk of superior court and the appropriate law enforcement agencies must expunge the record of the conviction.

Other sections of Article 5 provide for "Expunction of records when charges are dismissed or there are finding of not guilty as a result of identity fraud"[2] and "Expunction of DNA records when charges are dismissed on appeal or pardon of innocence is granted."[3].

BILL ANALYSIS: The PCS to the bill would add a new section to Article 5 "Expunction of Records" of Chapter 15A "Criminal Procedure Act" of the General Statutes. The proposed G.S. 15A-149 would

[1] G.S. 15A-145(a)(1) through (4).
[2] G.S. 15A-147.
[3] G.S. 15A-148.

provide expunction of the criminal records of first time offenders who are under 18 years of age at the time of the commission of the nonviolent felony if there are no previous or subsequent felony or misdemeanor convictions, other than a traffic violation. The petitioner cannot have received a prior expunction. "Nonviolent felony" would include any felony ***except*** the following:

- A Class A through F felony;
- A felony that includes assault as an essential element of the offense; and
- A felony that is an offense for which the convicted offender must register under Article 27A of Chapter 14 of the General Statutes (sex offenders).

If the person is convicted of more than one nonviolent felony in the same session of court, the bill provides that the multiple nonviolent felony convictions are to be treated as one nonviolent felony conviction under the section and the expunction order is to provide that the multiple convictions are to be expunged.

The procedure to be followed by the petitioner is modeled along the lines of the existing procedures for expunction of records. The petition cannot be filed earlier than two years after the date of conviction or after the time when any active sentence, period of probation, or post-release supervision has been served, whichever occurs later. The petitioner is also required to perform at least 100 hours of community service before filing the petition for expunction.

The petition must contain at least the following:

1) An affidavit of good behavior by the petitioner for the 2 years following conviction, stating that the petitioner has not been convicted of any felony or non-traffic misdemeanor charge under the laws of the United States, this State or any other state during that time;

2) Two affidavits of good character from persons unrelated to petitioner;

3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted;

4) An application authorizing a State and national criminal record check by the Department of Justice with the results reported to the court;

5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding; and

6) An affidavit by the petitioner that he or she has performed at least 100 hours of community service since the conviction with a list of the community services performed, a list of the recipients of the services, and a detailed description of the services.

The petition is to be served on the district attorney who has 10 days to file any objections. The judge is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct. If the judge finds that the petitioner has met all of the requirements, the judge shall order that the petitioner be restored to the statute he or she had before the arrest or indictment. The judge shall also order that the nonviolent felony conviction be expunged from the records of the court and direct all law enforcement agencies to expunge their records, including the State Bureau of Investigation and the Federal Bureau of Investigation.

Any other applicable State or local government agency is directed to expunge from its records any entries made as a result of the conviction order expunged under this section. The agency is required to

also reverse any administrative actions taken against a person whose record is expunged under this section.

The clerk of superior court in each North Carolina county shall file with the Administrative Offices of the Court the names of those persons granted a discharge under the provisions of this section and the Administrative Offices of the Courts must maintain a confidential file containing the names of persons granted conditional discharges. This information can only be disclosed to judges of the General Court of Justice of North Carolina for the purpose of determining if any person charged with an offense has been previously given a discharge.

If a probation officer is assigned to the person eligible for expunction, the probation officer must notify the person of the provisions of this section. If no probation officer is assigned, then the court which heard the felony must provide notification of the possibility of expunction under this section.

The bill would set the filing fee for the expunction petition at $100.00 unless the petitioner was indigent. Fees collected would be deposited into the General Fund.

EFFECTIVE DATE: The bill would become effective December 1, 2005 and would expire December 1, 2012.

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 20, 2005

TO: House Finance Committee

FROM: Chloe Gossage, Douglas Holbrook, and Aaron Paul
Fiscal Research Division

RE: PCS H1084-CSRQ-35 [v.4] – Expunge Nonviolent Felonies/Young Offenders

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:	$58,600	$40,500	$22,400	$22,400	$22,400
EXPENDITURES:					
Judicial Branch	$36,750	$26,442	$13,858	$13,858	$13,858
Justice	$64,303	$44,460	$24,618	$24,618	$24,618
TOTAL EXPENDITURES:	$101,053	$70,902	$38,476	$38,476	$38,476
POSITIONS (cumulative)-DOJ:	1	1	0.5	0.5	0.5

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch; Department of Justice

EFFECTIVE DATE: December 1, 2005

BILL SUMMARY: This bill would enact new G.S. 15A-149 to allow expunction of records for nonviolent felonies committed by first-time offenders who were under the age of 18 at the time of the conviction. In the second edition of this bill, a nonviolent felony was defined as any felony except a Class A through Class E felony, a felony with assault as an essential element of the offense, and a felony for which the convicted offender must register as a sex offender. This PCS also excludes Class F felonies from the definition of nonviolent felonies.

To be eligible for expunction under the bill, the offender must not have been previously convicted of any felony or misdemeanor other than a traffic violation, and must have remained of good behavior and been free of conviction of any felony or misdemeanor other than a traffic violation for two years from the date of conviction of the nonviolent felony to be expunged. This PCS additionally requires that the offender must not have previously been granted an expunction. A petition cannot be filed earlier than two years after the date of conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The offender must also perform 100 hours of community service before filing a petition. The provisions in this bill expire in seven years (December 1, 2012).

Source: Adapted from Administrative Office of the Courts, Research and Planning (04/27/05).

ASSUMPTIONS AND METHODOLOGY:

To estimate the number of individuals eligible to file a petition for expunction under this bill, the Administrative Office of the Courts (AOC) identified the number of defendants convicted of a single nonviolent felony while under the age of eighteen by counting the number of convictions recorded per defendant's name in each county. Using this method, AOC identified 12,056 defendants eligible for expunction due to this bill.[1]

As it would be unreasonable to assume that all 12,056 eligible individuals would petition for expunction, AOC estimated the percentage of this total that would file a petition by utilizing the petition rate for existing expunction provisions under G.S. 15A-145(a), which allows for expunction of non-traffic misdemeanors committed by offenders under age eighteen. In calendar year 2004, there were 244 petitions filed out of an estimated 6,900 eligible convictions, revealing that approximately 4 percent of eligible individuals actually sought to have their convictions expunged.

For the 12,056 existing convictions that would be eligible for expunction, AOC estimates that a greater proportion of individuals would seek expunction initially and at declining rates thereafter. However, each year AOC anticipates that an additional 725 convictions would become eligible for expunction. Of these, AOC estimates that 8 percent would seek expunction, resulting in an additional 58 petitions annually. Table 1 below outlines the total number of petitions that would be filed each year based on the estimated numbers of eligible convictions and the rate at which eligible individuals would seek expunction.

Table 1: Estimated Number of Expunction Petitions Filed

	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Existing Backlog of Convictions	12,056	12,056	12,056	12,056	12,056
Percentage Seeking Expunction	6%	4%	2%	2%	2%
Petitions	**723**	**482**	**241**	**241**	**241**
New Convictions	725	725	725	725	725
Percentage Seeking Expunction	8%	8%	8%	8%	8%
Petitions	**58**	**58**	**58**	**58**	**58**
Total Estimated Petitions	**781**	**540**	**299**	**299**	**299**

[1] To the extent that two individuals with identical names would appear to be one individual with multiple convictions, this approximation would underestimate the number of defendants eligible for expunction under this bill. However, to the extent that some individuals could have a single conviction in multiple counties, this approximation would be an overestimate.

Revenues

Under this bill there would be a $100 fee when filing a petition for expunction. AOC estimates that approximately one quarter of petitioners would be indigent and would thus not pay the fee when seeking expunction. Table 2 below outlines projected revenues if 75 percent of petitioners were to pay the $100 fee.

Table 2: Estimated Revenues Resulting from $100 Fee.

	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Total Estimated Petitions	781	540	299	299	299
Non-Indigent Petitions (75%)	586	405	224	224	224
Revenues	**$58,600**	**$40,500**	**$22,400**	**$22,400**	**$22,400**

Expenditures

Judicial Branch

Petitions filed as a result of this bill would lead to additional workload and costs for superior court and the Administrative Office of the Courts.

Superior Court: Clerks would devote time to receiving, filing, and processing petitions, as well as destroying and otherwise expunging court files and records. Additionally, the petitioner would pay a $100 fee when filing a petition, and clerks would incur time receiving and processing these payments or an affidavit of indigency if the petitioner is unable to pay. The petition must also be served on the district attorney, who would then have ten days to review and file an objection. Furthermore, the bill specifies that a hearing must be held and lists the findings that would justify expunction. Under current practice, most hearings are conducted in chambers or otherwise informally, and with rare exceptions, are uncontested. Nevertheless, expunction petitions due to this bill would require additional judge time to review affidavits and other documents, hear from the petitioner, make an evaluation, and issue an order. For cases that are contested or require closer scrutiny, significant judge time would be required.

Administrative Office of the Courts: To seek expunction under existing law, a person fills out an AOC form, which is sent to the SBI for a national record check and to the AOC to determine whether the person has previously had a record expunged. In 2004, AOC processed 6,297 of these requests. As under current law, this bill would require AOC to maintain a confidential file of expungements. Handling current expunction petitions requires approximately one-half of a position in order to look up the information, handle related communications with the clerk and SBI, answer citizen questions, and maintain the files. Also, AOC would incur costs for programming, development, production of forms, postage, copying, printing, mailing, and similar operating costs.

Table 3 on the next page outlines the additional costs that would be needed to process the estimated number of expunction petitions resulting from this bill each year. These figures represent additional resource costs for the Courts but, as they are formulated on fractional position estimates, do not represent the need for additional positions. The position and cost estimates are not changed with the slight reduction in petitions by excluding Class F felonies under the PCS.

Table 3: Estimated Judiciary Position and Operating Expenditures

	FY 05-06 781 Petitions		FY 06-07 540 Petitions		FY 07-08 to FY 09-10 299 Petitions	
	Positions	Cost	Positions	Cost	Positions	Cost
Deputy Clerks	0.20	$6,766	0.14	$4,736	0.08	$2,706
Superior Court Judges	0.11	$16,452	0.08	$11,965	0.04	$5,982
Assistant District Attorneys	0.11	$8,597	0.08	$6,252	0.04	$3,126
AOC Staff	0.07	$3,345	0.05	$2,389	0.03	$1,434
Operating Costs	-	$1,590	-	$1,100	-	$610
Total		**$36,750**		**$26,442**		**$13,858**

Department of Justice

The State Bureau of Investigation (SBI) in the Department of Justice is involved in the expunction process in two ways:

1. The SBI reviews applications for expunction to determine whether the applicant is eligible, and transmits that information to the Court system.
2. Upon a judicial order for expunction, the SBI removes information from its databases and forwards the expunction order to the Federal Bureau of Investigation.

The workload of four different positions in the SBI is affected by this bill – two processing assistants, a fingerprint technician supervisor, and an attorney. It requires a total of approximately 67 minutes of staff time to process an application and 172 minutes of staff time to process an expunction order. The SBI estimates that 87 percent of applications result in expunction orders. Using data and methodology from the Administrative Office of the Courts, we estimate the following:

Table 4: Estimated SBI Position and Operating Expenditures

	2005-06	2006-07	2007-08
Number of applications	781	540	299
Number of orders (87%)	679	470	260
Cost per Application	$27.79	$27.79	$27.79
Cost per Order	$61.24	$61.24	$61.24
Postage per Order	$1.27	$1.27	$1.27
TOTAL	**$64,303**	**$44,460**	**$24,618**
Positions required	**1.30**	**0.90**	**0.50**

The staff time required to process 781 applications is equivalent to one full-time position. Therefore, the box on the front page reflects one additional position required for the SBI in FY 2005-06. Position requirements will decrease in later years as workload declines.

SOURCES OF DATA: Administrative Office of the Courts, Department of Justice

TECHNICAL CONSIDERATIONS:

1. Effective date: This bill would be effective December 1, 2005. AOC notes that considerable preparation would be necessary to implement this bill, including hiring and training personnel, modifying computer programs, and coordination between AOC and the SBI to prepare for the

anticipated increase in petitions. AOC expects that an effective date no earlier than January 1, 2006 would be necessary to implement the bill.

2. Notice to Department of Correction and Division of Motor Vehicles: The bill does not include the Department of Correction or Division of Motor Vehicles among the agencies to whom the Clerk must send a certified copy of an expungement order. The mechanism by which DOC and DMV would receive notice of an expungement order is not specified.

3. Fee for Expungement. This bill sets a fee of $100 for expungements resulting from this legislation. Currently, the fee for expungement is $65. Senate Bill 622 (2005 Appropriations Act), which has passed the Senate and been referred to the House, would increase fees for expungements to $125.

HOUSE BILL 1084, Expunge Nonviolent Felonies/Young Offenders

is **OPPOSED** by:

North Carolina Sheriffs' Association

North Carolina Hospital Association

North Carolina Bankers Association

North Carolina Association of Realtors

North Carolina Victims Assistance Network (NCVAN)

North Carolina Criminal Justice Education and Training Standards Commission

North Carolina Citizens for Business and Industry (NCCBI)

North Carolina Conference of District Attorneys

North Carolina Sheriffs' Education and Training Standards Commission

North Carolina Association of County Commissioners

North Carolina Press Association

North Carolina Association of Chiefs of Police

ATTACHMENT 9

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1084

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

H1084-AMB-11 [v.1]

Date June 30, ,2005

Comm. Sub. [NO]
Amends Title [NO]
PCS to Second Edition

Representative Glazier

moves to amend the bill on page 1, line 11, by rewriting the line to read:
"(1) A Class A through G felony."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute # 1 for

HB 1084 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A YOUTHFUL OFFENDER'S CRIMINAL RECORD MAY BE EXPUNGED OF NONVIOLENT FELONIES.

☒ With a favorable report as to the committee substitute bill 2, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 369
Finance Committee Substitute Adopted 6/1/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S369-CSMBx-27 [v.2]

6/28/2005 2:02:20 PM

Short Title: Franklin County Occupancy Tax. (Local)

Sponsors:

Referred to:

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE FRANKLIN COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Occupancy Tax. – (a) Authorization and Scope. – The Franklin County Board of Commissioners may levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

SECTION 1.(c) Distribution and Use of Tax Revenue. – Franklin County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Franklin County Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Franklin County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish, and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

SECTION 2. Franklin County Tourism Development Authority. – (a) Appointment and Membership. – When the Franklin County Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Franklin County shall be the ex officio finance officer of the Authority.

SECTION 2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

SECTION 2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Franklin County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

SECTION 3. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Franklin, Granville, Halifax, Madison, Montgomery, Nash, New Hanover, Pasquotank, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, and to the Township of Averasboro in Harnett County."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 369

Finance Committee Substitute Adopted 6/1/05

Short Title: Franklin County Occupancy Tax. (Local)

Sponsors:

Referred to:

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE FRANKLIN COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Occupancy Tax. – (a) Authorization and Scope. – The Franklin County Board of Commissioners may levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

SECTION 1.(c) Distribution and Use of Tax Revenue. – Franklin County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Franklin County Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Franklin County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish, and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract

tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

SECTION 2. Franklin County Tourism Development Authority. – (a) Appointment and Membership. – When the Franklin County Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Franklin County shall be the ex officio finance officer of the Authority.

SECTION 2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

SECTION 2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Franklin County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

SECTION 3. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Durham, Franklin, Granville, Madison, Montgomery, Nash, New Hanover, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, and to the Township of Averasboro in Harnett County."

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

Senate Bill 369:
Franklin County Occupancy Tax.

BILL ANALYSIS

Committee:	**House Finance**	**Sponsor:**	**Senator Berger of Franklin**
Date:	**June 30, 2005**	**Analysis by:**	Ashley Huffstetler
Version:	**PCS to 2nd Edition**		Staff Attorney

SUMMARY: ***The Proposed Committee Substitute for the 2nd Edition of Senate Bill 369[1] authorizes Franklin County to levy a room occupancy tax of up to 6%.***

CURRENT LAW: Franklin County does not have authority to levy a room occupancy tax, nor do any of the municipalities located within Franklin County.

BILL ANALYSIS: The Proposed Committee Substitute for the 2nd Edition of Senate Bill 369 authorizes Franklin County to levy a room occupancy tax of up to 6%. The proceeds must be remitted to a county Tourism Development Authority (TDA), which must use two-thirds of the proceeds to promote travel and tourism and the remainder for tourism-related expenditures. These administrative and use provisions conform to the uniform guidelines referenced above and detailed in the chart below:

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least ¾ of the members must be currently active in the promotion of travel and tourism in the county and ½ of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

PCS CHANGES: The PCS merely updates the provisions of G.S. 153A-155(g) to reflect changes already made to the statute this session.

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

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – G.S. 153A-155 and G.S. 160A-215. These provisions provide uniformity in the areas of levy, administration, collection, repeal, and penalties.

The North Carolina Travel and Tourism Coalition has a policy statement for legislation authorizing local occupancy taxes. Many of the principles contained in its statement are similar to the ones established by a House Finance subcommittee on Occupancy Taxes in 1993.

[1] The original bill was a blank local bill.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 369 (Second Edition)

SHORT TITLE: Franklin County Occupancy Tax.

SPONSOR(S): Senator Berger of Franklin

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund	**No General Fund Impact**				
Franklin County	**$77,609**	**$79,394**	**$81,140**	**$82,763**	**$84,418**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Franklin County

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:

The Proposed Committee Substitute for Senate Bill 369 would authorize Franklin County to levy a room occupancy tax of 6%. Two-thirds of the proceeds would be used to promote travel and tourism and one-third would be used for tourism-related expenditures. This bill conforms to the guidelines supported by the North Carolina Travel and Tourism Coalition and adhered to by the House Finance Committee.

ASSUMPTIONS AND METHODOLOGY:

According to the Franklin County manager, there are four hotels in Franklin County with a total of 116 rooms. An average rate of occupancy of 52% and an average room rate of $45 are used to calculate an estimated annual revenue of $75,900. Because no historical data is available, the five-year revenue projection is based on the General Consumer Price Index rate of increase.

	6% Occupancy Tax	Each 1%
FY06	$77,609	$12,935
FY07	$79,394	$13,232
FY08	$81,140	$13,523
FY09	$82,763	$13,794
FY10	$84,418	$14,070

SOURCES OF DATA: Franklin County

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: June 7, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

North Carolina General Assembly

House Committee on Finance

Minutes

~

July 7, 2005

The House Committee on Finance met on Thursday, July 7, 2005 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Luebke, and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Blust, Bordsen, Capps, Carney, Dockham, England, Faison, Fisher, Folwell, Glazier, Goforth, Hackney, Holliman, Insko, Lewis, McGee, Rayfield, Underhill, and Wiley. Also present were Sergeant-at-Arms Bill Freeman, Fred Hines, Dusty Rhodes, Bill Sullivan, and Walter Spell. Staff persons present included Cindy Avrette, Rodney Bizzell, Erika Churchill, Brenna Erford, Ashley Huffstetler, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Luebke called the meeting to order at 8:34 am and recognized the five (5) pages present: (1) David Epps of Wake County, sponsored by Speaker Pro Tem Morgan; (2) Christina Preddy of Wake County, sponsored by Representative Eddins; (3) Ashley Daniels of Wake County, sponsored by Representative Eddins; (4) Keith Nance of Wake County, sponsored by Representative Lewis; (5) Russell Lewis of Carteret County, sponsored by Representative Preston.

The first bill under the Committee's consideration was **HB 1327 – CRIMINAL RECORD CHECKS/PSYCHOLOGY PRACTICE ACT** (see **attachment 3**). Chairman Luebke first recognized Representative Harrison who explained that the bill provides authority to conduct criminal background checks for applicants for licensure under the Psychology Practice Act. Following the explanation, Representative Faison was recognized and requested that the bill be temporarily displaced while an amendment was prepared. Chairman Luebke agreed to this request and temporarily displaced House Bill 1327.

Chairman Luebke then recognized Senator Boseman to explain **SB 443 – PUBLIC HOSPITAL INVESTMENTS** (see **attachment 4**). She explained that the bill would allow a public hospital to deposit any funds held in reserves with the State Treasurer for investment purposes. Following the explanation, Representative Lewis was recognized and asked if this bill would cost the state any money. Senator Boseman was recognized and stated that no additional expenses would be incurred by the State because of the bill. Chairman Luebke then recognized Representative Ross who moved that Senate Bill 443 be given a favorable report by the Committee. Seeing no further discussion, Chairman Luebke called the motion to a vote and it carried by consent.

The following bill considered by the Committee was **SB 170 – WACO TOWN CENTER** (see **attachment 5**). Chairman Luebke first recognized Senator Dalton who explained that the bill updates language in the town charter, which references the center of the Town of Waco. Following

the explanation, Chairman Luebke recognized Representative Alexander who moved that Senate Bill 170 be given a favorable report by the Committee. As there was no further debate, Chairman Luebke called the motion to a vote and it carried without objection.

Chairman Luebke then replaced House Bill 1327 before the Committee and recognized Representative Faison to send forth an amendment (see **attachment 6**). Representative Faison explained that the amendment makes a small change in the language used in the limited liability clause on Page 2 Lines 2-4. He then moved for the adoption of the amendment. Seeing no further discussion, Chairman Luebke called the motion to a vote and the amendment was adopted. Representative Howard was then recognized and moved for a favorable report to a new proposed committee substitute, incorporating the adopted amendment, and an unfavorable report to the original bill. As there was no further debate, Chairman Luebke called the motion to a vote and it carried by consent.

The next bill considered by the Committee was **HB 688 – CERTIFY ON-SITE WASTEWATER CONTRACTORS** (see **attachment 7**). Chairman Luebke recognized Representative Carney who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Representative Culp, the bill sponsor, was then recognized and explained that the bill requires licensing of on-site wastewater contractors and inspectors. He also stated that it creates a nine-member NC On-Site Wastewater Contractors and Inspectors Certification Board. Chairman Luebke then recognized Ashley Huffstetler of the Bill Drafting Division who explained further that this bill requires the licensing of wastewater contractors and is before the Finance Committee because of maximum fees established in the bill that the Board may charge to a person applying for a license. Following the explanation, Representative Ross moved for a favorable report to the proposed committee substitute with a recommendation that the bill be re-referred to the House Committee on Environment and Natural Resources, and an unfavorable report to the original bill. Chairman Luebke then recognized Representative Hackney who asked if this bill affects the Department of Environment and Natural Resources (DENR). Representative Culp was then recognized and stated that this bill only licenses and increases education for wastewater contractors and does not affect DENR.

Seeing further discussion, Chairman Luebke then recognized Representative Capps who asked if someone could explain the decrease in revenue collected after the first year reported on the fiscal note. Rodney Bizzell of Research was recognized and reported that licensees will be required to pay a maximum of $150 for their initial license but only a maximum of $100 for a license renewal. Chairman Luebke then recognized Representative McGee who asked if certification would save local governments money. Representative Culp was then recognized and stated that certification will make the registration easier for wastewater contractors. Chairman Luebke then recognized Representative Blackwood who believed that this bill would only increase costs for wastewater contractors. Representative Gibson was recognized and explained that newer technologies require additional education that will be a part of the certification process. He also reminded the Committee members that the bill had been requested by the On-site Wastewater Contractors and Inspectors. Chairman Luebke then recognized Representative Insko who stated that this bill is a step forward in the right direction for North Carolina. Seeing no further discussion, Chairman Luebke then called the motion made previously by Representative Ross to a vote and it carried by a majority.

The following bill considered by the Committee was **HB 254 – GARVEE BOND ISSUANCE** (see **attachment 8**). Chairman Luebke first recognized Representative Crawford, the bill sponsor, who explained that the bill directs the Secretary of the Department of Transportation and the State Treasurer to jointly form a committee to develop a plan for issuance of "GARVEE"

bonds. The bill provides that the annual principal and interest of the debt cannot exceed 15% of the expected federal revenue for the 7-year period in the most recently adopted Transportation Improvement Program. Representative Hill was then recognized to send forth an amendment (see **amendment 9**) that would add a requirement for the approval from the Council of State in order for a GARVEE bond to be requested. Representative Hill then moved the amendment's adoption. As there was no further debate, Chairman Luebke called the motion to a vote, and the amendment was adopted.

Representative Holliman was then recognized and asked how much the state would be able to borrow each year. Chairman Luebke recognized Mark Foster, the Chief Financial Officer for the Department of Transportation, who stated that North Carolina could borrow a maximum of approximately $150 million per year under the bill. Representative Ross was then recognized and asked how many other states have similar provisions. Mr. Foster was again recognized and stated that 17 other states have similar provisions, and 6 other states are currently considering such provisions. Chairman Luebke then recognized Representative Blackwood who asked what would happen if the federal government does not follow through with payments. Representative Crawford was then recognized and said that the bond would be left unpaid; however, he stated that this rarely happens and that, in any case, these bonds do not pledge the faith and credit of the State . Representative Holliman was then recognized and said that he believed the interest payment of $300 million to be too high over 13 years. In response, Representative Crawford was recognized and stated that $300 million was not too high when you account for inflation and the increasing cost of gasoline and commodities required in the construction of roads. Seeing no further discussion, Chairman Luebke then called the Howard motion to a vote, and it carried without objection.

Chairman Luebke then recognized Representative Alexander who moved for the adoption of the proposed committee substitute for **SB 369 – FRANKLIN COUNTY OCCUPANCY TAX** (see **attachment 10**). The motion was adopted. Chairman Luebke then recognized Representative Cole who explained that the proposed committee substitute authorizes the cities of Eden and Reidsville to levy an occupancy tax of up to 3%. The bill allows Franklin County to levy a room occupancy tax of up to 3% and amends the Durham Occupancy Tax to allow the city a time extension for planning and constructing a performing arts theater. Representative Womble was then recognized and reported that all of the separate portions of the bill been approved by the Occupancy Tax Subcommittee at various meetings. Chairman Luebke then recognized Representative Weiss who moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. As there was no further debate, Chairman Luebke called the motion to a vote, and it carried by consent.

The final bill considered by the Committee was **HB 1775 - UNC NONAPPROPRIATED CAPITAL PROJECTS** (see **attachment 11**). Chairman Luebke first recognized Representative Alexander who moved for the adoption of the proposed committee substitute for consideration by the Committee. The motion was adopted. Chairman Luebke then recognized Representative Gibson who explained that the bill authorizes the construction of numerous projects by the University of North Carolina. The projects would be financed through revenue bonds and special obligation bonds, but would not require direct appropriations from the State's General Fund. Changes in the proposed committee substitute included an increase in the supplemental dollar amount for the Daniels Building Renovations at UNC-Chapel Hill from $1,000,000 to $4,000,000. Representative Gibson then sent forth a technical amendment (see **attachment 12**) and moved for its adoption. Seeing no further discussion, Chairman Luebke called the motion to a vote and the amendment was adopted.

Representative Wainwright was then recognized and noted that it was strange for a supplemental estimate to jump from $1 million to $4 million. Chairman Luebke then recognized Bruce Runberg, the Associate Vice-Chancellor of Facilities Planning and Construction at the University of North Carolina at Chapel Hill, who stated that the project was one with a high degree of complexity consisting of five different sequences. He further stated that this complexity was not properly taken into account when the initial estimate was produced. Representative Capps was then recognized and asked if the project would be paid for by receipts from the University Bookstore located in the Daniels building. Mr. Runberg was then recognized and responded in the affirmative. Representative Underhill was then recognized and asked what construction was occurring at the Daniels Building. Chairman Luebke again recognized Mr. Runberg who answered that the building was being expanded while the bookstore remains open. He also stated that the total cost of the project was increasing from $7 million to $11 million. Representative Hackney was then recognized and moved for a favorable report to the proposed committee substitute, incorporating the amendment and recommending re-referral of the amended PCS to the House Committee on Appropriations, and an unfavorable report to the original bill.

Representative Glazier was then recognized and said that he is concerned about the poor estimates and hopes that this can be prevented in the future. He then requested more information from Mr. Runberg and UNC as to what happened in the process that led to such a large underestimate. Chairman Luebke then recognized Representative Lewis who asked about the Medicare education reimbursements used to fund the East Carolina University's Brody School of Medicine. Austin Bunch, the Chief Financial Officer from East Carolina University, was recognized and reported that the Medicare education reimbursements would be used for the construction of the new facility. Chairman Luebke then recognized Representative Dockham who questioned the $3.5 million directed toward the construction of a new Chancellor's Residence located in North Carolina State University's Centennial Campus. Kevin McNaughton, a representative from NCSU, was recognized and stated that the new residence was necessary as the existing Chancellor's residence was used for many public purposes. He also noted that the new residence would be constructed using money from private sources. Seeing no further discussion, Chairman Luebke called the Hackney motion to a vote and it carried without objection.

Chairman Luebke then recognized Representative Hackney who announced a Democratic Caucus meeting would be held at 11:00 am in the normal meeting place. As there was no further business before the Committee, Chairman Luebke then adjourned the meeting at 9:36 am.

Respectfully submitted,

Representative Paul Luebke
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. House Bill 1327 (and related materials)
4. Senate Bill 443 (and related materials)
5. Senate Bill 170 (and related materials)

6. Faison Amendment on HB 1327 - **ADOPTED**
7. House Bill 688 (and related materials)
8. House Bill 254 (and related materials)
9. Hill Amendment on HB 254 - **ADOPTED**
10. Senate Bill 369 (and related materials)
11. House Bill 1775 (and related materials)
12. Gibson Amendment on HB 1775 – **ADOPTED**
13. House Bill 1515 (and related materials) – (REMOVED FROM CALENDAR)

AGENDA

ATTACHMENT 1

House Finance Committee

July 7, 2005
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Luebke

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard
Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order

Introduction of Pages

Bills:

HB 254 **GARVEE BOND ISSUANCE** *Rep. Crawford*

HB 688 **CERTIFY ON-SITE WASTEWATER CONTRACTORS**
Reps. Gibson & Culp

HB 1327 **CRIM. RECORD CHECKS/PSYCHOLOGY PRACTICE ACT**
Reps. Harrison, Martin, & Wiley

HB 1515 **MED SCHOOLS/CRIM BACKGROUND CHECK**
Reps. LaRoque & England

HB 1775 **UNC NONAPPROPRIATED CAPITAL PROJECTS** *Rep. McComas*

SB 170 **WACO TOWN CENTER** *Sen. Dalton*

SB 369 **FRANKLIN COUNTY OCCUPANCY TAX** *Sen. D. Berger*

SB 443 **PUBLIC HOSPITAL INVESTMENTS** *Sen. Boseman*

Adjournment

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Thursday, July 7, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 254 – GARVEE BOND ISSUANCE – Rep. Crawford

HB 688 – CERTIFY ON-SITE WASTEWATER CONTRACTORS – Reps. Gibson & Culp

HB 1327 – CRIM. RECORD CHECKS/PSYCHOLOGY PRACTICE ACT – Reps. Harrison, Martin, & Wiley

HB 1515 – MED SCHOOLS/CRIM BACKGROUND CHECK – Reps. LaRoque & England

HB 1775 – UNC NONAPPROPRIATED CAPITAL PROJECTS – Rep. McComas

SB 170 – WACO TOWN CENTER – Sen. Dalton

SB 369 – FRANKLIN COUNTY OCCUPANCY TAX – Sen. D. Berger

SB 443 – PUBLIC HOSPITAL INVESTMENTS – Sen. Boseman

Respectfully,
Representatives Alexander, Gibson, Howard,
Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **9:45 a.m.** on **July 6, 2005**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

ATTACHMENT 2

VISITOR REGISTRATION SHEET

House Committee on Finance — July 7, 2005

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Janice Burke	Dept of State Treasurer
Ken Durham	" "
Stephanie Dorko	Charlotte Chamber
Cam Cover	BPOA
ANN LORE	DUKE
John Bowdish	AOA
Susan Conard	NCDOT
BILL SCOGGIN	KCLH
BERRY JONES	Carolinas AGC
Angie Harris	Maupin Taylor
Christie Barbee	CAPA
Lyn Wilson Lenton	NCALTCF KCLH

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 7, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bruce Runberg	UNC Chapel Hill
Ross Nelson	UNC
Jeff Davies	UNC
Erin Schuettpelz	UNC
MARK FOSTER	NCDOT
Doug Lassiter	
Sally Comeaux	NC Psychological Assoc.
Sondra Panico	NC AG's Office
Jon Carr	Jordan Price Law Firm
Rudolph S. Hu	Rudolph S. Hu & Assoc.
Milton Alford	OSBM

VISITOR REGISTRATION SHEET

House Committee on Finance — July 7, 2005

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Karen Johnson	Smith Anderson
Austin Bunch	ECU
Jami Fitzgerald	N.C. Family Policy Council
Kevin Fitzgerald	UNC CHAPEL HILL
Calvin Leggett	NCDOT
Kathy Hawkins	Progress Energy

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 7, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Lanier	UNC Wilmington
Terry Ferlich	UNC
ROBERT FRASER	UNC-OP
KEVIN MacNAUGHTON	NC STATE
Andy Willis	NC State
Johanna Reese	DENR

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1327

Committee Substitute Favorable 5/25/05

Short Title: Crim. Record Checks/Psychology Practice Act. (Public)

Sponsors:

Referred to:

April 20, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD CHECKS FROM STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORY OF APPLICANTS FOR LICENSURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-270.4(e) reads as rewritten:

"(e) Nothing in this Article shall be construed to prevent qualified members of other professional groups licensed or certified under the laws of this State from rendering services ~~consistent with their professional training and code of ethics,~~within the scope of practice, as defined in the statutes regulating those professional practices, provided they do not hold themselves out to the public by any title or description stating or implying that they are psychologists or are licensed, certified, or registered to practice psychology."

SECTION 2. Article 18A of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"**§ 90-270.22. Criminal history record checks of applicants for licensure and licensees.**

(a) The Board may request that an applicant for licensure or reinstatement of a license or that a licensed psychologist or psychological associate currently under investigation by the Board for allegedly violating this Article consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure or reinstatement of a license to an applicant or take disciplinary action against a licensee, including revocation of a license. The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant or licensee to be checked, a form signed by the applicant or licensee consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories, and

any additional information required by the Department of Justice. The Board shall keep all information obtained pursuant to this section confidential.

(b) Limited Immunity. – The Board, its officers and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying licensure or reinstatement of a license to an applicant or the revocation of a license or other discipline of a licensee based on information provided in the applicant's or licensee's criminal history record check."

SECTION 3. Article 4 of Chapter 114 of the General Statutes is amended by adding the following new section to read:

"**§ 114-19.16. Criminal record checks of applicants for licensure and licensees.**

The Department of Justice may provide to the North Carolina Psychology Board from the State and National Repositories of Criminal Histories the criminal history of any applicant for licensure or reinstatement of a license to practice psychology or a licensed psychologist or psychological associate under Article 18A of Chapter 90 of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant or licensee, a form signed by the applicant or licensee consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant's or licensee's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Board shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

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

House Bill 1327:
Criminal Record Checks/Psychology Practice Act

BILL ANALYSIS

Committee: House Finance
Date: July 7, 2005
Version: 2nd Edition

Sponsor: Representatives Harrison, Martin, and Wiley
Analysis: Ashley Huffstetler

SUMMARY: ***House Bill 1327 provides authority to conduct criminal background checks for applicants for licensure under the Psychology Practice Act.***

BILL ANALYSIS: House Bill 1327 allows the North Carolina Psychology Board ("Board") to request that an applicant for licensure or reinstatement of a license or a licensed psychologist or psychological associate currently under investigation by the Board consent to a criminal background check.

The bill authorizes the Board to obtain fingerprints from the applicant or licensee and submit those to the State Bureau of Investigation ("SBI") for a state and national criminal history check. The SBI is authorized to charge a fee for the background check.

The Board is granted limited immunity for a denial or revocation of a license taken in good faith based on information provided in the criminal history check.

THE 2nd EDITION MADE THE FOLLOWING CHANGES: House Bill 1327 was given a favorable report in House Judiciary I after the following changes were made: a modification to the reference to scope of practice in G.S. 90-270.4(e), a clarification that the criminal history checks apply to those licensees who have *allegedly* violated the provisions of the act, the requirement that the Board ensure that State and federal checks were done was omitted, and the provisions defining which crimes constituted a "criminal history" and the factors the Board was to consider in making a determination of licensure were removed.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 1327 (Second Edition)

SHORT TITLE: Crim. Record Checks/Psychology Practice Act.

SPONSOR(S):

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	**FY 2006-07**	**FY 2007-08**	**FY 2008-09**	**FY 2009-10**
REVENUES:					
Justice	$7,600	$7,600	$7,600	$7,600	$7,600
EXPENDITURES:					
Justice	$7,666	$7,666	$7,666	$7,666	$7,666
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Justice, North Carolina Psychology Board

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY:

The first edition of this bill enacted new GS 114-19.16 concerning an applicant for licensure or reinstatement of license to practice psychology, or a licensed psychologist or psychological associate. Enacted new GS 90-270.22 to provide that: (1) NC Psychology Board may request that applicant for licensure or reinstatement of license or a licensed psychologist or psychological associate currently under investigation by Board to consent to criminal history check; (2) refusal to consent may constitute grounds for denial of licensure or reinstatement of license or disciplinary action against licensee, including revocation of license; (3) "criminal history" is defined to include conviction of specified crimes; and (4) conviction will not automatically bar licensure or reinstatement of license or result in revocation of license, but Board may consider conviction along with other specified factors.

House committee substitute makes the following changes to first edition: Modifies proposed GS 90-270.22 to (1) provide that criminal history record check provisions apply to those who have allegedly violated the provisions of the act (was, violated); (2) delete requirement that the Board ensure that the State and national criminal history of an applicant or licensee is checked; (3) delete

provisions allowing Board to deny licensure or reinstatement even though criminal history record check reveals one or more convictions; and (4) delete provisions defining those crimes the conviction for which makes up one's "criminal history."
Source: Adapted from Bill Digest H.B. 1327 (04/20/0200)

ASSUMPTIONS AND METHODOLOGY:

NC Psychology Board. Based upon the average number of applicants over the past five years, the NC Psychology Board anticipates approximately 200 criminal checks annually with payment for the checks provided by the applicants. According to the Board, the inclusion of a criminal record check in the application process is not expected to increase the time spent in processing an application or requirement for additional personnel. Receipt of this information will be incorporated into the Board's current process. There is an estimated increase in postage of $120.00 that is considered so insignificant that it will be covered in the Board's existing budget.

Department of Justice. The Department charges $38 for a state and national fingerprint background check. Of the $38, $22 is remitted to the Federal Bureau of Investigation for the national check; the remaining $16 is retained by the Department of Justice and used to fund receipt-supported positions to conduct the background checks. Internal costs per background check range from $11.45 to $17.95, with an average cost of $16.33. The Department currently has the capacity to conduct the projected 200 background checks per year due to this bill.

SOURCES OF DATA: Department of Justice, Office of State Budget and Management, NC Psychology Board

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Chloe Gossage, Michele Nelson

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: June 13, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

HB 1327 A BILL TO BE ENTITLED AN ACT TO ALLOW THE DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD CHECKS FROM STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORY OF APPLICANTS FOR LICENSURE.

☒ With a favorable report as to the committee substitute bill 2, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 443
Finance Committee Substitute Adopted 6/1/05

Short Title: Public Hospital Investments. (Public)

Sponsors:

Referred to:

March 9, 2005

A BILL TO BE ENTITLED

AN ACT RELATING TO PUBLIC HOSPITAL INVESTMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 159-39(g) reads as rewritten:

"(g) A public hospital may deposit or invest at interest all or part of its cash balance pursuant to ~~G.S. 159-30.~~G.S. 159-30 and may deposit any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, with the State Treasurer for investment pursuant to G.S. 147-69.2."

SECTION 2. G.S. 147-69.2 reads as rewritten:

"**§ 147-69.2. Investments authorized for special funds held by State Treasurer.**

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

(1) The Teachers' and State Employees' Retirement ~~System,~~System.
(2) The Consolidated Judicial Retirement ~~System,~~System.
(3) The Teachers' and State Employees' Hospital and Medical Insurance ~~Plan,~~Plan.
(4) The General Assembly Medical and Hospital Care ~~Plan,~~Plan.
(5) The Disability Salary Continuation ~~Plan,~~Plan.
(6) The Firemen's and Rescue Workers' Pension ~~Fund,~~Fund.
(7) The Local Governmental Employees' Retirement ~~System,~~System.
(8) The Legislative Retirement ~~System,~~System.
(9) The Escheat ~~Fund,~~Fund.
(10) The Legislative Retirement ~~Fund,~~Fund.
(11) The State Education Assistance ~~Authority,~~Authority.
(12) The State Property Fire Insurance ~~Fund,~~Fund.
(13) The Stock Workers' Compensation ~~Fund,~~Fund.
(14) The Mutual Workers' Compensation ~~Fund,~~Fund.
(15) The Public School Insurance ~~Fund,~~Fund.
(16) The Liability Insurance Trust ~~Fund,~~Fund.

(17) Trust funds of The University of North Carolina and its constituent institutions deposited with the State Treasurer pursuant to ~~G.S. 116-36.1,~~G.S. 116-36.1.

(17a) North Carolina Veterans Home Trust ~~Fund,~~Fund.

(17b) North Carolina National Guard Pension ~~Fund,~~Fund.

(17c) Retiree Health Premium Reserve ~~Account, and~~Account.

(17d) The Election Fund.

(17e) Funds deposited with the State Treasurer by public hospitals pursuant to G.S. 159-39(g).

(18) Any other special fund created by or pursuant to law for purposes other than meeting appropriations made pursuant to the Executive Budget Act.

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

(1) Any of the investments authorized by G.S. 147-69.1(c)(1)-(7).

(2) General obligations of other states of the United States.

(3) General obligations of cities, counties and special districts in North Carolina.

(4) Obligations of any company, other organization or legal entity incorporated or otherwise created or located within or outside the United States if the obligations bear one of the four highest ratings of at least one nationally recognized rating service and do not bear a rating below the four highest by any nationally recognized rating service which rates the particular security.

(5) Repealed by Session Laws 2001-444, s. 2, effective October 1, 2001.

(6) Asset-backed securities (whether considered debt or equity) provided they bear ratings by nationally recognized rating services as provided in G.S. 147-69.2(b)(4) and that they do not bear a rating below the four highest by any nationally recognized rating service that rates the particular securities.

(7) With respect to Retirement Systems' assets referred to in G.S. 147-69.2(b)(8), (i) insurance contracts that provide for participation in individual or pooled separate accounts of insurance companies, (ii) group trusts, (iii) individual, common, or collective trust funds of banks and trust companies, (iv) real estate investment trusts, and (v) limited partnerships, whether described as limited liability partnerships or limited liability companies; provided the investment manager has assets under management of at least one hundred million dollars ($100,000,000); provided such investment assets are managed primarily for the purpose of investing in or owning real estate or related debt financing located within or outside the United States; and provided that the investment authorized by this

subsection shall not exceed ten percent (10%) of the market value of all invested assets of the Retirement Systems.

(8) With respect to assets of the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Firemen's and Rescue Workers' Pension Fund, the Local Governmental Employees' Retirement System, the Legislative Retirement System, ~~and~~ the North Carolina National Guard Pension Fund (hereinafter referred to collectively as the Retirement Systems), and assets invested pursuant to subdivision (b2) of this section, they may be invested in preferred or common stocks issued by any company incorporated or otherwise created or located within or outside the United States provided the investments meet the conditions of this subdivision.

The investments authorized for the Retirement Systems under this subdivision cannot exceed sixty-five percent (65%) of the market value of all invested assets of the Retirement Systems. Up to five percent (5%) of the amount that may be invested under this subdivision may be invested in the stocks or shares of a diversified investment company registered under the "Investment Company Act of 1940" that has total assets of at least fifty million dollars ($50,000,000).

The assets authorized under this subdivision can be invested through individual, common, or collective trust funds of banks, trust companies, and group trust funds of investment advisory companies so long as the investment manager has assets under management of at least one hundred million dollars ($100,000,000).

The assets authorized under this subdivision can also be invested directly, if all of the following conditions are met:

a. The common stock or preferred stock of such corporation is registered on a national securities exchange as provided in the Federal Securities Exchange Act or quoted through the National Association of Securities Dealers' Automated Quotations (NASDAQ) system.

b. The corporation has paid a cash dividend on its common stock in each year of the 5-year period next preceding the date of investment and the aggregate net earnings available for dividends on the common stock of the corporation for the whole of that period have been at least equal to the amount of the dividends paid.

c. In applying the dividend and earnings test under this section to any issuing, assuming, or guaranteeing corporation, if the corporation acquired its property or any substantial part thereof within a five-year period immediately preceding the date of investment by consolidation, merger, or by the purchase of all

or a substantial portion of the property of any other corporation or corporations, or acquired the assets of any unincorporated business enterprise by purchase or otherwise, the dividends and net earnings of the several predecessor or constituent corporations or enterprises shall be consolidated and adjusted so as to ascertain whether or not the applicable requirements of this subdivision have been complied with.

No more than one and one-half percent (1 1/2%) of the market value of the Retirement Systems' assets that may be invested under this subdivision can be invested in the stock of a single corporation, and the total number of shares in that single corporation cannot exceed eight percent (8%) of the issued and outstanding stock of that corporation.

d. to f. Repealed by Session Laws 2001-444, s. 2, effective October 1, 2001.

g. That investments may be made in securities convertible into common stocks issued by any such company, if such securities bear one of the four highest ratings of at least one nationally recognized rating service and do not bear a rating below the four highest by any nationally recognized rating service which may then rate the particular security.

(9) With respect to Retirement Systems' assets, as defined in subdivision (b)(8) of this subsection, they may be invested in limited partnership interests in a partnership or in interests in a limited liability company if the primary purpose of the partnership or limited liability company is to invest in public or private debt, public or private equity, or corporate buyout transactions, within or outside the United States. The amount invested under this subdivision shall not exceed five percent (5%) of the market value of all invested assets of the Retirement Systems.

(10) Recodified as part of subdivision (b)(9) by Session Laws 2000-160, s. 2.

(11) With respect to assets of the Escheat Fund, obligations of the North Carolina Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed twenty-five million dollars ($25,000,000), that have a final maturity not later than July 1, 2005. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from the loss by appropriating to the Escheat Fund funds equivalent to the loss.

(b1) With respect to investments authorized by subsections (b)(8) and (b)(9) of this section, the State Treasurer shall appoint an Investment Advisory Committee, which shall consist of five members: the State Treasurer, who shall be chairman ex officio; two members selected from among the members of the boards of trustees of the Retirement Systems; and two members selected from the general public. The two public members must have experience in one or more of the following areas: investment management, real estate investment trusts, real estate development, venture capital investment, or absolute return strategies. The State Treasurer shall also appoint a Secretary of the Investment Advisory Committee who need not be a member of the committee. Members of the committee shall receive for their services the same per diem and allowances granted to members of the State boards and commissions generally. The committee shall have advisory powers only and membership shall not be deemed a public office within the meaning of Article VI, Section 9 of the Constitution of North Carolina or G.S. 128-1.1.

(b2) The State Treasurer may invest funds deposited pursuant to subdivision (a)(17e) of this section in any of the investments authorized under subdivisions (1) through (6) and subdivision (8) of subsection (b) of this section. The State Treasurer may require a minimum deposit, up to one hundred thousand dollars ($100,000), and may assess a reasonable fee, not to exceed 15 basis points, as a condition of participation pursuant to this subsection. Funds deposited pursuant to this subsection by a hospital shall remain the funds of that hospital, and interest or other investment income earned thereon shall be prorated and credited to the contributing hospital on the basis of the amounts thereof contributed, figured according to sound accounting principles.

(c) Repealed by Session Laws 1995, c. 501, s. 2."

SECTION 2. This act becomes effective October 1, 2005.

BILL ANALYSIS

SENATE BILL 443:
Public Hospital Investments

Committee:	House Finance	**Date:**	July 7, 2005
Introduced by:	Sen. Boseman	**Summary by:**	Martha Walston
Version:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 443 would authorize any public hospital to deposit certain funds with the State Treasurer's Office for investment. The State Treasurer would be authorized to invest those funds, on behalf of the public hospital, in certain investments. The State Treasurer could require a minimum deposit of $100,000 and charge a fee not to exceed 15 basis points.*** [1]

CURRENT LAW: A public hospital is a hospital that:

- Is operated by a county, city, hospital district, or hospital authority.
- Is owned by a county, city, hospital district, or hospital authority and operated by a nonprofit corporation or association, a majority of whose board of directors or trustees are appointed by the governing body of a county, city, hospital district, or hospital authority.
- On whose behalf a county or city has issued and has outstanding general obligation or revenue bonds, or to which a county or city makes current appropriations.

A public hospital may invest all or part of its cash balance in the following classes of securities:

1. Obligations of the United States.
2. Obligations of the Federal Financing Bank, the Federal Farm Credit Bank, the Bank for Cooperatives, the Federal Intermediate Credit Bank, the Federal Land Banks, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, Fannie Mae, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, the United States Postal Service.
3. Obligations of the State of North Carolina.
4. Bonds and notes of any North Carolina local government or public authority, subject to such restrictions as the secretary may impose.
5. Savings certificates issued by any savings and loan association organized under the laws of the State of North Carolina or by any federal savings and loan association having its principal office in North Carolina; provided that any principal amount of such certificate in excess of the amount insured by the federal government or any agency thereof, or by a mutual deposit guaranty association authorized by the Commissioner of Banks of the Department of Commerce of the State of North Carolina, be fully collateralized.
6. Prime quality commercial paper bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligation.

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[1] The first edition would have authorized public hospitals, if located in a county with land area of 250 square miles or less and a population of at least 160,000, to invest reserves, sinking funds, and other idle funds in any property or securities in which fiduciaries may legally invest. Only New Hanover County meets the area and population described in the 1st edition.

*Trina Griffin, Counsel to Senate Finance, substantially contributed to this summary.

7. Bills of exchange or time drafts drawn on and accepted by a commercial bank and eligible for use as collateral by member banks in borrowing from a federal reserve bank.
8. Participating shares in a mutual fund for local government investment; provided that the investments of the fund are limited to those qualifying for investment under this subsection (c) and that said fund is certified by the Local Government Commission.
9. A commingled investment pool established and administered by the State Treasurer.
10. A commingled investment pool established by interlocal agreement by two or more units of local government.
11. Evidences of ownership of, or fractional undivided interests in, future interest and principal payments on either direct obligations of the United States government or obligations the principal of and the interest on which are guaranteed by the United States, which obligations are held by a bank or trust company organized and existing under the laws of the United States or any state in the capacity of custodian.
12. Subject to certain restrictions, repurchase agreements with respect to either direct obligations of the United States or obligations the principal of and the interest on which are guaranteed by the United States if entered into with a broker or dealer, or any commercial bank, trust company or national banking association, the deposits of which are insured by the Federal Deposit Insurance Corporation or any successor thereof.
13. In connection with funds held by or on behalf of a local government or public authority, which funds are subject to the arbitrage and rebate provisions of the Internal Revenue Code of 1986, as amended, participating shares in tax-exempt mutual funds, to the extent such participation, in whole or in part, is not subject to such rebate provisions, and taxable mutual funds, to the extent such fund provides services in connection with the calculation of arbitrage rebate requirements under federal income tax law.

BILL ANALYSIS: Senate Bill 443 authorizes public hospitals to deposit with the State Treasurer for investment any funds held in reserves or sinking funds[2], or any funds not required for immediate disbursement. In addition to a public hospital's current investment options, this bill would authorize investment, by and through the Treasurer's Office, in the following additional classes of investments:

1. Obligations of the Export-Import Bank, the International Bank for Reconstruction and Development, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, and the Student Loan Marketing Association.

2. Time deposits of financial institutions with a physical presence in North Carolina for the purpose of receiving commercial or retail deposits; provided that any principal amount of such deposit in excess of the amount insured by the federal government or any agency thereof, be fully secured by surety bonds, or be fully collateralized; provided further that the rate of return or investment yield may not be less than that available in the market on United States government or agency obligations of comparable maturity.

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

4. General obligations of other states of the United States.

[2] Sinking funds are assets and their earnings earmarked for the retirement of bonds or other long-term obligations.

5. General obligations of cities, counties, and special districts in North Carolina.
6. Obligations of any company, other organization or legal entity incorporated or otherwise created or located within or outside the United States if the obligations bear one of the four highest ratings of at least one nationally recognized rating service and do not bear a rating below the four highest by any nationally recognized rating service which rates the particular security.
7. Asset-backed securities (whether considered debt or equity) provided they bear ratings by nationally recognized rating services as provided in G.S. 147-69.2(b)(4) and that they do not bear a rating below the four highest by any nationally recognized rating service that rates the particular securities.
8. Preferred or common stocks issued by any company incorporated or otherwise created or located within or outside the United States.

The State Treasurer may require a minimum deposit, up to $100,000, and may assess a reasonable fee, not to exceed 15 basis points[3] as a condition of participation. Funds deposited by a hospital will remain the funds of that hospital and interest or investment income earned must be prorated and credited to the contributing hospital on the basis of amounts contributed, figured according to sound accounting principles.

EFFECTIVE DATE: This act becomes effective October 1, 2005.

BACKGROUND: A public hospital authority is a public body and a body corporate and politic created by resolution of a city council or board of commissioners. A public hospital authority has the authority to invest in any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which trustees, guardians, executors, administrators, and others acting in a fiduciary capacity may legally invest funds under their control. Through this bill, public hospitals are seeking to have the same investment authority as public hospital authorities. The original bill was drafted to mirror this provision for public hospital authorities.

S0443e1-SMSV-CSSVf-35

[3] A basis point is equal to one hundredth of a percentage point (0.01%).

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

SB 443 A BILL TO BE ENTITLED AN ACT RELATING TO PUBLIC HOSPITAL INVESTMENTS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 1

SENATE BILL 170*

Short Title:	Waco Town Center.	(Local)
Sponsors:	Senator Dalton.	
Referred to:	Finance.	

February 21, 2005

A BILL TO BE ENTITLED

AN ACT AMENDING THE CHARTER OF THE TOWN OF WACO TO CORRECTLY IDENTIFY THE CENTER OF TOWN.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of the Charter of the Town of Waco, being Chapter 147 of the 1907 Private Laws, reads as rewritten:

"Sec. 2. ~~That the incorporate limits of said corporation of Waco shall remain hereafter as formerly defined and located, as follows: All that territory covered by and included in the circle having as its center the railroad bridge in the town of Waco, and made by a radius extending one-half of a mile in length from said center; that is, all that territory within a radius of one-half mile from the railroad bridge, the present center of the Town of Waco.~~The center of the Town of Waco is described as follows: Mag nail set in the centerline of the intersection of Cherryville Road (NC Hwy. 150) and Main Street (S.R. 1001). Grid coordinates: Y=595,434.5286; X=1,276,039.0584. Latitude=35°21'42.234723"; Longitude=81°25'42.607645"."

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

SENATE BILL 170:
Waco Town Center

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 6, 2005
Introduced by:	Sen. Dalton	**Summary by:**	R. Erika Churchill
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 170 amends the charter of the Town of Waco to correctly identify the center of town. This bill was identical to H317, as introduced by Rep. Clary, which is currently in Rules, Calendar, and Operations of the House.

BILL ANALYSIS: Senate Bill 170 amends the charter of the Town of Waco to correctly identify the center of town. The current description references a railroad bridge that no longer exists. Therefore, the revised description with survey coordinates more accurately reflects the location of the center of the town.

S0170e1-SMST

Trina Griffin contributed substantially to this summary.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

SB 170 A BILL TO BE ENTITLED AN ACT AMENDING THE CHARTER OF THE TOWN OF WACO TO CORRECTLY IDENTIFY THE CENTER OF TOWN.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

ATTACHMENT 6

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1327

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

H1327-AMB-15 [v.1]

Date July 7 ,2005

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

Representative Faison

moves to amend the bill on page 2, lines 3 and 4, by rewriting those lines to read:
"(b) Limited Immunity. – The Board, its officers and employees, acting reasonably and in compliance with this section, shall be immune from civil liability for"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

ATTACHMENT 7

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H **D**

HOUSE BILL 688*
PROPOSED COMMITTEE SUBSTITUTE H688-CSMBf-24 [v.7]

7/6/2005 1:39:37 PM

Short Title: Certify On-Site Wastewater Contractors. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE CERTIFICATION OF ON-SITE WASTEWATER CONTRACTORS AND INSPECTORS.

The General Assembly of North Carolina enacts:

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

"Article 5.

"Certification of On-Site Wastewater Contractors and Inspectors.

"**§ 90A-70. Purpose.**

It is the purpose of this Article to protect the environment, public health, and safety by ensuring the integrity and competence of on-site wastewater contractors and inspectors; to require the examination of on-site wastewater contractors and inspectors and the certification of their competency to supervise, conduct, or inspect the construction, installation, repair, or inspection of on-site wastewater systems; to establish minimum standards for ethical conduct, responsibility, training, experience, and continuing education for on-site wastewater system contractors and inspectors; and to provide appropriate enforcement procedures for rules adopted by the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board.

"**§ 90A-71. Definitions.**

The following definitions apply in this Article:

(1) 'Board' means the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board.

(2) 'Department' means the Department of Environment and Natural Resources.

(3) 'Certified on-site wastewater system inspector' means a person who is certified under this Article to conduct an inspection of an existing on-site wastewater system at the time of resale.

(4) 'On-site wastewater system' means any wastewater system permitted under the provisions of Article 11 of Chapter 130A of the General Statutes that does not discharge to a treatment facility or the surface waters.

(5) 'Contractor' means a person who constructs, installs, or repairs, or offers to construct, install, or repair an on-site wastewater system in the State.

(6) 'Person' means all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities, or political subdivisions, governmental agencies, or private or public corporations organized and existing under the laws of this State or any other state or country.

(7) 'Responsible charge' means the direct control and personal supervision of the installation, construction, repair, or inspection of an on-site wastewater system.

"**§ 90A-72. Certification required; applicability.**

(a) Certification Required. – No person shall construct, install, repair, or inspect, or offer to construct, install, repair, or inspect an on-site wastewater system in the State without first obtaining and holding the required level of certification for the specified system. A certified on-site wastewater system inspector shall be required for any professional performance inspection of an existing on-site wastewater system.

(b) Applicability. – This Article does not apply to the following:

(1) A person who constructs, installs, or repairs an on-site wastewater system described as a single septic tank with a gravity-fed distribution system when located on land owned by that person and that is intended solely for use by that person and members of that person's immediate family.

(2) A person licensed under Article 1 of Chapter 87 of the General Statutes who constructs or installs an on-site wastewater system ancillary to the building being constructed.

(3) A person who is certified by the Water Pollution Control System Operators Certification Commission and contracted to provide necessary operation and maintenance on the permitted on-site wastewater system.

(4) A person permitted under Article 21 of Chapter 143 who is constructing a water pollution control facility necessary to comply with the terms and conditions of a National Pollutant Discharge Elimination System (NPDES) permit.

(5) A person licensed under Article 1 of Chapter 87 of the General Statutes as a licensed public utilities contractor who is installing or expanding a wastewater treatment facility, including a collection system, designed by a registered professional engineer.

(6) A plumbing contractor licensed under Article 2 of Chapter 87 of the General Statutes unless the plumbing contractor constructs, installs,

repairs, or inspects, or offers to construct, install, repair, or inspect an on-site wastewater system in the State.

"**§ 90A-73. Creation and membership of the Board.**

(a) Creation and Appointments. – There is created the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board. The Board shall consist of nine members appointed to three-year terms as follows:

(1) One member appointed by the Governor who, at the time of appointment, is engaged in the construction, installation, repair, or inspection of on-site wastewater systems, to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(2) One member appointed by the Governor who, at the time of appointment, is a certified water treatment facility operator pursuant to Article 2 of Chapter 90A of the General Statutes, to a term that expires on 1 July of years evenly divisible by three.

(3) One member appointed by the Governor who is an employee of the Division of Environmental Health to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.

(4) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is engaged in the construction, installation, repair, or inspection of on-site wastewater systems, to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.

(5) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is engaged in the business of inspecting on-site wastewater systems, to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(6) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate upon the recommendation of the North Carolina Home Builders Association, to a term that expires on 1 July of years evenly divisible by three.

(7) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is engaged in the construction, installation, repair, or inspection of on-site wastewater systems, to a term that expires on 1 July of years evenly divisible by three.

(8) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) employed as an environmental health specialist, and (ii) engaged primarily in the inspection and permitting

of on-site wastewater systems, to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.

(9) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) employed by North Carolina State University Cooperative Extension Service, and (ii) is knowledgeable in the area of on-site wastewater systems, to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(b) Vacancies. – An appointment to fill a vacancy on the Commission created by the resignation, dismissal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled as provided in G.S. 120-122.

(c) Oath. – Each member of the Board, before entering upon the discharge of the duties of the Board, shall take and file with the Secretary of State an oath in writing to perform properly the duties as a member of the Board and to uphold the Constitution of North Carolina and the Constitution of the United States.

(d) Officers. – The Board shall elect a Chair from among its members. The Chair shall serve from the time of election until 30 June of the following year, or until a successor is elected.

(e) Compensation. – Board members who are State employees shall receive no per diem compensation for serving on the Board but shall be reimbursed for their expenses in accordance with G.S. 138-6. All other Board members shall receive per diem compensation and reimbursement in accordance with the compensation rate established in G.S. 93B-5.

(f) Quorum. – A majority of the members of the Board constitutes a quorum for the transaction of business.

(g) Meetings. – The Board shall meet at least twice each year and may hold special meetings at the call of the Chair or a majority of the members of the Board.

(h) Staff. – The Board may employ staff to carry out the duties of the Board and the provisions of this Article. The Board shall determine the compensation, duties, and other terms and conditions of employment of the staff.

"**§ 90A-74. Powers and duties of the Board.**

The Board shall have the following general powers and duties:

(1) To adopt rules in the manner prescribed by Chapter 150B of the General Statutes to govern its actions and to implement the provisions of this Article.

(2) To determine the qualifications of persons who are certified pursuant to this Article.

(3) To establish grades of certifications based on design capacity, complexity, projected costs, and other features of approved on-site wastewater systems.

(4) To develop and administer examinations for each grade of certification. The Board may approve applications by recognized

associations for certification of its members after a review of the requirements of the association to ensure that they are equivalent to the requirements of the Board.

(5) To issue, renew, deny, restrict, suspend, or revoke licenses and to carry out any of the other actions authorized by this Article.

(6) To establish, publish, and enforce rules of professional conduct of persons who are certified pursuant to this Article.

(7) To maintain a record of all proceedings and make available to persons licensed under this Article, and to other concerned parties, an annual report of all Board action.

(8) To establish reasonable fees for application, certification, and renewal, and other services provided by the Board.

(9) To conduct investigations for the purpose of determining whether violations of this Article or grounds for disciplining persons certified under this Article exist.

(10) To adopt a common seal containing the name of the Board for use on all certificates and official reports issued by the Board.

(11) To conduct other services necessary to carry out the purposes of this Article.

"**§ 90A-75. Expenses and fees.**

(a) Expenses. – All salaries, compensation, and expenses incurred or allowed for the purposes of carrying out this Article shall be paid by the Board exclusively out of the funds received by the Board as authorized by this Article. No salary, expense, or other obligations of the Board may be charged against the General Fund of the State. Neither the Board nor any of its members or employees may incur any expense, debt, or financial obligation binding upon the State.

(b) Contributions. – The Board may accept grants, contributions, bequests, and gifts that shall be kept in the same account as the funds deposited in accordance with this Article and other provisions of the law.

(c) Fees. – All fees shall be established in rules adopted by the Board. The Board shall establish fees sufficient to pay the costs of administering this Article, but in no event shall the Board charge a fee at an annual rate in excess of the following:

(1)	Application for basic certification	$150.00
(2)	Application for each step grade	$50.00
(3)	Certification renewal	$100.00
(4)	Reinstatement of revoked or suspended certification	$500.00
(5)	Application for on-site wastewater system inspector	$200.00.

(d) Audit. – The Board is subject to the oversight of the State Auditor under Article 5A of Chapter 147 of the General Statutes.

"**§ 90A-76. On-Site Wastewater Certification Fund.**

Fund. – The On-Site Wastewater Certification Fund is created as a nonreverting account within the Department. All fees collected pursuant to this Article shall be

credited to the Fund. The Fund shall be used solely for the costs of administering this Article.

"**§ 90A-77. Certification requirements.**

(a) Certification. – The Board shall issue a certificate of the appropriate grade level to an applicant who satisfies all of the following conditions:

(1) Is at least 18 years of age.

(2) Files a properly completed application with the Board or submits a recognized application from an accepted association.

(3) Is of good moral character and submits affidavits of three persons not related to the applicant for whom the applicant provided on-site wastewater services.

(4) Completes the training program designed by the Board specific to the grade level for which the applicant is applying.

(5) Pays the applicable fees set by the Board for the particular application.

(b) Examination. – For grade levels greater than conventional systems for a conventional system as defined by G.S. 130A-343(a)(3), the applicant must pass a written or oral examination that tests the applicant's proficiency in the following areas:

(1) Principles of public and environmental health associated with on-site wastewater systems.

(2) Principles of construction and safety.

(3) Technical and practical knowledge of on-site wastewater systems typical to the specified grade level.

(4) Laws and rules related to the installation, construction, repair, or inspection of the specified on-site wastewater system.

(c) Location of Examinations. – The Board shall provide a minimum of three examinations each year; one each in the coastal plain, the Piedmont, and the mountain areas of the State.

(d) Approval of Certification Programs. – The Board may issue a certificate at the appropriate grade level to an applicant from a recognized association after review and approval of the continuing education program of the association.

(e) No Prior Experience. – Applicants with no prior experience in providing on-site wastewater services shall, upon a properly completed application, complete a basic on-site wastewater education program approved by the Board. Upon completion of the basic on-site wastewater education program, the applicant shall be eligible to participate in courses in an on-site wastewater systems training program designed by the Board specific to the grade level for which the applicant is applying.

(f) No Degree Required. – An applicant shall not be required to hold or obtain an educational diploma or degree to obtain a certificate. If the applicant meets all the conditions for certification except for passage of the Board examination, the applicant may take the examination on two more occasions without having to file for a new application, pay an additional application fee, or repeat the training program. If the applicant fails to pass the Board examination on three successive occasions, the applicant must reapply to the Board, pay the application fee, and repeat the training program.

(g) Certificate. – The certification shall show the full name of the certificate holder. The certificate shall provide a unique identification number and shall be signed by the Chair. Issuance of the certificate by the Board shall be prima facie evidence that the person named therein is entitled to all the rights and privileges of a certified on-site wastewater contractor or inspector, at the grade level specified on the certificate, while the certificate remains in effect.

(h) Replacement Certificate. – A new certificate to replace one lost, destroyed, or mutilated shall be issued subject to rules adopted by the Board and with the payment of a fee set by the Board. The fee for a duplicate or replacement certificate shall not exceed twenty-five dollars ($25.00).

"**§ 90A-78. Certification renewal.**

(a) Renewal. – All certifications shall expire at intervals determined by the Board unless they are renewed. In no event may the interval determined by the Board be less than one year. To renew a certification, a contractor or inspector must meet all of the following conditions:

(1) Submit an application for renewal on the form prescribed by the Board.

(2) Meet the continuing education requirements prescribed by the Board.

(3) Pay the certification renewal fee.

(b) Late Fee. – A contractor or inspector with an expired certificate may renew the certification within 90 days of its expiration upon payment of a late fee set by the Board. The late fee shall not exceed twenty-five dollars ($25.00). If a certification is not renewed within 90 days of its expiration, the certification shall not be renewed, and the holder must apply for a new certificate.

"**§ 90A-79. Continuing education.**

(a) Requirements. – The Board shall require continuing education as a condition of certification and renewal. The Board shall determine the number of hours, based on grade levels applied for, up to a maximum of 12 hours per year, and the subject material for the specified grade level. The Board shall maintain records of continuing education coursework successfully completed by each certificate holder.

(b) Approval of Continuing Education Programs. – The Board may approve a continuing education program or course if the Board finds that the program or course offers useful educational experience that will enhance the construction, installation, repair, or inspection of on-site wastewater systems. The Board may develop and offer continuing education programs.

"**§ 90A-80. Responsibility of the certificate holder.**

(a) Responsibilities. – The certificate holder shall be responsible for all crew actions and quality of workmanship. A certificate may be issued jointly to an individual doing business under the name of the individual, under a trade name, or under the name of a firm, partnership, association, or corporation. The certificate holder shall be the person of responsible charge and shall assume all duties and liabilities for the construction, installation, repair, or inspection of the system.

(b) Separation of Employment. – If the certificate holder is an employee of the firm, partnership, association, or corporation, employment must continue for the

certificate to remain in force. If separation of the employee occurs, the firm, partnership, association, or corporation must employ a certified contractor or inspector within 60 days for the certificate to remain in force.

"**§ 90A-81. Investigation of complaints.**

(a) Misconduct. – A person may refer to the Board charges of fraud, deceit, negligence, incompetence, or misconduct against any contractor or inspector licensed under this Article. The charges shall be in writing and sworn to by the complainant and submitted to the Board. These charges, unless dismissed without a hearing by the Board as unfounded or trivial, shall be heard and determined by the Board in accordance with the provisions of Chapter 150B of the General Statutes. An association that receives professional recognition of its own certification process by the Board shall be responsible for the conduct and competency of its members.

(b) Records. – The Board shall establish and maintain detailed records regarding complaints concerning each certified contractor or inspector. The records shall include those certified by recognized associations. The records shall also detail the levels of certification held by each contractor or inspector.

(c) Notification. – The Board shall notify local health departments of updates in certifications, complaints, suspensions, or reinstatements.

"**§ 90A-82. Remedies.**

(a) Denial, Suspension, and Revocation of Certification. – The Board may deny, suspend, or revoke a certificate under this Article for:

(1) A violation of this Article or a rule of the Board.

(2) The use of fraud or deceit in obtaining or renewing a certificate.

(3) Any act of gross negligence, incompetence, or misconduct in the construction, installation, repair, or inspection of an on-site wastewater system.

(b) Arbitration. – The Board may establish a voluntary arbitration procedure to resolve complaints concerning a certificate holder or any work performed by the certificate holder, or conflicts involving any certificate holder and the Division of Environmental Health or a local health department.

(c) Injunction. – The Board may ask the Attorney General to seek an injunction to restrain any person, firm, partnership, or corporation from violating the provisions of this Article or rules adopted by the Board. The Attorney General may bring an action for an injunction in the name of the State in the superior court of any county in which the violator resides or the violator's principal place of business is located. In any proceedings for an injunction, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation. Members of the Board shall not be personally or professionally liable for any act or omission pursuant to this subsection. The Board shall not be required to post a bond in connection with any action to obtain an injunction.

(d) Offenses. – A person who commits any one or more of the following offenses is guilty of a Class 2 misdemeanor:

(1) Engages in or offers to engage in the construction, installation, repair, or inspection of an on-site wastewater system without the appropriate certificate for the specific grade of on-site wastewater system.
(2) Gives false or forged evidence of any kind in obtaining a certificate.
(3) Falsely impersonates a certificate holder."

SECTION 2.(a) In order to provide for a system of staggered three-year terms for the members of the On-Site Wastewater Contractors and Inspectors Certification Board established by G.S. 90A-73(a), as enacted by Section 1 of this act, the following provisions shall apply:

(1) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(1) shall be three years and shall expire on 1 July 2008.
(2) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(2) shall be four years and shall expire on 1 July 2009.
(3) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(3) shall be five years and shall expire on 1 July 2010.
(4) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(4) shall be five years and shall expire on 1 July 2010.
(5) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(5) shall be three years and shall expire on 1 July 2008.
(6) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(6) shall be four years and shall expire on 1 July 2009.
(7) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(7) shall be four years and shall expire on 1 July 2009.
(8) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(8) shall be five years and shall expire on 1 July 2010.
(9) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(9) shall be three years and shall expire on 1 July 2008.

SECTION 2.(b) In the event that the General Assembly fails to appoint one or more initial members to the On-Site Wastewater Contractors and Inspectors Certification Board while the General Assembly is in session during 2005, the failure to make an initial appointment shall be treated as though a vacancy had occurred, and the vacancy may be filled by appointment as provided in G.S. 120-122.

SECTION 3. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The On-Site Wastewater Contractors and Inspectors Certification Board may adopt temporary rules to implement the provisions

of this act until 1 July 2007. Notwithstanding G.S. 150B-21.1(d), a temporary rule adopted in accordance with this section shall remain in effect until a permanent rule adopted to replace the temporary rule becomes effective. Prior to the adoption of temporary rules under this section, the Board shall:

(1) Consult with persons who may be interested in the subject matter of the temporary rule during the development of the text of the proposed temporary rule.

(2) Establish a mailing list pursuant to G.S. 150B-21.2(d) and notify persons on the mailing list of its intent to adopt a temporary rule.

(3) Publish a notice of intent to adopt a temporary rule in the North Carolina Register. The notice shall set out the text of the proposed temporary rule and include the name of the person to whom questions and written comments on the proposed rule may be submitted. The Board shall accept written comments on the proposed temporary rule for at least 30 days after the notice of intent to adopt the temporary rule as published in the North Carolina Register.

(4) Hold at least one public hearing on the proposed temporary rule.

SECTION 4. Section 1 of this act is effective when it becomes law except that G.S. 90A-72, 90A-79, and 90A-82, as enacted by Section 1 of this act, become effective July 1, 2007. Sections 2, 3, and 4 of this act are effective when the act becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 688*

Short Title:	Certify On-Site Wastewater Contractors.	(Public)
Sponsors:	Representatives Gibson and Culp (Primary Sponsors).	
Referred to:	Finance.	

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE CERTIFICATION OF ON-SITE WASTEWATER CONTRACTORS AND INSPECTORS.

The General Assembly of North Carolina enacts:

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

"Article 5.

"Certification of On-Site Wastewater Contractors and Inspectors.

"**§ 90A-70. Purpose.**

It is the purpose of this Article to protect the environment, public health, and safety by ensuring the integrity and competence of on-site wastewater contractors and inspectors; to require the examination of on-site wastewater contractors and inspectors and the certification of their competency to supervise, conduct, or inspect the construction, installation, repair, or inspection of on-site wastewater systems; to establish minimum standards for ethical conduct, responsibility, training, experience, and continuing education for on-site wastewater system contractors and inspectors; and to provide appropriate enforcement procedures for rules adopted by the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board.

"**§ 90A-71. Definitions.**

The following definitions apply in this Article:

(1) 'Board' means the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board.

(2) 'Department' means the Department of Environment and Natural Resources.

(3) 'Inspector' means a person that evaluates and reports on or offers to evaluate and report on the performance of an on-site wastewater system.

(4) 'On-site wastewater system' means any wastewater system permitted under the provisions of Article 11 of Chapter 130A of the General Statutes.

(5) 'Contractor' means a person that constructs, installs, or repairs, or offers to construct, install, or repair an on-site wastewater system in the State.

(6) 'Person' means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities, or political subdivisions, governmental agencies, or private or public corporations organized and existing under the laws of this State or any other state or country.

(7) 'Responsible charge' means the direct control and personal supervision of the installation, construction, repair, or inspection of an on-site wastewater system.

"**§ 90A-72. Certification required; applicability.**

(a) Certification Required. – No person shall construct, install, repair, or inspect, or offer to construct, install, repair, or inspect an on-site wastewater system in the State without first obtaining and holding the required level of certification for the specified system. A certified on-site wastewater system inspector shall be required for any professional performance inspection of an existing on-site wastewater system.

(b) Applicability. – This Article does not apply to the following:

(1) A person who constructs, installs, or repairs an on-site wastewater system described as a single septic tank with a gravity-fed distribution system when located on land owned by that person and that is intended solely for use by that person and members of that person's immediate family.

(2) A person licensed under Article 1 of Chapter 87 of the General Statutes who constructs or installs an on-site wastewater system ancillary to the building being constructed.

"**§ 90A-73. Creation and membership of the Board.**

(a) Creation and Appointments. – There is created the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board. The Board shall consist of nine members appointed to three-year terms as follows:

(1) One member appointed by the Governor who, at the time of appointment, is engaged in the construction, installation, repair, or inspection of on-site wastewater systems, to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(2) One member appointed by the Governor who, at the time of appointment, is a certified water treatment facility operator pursuant to Article 2 of Chapter 90A of the General Statutes, to a term that expires on 1 July of years evenly divisible by three.

(3) One member appointed by the Governor who is an employee of the Division of Environmental Health to a term that expires on 1 July of

years that follow by one year those years that are evenly divisible by three.

(4) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is engaged in the construction, installation, repair, or inspection of on-site wastewater systems, to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.

(5) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is engaged in the business of inspecting on-site wastewater systems, to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(6) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate upon the recommendation of the North Carolina Home Builders Association, to a term that expires on 1 July of years evenly divisible by three.

(7) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is engaged in the construction, installation, repair, or inspection of on-site wastewater systems, to a term that expires on 1 July of years evenly divisible by three.

(8) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) employed as an environmental health specialist, and (ii) engaged primarily in the inspection and permitting of on-site wastewater systems, to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.

(9) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) employed by North Carolina State University Cooperative Extension Service, and (ii) is knowledgeable in the area of on-site wastewater systems, to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(b) Vacancies. – An appointment to fill a vacancy on the Commission created by the resignation, dismissal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled as provided in G.S. 120-122.

(c) Oath. – Each member of the Board, before entering upon the discharge of the duties of the Board, shall take and file with the Secretary of State an oath in writing to perform properly the duties as a member of the Board and to uphold the Constitution of North Carolina and the Constitution of the United States.

(d) Officers. – The Board shall elect a Chair from among its members. The Chair shall serve from the time of their election until 30 June of the following year, or until a successor is elected.

(e) Compensation. – Board members who are State employees shall receive no per diem compensation for serving on the Board but shall be reimbursed for their expenses in accordance with G.S. 138-6. All other Board members shall receive per diem compensation and reimbursement in accordance with the compensation rate established in G.S. 93B-5.

(f) Quorum. – A majority of the members of the Board constitutes a quorum for the transaction of business.

(g) Meetings. – The Board shall meet at least twice each year and may hold special meetings at the call of the Chair or a majority of the members of the Board.

(h) Staff. – The Board may employ staff to carry out the duties of the Board and the provisions of this Article. The Board shall determine the compensation, duties, and other terms and conditions of employment of the staff.

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The Board shall have the following general powers and duties:

(1) To adopt rules in the manner prescribed by Chapter 150B of the General Statutes to govern its actions and to implement the provisions of this Article.

(2) To determine the qualifications of persons who are certified pursuant to this Article.

(3) To establish grades of certifications based on design capacity, complexity, projected costs, and other features of approved on-site wastewater systems.

(4) To develop and administer examinations for each grade of certification. The Board may approve applications by recognized associations for certification of its members after a review of the requirements of the association to ensure that they are equivalent to the requirements of the Board.

(5) To issue, renew, deny, restrict, suspend, or revoke licenses and to carry out any of the other actions authorized by this Article.

(6) To establish, publish, and enforce rules of professional conduct of persons who are certified pursuant to this Article.

(7) To maintain a record of all proceedings and make available to persons licensed under this Article, and to other concerned parties, an annual report of all Board action.

(8) To establish reasonable fees for application, certification, and renewal, and other services provided by the Board.

(9) To conduct investigations for the purpose of determining whether violations of this Article or grounds for disciplining persons certified under this Article exist.

(10) To adopt a common seal containing the name of the Board for use on all certificates and official reports issued by the Board.

(11) To conduct other services necessary to carry out the purpose of this Article.

"**§ 90A-75. Expenses and fees.**

(a) Expenses. – All salaries, compensation, and expenses incurred or allowed for the purposes of carrying out this Article shall be paid by the Board exclusively out of the funds received by the Board as authorized by this Article. No salary, expense, or other obligations of the Board may be charged against the General Fund of the State. Neither the Board nor any of its members or employees may incur any expense, debt, or financial obligation binding upon the State.

(b) Contributions. – The Board may accept grants, contributions, bequests, and gifts that shall be kept in the same account as the funds deposited in accordance with this Article and other provisions of the law.

(c) Fees. – All fees shall be established in rules adopted by the Board. The Board shall establish fees sufficient to pay the costs of administering this Article, but in no event shall the Board charge a fee at an annual rate in excess of the following:

(1)	Application for basic certification	$150.00
(2)	Application for each step grade	$50.00
(3)	Certification renewal	$100.00
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Fund. – The On-Site Wastewater Certification Fund is created as a nonreverting account within the Department. All fees collected pursuant to this Article shall be credited to the Fund. The Fund shall be used for the costs of administering this Article.

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(a) Certification. – The Board shall issue a certificate of the appropriate grade level to an applicant who satisfies all of the following conditions:

(1) Is at least 18 years of age.

(2) Files a properly completed application with the Board or submits a recognized application from an accepted association.

(3) Is of good moral character and submits affidavits of three persons not related to the applicant for whom the applicant provided on-site wastewater services.

(4) Completes the training program designed by the Board specific to the grade level for which the applicant is applying.

(5) Pays the applicable fees set by the Board for the particular application.

(b) Examination. – For grade levels greater than conventional systems for a conventional system as defined by G.S. 130A-343(a)(3), the applicant must pass a written or oral examination that tests the applicant's proficiency in the following areas:

(1) Principles of public and environmental health associated with on-site wastewater systems.
(2) Principles of construction and safety.
(3) Technical and practical knowledge of on-site wastewater systems typical to the specified grade level.
(4) Laws and rules related to the installation, construction, repair, or inspection of the specified on-site wastewater system.

(c) Location of Examinations. – The Board shall provide a minimum of three examinations each year; one each in the coastal plain, the Piedmont, and the mountain areas of the State.

(d) Approval of Certification Programs. – The Board may issue a certificate at the appropriate grade level to an applicant from a recognized association after review and approval of the continuing education program of the association.

(e) No Prior Experience. – Applicants with no prior experience in providing on-site wastewater services shall, upon a properly completed application, complete a basic on-site wastewater education program approved by the Board. Upon completion of the basic on-site wastewater education program, the applicant shall be eligible to participate in courses in an on-site wastewater systems training program designed by the Board specific to the grade level for which the applicant is applying.

(f) No Degree Required. – An applicant shall not be required to hold or obtain an educational diploma or degree to obtain a certificate. If the applicant meets all the conditions for certification except for passage of the Board examination, the applicant may take the examination on two more occasions without having to file for a new application, pay an additional application fee, or repeat the training program. If the applicant fails to pass the Board examination on three successive occasions, the applicant must reapply to the Board, pay the application fee, and repeat the training program.

(g) Certificate. – The certification shall show the full name of the certificate holder. The certificate shall provide a unique identification number and shall be signed by the Chair. Issuance of the certificate by the Board shall be prima facie evidence that the person named therein is entitled to all the rights and privileges of a certified on-site wastewater contractor or inspector, at the grade level specified on the certificate, while the certificate remains in effect.

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(a) Renewal. – All certifications shall expire at intervals determined by the Board unless they are renewed. In no event may the interval determined by the Board be less than one year. To renew a certification, a contractor or inspector must meet all of the following conditions:

(1) Submit an application for renewal on the form prescribed by the Board.

(2) Meet the continuing education requirements prescribed by the Board.
(3) Pay the certification renewal fee.

(b) Late Fee. – A contractor or inspector with an expired certificate may renew the certification within 90 days of its expiration upon payment of a late fee set by the Board. The late fee shall not exceed twenty-five dollars ($25.00). If a certification is not renewed within 90 days of its expiration, the certification shall not be renewed, and the holder must apply for a new certificate.

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(a) Requirements. – The Board shall require continuing education as a condition of certification and renewal. The Board shall determine the number of hours, based on grade levels applied for, up to a maximum of 12 hours per year, and the subject material for the specified grade level. The Board shall maintain records of continuing education coursework successfully completed by each certificate holder.

(b) Approval of Continuing Education Programs. – The Board may approve a continuing education program or course if the Board finds that the program or course offers useful educational experience that will enhance the construction, installation, repair, or inspection of on-site wastewater systems. The Board may develop and offer continuing education programs.

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(a) Responsibilities. – The certificate holder shall be responsible for all crew actions and quality of workmanship. A certificate may be issued jointly to an individual doing business under the name of the individual, under a trade name, or under the name of a firm, partnership, association, or corporation. The certificate holder shall be the person of responsible charge and shall assume all duties and liabilities for the construction, installation, repair, or inspection of the system.

(b) Separation of Employment. – If the certificate holder is an employee of the firm, partnership, association, or corporation, employment must continue for the certificate to remain in force. If separation of the employee occurs, the firm, partnership, association, or corporation must employ a certified contractor or inspector within 60 days for the certificate to remain in force.

"**§ 90A-81. Investigation of complaints.**

(a) Misconduct. – A person may refer to the Board charges of fraud, deceit, negligence, incompetence, or misconduct against any contractor or inspector licensed under this Article. The charges shall be in writing and sworn to by the complainant and submitted to the Board. These charges, unless dismissed without a hearing by the Board as unfounded or trivial, shall be heard and determined by the Board in accordance with the provisions of Chapter 150B of the General Statutes. An association that receives professional recognition of its own certification process by the Board shall be responsible for the conduct and competency of its members.

(b) Records. – The Board shall establish and maintain detailed records regarding complaints concerning each certified contractor or inspector. The records shall include those certified by recognized associations. The records shall also detail the levels of certification held by each contractor or inspector.

(c) Notification. – The Board shall notify local health departments of updates in certifications, complaints, suspensions, or reinstatements.

"**§ 90A-82. Remedies.**

(a) Denial, Suspension, and Revocation of Certification. – The Board may deny, suspend, or revoke a certificate under this Article for:

(1) A violation of this Article or a rule of the Board.

(2) The use of fraud or deceit in obtaining or renewing a certificate.

(3) Any act of gross negligence, incompetence, or misconduct in the construction, installation, repair, or inspection of an on-site wastewater system.

(b) Arbitration. – The Board may establish a voluntary arbitration procedure to resolve complaints concerning a certificate holder or any work performed by the certificate holder, or conflicts involving any certificate holder and the Division of Environmental Health or a local health department.

(c) Injunction. – The Board may ask the Attorney General to seek an injunction to restrain any person, firm, partnership, or corporation from violating the provisions of this Article or rules adopted by the Board. The Attorney General may bring an action for an injunction in the name of the State in the superior court of any county in which the violator resides or the violator's principal place of business is located. In any proceedings for an injunction, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation. Members of the Board shall not be personally or professionally liable for any act or omission pursuant to this subsection. The Board shall not be required to post a bond in connection with any action to obtain an injunction.

(d) Offenses. – A person who commits any one or more of the following offenses is guilty of a Class 2 misdemeanor:

(1) Engages in or offers to engage in the construction, installation, repair, or inspection of an on-site wastewater system without the appropriate certificate for the specific grade of on-site wastewater system.

(2) Gives false or forged evidence of any kind in obtaining a certificate.

(3) Falsely impersonates a certificate holder."

SECTION 2.(a) In order to provide for a system of staggered three-year terms for the members of the On-Site Wastewater Contractors and Inspectors Certification Board established by G.S. 90A-73(a), as enacted by Section 1 of this act, the following provisions shall apply:

(1) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(1) shall be three years and shall expire on 1 July 2008.

(2) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(2) shall be four years and shall expire on 1 July 2009.

(3) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(3) shall be five years and shall expire on 1 July 2010.

(4) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(4) shall be five years and shall expire on 1 July 2010.

(5) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(5) shall be three years and shall expire on 1 July 2008.

(6) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(6) shall be four years and shall expire on 1 July 2009.

(7) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(7) shall be four years and shall expire on 1 July 2009.

(8) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(8) shall be five years and shall expire on 1 July 2010.

(9) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(9) shall be three years and shall expire on 1 July 2008.

SECTION 2.(b) In the event that the General Assembly fails to appoint one or more initial members to the On-Site Wastewater Contractors and Inspectors Certification Board while the General Assembly is in session during 2003, the failure to make an initial appointment shall be treated as though a vacancy had occurred, and the vacancy may be filled by appointment as provided in G.S. 120-122.

SECTION 3. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The On-Site Wastewater Contractors and Inspectors Certification Board may adopt temporary rules to implement the provisions of this act until 1 July 2005. Notwithstanding G.S. 150B-21.1(d), a temporary rule adopted in accordance with this section shall remain in effect until a permanent rule adopted to replace the temporary rule becomes effective. Prior to the adoption of temporary rules under this section, the Board shall:

(1) Consult with persons who may be interested in the subject matter of the temporary rule during the development of the text of the proposed temporary rule.

(2) Establish a mailing list pursuant to G.S. 150B-21.2(d) and notify persons on the mailing list of its intent to adopt a temporary rule.

(3) Publish a notice of intent to adopt a temporary rule in the North Carolina Register. The notice shall set out the text of the proposed temporary rule and include the name of the person to whom questions and written comments on the proposed rule may be submitted. The Board shall accept written comments on the proposed temporary rule for at least 30 days after the notice of intent to adopt the temporary rule as published in the North Carolina Register.

(4) Hold at least one public hearing on the proposed temporary rule.

SECTION 4. Section 1 of this act is effective when it becomes law except that G.S. 90A-72, 90A-79, and 90A-82, as enacted by Section 1 of this act, become effective January 1, 2007. Sections 2, 3, and 4 of this act are effective when the act becomes law.

House Bill 688:
Certify On-Site Wastewater Contractors.

BILL ANALYSIS

Committee:	**House Finance**	**Sponsors:**	Representatives Gibson and Culp
Date:	**July 7, 2005**	**Analysis by:**	Ashley Huffstetler
Version:	**PCS to 1st Edition**		Staff Attorney
	H688-CSMBx-24 v.7		

SUMMARY: The PCS to House Bill 688 requires licensing of on-site wastewater contractors and inspectors. It also creates a nine-member NC On-Site Wastewater Contractors and Inspectors Certification Board and sets out the maximum fees the board may charge.

BACKGROUND: Under current law, persons who install, extend, repair, or inspect on-site wastewater systems are not regulated. In order to install or repair an on-site wastewater system, a person is only required to register with the local health department. The wastewater systems themselves are regulated by the Department of Environment and Natural Resources.

The Legislative Committee on New Licensing Boards studied this issue and published a report in May 2005, recommending licensure of on-site wastewater contractors and inspectors. Specifically, the committee found that the unregulated practice of on-site wastewater contractors can harm the public health, safety, or welfare because the installation and repair of new on-site wastewater systems and the inspection of existing systems at the time of property transfer are not currently regulated in a way that provides the public with assurance of competent construction practices. The Committee found that the current requirement of registration with the local health department does not adequately protect the state's environmental health or the public health of the citizens of North Carolina.

BILL ANALYSIS: The PCS to House Bill 688 adds a new Article 5 to G.S. Chapter 90A to require licensing of on-site wastewater contractors and inspectors.

Any person who constructs, installs, repairs, or inspects an "on-site wastewater system" must hold the required level of certification for the particular system. Also, a certified on-site wastewater system inspector is required for any professional performance inspection of an existing on-site wastewater system. An "on-site wastewater system" is defined as "any wastewater system permitted under the provisions of Article 11 of Chapter 130A of the General Statutes that does not discharge to a treatment facility or other surface waters."

Exemptions from Certification.

Persons not required to be certified include:

- A landowner who constructs, installs, or repairs an on-site wastewater system described as a single septic system so long as it is intended for use by that person and members of that person's immediate family.
- A licensed general contractor who constructs or installs an on-site wastewater system ancillary to the building being constructed.
- A person already certified by the Water Pollution Control System Operators Certification Commission who is contracted to provide necessary operation and maintenance on an on-site wastewater system.
- A person permitted under Chapter 143 to construct a water pollution control facility necessary to comply with the terms and conditions of an NPDES permit.

- A licensed public utilities contractor who is installing or expanding a wastewater treatment facility, including a collection system, designed by a registered professional engineer.
- Plumbers performing plumbing duties for which they are already licensed.

Initial Certification Requirements.

General Requirements: All applicants for certification must meet the following conditions:

- Be at least 18 years old.
- File a properly completed application with the Board or submit a recognized application from an accepted association.
- Be of good moral character and submit three (3) affidavits of persons not related to the applicant for whom the applicant has provided on-site wastewater services.
- Complete the training program designed by the Board specific to the grade level for which the applicant is applying. The Board establishes grade levels based on design capacity, complexity, projected costs, and other features of approved on-site wastewater systems.
- Pay the applicable fee.

Applicants with No Prior Experience: Applicants with no prior experience in providing on-site wastewater services must:

- Complete an application; and
- Complete a basic on-site wastewater education program approved by the Board.

After meeting the above conditions, the applicant is then eligible to participate in training courses designed by the Board for the grade level for which the applicant is applying.

No Degree Requirement: Applicants are not required to hold a degree to be certified.

Fees. Fees are set by the Board and cannot exceed the following amounts:

Purpose of Fee	Fee Amount
Application for basic certification	$150.00
Application for each step grade	$50.00
Certification renewal	$100.00
Reinstatement of revoked or suspended certification	$500.00
Application for on-site wastewater system inspector certification	$200.00
Replacement of a certificate	$25.00
Late renewal	$25.00

GOVERNING BOARD

North Carolina On-Site Wastewater Contractors and Inspectors Certification Board. The Board will consist of nine members. Three are appointed by the Governor, three by the General Assembly upon recommendation of the President Pro Tem of the Senate, and three by the General Assembly upon recommendation of the Speaker of the

House. The Board has administrative and disciplinary powers, and may establish grades of certification, develop and administer exams, and establish fees, not to exceed statutory maximums.

PCS CHANGES

The PCS changes the definitions of "Certified on-site wastewater system inspector" and "On-site wastewater system", adds new exceptions to licensure in Section 90A-72, changes the effective date from January 1, 2007 to July 1, 2007, and changes the final date to adopt temporary rules from 2005 to 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: July 6, 2005
TO: Representatives Culp and Gibson
FROM: Jennifer Haygood
Fiscal Research Division
RE: PCS H688-CSMBf-24 [v.7]

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund					
DENR	No Fiscal Impact				
Dept. of Correction	Exact amount cannot be determined; no substantial impact anticipated.				
Judicial Branch	Exact amount cannot be determined; no substantial impact anticipated.				
On-Site Wastewater Certification Fund	$0	$370,500	$180,975	$181,901	$183,280
EXPENDITURES:					
On-Site Wastewater Certification Fund	See Assumptions and Methodology				
POSITIONS (cumulative):	See Assumptions and Methodology				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment and Natural Resources (DENR); Department of Correction; Judicial Branch

EFFECTIVE DATE: Effective when it becomes law except provisions requiring persons to be licensed and remedies for violation take effect on July 1, 2007.

BILL SUMMARY: Adds new Article 5 of G.S. Chapter 90A to require licensing of on-site wastewater contractors and inspectors. Creates a nine-member NC On-Site Wastewater Contractors and Inspectors Certification Board, appointed by the Governor and General Assembly. Specifies the duties of the Board including determining the qualifications for certification, issuing, suspending and revoking licenses, and establishing and enforcing rules of professional conduct. Sets out maximum fees that Board may charge. Specifies requirements for applicant for certification and for renewals. Creates the On-Site Wastewater Certification Fund, a non-reverting account with the Department of Environment and Natural Resources (DENR). Sets out procedure for Board to investigate complaints of fraud, deceit, negligence, incompetence, or misconduct of any licensed contractor or inspector. Creates the following new Class 2 misdemeanor offenses: 1) engaging in or offering to engage in the construction, installation, repair, or inspection of an on-site wastewater system without the appropriate certificate for the specific grade of on-site wastewater system; giving false or forged evidence of any kind in obtaining a certificate; and, 2) falsely impersonating a certificate holder. Authorizes Board to adopt temporary rules to implement act until July 1, 2007. Effective when it becomes law except provisions requiring persons to be licensed and remedies for violation take effect on July 1, 2007.

ASSUMPTIONS AND METHODOLOGY:
The On-Site Wastewater Contractors and Inspectors Certification Board created by this act will be entirely funded by fees and contributions as set forth in G.S. 90A-75. All fees and contributions will be deposited into the On-Site Wastewater Certification Fund to be established in DENR. The NC Septic Tank Association estimates the number of installers ranges from 1,500 to 2,000, of which 300 to 400 will also request certification as on-site wastewater system inspectors. In order to meet the July 1, 2007 certification deadline, this fiscal note assumes that installers seeking certification will initially apply in FY 06-07. After this initial certification period, the Septic Tank Association believes that the number of new applications each year will be minimal. Consequently, this fiscal note assumes a 5% annual growth rate in new applications and a 95% renewal rate in subsequent years. Table 1 below summarizes the revenue generated if the Board adopts the maximum fees allowed. A revenue estimate cannot be given at this time on the number of applications for step grades or revoked/suspended certificates.

Table 1: Estimated Fee Revenue

		FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Number of Applications						
New Applications						
-Basic		0	1,500	75	79	83
-System Inspector		0	300	15	16	17
Renewals		0	855	1,667	1,669	1,676
Fee Revenues:						
New Applications						
-Basic	$150	$0	$225,000	$11,250	$11,813	$12,403
-System Inspector	$200	$0	$60,000	$3,000	$3,150	$3,308
Renewals	$100	$0	$85,500	$166,725	$166,939	$167,569
Total		**$0**	**$370,500**	**$180,975**	**$181,901**	**$183,280**

At this time a precise estimate of the cost to operate this program is not available. DENR staff, however, estimates the Board's operating costs will average $180,000 a year for a staff of three (includes salaries and fringe benefits, travel for Board and staff, rental, postage, supplies, contractual services, etc.). This estimate is based on the staff DENR employs for its Water Certification Board. Additional start-up costs in the first year are estimated to be $16,000 for furniture, computers, printers, and software.

G.S. 90A-82(d) – Class 2 Misdemeanor Offenses

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

As the offenses created by this bill would be new, the Sentencing Commission has no historical data from which to estimate the impact on local jail populations.

- In FY 2003-04, 15 percent of Class 2 misdemeanors resulted in active sentences with an average estimated time served of 13 days.
- Offenders with active sentences of less than thirty days are housed in county jails at county expense.
- The remaining 85 percent of Class 2 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Corrections (DCC) would incur costs of $1.87 per offender per day. Offenders sentenced to community service would cost $0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

As this bill would create new Class 2 misdemeanor offenses, no data is available to estimate the specific number of additional charges that might result from this bill. Based on the costs of time in court, attorney preparation time, and indigent defense, the average estimated cost to process one Class 2 misdemeanor via trial is $2,322. This cost includes an estimated $1,373 in costs of time in court and attorney costs and an additional $949 in indigent defense. However, based on

prior-year data, the majority of any new Class 2 misdemeanor charges that are not dismissed are likely to be settled by guilty plea at an estimated cost of $272 per plea.

AOC notes that new G.S. 90A-82(c), which would authorize the Board to request that the Attorney General seek an injunction to restrain any violators of the new article, could increase superior court workload. However, no data is available from which to estimate the frequency with which the Attorney General would seek an injunction under the bill and, as such, the specific cost cannot be determined.

SOURCES OF DATA: Department of Environment and Natural Resources; Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 688 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE CERTIFICATION OF ON-SITE WASTEWATER CONTRACTORS AND INSPECTORS.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on ENVIRONMENT AND NATURAL RESOURCES.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 254*
Committee Substitute Favorable 5/26/05

Short Title: GARVEE Bond Issuance. (Public)

Sponsors:

Referred to:

February 16, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE STATE TREASURER TO ISSUE "GARVEE" GRANT ANTICIPATION REVENUE VEHICLE BONDS ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION AND TO DIRECT THE SECRETARY OF THE DEPARTMENT OF TRANSPORTATION AND THE STATE TREASURER TO DEVELOP AN IMPLEMENTATION PLAN FOR ISSUANCE OF THE BONDS, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. The Secretary of the Department of Transportation and the State Treasurer shall jointly form a committee to develop a plan to implement the provisions of this act. The plan shall address all financial, legal, and practical issues involved in issuing "GARVEE" bonds. The two Departments shall jointly submit their implementation plan to the cochairs of the Transportation Appropriations Subcommittee and the cochairs of the Joint Legislative Transportation Oversight Committee by December 1, 2005.

SECTION 2. G.S. 136-18 is amended by adding a new subdivision to read:

"(12b) To issue "GARVEE" bonds (Grant Anticipation Revenue Vehicles) or other eligible debt financing instruments to finance federal-aid highway projects using federal funds to pay a portion of principal, interest, and related bond issuance costs, as authorized by 23 U.S.C. § 122, as amended (the National Highway System Designation Act of 1995, Pub. L. 104-59). These bonds shall be issued by the State Treasurer on behalf of the Department. The State Treasurer shall develop and adopt appropriate debt instruments, consistent with the terms of the State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, for use under this subdivision. Prior to issuance of any "GARVEE" or other eligible debt instrument using federal funds to pay a portion of principal, interest, and related

bond issuance costs, the State Treasurer shall determine (i) that the total outstanding principal of such debt does not exceed the total amount of federal transportation funds authorized to the State in the prior federal fiscal year; or (ii) that the maximum annual principal and interest of such debt does not exceed fifteen percent (15%) of the expected average annual federal revenue shown for the seven-year period in the most recently adopted Transportation Improvement Program. Notes issued under the provisions of this subdivision may not be deemed to constitute a debt or liability of the State or of any political subdivision thereof, or a pledge of the full faith and credit of the State or of any political subdivision thereof, but shall be payable solely from the funds and revenues pledged therefor. All the notes shall contain on their face a statement to the effect that the State of North Carolina shall not be obligated to pay the principal, or the interest on the notes, except from the federal transportation fund revenues as shall be provided by the documents governing the revenue note issuance, and that neither the faith and credit nor the taxing power of the State of North Carolina or of any of its political subdivisions is pledged to the payment of the principal or interest on the notes. The issuance of notes under this Part shall not directly or indirectly or contingently obligate the State or any of its political subdivisions to levy or to pledge any form of taxation whatever or to make any appropriation for their payment."

SECTION 3. Section 2 of this act becomes effective February 1, 2006. The remainder of this act is effective when it becomes law.

HOUSE BILL 254:
GARVEE Bond Issuance

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 7, 2005
Introduced by:	Rep. Crawford	**Summary by:**	Martha Walston
Version:	Second Edition		Committee Counsel

SUMMARY: House Bill 254 directs the Secretary of DOT and the State Treasurer to jointly form a committee to develop a plan for issuance of "GARVEE" bonds. SB 153, introduced by Sen. Jenkins, is a companion bill and is in Senate Finance.

BILL ANALYSIS: Section 1 of House Bill 254 directs the Secretary of Transportation and the State Treasurer to form a committee to develop a plan for issuance of "GARVEE" bonds. This plan must be submitted to the Transportation Appropriations Subcommittee and the co-chairs of the Joint Legislative Transportation Oversight Committee by December 1, 2005.

Section 2 of HB 254 authorizes DOT to issue GARVEE bonds or other eligible debt financing instruments to finance Federal-aid highway projects. Prior to issuance of the bonds, the State Treasurer must determine one of the following:

- That the total outstanding principal of the debt does not exceed the total amount of federal transportation funds authorized to the State in the prior federal fiscal year
- That the maximum annual principal and interest of the debt does not exceed 15% of the expected federal revenue for the 7-year period in the most recently adopted Transportation Improvement Program.

Notes issued under the plan shall not constitute a debt or liability of the State, or a pledge of the full faith and credit of the State. The notes must include a statement that the State will not be obligated to pay the principal or interest on the notes except from the federal transportation fund revenues, and that neither the State's full faith and credit nor its taxing authority is pledged for payment of principal or interest.

EFFECTIVE DATE: Section 2 of the act becomes effective February 1, 2006. The remainder of the act is effective when it becomes law.

BACKGROUND: GARVEE bonds are Grant Anticipation Revenue Vehicles, authorized by federal law, that permit states to use anticipated future federal highway funds to finance highway project construction. Candidate projects for GARVEE financing are typically larger projects that have the following characteristics:

- They are large enough to merit borrowing rather than pay-as-you-go grant funding, with the costs of delay outweighing the cost of financing.
- They do not have access to a revenue stream (such as local taxes or tolls) and other forms of repayment (such as state appropriations) are not feasible.
- The sponsors (generally state DOTs) are willing to reserve a portion of future year Federal-aid highway funds to satisfy debt service requirements.

GARVEES must be issued by a state, a political subdivision of a state, or a public authority. A state may elect to pledge their obligations of future Federal-aid funds as the only security backing the federal share of the obligation to investors (non-recourse GARVEES) or to pledge other sources of revenue as a back-stop for the future federal-aid funds (back-stopped GARVEES).

H0254e2-SMLA

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 254 (Second Edition)

SHORT TITLE: GARVEE Bond Issuance.

SPONSOR(S): Representative Crawford

FISCAL IMPACT ($ Millions)

	Yes (x)	No ( )	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
EXPENDITURES					
Debt Service: *	0	52	104	104	104
Federal Funds:	0	-52	-104	-104	-104
Net Requirements:	0	0	0	0	0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation, Transportation Improvement Program (TIP)

EFFECTIVE DATE: February 1, 2006

*** Total interest on $950 million in debt over the 13-year term of the loans would be roughly $300 million.**

BILL SUMMARY:

Section 1 of House Bill 254 directs the Secretary of Transportation and the State Treasurer to form a committee to develop a plan for issuance of "GARVEE" bonds. This plan must be submitted to the Transportation Appropriations Subcommittee and the co-chairs of the Joint Legislative Transportation Oversight Committee by December 1, 2005.

Section 2 of HB 254 authorizes DOT to issue GARVEE bonds or other eligible debt financing instruments to finance Federal-aid highway projects. Prior to issuance of the bonds, the State Treasurer must determine the following:

- That the total outstanding principal of the debt does not exceed the total amount of federal transportation funds authorized to the State in the prior federal fiscal year.
- That the maximum annual principal and interest of the debt does not exceed 15% of the expected average annual federal revenue for the 7-year period in the most recently adopted Transportation Improvement Program.

Notes issued under the plan shall not constitute a debt or liability of the State, or a pledge of the full faith and credit of the State. The notes must include a statement that the State will not be obligated to pay the principal or interest on the notes except from the federal transportation fund revenues, and that neither the State's full faith and credit nor its taxing authority is pledged for payment of principal or interest.

EFFECTIVE DATE: Section 2 of the act becomes effective February 1, 2006. The remainder of the act is effective when it becomes law.

BACKGROUND: GARVEE bonds are Grant Anticipation Revenue Vehicles, authorized by federal law, that permit states to use anticipated future federal highway funds to finance highway project construction. According to the Federal Highway Administration, candidate projects for GARVEE financing are typically larger projects that have the following characteristics:

- They are large enough to merit borrowing rather than pay-as-you-go grant funding, with the costs of delay outweighing the cost of financing.
- They do not have access to a revenue stream (such as local taxes or tolls) and other forms of repayment (such as state appropriations) are not feasible.
- The sponsors (generally state DOTs) are willing to reserve a portion of future year Federal-aid highway funds to satisfy debt service requirements.

GARVEES must be issued by a state, a political subdivision of a state, or a public authority. A state may elect to pledge their obligations of future Federal-aid funds as the only security backing the federal share of the obligation to investors (non-recourse GARVEES) or to pledge other sources of revenue as a back-stop for the future federal-aid funds (back-stopped GARVEES).
Source: "Bill Summary," Martha Walston, Committee Counsel.

ASSUMPTIONS AND METHODOLOGY: Total debt would be constrained by the amount of federal aid authorized in the prior federal fiscal year, roughly $950 million for federal fiscal year 2004, the last year for which we have data. Actual federal aid received by the State (commonly referred to as the obligation authority) amounts to less than the federal aid authorized. For example, for federal fiscal year 2004, the obligation authority was $830 million.

The debt service estimates in this fiscal note are from the State Treasurer and are based on the following assumptions:

- DOT would issue $475 million of debt in February 2006, and $475 million of debt in the spring of 2007.
- The interest rate would be 4.5% for each of the bond issues.
- Each bond issue would be paid off over twelve years.
- Although DOT could issue new debt as old debt is retired and as growing federal aid increases the debt ceiling, for the sake of simplicity we assume that no more bonds would be issued after the first two years.

In broad terms, this bill would allow the State to borrow roughly $950 million. After both bond issues are repaid over a total of thirteen years, the payments on this debt would be about $1.25 billion. Of this $1.25 billion in payments, roughly $300 million would be for interest expenses. These debt service payments would be funded from federal aid available to the State, and would displace the use of this federal aid for other projects or purposes. The chart below shows principal and interest payments according to the debt service model of the State Treasurer.

Debt Service Payments for $950 Million in GARVEE Bonds *

Fiscal Year	Principle	Interest	Total Debt Service
2007	$ 30,715,000	$ 21,375,000	$ 52,090,000
2008	62,815,000	41,367,825	104,182,825
2009	65,645,000	38,541,150	104,186,150
2010	68,600,000	35,587,125	104,187,125
2011	71,685,000	32,500,125	104,185,125
2012	74,910,000	29,274,300	104,184,300
2013	78,280,000	25,903,350	104,183,350
2014	81,800,000	22,380,750	104,180,750
2015	85,480,000	18,699,750	104,179,750
2016	89,330,000	14,853,150	104,183,150
2017	93,350,000	10,833,300	104,183,300
2018	97,545,000	6,632,550	104,177,550
2019	49,845,000	2,243,025	52,088,025
Total	**$950,000,000**	**$300,191,400**	**$ 1,250,191,400**

* Assumes two bond issues of $475 million each in February 2007 and spring 2008, and an interest rate of 4.5%.

SOURCES OF DATA: Office of the State Treasurer, Department of Transportation.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Evan Rodewald

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: July 6, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 254 (Second Edition)

SHORT TITLE: GARVEE Bond Issuance.

SPONSOR(S): Representative Crawford

FISCAL IMPACT ($ Millions)

	Yes (x)	No ( )	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
EXPENDITURES					
Debt Service: *	0	52	104	104	104
Federal Funds:	0	-52	-104	-104	-104
Net Requirements:	0	0	0	0	0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation, Transportation Improvement Program (TIP)

EFFECTIVE DATE: February 1, 2006

*** Total interest on $950 million in debt over the 13-year term of the loans would be roughly $300 million.**

BILL SUMMARY:

Section 1 of House Bill 254 directs the Secretary of Transportation and the State Treasurer to form a committee to develop a plan for issuance of "GARVEE" bonds. This plan must be submitted to the Transportation Appropriations Subcommittee and the co-chairs of the Joint Legislative Transportation Oversight Committee by December 1, 2005.

Section 2 of HB 254 authorizes DOT to issue GARVEE bonds or other eligible debt financing instruments to finance Federal-aid highway projects. Prior to issuance of the bonds, the State Treasurer must determine the following:

- That the total outstanding principal of the debt does not exceed the total amount of federal transportation funds authorized to the State in the prior federal fiscal year.
- That the maximum annual principal and interest of the debt does not exceed 15% of the expected average annual federal revenue for the 7-year period in the most recently adopted Transportation Improvement Program.

Notes issued under the plan shall not constitute a debt or liability of the State, or a pledge of the full faith and credit of the State. The notes must include a statement that the State will not be obligated to pay the principal or interest on the notes except from the federal transportation fund revenues, and that neither the State's full faith and credit nor its taxing authority is pledged for payment of principal or interest.

EFFECTIVE DATE: Section 2 of the act becomes effective February 1, 2006. The remainder of the act is effective when it becomes law.

BACKGROUND: GARVEE bonds are Grant Anticipation Revenue Vehicles, authorized by federal law, that permit states to use anticipated future federal highway funds to finance highway project construction. According to the Federal Highway Administration, candidate projects for GARVEE financing are typically larger projects that have the following characteristics:

- They are large enough to merit borrowing rather than pay-as-you-go grant funding, with the costs of delay outweighing the cost of financing.
- They do not have access to a revenue stream (such as local taxes or tolls) and other forms of repayment (such as state appropriations) are not feasible.
- The sponsors (generally state DOTs) are willing to reserve a portion of future year Federal-aid highway funds to satisfy debt service requirements.

GARVEES must be issued by a state, a political subdivision of a state, or a public authority. A state may elect to pledge their obligations of future Federal-aid funds as the only security backing the federal share of the obligation to investors (non-recourse GARVEES) or to pledge other sources of revenue as a back-stop for the future federal-aid funds (back-stopped GARVEES).
Source: "Bill Summary," Martha Walston, Committee Counsel.

ASSUMPTIONS AND METHODOLOGY: Total debt would be constrained by the amount of federal aid authorized in the prior federal fiscal year, roughly $950 million for federal fiscal year 2004, the last year for which we have data. Actual federal aid received by the State (commonly referred to as the obligation authority) amounts to less than the federal aid authorized. For example, for federal fiscal year 2004, the obligation authority was $830 million.

The debt service estimates in this fiscal note are from the State Treasurer and are based on the following assumptions:

- DOT would issue $475 million of debt in February 2006, and $475 million of debt in the spring of 2007.
- The interest rate would be 4.5% for each of the bond issues.
- Each bond issue would be paid off over twelve years.
- Although DOT could issue new debt as old debt is retired and as growing federal aid increases the debt ceiling, for the sake of simplicity we assume that no more bonds would be issued after the first two years.

In broad terms, this bill would allow the State to borrow roughly $950 million. After both bond issues are repaid over a total of thirteen years, the payments on this debt would be about $1.25 billion. Of this $1.25 billion in payments, roughly $300 million would be for interest expenses. These debt service payments would be funded from federal aid available to the State, and would displace the use of this federal aid for other projects or purposes. The chart below shows principal and interest payments according to the debt service model of the State Treasurer.

Debt Service Payments for $950 Million in GARVEE Bonds *

Fiscal Year	Principle	Interest	Total Debt Service
2007	$ 30,715,000	$ 21,375,000	$ 52,090,000
2008	62,815,000	41,367,825	104,182,825
2009	65,645,000	38,541,150	104,186,150
2010	68,600,000	35,587,125	104,187,125
2011	71,685,000	32,500,125	104,185,125
2012	74,910,000	29,274,300	104,184,300
2013	78,280,000	25,903,350	104,183,350
2014	81,800,000	22,380,750	104,180,750
2015	85,480,000	18,699,750	104,179,750
2016	89,330,000	14,853,150	104,183,150
2017	93,350,000	10,833,300	104,183,300
2018	97,545,000	6,632,550	104,177,550
2019	49,845,000	2,243,025	52,088,025
Total	**$950,000,000**	**$300,191,400**	**$ 1,250,191,400**

* Assumes two bond issues of $475 million each in February 2007 and spring 2008, and an interest rate of 4.5%.

SOURCES OF DATA: Office of the State Treasurer, Department of Transportation.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Evan Rodewald

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: July 6, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

ATTACHMENT 9

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 254*

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

H254-ALA-17 [v.1]

Date July 7 ,2005

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

Representative Hill

moves to amend the bill on page 1, line 24, by rewriting the line to read:
"Treasurer on behalf of the Department, and shall be issued pursuant to an order adopted by the Council of State under G.S. 159-88."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

HB 254 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE STATE TREASURER TO ISSUE "GARVEE" GRANT ANTICIPATION REVENUE VEHICLE BONDS ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION AND TO DIRECT THE SECRETARY OF THE DEPARTMENT OF TRANSPORTATION AND THE STATE TREASURER TO DEVELOP AN IMPLEMENTATION PLAN FOR ISSUANCE OF THE BONDS, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

☒ With a favorable report as to the committee substitute bill 2, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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SENATE BILL 369
Finance Committee Substitute Adopted 6/1/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S369-CSMBx-29 [v.1]

7/6/2005 4:14:57 PM

Short Title: Omnibus Occupancy Taxes. (Local)

Sponsors:

Referred to:

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE FRANKLIN COUNTY AND THE CITIES OF EDEN AND REIDSVILLE TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO AMEND THE DURHAM OCCUPANCY TAX.

THE GENERAL ASSEMBLY OF NORTH CAROLINA ENACTS:

PART I. FRANKLIN COUNTY OCCUPANCY TAX.

SECTION 1.1 Occupancy Tax. – (a) Authorization and Scope. – The Franklin County Board of Commissioners may levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.1(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

SECTION 1.1(c) Distribution and Use of Tax Revenue. – Franklin County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Franklin County Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Franklin County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred

thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish, and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

SECTION 1.2. Franklin County Tourism Development Authority. – (a) Appointment and Membership. – When the Franklin County Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Franklin County shall be the ex officio finance officer of the Authority.

SECTION 1.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

SECTION 1.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Franklin County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

PART II. EDEN OCCUPANCY TAX.

SECTION 2.1. Occupancy Tax. – (a) Authorization and Scope. – The Eden City Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit

charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 2.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 2.1.(c) Distribution and Use of Tax Revenue. – The City of Eden shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Eden Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Eden and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a city or to attract tourists or business travelers to the city. The term includes tourism-related capital expenditures.

SECTION 2.2. Eden Tourism Development Authority. – (a) Appointment and Membership. – When the Eden City Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a city Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the city, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the city. The city council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Eden shall be the ex officio finance officer of the Authority.

SECTION 2.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the city, sponsor tourist-related events and activities in the city, and finance tourist-related capital projects in the city.

SECTION 2.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Eden City Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the city council may require.

PART III. REIDSVILLE OCCUPANCY TAX.

SECTION 3.1. Occupancy Tax. – (a) Authorization and Scope. – The Reidsville City Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 3.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 3.1.(c) Distribution and Use of Tax Revenue. – The City of Reidsville shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Reidsville Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Reidsville and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a city or to attract tourists or business travelers to the city. The term includes tourism-related capital expenditures.

SECTION 3.2. Reidsville Tourism Development Authority. – (a) Appointment and Membership. – When the Reidsville City Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a city Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals

who are affiliated with businesses that collect the tax in the city, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the city. The city council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Reidsville shall be the ex officio finance officer of the Authority.

SECTION 3.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the city, sponsor tourist-related events and activities in the city, and finance tourist-related capital projects in the city.

SECTION 3.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Reidsville City Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the city council may require.

PART IV. DURHAM OCCUPANCY TAX.

SECTION 4.1. Section 7(a) of S.L. 2001-480, as amended by Section 1 of S.L. 2002-36, reads as rewritten:

"**SECTION 7.(a)** If a plan for financing a Performing Arts Theater has not been approved by the Durham City Council and has been disapproved by the Durham County Commissioners within ~~42~~54 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, the county's authority to levy the one percent (1%) tax described under Section 6(c) of this act and the levy of the one percent (1%) tax described in this subsection are repealed on the first day of the second month following the ~~42-month~~54-month period.

If construction on the Performing Arts Theater has not begun within ~~42~~54 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, the county's authority to levy the one percent (1%) tax described in Section 6(c) of this act and the levy of the one percent (1%) tax described in Section 6(c) of this act are repealed on the first day of the second month following the ~~42-month~~54-month period.

It is the goal of the General Assembly that a plan for financing the Performing Arts Theater shall be adopted within ~~12~~54 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, and construction of the Performing Arts Theater shall begin within ~~24~~54 months of the levy of the one percent (1%) tax described in Section 6(c) of this act.

Any funds collected but not spent before the repeal date shall be redistributed to the Durham Convention and Visitors Bureau to promote travel and tourism."

SECTION 4.2. Section 9(e) of S.L. 2001-480, as amended by Section 4 of S.L. 2002-36, reads as rewritten:

"**SECTION 9.(e)** Use of Proceeds From Additional One Percent (1%) Tax After First 24 Months. – The net proceeds of the tax collected under Section 6(c) of this act after the first 24 months that the tax is levied shall be remitted monthly to the Durham

Convention and Visitors Bureau as set out in Section 10 of this act. The Bureau shall use and distribute these net proceeds in the following priority order:

(1) To the City of Durham, the first one million four hundred thousand dollars ($1,400,000) collected annually to finance the debt service associated with the construction of the Performing Arts ~~Theater.~~Theater and for the design and engineering costs associated with the construction of the Theater. But no more than two million seven hundred fifty-two thousand dollars ($2,752,000) of those proceeds may be used for design and engineering costs associated with the construction of the Theater. Until those funds are distributed to the City of Durham for that purpose, they shall be held by the Durham Convention and Visitors Bureau in a capital reserve fund as provided by Part 2 of Article 3 of Chapter 159 of the General Statutes except they may be expended as provided by the last sentence of Section 7(a) of this act if the tax is repealed as provided by Section 7(a) of this act. Any interest earned by that fund shall be credited to the fund.

(2) Thirty-two years after the levy of the tax authorized under Section 6(c) of this act, instead of the allocation under subdivision (1) of this subsection, the first one million four hundred thousand dollars ($1,400,000) collected annually shall be used by the Bureau to promote travel and tourism or for tourism related expenditures.

(3) To Durham County, the next five hundred thousand dollars ($500,000) collected annually to be used for improvements to the Museum of Life and Science. This may include the financing of debt service. Any of these funds that are not needed for this purpose shall be returned to the Bureau and used to promote travel and tourism.

(4) The Bureau shall use any net proceeds in excess of that provided by subdivisions (1), (2), and (3) of this subsection to promote travel, tourism, and conventions in Durham County.

As used in this subsection, "annually" means the 12-month period beginning after the first 24 months that the tax authorized under Section 6(c) of this act is levied."

PART V. UNIFORM PROVISIONS.

SECTION 5.1. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Franklin, Granville, Halifax, Madison, Montgomery, Nash, New Hanover, Pasquotank, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, and to the Township of Averasboro in Harnett County."

SECTION 5.2. G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Elizabeth City, Eden, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Reidsville, Roanoke Rapids,

Shelby, Statesville, Washington, and Wilmington, to the Towns of Beech Mountain, Blowing Rock, Carolina Beach, Carrboro, Franklin, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, West Jefferson, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

PART VI. EFFECTIVE DATE.

SECTION 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 369
Finance Committee Substitute Adopted 6/1/05

Short Title: Franklin County Occupancy Tax. (Local)

Sponsors:

Referred to:

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE FRANKLIN COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Occupancy Tax. – (a) Authorization and Scope. – The Franklin County Board of Commissioners may levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

SECTION 1.(c) Distribution and Use of Tax Revenue. – Franklin County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Franklin County Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Franklin County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish, and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract

tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

SECTION 2. Franklin County Tourism Development Authority. – (a) Appointment and Membership. – When the Franklin County Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Franklin County shall be the ex officio finance officer of the Authority.

SECTION 2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

SECTION 2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Franklin County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

SECTION 3. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Durham, Franklin, Granville, Madison, Montgomery, Nash, New Hanover, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, and to the Township of Averasboro in Harnett County."

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

Senate Bill 369:
Omnibus Occupancy Taxes.

BILL ANALYSIS

Committee:	House Finance	Sponsor:	Senator Berger of Franklin
Date:	July 7, 2005	Analysis by:	Ashley Huffstetler
Version:	PCS to 2nd Edition		Staff Attorney

SUMMARY: The Proposed Committee Substitute for the 2nd Edition of Senate Bill 369[1] authorizes Franklin County to levy a room occupancy tax of up to 6%, authorizes the cities of Eden and Reidsville to levy occupancy taxes at a rate of 3%, and adds provision amending the Durham Occupancy Tax.

FRANKLIN COUNTY OCCUPANCY TAX

CURRENT LAW: Franklin County does not have authority to levy a room occupancy tax, nor do any of the municipalities located within Franklin County.

BILL ANALYSIS: The Proposed Committee Substitute for the 2nd Edition of Senate Bill 369 authorizes Franklin County to levy a room occupancy tax of up to 6%. Its provisions fully comply with the uniform guidelines.

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least ¾ of the members must be currently active in the promotion of travel and tourism in the county and ½ of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

DURHAM OCCUPANCY TAX

This committee already considered the portion of this bill amending the Durham Occupancy Tax when it gave a favorable report to House Bill 945 on June 2, 2005. The bill subsequently passed three readings in the House and was referred to the Senate. The Durham Occupancy Tax has been removed from House Bill 945 and placed in this bill. Its provisions have not changed.

This bill extends the time allowed the city to plan for and construct the performing arts theater. It gives the city 54 months (4 ½ years) to plan and begin construction, and the 1% tax will not automatically be repealed until that time. Also, the bill modifies how the proceeds of the tax are to be used after the tax has been levied for 24 months. The Visitor's Bureau must continue to distribute the money to the City of Durham to finance the debt associated with the performing arts theater, and must also distribute money to pay for the design and engineering costs associated with building the theater. The bill caps the amount at $2,752,000 that may be used for design and engineering costs.

[1] The original bill was a blank local bill.

EDEN AND REIDSVILLE OCCUPANCY TAXES

This committee already considered the portion of this bill levying a room occupancy tax in Eden and Reidsville when it gave a favorable report to House Bill 945 on June 2, 2005. The bill subsequently passed three readings in the House and was referred to the Senate. The Eden and Reidsville taxes have been removed from House Bill 945 and placed in this bill. Its provisions have not changed.

The cities of Eden and Reidsville are located in Rockingham County. Neither city currently levies an occupancy tax, but Rockingham County does levy a 3% tax. This bill authorizes the levy of a 3% tax in each city, and, if enacted, the total amount levied in Eden and Reidsville would be 6% (when combined with the county rate).

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: July 6, 2005

TO: Senator Berger of Franklin

FROM: Rodney Bizzell
Fiscal Research Division

RE: PCS S369-CSMBx-29v1 Omnibus Occupancy Taxes

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	**FY 2006-07**	**FY 2007-08**	**FY 2008-09**	**FY 2009-10**
REVENUES:					
General Fund			No General Fund Impact		
Franklin County	**$77,609**	**$79,394**	**$81,140**	**$82,763**	**$84,418**
City of Durham			No Change in Fiscal Impact		
City of Eden	**$44,348**	**$45,368**	**$46,366**	**$47,293**	**$48,239**
City of Reidsville	**$53,217**	**$54,441**	**$55,639**	**$56,751**	**$57,886**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Franklin County, City of Durham, City of Eden, City of Reidsville,

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY: The Proposed Committee Substitute for the 2nd Edition of Senate Bill 369 authorizes Franklin County to levy a room occupancy tax of up to 6%, authorizes the cities of Eden and Reidsville to levy occupancy taxes at a rate of 3%, and adds provisions amending the Durham Occupancy Tax.

ASSUMPTIONS AND METHODOLOGY:

Franklin County

According to the Franklin County manager, there are four hotels in Franklin County with a total of 116 rooms. An average rate of occupancy of 52% and an average room rate of $45 are used to

calculate an estimated annual revenue of $75,900. Because no historical data is available, the five-year revenue projection is based on the General Consumer Price Index rate of increase.

	6% Occupancy Tax	Each 1%
FY06	$77,609	$12,935
FY07	$79,394	$13,232
FY08	$81,140	$13,523
FY09	$82,763	$13,794
FY10	$84,418	$14,070

Durham

Because the bill does not change the current occupancy tax rate for Durham and only makes changes related to the time allowed for planning and construction of a performing arts center and the use of the proceeds, this bill does not change the fiscal impact for the Durham occupancy tax.

Eden

According to the City of Eden, there are 5 motels in the city limits. Assuming an average of 30 rooms in each, an average room rate of $45 per night and a 60% rate of room occupancy, FRD estimates the 3% occupancy tax would generate $44,348 per year. Because no historic data is available, the General Consumer Price Index estimated rate of increase is used to estimate future growth in occupancy tax receipts. The following chart illustrates the five-year fiscal estimate:

	Eden	Each 1%
FY06	$44,348	$14,782
FY07	$45,368	$15,122
FY08	$46,366	$15,455
FY09	$47,293	$15,764
FY10	$48,239	$16,079

Reidsville

According to the City of Reidsville, there are 6 motels in the city limits. Assuming an average of 30 rooms in each, an average room rate of $45 per night and a 60% rate of room occupancy, FRD estimates the 3% occupancy tax would generate $53,217 per year. Because no historic data is available, the General Consumer Price Index estimated rate of increase is used to estimate future growth in occupancy tax receipts. Based on these assumptions, the following five-year stream of additional revenue is suggested:

	Reidsville	Each 1%
FY06	$53,217	$17,739
FY07	$54,441	$18,147
FY08	$55,639	$18,546
FY09	$56,751	$18,917
FY10	$57,886	$19,295

SOURCES OF DATA: Franklin County, City of Eden, City of Reidsville

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

SB 369 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE FRANKLIN COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1775
PROPOSED COMMITTEE SUBSTITUTE H1775-PCS50469-RBx-23

Short Title: UNC Nonappropriated Capital Projects. (Public)

Sponsors:

Referred to:

May 12, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. The purpose of this act is: (i) to authorize the construction by certain constituent institutions of The University of North Carolina of the capital improvements projects listed in the act for the respective institutions, and (ii) to authorize the financing of these projects with funds available to the institutions from gifts, grants, receipts, self-liquidating indebtedness, Medicare reimbursements for education costs, or other funds, or any combination of these funds, but not including funds received for tuition or appropriated from the General Fund of the State.

SECTION 2. The capital improvements projects, and their respective costs, authorized by this act to be constructed and financed as provided in Section 1 of this act, including by revenue bonds, by special obligation bonds as authorized in Section 6 of this act, or by both, are as follows:

1	**Appalachian State University**	
	Steam Distribution System – Improvements – Phase III	$ 6,500,000
	Residence Hall – Renovations	$12,000,000
	Parking Facilities – Improvements	$ 2,500,000
2	**East Carolina University**	
	Residence Hall – Heating, Ventilation and Air Conditioning Improvements	$ 2,000,000
	Parking Facilities – Expansion	$ 2,500,000
	Brody School of Medicine – Family Medicine Center	$30,000,000
3	**Elizabeth City State University**	

	Student Housing	$13,500,000
4	**North Carolina Central University**	
	Student Housing	$30,000,000
	Parking Facilities – Expansion	$10,000,000
5	**North Carolina State University**	
	Parking Facilities – Expansion	$ 7,500,000
	Thompson Theater – Renovation and Expansion	$15,500,000
	Residence Halls – Renovation	$20,550,000
	Owen Residence Hall – Expansion and Improvements	$ 3,700,000
	Carter Finley Stadium – Expansion	$14,500,000
	Chancellor's Residence	$ 3,350,000
6	**University of North Carolina at Chapel Hill**	
	Parking Facilities – Expansion	$25,000,000
	Residence Halls – Improvements	$ 5,500,000
	Information Technology Services (ITS) – Infrastructure Improvements	$13,000,000
	Water Reclamation and Reuse Infrastructure	$15,000,000
	Major Infrastructure Improvements	$47,522,000
	Research Resource Facility	$ 1,000,000
	Medical Research – D – Renovations	$ 1,000,000
7	**University of North Carolina at Charlotte**	
	Parking Facilities – Expansion	$14,000,000
8	**University of North Carolina at Greensboro**	
	Recreation Center – Roof Replacement	$ 2,500,000
	Residence Halls Renovation – Phase IV	$ 7,000,000
9	**University of North Carolina at Wilmington**	
	Parking Facilities – Expansion	$ 3,465,000
10	**Winston-Salem State University**	
	Athletic and Student Recreation Facilities	$ 2,670,000
	Bowman Gray Stadium Field House – Expansion and Renovation	$ 1,800,000

SECTION 3. The following capital improvements projects are authorized by the Board of Governors as supplements to previously approved projects, and their respective costs, authorized by this act to be constructed and financed as provided in Section 1 of this act, including by revenue bonds, by special obligation bonds as authorized in Section 6 of this act, or by both:

1	**Appalachian State University**	
	Central Dining Hall – Supplement	$ 6,000,000
	Student Recreation Complex – Supplement	$ 5,000,000
2	**North Carolina State University**	
	Classroom Building – Expansion – Supplement	$10,000,000
3	**University of North Carolina at Chapel Hill**	

	Residence College – Phase II – Supplement	$11,000,000
	Genetic Research Building – Supplement	$10,000,000
	Daniels Building Renovations – Supplement	$ 4,000,000
	Parking Facilities – Supplement	$ 1,000,000
	Major Infrastructure Improvements – Supplement	$61,828,000
4	**University of North Carolina at Charlotte**	
	Student Union – Supplement	$ 3,500,000
5	**University of North Carolina at Greensboro**	
	Parking Deck Addition – Supplement	$ 4,000,000
6	**Western Carolina University**	
	New Student Recreation Center – Supplement	$ 1,250,000

SECTION 4. The following projects are authorized, and the Board of Governors and the respective campuses are authorized to accept gifts and grants, or to use cash available to the constituent institution, for the costs associated with completing the projects:

1	**East Carolina University**	
	Geriatrics Center	$ 3,000,000
	Student Recreation Complex – Phase I	$ 8,000,000
2	**University of North Carolina at Charlotte**	
	Applied Optics and Physics Building – Improvement	$ 4,000,000

SECTION 5. At the request of the Board of Governors of The University of North Carolina and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the cost of, or a change in the method of, funding the projects authorized by this act. In determining whether to authorize a change in cost or funding, the Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations.

SECTION 6. Pursuant to G.S. 116D-26, the Board of Governors may issue, subject to the approval of the Director of the Budget, at one time or from time to time, special obligation bonds of the Board of Governors for the purpose of paying all or any part of the cost of acquiring, constructing, or providing for the projects authorized by Sections 2 and 3 of this act. The maximum principal amount of bonds to be issued shall not exceed the specified project costs in Sections 2 and 3 of this act plus twenty million dollars ($20,000,000) for related additional costs, such as issuance expenses, funding of reserve funds, and capitalized interest.

SECTION 7. With respect to the University of North Carolina at Chapel Hill's Water Reclamation and Reuse Infrastructure capital project, the institution may accomplish construction and financing notwithstanding the requirement in G.S. 116D-22(5) as to location at the institution and may accomplish the project either through (i) direct ownership of the project or (ii) purchase of capacity in the project from the Orange Water and Sewer Authority.

SECTION 8. With respect to the project at Winston-Salem State University for the Bowman Gray Stadium Field House – Expansion and Renovation, the institution may accomplish construction and financing notwithstanding the requirement in G.S. 116D-22(5) as to location at the institution and either through (i) direct ownership of the project, or (ii) by participation in a long-term agreement with the City of Winston-Salem.

SECTION 9. With respect to the project at North Carolina State University for the Carter Finley Stadium – Expansion, the institution may accomplish construction and financing through lease arrangements to and from the North Carolina State University Student Aid Association, Inc.

SECTION 10. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1775

Short Title:	UNC Nonappropriated Capital Projects.	(Public)
Sponsors:	Representatives McComas; and McMahan.	
Referred to:	Finance, if favorable, Appropriations.	

May 12, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. The purpose of this act is: (i) to authorize the construction by certain constituent institutions of The University of North Carolina of the capital improvements projects listed in the act for the respective institutions, and (ii) to authorize the financing of these projects with funds available to the institutions from gifts, grants, receipts, self-liquidating indebtedness, or other funds, or any combination of these funds, but not including funds received for tuition or appropriated from the General Fund of the State.

SECTION 2. The capital improvements projects, and their respective costs, authorized by this act to be constructed and financed as provided in Section 1 of this act, including by revenue bonds, by special obligation bonds as authorized in Section 6 of this act, or by both, are as follows:

1	**Appalachian State University**	
	Steam Distribution System – Improvements – Phase III	$ 6,500,000
	Residence Hall – Renovations	$12,000,000
	Parking Facilities – Improvements	$ 2,500,000
2	**East Carolina University**	
	Residence Hall – Heating, Ventilation and Air Conditioning Improvements	$ 2,000,000
	Parking Facilities – Expansion	$ 2,500,000
3	**Elizabeth City State University**	
	Student Housing	$13,500,000
4	**North Carolina Central University**	

		Student Housing	$30,000,000
		Parking Facilities – Expansion	$10,000,000
	5	**North Carolina State University**	
		Parking Facilities – Expansion	$ 7,500,000
		Thompson Theater – Renovation and Expansion	$15,500,000
		Residence Halls – Renovation	$20,550,000
		Owen Residence Hall – Expansion and Improvements	$ 3,700,000
		Carter Finley Stadium – Expansion	$14,500,000
		Chancellor's Residence	$ 3,350,000
	6	**University of North Carolina at Chapel Hill**	
		Parking Facilities – Expansion	$25,000,000
		Residence Halls – Improvements	$ 5,500,000
		Information Technology Services (ITS) – Infrastructure Improvements	$13,000,000
		Water Reclamation and Reuse Infrastructure	$15,000,000
		Major Infrastructure Improvements	$47,522,000
		Research Resource Facility	$ 1,000,000
		Medical Research – D – Renovations	$ 1,000,000
	7	**University of North Carolina at Charlotte**	
		Parking Facilities – Expansion	$14,000,000
	8	**University of North Carolina at Greensboro**	
		Recreation Center – Roof Replacement	$ 2,500,000
		Residence Halls Renovation – Phase IV	$ 7,000,000
	9	**University of North Carolina at Wilmington**	
		Parking Facilities – Expansion	$ 3,465,000
	10	**Winston-Salem State University**	
		Athletic and Student Recreation Facilities	$ 2,670,000
		Bowman Gray Stadium Field House – Expansion and Renovation	$ 1,800,000

SECTION 3. The following capital improvements projects are authorized by the Board of Governors as supplements to previously approved projects, and their respective costs, authorized by this act to be constructed and financed as provided in Section 1 of this act, including by revenue bonds, by special obligation bonds as authorized in Section 6 of this act, or by both:

	1	**Appalachian State University**	
		Central Dining Hall – Supplement	$ 6,000,000
		Student Recreation Complex – Supplement	$ 5,000,000
	2	**North Carolina State University**	
		Classroom Building – Expansion – Supplement	$10,000,000
	3	**University of North Carolina at Chapel Hill**	
		Residence College – Phase II – Supplement	$11,000,000
		Genetic Research Building – Supplement	$10,000,000

		Daniels Building Renovations – Supplement	$ 1,000,000
		Parking Facilities – Supplement	$ 1,000,000
		Major Infrastructure Improvements – Supplement	$61,828,000
	4	**University of North Carolina at Charlotte**	
		Student Union – Supplement	$ 3,500,000
	5	**University of North Carolina at Greensboro**	
		Parking Deck Addition – Supplement	$ 4,000,000
	6	**Western Carolina University**	
		New Student Recreation Center – Supplement	$ 1,250,000

SECTION 4. The following projects are authorized, and the Board of Governors and the respective campuses are authorized to accept gifts for the costs associated with completing the projects:

	1	**East Carolina University**	
		Geriatrics Center	$ 3,000,000
		Student Recreation Complex – Phase I	$ 8,000,000
	2	**University of North Carolina at Charlotte**	
		Applied Optics and Physics Building – Improvement	$ 4,000,000

SECTION 5. At the request of the Board of Governors of The University of North Carolina and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the cost of, or a change in the method of, funding the projects authorized by this act. In determining whether to authorize a change in cost or funding, the Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations.

SECTION 6. Pursuant to G.S. 116D-26, the Board of Governors may issue, subject to the approval of the Director of the Budget, at one time or from time to time, special obligation bonds of the Board of Governors for the purpose of paying all or any part of the cost of acquiring, constructing, or providing for the projects authorized by Sections 2 and 3 of this act. The maximum principal amount of bonds to be issued shall not exceed the specified project costs in Sections 2 and 3 of this act plus twenty million dollars ($20,000,000) for related additional costs, such as issuance expenses, funding of reserve funds, and capitalized interest.

SECTION 7. With respect to the University of North Carolina at Chapel Hill's Water Reclamation and Reuse Infrastructure capital project, the institution may accomplish construction and financing notwithstanding the requirement in G.S. 116D-22(5) as to location at the institution and may accomplish the project either through (i) direct ownership of the project or (ii) purchase of capacity in the project from the Orange Water and Sewer Authority.

SECTION 8. With respect to the project at Winston-Salem State University for the Bowman Gray Stadium Field House – Expansion and Renovation, the institution may accomplish construction and financing notwithstanding the requirement in G.S. 116D-22(5) as to location at the institution and either through (i) direct ownership

of the project, or (ii) by participation in a long-term agreement with the City of Winston-Salem.

SECTION 9. With respect to the project at North Carolina State University for the Carter Finley Stadium – Expansion, the institution may accomplish construction and financing through lease arrangements to and from the North Carolina State University Student Aid Association, Inc.

SECTION 10. This act is effective when it becomes law.

HOUSE BILL 1775:
UNC Nonappropriated Capital Projects

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 7, 2005
Introduced by:	Rep. McComas	**Summary by:**	Cindy Avrette
Version:	PCS to First Edition H1775-PCS50469-RBx-23		Committee Counsel

SUMMARY: ***House Bill 1775 authorizes the construction of numerous projects by The University of North Carolina. The projects will be financed through revenue bonds and special obligation bonds, not appropriations from the General Fund. The proposed committee substitute makes the following changes to the original bill:***

- ***It changes the supplemental dollar amount for the Daniels Building Renovations in Section 3 of the bill from $1,000,000 to $4,000,000.***
- ***It amends sections 1 and 2 of the bill to authorize the construction of the Brody School of Medicine at ECU Family Medicine Center and to allow the financing of the project with available Medicare education reimbursements.***[1]

CURRENT LAW: There are two types of self-liquidating bonds that may be issued by the Board of Governors of the University of North Carolina. Article 21 of Chapter 116 of the General Statutes authorizes the Board of Governors to issue revenue bonds for the types of projects enumerated in the article. The types of projects for which revenue bonds may be issued include educational buildings, dormitories, recreational facilities, dining facilities, student centers, health care buildings, parking decks, etc. The revenue bonds are payable from rentals, charges, fees, and other revenues generated by the facility. The bonds are not payable from tax revenues.

Article 3 of Chapter 116D of the General Statutes authorizes the Board of Governors to issue special obligation bonds payable with any sources of income or receipts of the Board of Governors or a constituent or affiliated institution, but not including tuition payments or appropriations from the General Fund from State revenues. The bond proceeds could be used for construction, improvement, and acquisition of any capital facilities located at UNC constituent and affiliated institutions. The bonds are not payable from tax revenues.

BILL ANALYSIS:

Section 1. States the purpose of the act to authorize the construction and financing of the capital improvements projects at various constituent institutions of The University of North Carolina. The projects authorized by the bill would not be financed with funds appropriated from the State's General Fund; but may be financed with gifts, grants, receipts, self-liquidating indebtedness, Medicare reimbursements for education costs, other funds available to the constituent institutions, or a combination of any of those financing methods. The projects include academic, research, clinical and administrative space and improvements to student services, residential living, dining, recreation, athletics and parking facilities. Once approved, a detailed financial plan will be developed in consultation with financial advisors and bond counsel for each project. The plans must be approved by the Chancellor, the Boards of Trustees, the President, and the to Board of Governors before construction contracts may be awarded and bonds issued.

Section 2. Sets out the self-liquidating projects the Board of Governors plans to finance with revenue and/or special obligation bonds. Although the UNC revenue bond act in Chapter 116 does not require the enactment

[1] The addition of this project to the bill and the financing of the project with Medicare education reimbursements is consistent with the changes made to G.S. 116-36.6 by Section 9.26 of both the House and Senate versions of SB 622, the 2005 Appropriations Act.

of an appropriation bill, the customary practice for UNC system revenue bond issues has been legislation that lists the specific projects to be financed and their costs. This year's bill includes 31 capital projects on 10 campuses. The Chancellors and Boards of Trustees for the listed campuses, as well as the President and the Board, have approved these projects. If authorized, construction on the projects is expected to begin before June 30, 2006.

Section 3. Sets out supplemental funding requests for 11 previously approved capital improvements at six campuses. North Carolina is experiencing construction cost increases that are the highest in 35 years. Estimates for previously approved projects used a 5% to 8% annual inflation rate; recent bids have been running 15% to 20% higher than estimated. The supplements requested generally reflect better market data and allow the campuses to maintain the needed program for each project.

Section 4. Authorizes three additional projects on two campuses, which will be financed without any debt incurred by the University. The Board of Governors and the respective campuses are authorized to accept gifts and grants and to use cash available to the institution for the costs associated with completing the projects.

Section 5. Authorizes the Director of the Budget, at the request of the Board of Governors, to authorize cost increases or decreases, or changes in the method of financing for the projects authorized by the bill. The Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations, but consultation is not required.

Section 6. The UNC special obligation bond act requires that the specific projects and their costs be set forth in legislation approved by the General Assembly and that the maximum amount of special obligation bonds to be issued to finance the specific projects listed be stated. Sections 2 and 3 set forth the specific projects and their costs. This section expressly states that the maximum principal amount of special obligation bonds to be issued shall not exceed the amounts listed in Sections 2 and 3 plus $20 million for related additional costs for which bond proceeds are routinely used, such as issuance expenses, funding of reserve funds, and capitalized interest.

Sections 7 and 8. G.S. 116D-22(5) defines a special obligation project as a capital facility located or to be located at an institution. Sections 7 and 8 create an exception to this requirement for two projects. **Section 7** authorizes the University of North Carolina at Chapel Hill to install a wastewater reuse system with a pumping station at the Orange Water and Sewer Authority Mason Farm Wastewater Treatment Plant site. The project will include distribution piping to and through the University Campus. The project may be accomplished through either direct ownership of the project or purchase of capacity in the project from the Orange Water and Sewer Authority. **Section 8** authorizes Winston-Salem State University to fund the expansion of the existing field house at the City of Winston-Salem's Bowman Gray football stadium. Continuing a long-standing partnership, the University intends to enter into an agreement with the City for the long-term use of the improved stadium.

Section 9. Authorizes construction and financing of a replacement for the existing Finley Field House facility and approximately 6,000 net additional seating in the north end zone area through lease arrangements to and from a third party – the North Carolina State University Student Aid Association Inc. Once constructed and approved by state reviewing agencies, the improvements would transfer to the State.

EFFECTIVE DATE: Section 10 provides that the act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 28, 2005

TO: Representative McComas

FROM: Richard Bostic
Fiscal Research Division

RE: PCS H1775-CSRBx-23[v1]

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES					
Various	See Assumptions and Methodology				
EXPENDITURES					
General Fund	$117,002	$220,072	$786,422	$837,855	$871,010
Various	See Assumptions and Methodology				
POSITIONS (cumulative):					
General Fund	1	9	12	12	12

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: University of North Carolina General Administration

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

BILL SUMMARY:
The bill authorizes the construction and financing, without appropriation from the General Fund, of capital improvement projects of the constituent institutions of the University of North Carolina.

ASSUMPTIONS AND METHODOLOGY:
The charts on the following pages detail the revenue sources for the $446.1 million in campus construction projects listed in the bill. The projects in section three are supplements to existing projects. Projects at NC State University (1) and Winston-Salem State University (2) will require an increase in student fees to retire the debt. Six projects will require General Fund support for their increased operating costs. The financial data for these charts was provided by the Senior Associate Vice President for Finance for the UNC Office of the President.

Section 2						
Campus	**Project**	**Amount**	**Source of Funds**	**Effect of Debt on Students**	**Increase in Annual Operating Costs**	**Source of Operating Costs**
Appalachian State University	Steam Distribution System – Improvements – Phase III	$6,500,000	Utility Receipts			
	Residence Hall – Renovations	$12,000,000	Housing Receipts			
	Parking Facilities – Improvements	$2,500,000	Parking Receipts			
East Carolina University	Residence Hall – Heating, Ventilation and Air Conditioning Improvements	$2,000,000	Housing Receipts			
	Parking Facilities – Expansion	$2,500,000	Parking Receipts			
	Brody School of Medicine–Family Medicine Center	$30,000,000	Medicare Education Funds		$1,335,456	Medicare Education Funds
Elizabeth City State University	Student Housing	$13,500,000	Housing Receipts		$1,089,381	Housing Receipts
North Carolina Central University	Student Housing	$30,000,000	Housing Receipts		$1,351,628	Housing Receipts
	Parking Facilities – Expansion	$10,000,000	Parking Receipts		$95,018	Parking Receipts

Section 2						
Campus	**Project**	**Amount**	**Source of Funds**	**Effect of Debt on Students**	**Increase in Annual Operating Costs**	**Source of Operating Costs**
North Carolina State University	Parking Facilities – Expansion	$7,500,000	Parking Receipts		$72,589	Parking Receipts
	Thompson Theater – Renovation and Expansion	$15,500,000	Debt Service Fee	$30/year	$67,643	Student Center Receipts
	Residence Halls – Renovation	$20,550,000	Housing Receipts		$241,750	Housing Receipts
	Owen Residence Hall – Expansion & Improvements	$3,700,000	Housing Receipts		$125,556	General Fund
	Carter Finley Stadium – Expansion	$14,500,000	Athletic Receipts		$58,184	Athletic Receipts
	Chancellor's Residence	$3,350,000	Gifts and Grants		$38,756	General Fund
University of North Carolina at Chapel Hill	Parking Facilities – Expansion	$25,000,000	Parking Receipts		$116,138	Parking Receipts
	Residence Halls – Improvements	$5,500,000	Housing Receipts		$313,544	Housing Receipts
	Information Technology Services (ITS) – Infrastructure Improvements	$13,000,000	Telecom and ITS Receipts			
	Water Reclamation and Reuse Infrastructure	$15,000,000	Utility Receipts			
	Major Infrastructure Improvements	$47,522,000	Utility Receipts			
	Research Resource Facility	$1,000,000	Facilities and Administrative Receipts		$46,279	General Fund

Section 2						
Campus	**Project**	**Amount**	**Source of Funds**	**Effect of Debt on Students**	**Increase in Annual Operating Costs**	**Source of Operating Costs**
University of North Carolina at Chapel Hill (Continued)	Medical Research –D- Renovations	$1,000,000	Facilities and Admini-strative Receipts		$60,795	General Fund
University of North Carolina at Charlotte	Parking Facilities – Expansion	$14,000,000	Parking Receipts		$14,061	Parking Receipts
University of North Carolina at Greensboro	Recreation Center – Roof Replacement	$2,500,000	Facilities Debt Service Fee			
	Residence Halls Renovation – Phase IV	$7,000,000	Housing Receipts			
University of North Carolina at Wilmington	Parking Facilities – Expansion	$3,465,000	Parking Receipts		$215,025	Parking Receipts
Winston-Salem State University	Athletic and Student Recreation Facilities	$2,670,000	Debt Service Fee	$54/year	$88,414	Athletic Fee Receipts
	Bowman Gray Stadium Field House – Expansion and Renovation	$1,800,000	Debt Service Fee	$21/year	$11,708	Athletic Fee Receipts

Section 3						
Campus	**Project**	**Amount**	**Source of Funds**	**Effect of Debt on Students**	**Increase in Annual Operating Costs**	**Source of Operating Costs**
Appalachian State University	Central Dining Hall – Supplement	$6,000,000	Dining Receipts			
	Student Recreation Complex – Supplement	$5,000,000	Student Fees			
North Carolina State University	Classroom Building – Expansion – Supplement	$10,000,000	Gifts and Grants		$544,464	General Fund
University of North Carolina at Chapel Hill	Residence College – Phase II – Supplement	$11,000,000	Housing Receipts			
	Genetic Research Building – Supplement	$10,000,000	Facilities and Administrative Receipts			
	Daniels Building Renovations – Supplement	$4,000,000	Student Store Receipts			
	Parking Facilities – Supplement	$1,000,000	Parking Receipts			
	Major Infrastructure Improvements – Supplement	$61,828,000	Utility Receipts			
University of North Carolina at Charlotte	Student Union – Supplement	$3,500,000	Debt Service Fee			
University of North Carolina at Greensboro	Parking Deck Addition – Supplement	$4,000,000	Parking Receipts			
Western Carolina University	New Student Recreation Center – Supplement	$1,250,000	Debt Service Fee			

Section 4						
Campus	**Project**	**Amount**	**Source of Funds**	**Effect of Debt on Students**	**Increase in Annual Operating Costs**	**Source of Operating Costs**
East Carolina University	Geriatrics Center	$3,000,000	Gifts and Grants		$175,204	Medical Family Practice Plan Receipts
	Student Recreation Complex – Phase I	$8,000,000	Institu-tional Accounts		$16,880	Recreation Services Receipts
University of North Carolina at Charlotte	Applied Optics and Physics Building – Improvement	$4,000,000	Facilities and Admini-strative Receipts		$233,751	General Fund

The following are summary details from the previous charts.

Cost of Construction = $446,135,000

Debt Payment Funding Methods

Utility Receipts	$130,850,000
Housing Receipts	105,250,000
Parking Receipts	69,965,000
Medicare Education Funds	30,000,000
Debt Service Fees	27,220,000
Gifts and Grants	16,350,000
Facilities and Administrative Receipts	16,000,000
Athletic Receipts	14,500,000
Telecom & ITS Receipts	13,000,000
Institutional Accounts	8,000,000
Dining Receipts	6,000,000
Student Fees	5,000,000
Student Store Receipts	4,000,000

SOURCES OF DATA: Senior Associate Vice President for Finance for the UNC Office of the President

TECHNICAL CONSIDERATIONS: None

ATTACHMENT 12

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1775

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

H1775-ARB-30 [v.1]

Date July 7 ,2005

Comm. Sub. [YES]
Amends Title [NO]
H1775-PCS50469-RBx-23

Representative Gibson

moves to amend the bill on page 3, line 39, by rewriting the line to read:
"Hill's Water Reclamation and Reuse Infrastructure capital project and the Research Resource Facility capital project, the institution may".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 1775 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on APPROPRIATIONS.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1515

Committee Substitute Favorable 5/31/05

Short Title: Med Schools/Crim Background Check. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A CRIMINAL BACKGROUND CHECK OF ALL STUDENTS ADMITTED INTO A SCHOOL OF MEDICINE AT A NORTH CAROLINA INSTITUTION OF HIGHER EDUCATION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 116 of the General Statutes is amended by adding a new Article to read:

"Article 33.

"Criminal Background Checks Required for Medical Students.

"**§ 116-265. Criminal background check required for medical students.**

(a) The following definitions apply in this Article:

(1) "Institution" includes both constituent institutions and private institutions.

(2) "Constituent institution" is as defined in G.S. 116-2.

(3) "Private institution" means an institution licensed under G.S. 116-15 and any other institution in this State that meets all of the requirements and regulations of the accrediting agencies whose approval is normally required for the establishment and operation of a medical school.

(4) "Applicant" means a person who has accepted an offer of admission at a school of medicine at an institution in this State.

(b) Any institution that has a school of medicine shall require as part of its matriculation process a national and State criminal background check of every person who has accepted an offer of admission to the school of medicine at the institution.

(c) The Department of Justice may provide a criminal record check to a constituent institution for a person who is accepted for admission to the school of medicine. If the institution is a private institution, then the Department of Justice may provide a criminal record check to the North Carolina Medical Board on behalf of the private institution as provided by G.S. 116-266. The institution shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any

additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The institution and the North Carolina Medical Board shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection; however, the fee shall not exceed the cost of conducting the criminal background check.

Nothing in this Article prohibits an institution from contracting with a private company to conduct the criminal background checks required by this Article.

"**§ 116-266. North Carolina Medical Board to receive criminal background check information on behalf of private medical schools.**

If the institution requesting the background check in compliance with G.S. 116-265 is a private institution, then the institution may request that the State Bureau of Investigation provide the information received from the background check to the North Carolina Medical Board. Upon request of the private institution, the Medical Board shall receive the information from a student's background check and shall review the information using the same criteria to evaluate the information that is used to evaluate the information received by the Board under G.S. 90-11. If the Medical Board determines any information received from the criminal background check would cause the Medical Board either to refuse to license a student to practice medicine under G.S. 90-11 or to investigate a student further before issuing a license to the student, then the Medical Board shall report that fact to the private institution requesting the background check.

The Medical Board may charge the private institution a reasonable fee for providing this service.

"**§ 116-267. Evaluation of criminal background information by school of medicine; effect on admissions decision.**

The information collected as a result of the criminal background check required by this Article shall be considered by the appropriate school of medicine in determining whether or not to complete an applicant's matriculation process. A criminal conviction shall not automatically preclude an applicant from matriculating, and the school of medicine may use its discretion in evaluating the applicant's fitness for the study of medicine."

SECTION 2. This act is effective when it becomes law and applies to the 2006-2007 academic year and each subsequent academic year.

House Bill 1515:
Medical Schools/Criminal Background Check.

BILL ANALYSIS

Committee:	**House Finance**	**Sponsor:**	**Reps. LaRoque and England**
Date:	**July 7, 2005**	**Analysis by:**	**Ashley Huffstetler**
Version:	**2nd Edition**		**Staff Attorney**

SUMMARY: House Bill 1515 would require criminal background checks of all students admitted to a school of medicine located in the State.

BILL ANALYSIS: House Bill 1515 would require criminal background checks of all students admitted to a medical school in the State. Every medical school must require, as a part of the matriculation process, a national and State criminal background check of every student that has accepted an offer of admission.

The NC Department of Justice (DOJ) may provide a criminal background check to a UNC constituent institution for a student admitted into a school of medicine. If the institution is private, the Department of Justice may provide a criminal background check to the NC Medical Board for the private institution. Both public and private institutions must provide to the DOJ fingerprints of the applicant, information requested by the DOJ, and a consent form signed by the applicant.

The DOJ is required to send the fingerprints to the State Bureau of Investigation for a search of the State criminal records and the State Bureau of Investigation is required to forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check.

All information obtained must be kept confidential. The DOJ may charge each applicant a fee, but it may not exceed the cost of conducting the background check.

If the institution requesting the criminal check is a private institution, then it may request the information received from the background check go to the NC Medical Board. If the NC Medical Board determines that the information would cause the Medical Board to refuse to issue a license to the student *or* to further investigate the student, then it shall report that fact to the private institution. This determination shall be made using the same criteria that is used to evaluate the issuance of licenses under G.S. 90-11.

The NC Medical Board may charge the private institution a reasonable fee for providing this service.

The school of medicine must use the information collected from criminal background check in determining whether or not to complete the applicant's matriculation process.

EFFECTIVE DATE: The bill would become effective when it becomes law and applies to the 2006-2007 academic year and each subsequent academic year.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 1515 (Second Edition)

SHORT TITLE: Med Schools/Crim Background Check.

SPONSOR(S):

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
GENERAL FUND REVENUES:					
Dept. of Justice	**$8,284**	**$8,284**	**$8,284**	**$8,284**	**$8,284**
OTHER REVENUES:					
NC Medical Board	**$21,800**	**$21,800**	**$21,800**	**$21,800**	**$21,800**
GENERAL FUND EXPENDITURES:					
UNC-Chapel Hill	**$0**	**$0**	**$0**	**$0**	**$0**
East Carolina Univ.			**$432 - $536 annually**		
Dept. of Justice	**$8,356**	**$8,356**	**$8,356**	**$8,356**	**$8,356**
OTHER EXPENDITURES:					
Duke University Medical School	**$20,680**	**$20,680**	**$20,680**	**$20,680**	**$20,680**
Wake Forest Univ./ Bowman Gray Medical School	**$20,304**	**$20,304**	**$20,304**	**$20,304**	**$20,304**
NC Medical Board	**$21,800**	**$21,800**	**$21,800**	**$21,800**	**$21,800**
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Justice, University of North Carolina – Chapel Hill, East Carolina University, NC Medical Board, Duke University and Wake Forest University Schools of Medicine

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY:
Requires a criminal background check of all students admitted into a school of medicine at a North Carolina institution of higher education, applicable to 2006-07 academic year and thereafter. Criminal background check must also include determination whether applicant had adjudication as sex offender that would require registration under Article 27A of GS Chapter 14. Department of Justice may provide criminal record check to schools of medicine of UNC constituent institutions. For school of medicine of private institutions, Department of Justice may provide check to NC Medical Board on behalf of institution. If Medical Board determines that information from check would cause board to either refuse to license student to practice medicine or investigate student before issuing license, then the board must report that fact to private institution. Department of Justice may charge applicant a fee for conducting check, but fee may not exceed cost of doing check. Information from check must be considered by school of medicine in determining whether to complete matriculation process, but criminal conviction does not automatically preclude applicant from matriculating. However, applicant who has been adjudicated as sex offender is barred from admission to any school of medicine in state.

House committee substitute makes the following changes to 1st edition: Amends proposed new GS 116-265(a)(3) to include in definition of "private institution" any institution that meets all of the requirements and regulations of accrediting agencies whose approval is normally required for establishment and operation of a medical school. Deletes from proposed new GS 116-265(b) the requirement that a criminal background check determine whether the person has any adjudications as a sex offender that would require registration and deletes from proposed new GS 116-267 the requirement that an applicant who has been adjudicated a sex offender be precluded from admission to any school of medicine located in the state
Source: Adapted from Bill Digest H.B. 1515 (04/21/0200).

ASSUMPTIONS AND METHODOLOGY:
Under this bill, medical schools are required to obtain state and national criminal background checks on admitted students. It is up to the school to decide whether to use a private vendor to conduct a "name check" or to request a fingerprint check through the State Bureau of Investigation (SBI) in the Department of Justice. The "name check" run by private vendors uses information such as name, date of birth, etc. to determine whether an individual has a criminal record. These checks may be run for a single state or multiple states, and costs vary by vendor and number of states checked. Only the SBI can conduct fingerprint background checks for non-criminal justice agencies; the SBI charges $38 for a state and national fingerprint background check.

University of North Carolina: Chapel Hill and East Carolina
The University of North Carolina has contracted with a private vendor to provide background checks for any schools or programs with such a requirement. These background checks are name checks, not fingerprint checks, and the cost of the multi-state or national check is $6 to $8.

UNC-Chapel Hill admits 160 students to its medical school each year. Chapel Hill has just instituted criminal background checks using UNC's private vendor; it is currently performing background checks on a rolling basis and by Fall 2005 will have them in place for all students. Therefore, this legislation is not expected to impact UNC-Chapel Hill.

ECU admits 72 students to its medical school each year. They currently do not perform criminal background checks. ECU has not yet determined whether to begin background checks with the class of 2006 or 2007. Based on the UNC vendor cost, ECU's annual costs would be $432 - $576.

NC Medical Board/Duke University and Wake Forest University Schools of Medicine

Section 1 of the bill amends G.S. 116 to add Article 33, which specifies the law in regard to criminal background checks of medical students. G.S. 116-265 requires a criminal background check for all students admitted to a medical school in North Carolina beginning with the FY 2006-07 academic school year. If the applicant is admitted to a constituent institution, i.e. one of the 16 public senior institutions as defined in G.S. 116-2, the NC Department of Justice may provide a criminal record check to the constituent institution. However, if the applicant accepts admission to the medical school of a private institution in the state, the Department can only furnish the results of the criminal background check to a State entity. As a State entity, the NC Medical Board would receive and review this information per G.S. 116-266. In North Carolina the Department of Justice would furnish information to the Board in regard to applicants who have accepted admission to Duke University Medical School and Bowman Gray School of Medicine at Wake Forest University.

In complying with G.S. 116-266 the Board would use the same criteria to evaluate this information as is used to evaluate information received for every applicant applying for a license to practice medicine or to perform medical acts, tasks, and functions as a physician assistant in the State under G.S. 90-11(b). Additionally G.S. 116-266 allows the Board to charge the private institution a reasonable fee to review the results of the record check. Although the Board has not conducted a formal analysis of what a reasonable cost would entail, a fee of $50-$100 is considered to be in order. The estimate of the Board's annual expense to review students' criminal background checks for the two (2) private institutions would range from $10,900 to $21,800 annually. In terms of the findings, the Board indicates there is no binary operation that takes place upon reviewing the results of the record check. According to the Board, whether someone would be denied a license or investigated further if that person were applying to this Board would be equivocal and crafted on a case-by-case basis. Therefore, each review could be somewhat time consuming for what would appear to be a simple task.

The current practice of Duke and Wake Forest medical schools is to have a private company conduct background checks, essentially name checks, that provide specific information about criminal involvement.

Duke University admits approximately 110 students annually. For the past five years the practice of the medical school has been to conduct a background/name check following the applicant's acceptance of admission. The name check is the expense of the medical school, but does not include fingerprinting. If this legislation were adopted, Duke University would comply with the law by additionally requesting a criminal background check through the SBI that would include fingerprinting. Duke would absorb this additional expense. Therefore, the estimated annual cost for Duke University would be $20,680 – $50 per admission for a name check by the private

company, $38 to the Department of Justice for the criminal background check, and $100 per admission for the Board review.

Wake Forest University/Bowman Gray Medical School currently requires background/name checks for students in the Physician Assistant Program, which is included in the school's admission process cost. In complying with this legislation the school would probably have the same company conduct name checks for the 108 students who are admitted annually to the Bowman Gray School of Medicine. Additionally, Wake Forest would have the SBI conduct criminal background checks that would be subject to the Board's review. As a result, the estimated annual cost would be $20,304 – $50 per admission for a name check by the private company, $38 to the Department of Justice for the criminal background check, and $100 per admission for the Board review. Wake Forest University would absorb any additional expense required for the criminal background check by the SBI.

The NC Medical Board, Duke University Medical School, and Wake Forest University/Bowman Gray School of Medicine would bear the expense related to adoption of this legislation and the cost to continue the name checks. There is no cost to the General Fund.

Department of Justice – State Bureau of Investigation

Based on the number of applicants each year, the North Carolina Medical Board anticipates that it will request approximately 218 criminal history checks annually. UNC-Chapel Hill and East Carolina University will use only private vendors and therefore will not impact the SBI. The SBI charges $38 for a state and national fingerprint background check. Of the $38, $22 is remitted to the Federal Bureau of Investigation for the national check; the remaining $16 is retained by the Department of Justice and used to fund receipt-supported positions to conduct the background checks. Internal costs per background check range from $11.45 to $17.95, with an average cost of $16.33. The Department currently has the capacity to conduct the projected background checks per year due to this bill.

SOURCES OF DATA: Department of Justice, Office of State Budget and Management, University of North Carolina, NC Medical Board, Duke and Bowman Gary Schools of Medicine

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910
PREPARED BY: Chloe Gossage, Michele Nelson, and Richard Bostic

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: July 1, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

North Carolina General Assembly

House Committee on Finance

Minutes

~

July 19, 2005

The House Committee on Finance met on Tuesday, July 19, 2005 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, Luebke, McComas and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives Blackwood, Bordsen, Capps, Carney, Dockham, Faison, Folwell, Holliman, Jones, Lewis, McGee, Underhill, Vinson, Walend and Wiley. Also present were Sergeant-at-Arms Mark Cone, Bill Freeman, Fred Hines, Dusty Rhodes, and Walter Spell. Staff persons present included Cindy Avrette, Erika Churchill, Gerry Cohen, Brenna Erford, Ashley Huffstetler, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Wainwright called the meeting to order at 8:34 am and recognized the seven (7) pages present: (1) Heather Parrish of Alamance County, sponsored by Representative Bordson; (2) Hannah Diggs of Alamance County, sponsored by Representative Bordson; (3) Casey Humphries of Person County, sponsored by Representative Wilkins; (4) Chris Morgan of Davidson County, sponsored by Representative Howard; (5) Caitlin Hodges of Wake County, sponsored by Speaker Black; (6) Lauren Adams of Fairfax Station, Virginia, sponsored by Representative Michaux; (7) Caitlin Compton of Orange County, sponsored by Representative Faison.

The first bill under the Committee's consideration was **HB 580 – BELMONT & TROUTMAN OCCUPANCY TAX** (see **attachment 3**). Chairman Wainwright first recognized Representative Ray who explained that the bill authorizes the Town of Troutman to levy a 3% occupancy tax. Following the explanation, Representative Womble was recognized and stated that the original bill was approved by the Subcommittee on Occupancy Tax and the town of Troutman was simply added to the bill when in the Senate. He also noted that when the bill returned to the House for concurrence, it was ruled material and, therefore, was returned to the Committee for further discussion. Representative Womble then moved that the Committee offer a recommendation that the House do concur with the Senate Committee Substitute for HB 580. Seeing no further discussion, Chairman Wainwright called the motion to a vote, and it carried by consent.

Chairman Wainwright then recognized Representative Howard who moved for the adoption of the proposed committee substitute for **HB 1515 – MED SCHOOLS/CRIM RECORD CHECK** (see **attachment 4**). The motion was adopted. The bill sponsor, Representative LaRoque, was then recognized and explained that the bill would require a background records check for students who have accepted an offer of admission at any medical school in North Carolina. He reported that each of the medical schools in North Carolina have expressed support for the bill.

Representative Folwell was recognized and reported that Wake Forest University's Bowman Gray School of Medicine supports the bill. He then moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. As there was no further debate, Chairman Wainwright called the motion to a vote, and it carried without objection.

The following bill considered by the Committee was **SB 1011 – RANDLEMAN DAM BONDS** (see **attachment 5**). Chairman Wainwright first recognized Senator Hagan who explained that the bill would give municipalities the authority to issue revenue bonds for the construction of a water treatment facility that would be owned by a water and sewer authority. The bill would also give the issuing municipality the ability to secure bonds through an absolute, unconditional, and irrevocable payment obligation agreement with the other participating members of the authority. Following the explanation, Representative Jones was recognized and moved that Senate Bill 1011 be given a favorable report by the Committee. Seeing no further discussion, Chairman Wainwright called the motion to a vote, and it carried by consent.

The next bill considered by the Committee was **SB 32 – ROCKINGHAM COUNTY FIRE DISTRICT TAX RATE** (see **attachment 6**). Chairman Wainwright recognized Representative Alexander who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Representative Luebke was then recognized to send forth a technical amendment (see **attachment 7**) and moved for its adoption. As there was no further debate, Chairman Wainwright called the motion to a vote and the amendment was adopted. Representative Cole was then recognized and explained that this bill prohibits Rockingham County from collecting property taxes in a rural fire protection district on industrial facilities in excess of 3.5 cents per $100 of property valuation to finance fire protection services in any tax year the facility meets listed standards. Chairman Wainwright then recognized Gerry Cohen of Bill Drafting who offered a more detailed explanation of the bill. Following the explanation, Representative Womble was recognized and moved that a new committee substitute, incorporating the adopted technical amendment, be given a favorable report and an unfavorable report to the original bill. Seeing no further discussion, Chairman Wainwright called the motion to a vote and it carried without objection.

The following bill considered by the Committee was **SB 420 – OAK RIDGE VOL. ANNEX./RED CROSS BUDGET ORD.** (see **attachment 8**). Chairman Wainwright first recognized Senator Phil Berger, the bill sponsor, who explained that the bill authorizes the Town of Oak Ridge to make voluntary annexations in a certain area and provides the Town of Red Cross an exemption from having to pay back State Highway funds from 2003-04 due to nonconformity in certain specified town services. He noted that the Committee had already approved an earlier version of SB 420 but the provisions for the Town of Red Cross were later added in a local government committee, which required that the bill be returned to House Finance. Representative Holliman was then recognized and moved that Senate Bill 420 be given a favorable report by the Committee. As there was no further debate, Chairman Wainwright called the motion to a vote and it carried by consent.

Chairman Wainwright then recognized Senator Kinnaird to explain **SB 592 – INDIGENT DEFENSE TECHNICAL REVISIONS** (see **attachment 9**). She explained that this bill requires the appointment fee of $50 to be charged only to an indigent who is convicted. Following the explanation, Representative Ross was recognized and moved the Senate Bill 592 be given a favorable report by the Committee. Seeing no further discussion, Chairman Wainwright called the motion to a vote, and it carried without objection.

Senator Kinnaird was then recognized again to explain **SB 593 – COPY COSTS IN INDIGENT CASES** (see **attachment 10**). She explained that this bill exempts attorneys appointed to represent indigent clients from the fee charged by the clerk of court for preparing copies. Following the explanation, Representative Carney was recognized and moved that Senate Bill 593 be given a favorable report by the Committee. As there was no further debate, Chairman Wainwright called the motion to a vote, and it carried by consent.

The next bill under the Committee's consideration was **SB 594 – RECOUPMENT BY COURT-APPOINTED ATTORNEYS** (see **attachment 11**). Chairman Wainwright once again recognized Senator Kinnaird to explain the bill. She stated that the bill provides that indigent persons able to pay a portion of their legal fees shall not be required to pay for the value of legal services rendered to perfect an appeal to the Appellate Division or in post-conviction proceedings if all of the matters that the person raised in the proceeding are vacated, reversed, or remanded for a new trial or resentencing. Following the explanation, Representative Womble was recognized and moved that Senate Bill 594 be given a favorable report by the Committee. Seeing no further discussion, Chairman Wainwright called the motion to a vote, and it carried without objection.

Chairman Wainwright then recognized Representative Hill who moved for the adoption of the proposed committee substitute for **SB 185 – WINDSHIELD REPLACERS - STICKERS W/O FEE** (see **attachment 12**). The motion was adopted. Chairman Wainwright then recognized Cindy Avrette of Research who explained that the proposed committee substitute provides that businesses that replace windshields may obtain replacement inspection stickers without paying the sticker fees. Following the explanation, Representative Dockham was recognized and asked who is currently paying the costs for a replacement sticker. Mrs. Avrette was then recognized and stated that the cost of a replacement sticker is currently paid by the consumer. Mike Gaither from DMV License and Theft Department was recognized and stated that this bill would provide funding from the DMV and his department does not oppose the bill. Representative Hill was then recognized and moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. As there was no further debate, Chairman Wainwright called the motion to a vote and it carried by consent.

The next bill considered by the Committee was **SB 705 – AMEND NC SUBSTANCE ABUSE ACT** (see **attachment 13**). Chairman Wainwright recognized Senator Nesbitt who explained that the bill provides for the licensure of substance abuse professionals and establishes the credential of certified criminal justice addictions professionals. He announced that the bill had received a favorable report from the House Health Committee and was before the Finance Committee because of an application fee for the credential of certified criminal justice addictions professional of $475 and a renewal fee of $150, which is consistent with the fees charged to other credentialed substance abuse professionals. Following the explanation, Representative Womble was recognized and asked how the bill originated. Senator Nesbitt was recognized and stated that the bill was filed at the request of substance abuse professionals. Representative Womble was then recognized again and asked what defined "substance abuse". Chairman Wainwright recognized Flow Stein, the Substance Abuse Director under the Division of Mental Health, Development Disabilities, and Substance Abuse Services in the North Carolina Department of Health and Human Services. She stated that substance abuse is defined as a person who is addicted or dependant upon any drug that can be abused. Representative Jones was then recognized and asked if a person who was formerly a substance abuser could still become a counselor. Jim Scarborough, the Executive Director of the North Carolina Substance Professional Certification Board, reported that there would be no hindrance in this bill from that occurring. Chairman Wainwright then recognized Representative Womble who moved that Senate Bill 705 be given a favorable report by the

Committee. Seeing no further discussion, Chairman Wainwright called the motion to a vote, and it carried without objection.

The final bill considered by the Committee was **SB 341 - MODERN ESCHEAT INVESTMENT PROGRAM** (see **attachment 14**). Chairman Wainwright first recognized Representative Gibson who explained that the bill authorizes the State Treasurer's Office to invest 20% of the Escheat Fund in insurance contracts, trusts, limited partnerships, corporate stock, and venture capital. This would allow the State Treasurer's Office to increase interest earned on the fund. Chairman Wainwright then recognized Representative Howard who moved that Senate Bill 341 be given a favorable report by the Committee. Representative Luebke was then recognized and asked why venture capital does not need to be capped under the provisions of the bill. Brett Joyal from the State Treasurer's Office was recognized and stated that the Treasurer's office already has internal caps and standards established that are used under investment programs that already help protect investments from unnecessary risk. As there was no further debate, Chairman Wainwright then called the motion to a vote, and it carried by consent.

As there was no further business before the Committee, Chairman Wainwright then adjourned the meeting at 9:14 am.

Respectfully submitted,

Representative William Wainwright
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. House Bill 580 (and related materials)
4. House Bill 1515 (and related materials)
5. Senate Bill 1011 (and related materials)
6. Senate Bill 32 (and related materials)
7. Luebke Amendment on SB 32 - **ADOPTED**
8. Senate Bill 420 (and related materials)
9. Senate Bill 592 (and related materials)
10. Senate Bill 593 (and related materials)
11. Senate Bill 594 (and related materials)
12. Senate Bill 185 (and related materials)
13. Senate Bill 705 (and related materials)
14. Senate Bill 341 (and related materials)

AGENDA

ATTACHMENT 1

House Finance Committee

July 19, 2005
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Wainwright

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard
Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order

Introduction of Pages

Bills:

HB 580	**BELMONT & TROUTMAN OCCUPANCY TAX**	*Rep. Rayfield*
HB 1515	**MED SCHOOLS/CRIM BACKGROUND CHECK**	*Reps. LaRoque & England*
SB 32	**ROCKINGHAM COUNTY FIRE DISTRICT TAX RATE**	*Sen. Hoyle*
SB 185	**WINDSHIELD REPLACERS – STICKERS W/O FEE**	*Sen. Holloman*
SB 341	**MODERN ESCHEAT INVESTMENT PROGRAM**	*Sen. Hoyle*
SB 420	**OAK RIDGE VOL. ANNEX./RED CROSS BUDGET ORD.**	*Sen. P. Berger*
SB 592	**INDIGENT DEFENSE TECHNICAL REVISIONS**	*Sen. Kinnaird*
SB 593	**COPY COSTS IN INDIGENT CASES**	*Sen. Kinnaird*
SB 594	**RECOUPMENT BY COURT-APPOINTED ATTORNEYS**	*Sen. Kinnaird*
SB 705	**AMEND NC SUBSTANCE ABUSE ACT**	*Sen. Nesbitt*
SB 1011	**RANDLEMAN DAM BONDS**	*Sen. Hagan*

Adjournment

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, July 19, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 580 – BELMONT & TROUTMAN OCCUPANCY TAX – Rep. Rayfield

HB 1515 – MED SCHOOLS/CRIM BACKGROUND CHECK – Reps. LaRoque & England

SB 32 – ROCKINGHAM COUNTY FIRE DISTRICT TAX RATE – Sen. Hoyle

SB 185 – WINDSHIELD REPLACERS – STICKERS W/O FEE – Sen. Holloman

SB 341 – MODERN ESCHEAT INVESTMENT PROGRAM – Sen. Hoyle

SB 420 – OAK RIDGE VOL. ANNEX./RED CROSS BUDGET ORD. – Sen. P. Berger

SB 592 – INDIGENT DEFENSE TECHNICAL REVISIONS – Sen. Kinnaird

SB 593 – COPY COSTS IN INDIGENT CASES – Sen. Kinnaird

SB 594 – RECOUPMENT BY COURT-APPOINTED ATTORNEYS – Sen. Kinnaird

SB 705 – AMEND NC SUBSTANCE ABUSE ACT – Sen. Nesbitt

SB 1011 – RANDLEMAN DAM BONDS – Sen. Hagan

Respectfully,
Representatives Alexander, Gibson, Howard, Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **2:55 pm** on **July 14, 2005**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

ATTACHMENT 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 19, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Hagleman	Lyfam Inc.
Stacey Phipps	Treasurer
Shirley Teale	←
Amy Hobbs	HANC
AJ Hudson	Rep. Cunningham
Erin Kinney	NC Conservation Network
Flo Stein	DMH/DD/SAS
Cathie Bates	ACMC
David Thorpe	NC Council
Cynthia Ward	NC Council
Terry VETRAVICH	UNC

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 19, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Danielle Carman	Indigent Defense Services, Durham
Hearn Hunter	N.C.S.D.A.
Clark Leonard	Intern - Rep. Dewey Hill
Anna Mitchell	NC DOR
Tye Hunter	IDS
Thomas Graham	Rep. Weiss guest
Laneta Dorflinger	" " "
Mike Gaither	License + Theft A. (DMV)
Portia Manley	~~DOT~~ DOT / DMV
Andrew Sidman	State Treasurer's office
Brett Joyal	DST

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 19, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Katherine Davis	ElectriCities
Belinda Harris	Towing & Recovery Professionals of NC
Bobby DeLeon	Towing & Recovery Professionals of NC
Ed Turlington	BPMHL
Angie Harris	Maupin Taylor

VISITOR REGISTRATION SHEET

FINANCE — Name of Committee

07-19-05 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
ANN UNK	DVHS
Elizabeth Cruz	NCPA
Ann Christian	Atty
Blair Carr	Greensboro
Linda Miles	Greensboro
Tom Coven	BP MHL
Jim Scarborough	NC Sub. Abuse Prof. Cert Bd.
Rich Webb	NCGA Intern
Sandy Sands	WCSR
Helen Wolshenholme	Division of MH/DD/SAS
Brent Grimes	NCSAPCB
Thom Mansfield	NC Medical Board
Ashleigh Taylor	Rep Wainwright
Katie Hawkins	PMA Pres Group
Anna Bidgen	NCSAPCB
Joseph Martin	NC Home Builders Assoc.
Stephanie Dorko	Charlotte Chamber
DAVID BARNES	Poyner + Spruill
Jim Blackburn	NC Association of County Commissioners
R. Reed Wilson	NEMBA
Alicia Barbara	NC DOC
Rebecca L. Ley	INTERN - REP. GIBSON
Jennifer Swearingen	NASW-NC
DON HOBART	DOC
Mark Fleming	Mecklenburg
[illegible]	ICCH
Gary Salamido	GCL

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
[illegible]	[illegible]
[illegible]	[illegible]
Paul Stark	NCBA
Rick Zechini	NC AR
[illegible]	[illegible]

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 580*

Committee Substitute Favorable 4/19/05

Senate Finance Committee Substitute Adopted 6/20/05

Short Title: Belmont & Troutman Occupancy Tax. (Local)

Sponsors:

Referred to:

March 10, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF BELMONT AND THE TOWN OF TROUTMAN TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

CITY OF BELMONT OCCUPANCY TAX

SECTION 1. Occupancy tax. – (a) Authorization and Scope. – The Belmont City Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.(c) Distribution and Use of Tax Revenue. – The City of Belmont shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Belmont Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Belmont and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a city or to attract tourists or business travelers to the city. The term includes tourism-related capital expenditures.

SECTION 2. Belmont Tourism Development Authority. – (a) Appointment and Membership. – When the Belmont City Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a city Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the city, and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the city. The city council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Belmont shall be the ex officio finance officer of the Authority.

SECTION 2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the city, sponsor tourist-related events and activities in the city, and finance tourist-related capital projects in the city.

SECTION 2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Belmont City Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the city council may require.

TOWN OF TROUTMAN OCCUPANCY TAX

SECTION 3. Occupancy tax. – (a) Authorization and Scope. – The Town of Troutman Board of Aldermen may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 3.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 3.(c) Distribution and Use of Tax Revenue. – The Town of Troutman shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Troutman Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Troutman and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 4. Troutman Tourism Development Authority. – (a) Appointment and Membership. – When the Town of Troutman Board of Aldermen adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a city Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town, and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the town. The Board of Aldermen shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Troutman shall be the ex officio finance officer of the Authority.

SECTION 4.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 4.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Town of Troutman Board of Aldermen on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board of Aldermen may require.

ADMINISTRATIVE PROVISIONS

SECTION 5. G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Belmont, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, Washington, and Wilmington, to the Towns of Beech Mountain, Blowing Rock, Carolina Beach, Carrboro, Franklin, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, Troutman, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

EFFECTIVE DATE

SECTION 6. This act is effective when it becomes law.

HOUSE BILL 580:
Belmont & Troutman Occupancy Tax
(f/k/a/ City of Belmont Occupancy Tax)

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 19, 2005
Introduced by:	Rep. Rayfield	**Summary by:**	Trina Griffin and Ashley Huffstetler
Version:	Third Edition		

SUMMARY: ***House Bill 580 authorizes the City of Belmont and the Town of Troutman to levy a 3% room occupancy tax. The provisions for both municipalities conform to the guidelines supported by the North Carolina Travel and Tourism Coalition and adhered to by the House Finance Committee. This bill is back in House Finance for a recommendation on whether the House should concur in the Senate changes.***

CURRENT LAW: Currently, the City of Belmont does not have authority to levy a room occupancy tax. Belmont is located in Gaston County, which does have authority to levy a 3% occupancy tax. The Town of Troutman does not have authority to levy a room occupancy tax. Troutman is located in Iredell County, which does have authority to levy a 3% occupancy tax. .

BILL ANALYSIS: House Bill 580 authorizes the City of Belmont and the Town of Troutman to each levy a room occupancy tax of up to 3%. The administrative and use provisions conform to the uniform guidelines detailed in the chart below:

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6%, and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism, and the remainder must be used for tourism-related expenditures.
Definitions – The terms "net proceeds," "promote travel and tourism," and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority, which has the authority to determine how the tax proceeds will be used and is created by a local ordinance. At least ½ of the members must be currently active in the promotion of travel and tourism in the city or county, and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

This bill was amended in Senate Finance to add the Troutman Occupancy Tax. The bill is in House Finance solely for the purpose of making a recommendation on whether the House should concur in the Senate changes.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 580 (Third Edition)

SHORT TITLE: Belmont & Troutman Occupancy Tax.

SPONSOR(S): Representative Rayfield

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
Town of Belmont	**$9,600**	**$9,820**	**$10,036**	**$10,237**	**$10,442**
Town of Troutman	*** See Assumptions and Methodology ***				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Town of Belmont, Town of Troutman

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:
This bill authorizes the Town of Belmont and the Town of Troutman to levy an occupancy tax. The tax applies to the rental of any room, lodging, or accommodation within the city limits. For both municipalities, the occupancy tax rate is 3% of gross receipts from the rental of accommodations, and two-thirds of the proceeds would be used to promote travel and tourism and one-third would be used for tourism-related expenditures.

ASSUMPTIONS AND METHODOLOGY:

Town of Belmont

According to the Belmont town manager, there are 3 motels in Belmont with 12-15 rooms each and 1 bed and breakfast. Assuming an average room rate of $45 per night and a 50% rate of room occupancy, FRD estimates the 3% occupancy tax would generate $9,600 per year. Because no historic data is available, the General Consumer Price Index estimated rate of increase is used to estimate future growth in occupancy tax receipts. No development of additional motels or other accommodations is assumed in the estimates of subsequent year revenues.

Town of Troutman
The Town of Troutman currently has no hotels or motels. Therefore, the fiscal analysis assumes no fiscal impact for the Town of Troutman.

SOURCES OF DATA: Town of Belmont, Town of Troutman

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: June 21, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Senate Committee Substitute for

HB 580 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE CITY OF BELMONT AND THE TOWN OF TROUTMAN TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

☒ With recommendation that the House concur.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1515
Committee Substitute Favorable 5/31/05
PROPOSED COMMITTEE SUBSTITUTE H1515-CSMBf-33 [v.3]

7/18/2005 1:12:52 PM

Short Title: Med Schools/Crim Record Check. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A CRIMINAL HISTORY RECORD CHECK OF ALL STUDENTS ADMITTED INTO A SCHOOL OF MEDICINE AT A NORTH CAROLINA INSTITUTION OF HIGHER EDUCATION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 116 of the General Statutes is amended by adding a new Article to read:

"Article 33.

"Criminal History Record Checks Required for Medical Students.

"**§ 116-265. Criminal history record checks required for medical students.**

(a) The following definitions apply in this Article:

(1) 'Applicant' means a person who has accepted an offer of admission at a school of medicine at an institution in this State.

(2) 'Constituent institution' is as defined in G.S. 116-2.

(3) 'Institution' includes both constituent institutions and private institutions.

(4) 'Private institution' means an institution licensed under G.S. 116-15 and any other institution in this State that meets all of the requirements and regulations of the accrediting agencies whose approval is normally required for the establishment and operation of a medical school.

(b) Any institution that has a school of medicine shall require as part of its matriculation process a nationwide criminal record check of every applicant to the school of medicine. The institution may use either the Department of Justice or a private company to conduct the criminal record check. The institution is not required to conduct a fingerprint check, but it shall provide a fingerprint to the Department of Justice if it uses that agency to conduct the check.

An institution and the North Carolina Medical Board shall keep all information obtained pursuant to this Article privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

(c) The Department of Justice may provide a criminal record check to a constituent institution for an applicant to the school of medicine.

If the institution is a private institution, the Department of Justice may provide a criminal record check to the North Carolina Medical Board on behalf of the private institution as provided by G.S. 116-266. If the institution elects to use the Department of Justice to conduct its criminal record check, the institution shall provide to the Department of Justice, along with the request, the name of the applicant, the fingerprints of the applicant, a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories, and any additional information required by the Department of Justice. The applicant's fingerprints shall then be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection; however, the fee shall not exceed the cost of conducting the criminal record check.

"**§ 116-266. North Carolina Medical Board to receive criminal history record check information on behalf of private medical schools.**

If a private institution requests the record check from the Department of Justice in accordance with G.S. 116-265, the institution may request that the State Bureau of Investigation provide the information received from the record check to the North Carolina Medical Board. Upon request of the private institution, the Medical Board shall receive the information from a applicant's record check and shall review the information using the same criteria to evaluate the information that is used to evaluate the information received by the Board under G.S. 90-11. If the Medical Board determines any information received from the criminal record check would cause the Medical Board either to refuse to license a student to practice medicine under G.S. 90-11 or to investigate a student further before issuing a license to the student, then the Medical Board shall report that fact to the private institution requesting the record check.

The Medical Board may charge the private institution a reasonable fee for providing this service.

"**§ 116-267. Evaluation of criminal history record information by school of medicine; effect on admissions decision.**

The information collected as a result of the criminal record check required by this Article shall be considered by the appropriate school of medicine in determining whether or not to complete an applicant's matriculation process. A criminal conviction shall not automatically preclude an applicant from matriculating, and the school of

medicine may use its discretion in evaluating the applicant's fitness for the study of medicine."

SECTION 2. This act is effective when it becomes law and applies to the 2006-2007 academic year and each subsequent academic year.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1515
Committee Substitute Favorable 5/31/05

Short Title: Med Schools/Crim Background Check. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A CRIMINAL BACKGROUND CHECK OF ALL STUDENTS ADMITTED INTO A SCHOOL OF MEDICINE AT A NORTH CAROLINA INSTITUTION OF HIGHER EDUCATION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 116 of the General Statutes is amended by adding a new Article to read:

"Article 33.

"Criminal Background Checks Required for Medical Students.

"**§ 116-265. Criminal background check required for medical students.**

(a) The following definitions apply in this Article:

(1) "Institution" includes both constituent institutions and private institutions.

(2) "Constituent institution" is as defined in G.S. 116-2.

(3) "Private institution" means an institution licensed under G.S. 116-15 and any other institution in this State that meets all of the requirements and regulations of the accrediting agencies whose approval is normally required for the establishment and operation of a medical school.

(4) "Applicant" means a person who has accepted an offer of admission at a school of medicine at an institution in this State.

(b) Any institution that has a school of medicine shall require as part of its matriculation process a national and State criminal background check of every person who has accepted an offer of admission to the school of medicine at the institution.

(c) The Department of Justice may provide a criminal record check to a constituent institution for a person who is accepted for admission to the school of medicine. If the institution is a private institution, then the Department of Justice may provide a criminal record check to the North Carolina Medical Board on behalf of the private institution as provided by G.S. 116-266. The institution shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any

additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The institution and the North Carolina Medical Board shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection; however, the fee shall not exceed the cost of conducting the criminal background check.

Nothing in this Article prohibits an institution from contracting with a private company to conduct the criminal background checks required by this Article.

"**§ 116-266. North Carolina Medical Board to receive criminal background check information on behalf of private medical schools.**

If the institution requesting the background check in compliance with G.S. 116-265 is a private institution, then the institution may request that the State Bureau of Investigation provide the information received from the background check to the North Carolina Medical Board. Upon request of the private institution, the Medical Board shall receive the information from a student's background check and shall review the information using the same criteria to evaluate the information that is used to evaluate the information received by the Board under G.S. 90-11. If the Medical Board determines any information received from the criminal background check would cause the Medical Board either to refuse to license a student to practice medicine under G.S. 90-11 or to investigate a student further before issuing a license to the student, then the Medical Board shall report that fact to the private institution requesting the background check.

The Medical Board may charge the private institution a reasonable fee for providing this service.

"**§ 116-267. Evaluation of criminal background information by school of medicine; effect on admissions decision.**

The information collected as a result of the criminal background check required by this Article shall be considered by the appropriate school of medicine in determining whether or not to complete an applicant's matriculation process. A criminal conviction shall not automatically preclude an applicant from matriculating, and the school of medicine may use its discretion in evaluating the applicant's fitness for the study of medicine."

SECTION 2. This act is effective when it becomes law and applies to the 2006-2007 academic year and each subsequent academic year.

House Bill 1515:
Medical Schools/Criminal Record Check.

BILL ANALYSIS

Committee:	**House Finance**	**Sponsor:**	**Reps. LaRoque and England**
Date:	**July 19, 2005**	**Analysis by:**	**Ashley Huffstetler**
Version:	**PCS to 2nd Edition H1515-CSMBf-33**		**Staff Attorney**

SUMMARY: House Bill 1515 requires criminal record checks of all students who have accepted an offer of admission to a school of medicine in North Carolina.

BILL ANALYSIS: The PCS to the 2nd Edition of House Bill 1515 requires criminal history record checks of all students who have accepted an offer of admission to a medical school in the State.

- The medical school has the option of using either the Department of Justice (DOJ) or a private agency to conduct a nationwide criminal record check.
- If using the DOJ, a school must provide a fingerprint to the DOJ. If using a private company, a name check will suffice.
- If the medical institution is private, e.g., Duke Medical School, DOJ may only provide a criminal record check to the NC Medical Board (the Board) for the private institution, in accordance with federal guidelines. The Board must then alert the private institution if it receives information that would cause the Board to consider refusing to license a student or to investigate a student further. The Board, however, may *not* share criminal record information obtained from the DOJ with the private institution.
- If the private institution contracts with a private company to conduct the checks, the NC Medical Board need not be involved in the process.
- All information must be kept confidential.
- The DOJ may charge each applicant a fee, but it may not exceed the cost of conducting the record check. The NC Medical Board may charge the private institution a reasonable fee for providing a record review service.
- A criminal history does not bar admission to a medical school in this State; rather, the school "may use its discretion in evaluating the applicant's fitness for the study of medicine."

EFFECTIVE DATE: The bill becomes effective when it becomes law and applies to the 2006-2007 academic year and each subsequent academic year.

PCS CHANGES: This PCS makes the following changes to the 2nd Edition of the bill: (1) rearranges the definitions, (2) clarifies that an institution has the option of using either the DOJ or a private agency to conduct the criminal record checks, and (3) clarifies that the institution may conduct either a fingerprint check or a name check of the applicant.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: July 18, 2005

TO: Representatives LaRoque and England

FROM: Chloe Gossage, Michele Nelson, and Richard Bostic
Fiscal Research Division

RE: PCS for House Bill 1515 (H1515-CSMBf-33 [v.3])

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
GENERAL FUND REVENUES:					
Dept. of Justice		* See Assumptions & Methodology * (p. 4)			
OTHER REVENUES:					
NC Medical Board			$100-$21,800		
GENERAL FUND EXPENDITURES:					
UNC-Chapel Hill	$0	$0	$0	$0	$0
East Carolina Univ.			$432 - $536 annually		
Dept. of Justice		* See Assumptions & Methodology * (p. 4)			
OTHER EXPENDITURES:					
Duke University Medical School			$5,500-$15,180		
Wake Forest Univ./ Bowman Gray Medical School			$5,400-$14,904		
NC Medical Board			$100-$21,800		

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Justice, University of North Carolina – Chapel Hill, East Carolina University, NC Medical Board, Duke University and Wake Forest University Schools of Medicine

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY:
Requires a criminal background check of all students admitted into a school of medicine at a North Carolina institution of higher education, applicable to 2006-07 academic year and thereafter. Criminal background check must also include determination whether applicant had adjudication as sex offender that would require registration under Article 27A of GS Chapter 14. Department of Justice may provide criminal record check to schools of medicine of UNC constituent institutions. For school of medicine of private institutions, Department of Justice may provide check to NC Medical Board on behalf of institution. If Medical Board determines that information from check would cause board to either refuse to license student to practice medicine or investigate student before issuing license, then the board must report that fact to private institution. Department of Justice may charge applicant a fee for conducting check, but fee may not exceed cost of doing check. Information from check must be considered by school of medicine in determining whether to complete matriculation process, but criminal conviction does not automatically preclude applicant from matriculating. However, applicant who has been adjudicated as sex offender is barred from admission to any school of medicine in state.

House committee substitute made the following changes to 1st edition: Amended proposed new GS 116-265(a)(3) to include in definition of "private institution" any institution that meets all of the requirements and regulations of accrediting agencies whose approval is normally required for establishment and operation of a medical school. Deleted from proposed new GS 116-265(b) the requirement that a criminal background check determine whether the person has any adjudications as a sex offender that would require registration and deleted from proposed new GS 116-267 the requirement that an applicant who has been adjudicated a sex offender be precluded from admission to any school of medicine located in the state.

This Proposed Committee Substitute clarifies that an institution may either request a background check from the Department of Justice or from a private vendor; background checks conducted through the Department of Justice must be state and national fingerprint checks. All background checks must be nationwide. The school "may use its discretion in evaluating the applicant's fitness for the study of medicine."
Source: Adapted from Bill Digest H.B. 1515 (04/21/0200).

ASSUMPTIONS AND METHODOLOGY:
Under this PCS, medical schools are required to obtain state and national criminal background checks on admitted students. It is up to the school to decide whether to use a private vendor to conduct a "name check" or to request a state and national fingerprint check through the State Bureau of Investigation (SBI) in the Department of Justice. The "name check" run by private vendors uses information such as name, date of birth, etc. to determine whether an individual has a criminal record. These checks may be run for a single state or multiple states, and costs vary by vendor and number of states checked. Only the SBI can conduct fingerprint background checks for non-criminal justice agencies; the SBI charges $38 for a state and national fingerprint background check.

University of North Carolina: Chapel Hill and East Carolina
The University of North Carolina has contracted with a private vendor to provide background checks for any schools or programs with such a requirement. These background checks are name checks, not fingerprint checks, and the cost of the multi-state or national check is $6 to $8.

UNC-Chapel Hill admits 160 students to its medical school each year. Chapel Hill has just instituted criminal background checks using UNC's private vendor; it is currently performing background checks on a rolling basis and by Fall 2005 will have them in place for all students. Therefore, this legislation is not expected to impact UNC-Chapel Hill.

ECU admits 72 students to its medical school each year. They currently do not perform criminal background checks. ECU has not yet determined whether to begin background checks with the class of 2006 or 2007. Based on the UNC vendor cost, ECU's annual costs would be $432 - $576.

NC Medical Board/Duke University and Wake Forest University Schools of Medicine

Section 1 of the bill amends G.S. 116 to add Article 33, which specifies the law in regard to criminal history record checks of medical students. G.S. 116-265 requires a criminal history record check for all students admitted to a medical school in North Carolina beginning with the FY 2006-07 academic school year. In obtaining a criminal record check, the institution may use the services of either the Department of Justice (DOJ) or a private company. If the latter, this will not include a fingerprint check. For an applicant admitted to a constituent institution, i.e. one of the 16 public senior institutions as defined in G.S. 116-2; DOJ may provide a criminal record check to the constituent institution. Additionally, if the applicant accepts admission to one of the State's private institutions, DOJ may conduct a criminal record check, and furnish the results to the NC Medical Board on behalf of the private institution per G.S. 116-266. In North Carolina DOJ would furnish information to the Board in regard to applicants who have accepted admission to Duke University Medical School and Bowman Gray School of Medicine at Wake Forest University. If the institution (public or private) elects to use the services of DOJ, it shall provide with the request the applicant's name, fingerprints, a consent form signed by the applicant, and any additional information required by DOJ.

In complying with G.S. 116-266 the Board would use the same criteria to evaluate this information as is used to evaluate information received for every applicant applying for a license to practice medicine or to perform medical acts, tasks, and functions as a physician assistant in the State under G.S. 90-11(b). Additionally G.S. 116-266 allows the Board to charge the private institution a reasonable fee to review the results of the record check. Although the Board has not conducted a formal analysis of what a reasonable cost would entail, a fee of $50-$100 is considered to be in order. The estimate of the Board's annual expense to review students' criminal record checks for the two (2) private institutions would range annually from $100 for one review to $21,800 for reviews of all applicants. In terms of the findings, the Board indicates there is no binary operation that takes place upon reviewing the results of the record check. According to the Board, whether someone would be denied a license or investigated further if that person were applying to this Board would be equivocal and crafted on a case-by-case basis. Therefore, each review could be somewhat time consuming for what would appear to be a simple task.

The current practice of Duke and Wake Forest medical schools is to have a private company conduct background/name checks that provide specific information about criminal involvement.

Duke University admits approximately 110 students annually. For the past five years the practice of the medical school has been to conduct a background/name check following the applicant's acceptance of admission. The name check is the expense of the medical school. In compliance with the legislation, Duke University will continue background/name checks, which have an annual cost of $5,500. If DOJ were asked to conduct the criminal record check, Duke University

would assume the expense of $38 per check and the $100 fee per review by the Board. Although it is not possible to determine the number of requests each year to DOJ and the Board, the estimated cost per applicant is $138. At the very least, Duke University will maintain the background/name checks with an annual expense of $5,500. However, the annual cost will increase if only 1 of the 110 criminal record checks is provided by DOJ. Therefore, the annual cost would range from $5,500 for all checks provided by the private company to $15,180 for all checks provided by DOJ.

Wake Forest University/Bowman Gary Medical School currently requires background/name checks for students in the Physician Assistant Program, with the expense included in the school's admission process cost. In complying with this legislation the school would have the same company conduct background/name checks for the 108 students who are admitted annually to the Bowman Gray School of Medicine. The cost would be $50 per admission or $5,400 annually. If DOJ were asked to conduct the criminal record check, Wake Forest University would assume the expense of $38 per check and the $100 fee per review by the Board. Although it is not possible to determine the number of requests each year to DOJ and the Board, the estimated cost per applicant is $138. At the very least, Wake Forest University will provide the background/name checks with an annual expense of $5,400. However, the annual cost will increase if only 1 of the 108 criminal record checks is provided by DOJ. Therefore, the annual cost would range from $5,400 for all checks provided by the private company to $14,904 for all checks provided by DOJ.

There is no expense to the General Fund. Duke University Medical School, Wake Forest University/Bowman Gray School of Medicine, and the NC Medical Board would bear the expense related to continued background/name checks, and any additional cost related to adoption of this legislation.

Department of Justice – State Bureau of Investigation

Based on the number of applicants each year, the private universities could request up to 218 background checks each year. However, they may continue to use private vendors rather than the SBI, in which case the Department would not collect any revenue or incur any costs. UNC-Chapel Hill and East Carolina University will use only private vendors and therefore will not impact the SBI. The SBI charges $38 for a state name check. Of the $38, $22 is remitted to the Federal Bureau of Investigation for the national check; the remaining $16 is retained by the Department of Justice and used to fund receipt-supported positions to conduct the background checks. Internal costs per background check range from $11.45 to $17.95, with an average cost of $16.33. The Department currently has the capacity to conduct the projected background checks per year due to this bill.

SOURCES OF DATA: Department of Justice, Office of State Budget and Management, University of North Carolina, NC Medical Board, Duke and Bowman Gary Schools of Medicine

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

HB 1515 A BILL TO BE ENTITLED AN ACT TO REQUIRE A CRIMINAL BACKGROUND CHECK OF ALL STUDENTS ADMITTED INTO A SCHOOL OF MEDICINE AT A NORTH CAROLINA INSTITUTION OF HIGHER EDUCATION.

☒ With a favorable report as to the committee substitute bill 2, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 1

SENATE BILL 1011

Short Title:	Randleman Dam Bonds.	(Public)
Sponsors:	Senator Hagan.	
Referred to:	Finance.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE MUNICIPALITIES TO ISSUE REVENUE BONDS FOR THE CONSTRUCTION OF WATER TREATMENT AND RELATED FACILITIES TO BE OWNED BY A WATER AND SEWER AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 159-83 is amended by adding a new subsection to read:

"(f) In addition to the powers they may now or hereafter have, each municipality has the power to finance and refinance the cost of water treatment facilities and related transmission mains, and their expansion and improvement, all or some portion of which may be located on land leased from an authority created under the provisions of G.S. 162A-3.1, for a term not less than the term of the obligations issued or otherwise incurred for the purpose. The authority may own or operate (or both) such facilities and mains and may contract with one or more of the political subdivisions that are members of the authority for operation of all or portions thereof. For this purpose, each municipality has, in addition to the powers it has under applicable law, all the powers under G.S. 162A-6(b) of an authority created under G.S. 162A-3.1, and the political subdivisions that are members of the authority and that contract with such municipality for a supply of water and a portion of the capacity of the water treatment facilities and mains shall have all the powers of political subdivisions under G.S. 162A-6(b) and G.S. 162A-16 contracting with an authority created under G.S. 162A-3.1. This provision is supplemental to the other provisions of this Article."

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

SENATE BILL 1011:
Randleman Dam Bonds

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 19, 2005
Introduced by:	Sen. Hagan	**Summary by:**	Cindy Avrette
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 1011[1] would give municipalities the authority to issue revenue bonds for the construction of a water treatment and related facilities that would be owned by a water and sewer authority. It would also give the issuing municipality the ability to secure the bonds through an 'absolute, unconditional, and irrevocable' payment obligation agreement with the other participating members of the authority. The bill would become effective when it becomes law.

CURRENT LAW: The governing bodies of two or more political subdivisions may join together and create a water and sewer authority. An authority has the power to issue revenue bonds, to establish and collect rates, fees, and other charges for the use of the authority's services and facilities.

An authority created under G.S. 162A-3.1 and its participating members may enter into an agreement that may obligate the participating members to make payments to the authority for treated water. The payment obligations may be made absolute, unconditional, and irrevocable. The payment obligations are in consideration of any output or capacity that may at any time be available from facilities of the authority.[2] Participating members may also make contributions or advances to an authority to provide for the preliminary expenses of the authority. Any such advances may be repaid to the members from the proceeds of any bonds issued by the authority.[3]

BACKGROUND: Greensboro, High Point, Archdale, Jamestown, Randleman, and Randolph County created the Piedmont Triad Water Authority (PTWA) to create and construct a dam across Randleman Lake to ensure a continued water supply for the Piedmont area. The PTWA constructed the dam from monies received on a pro rate share from the participating political subdivisions. The PTWA now needs to construct the water treatment facility to process the water. Funds generated from a bond issuance are needed to construct the project. The cost of the project is expected to be approximately $40 million.

Although PTWA could issue revenue bonds to build the facility, it does not have as favorable a bond rating as the City of Greensboro. Under the State and Local Government Revenue Bond Act, the City of Greensboro could issue revenue bonds for the project[4]; however, it is questionable whether the city could enter into an interlocal agreement with the other participating members of the PTWA that could be as strong as the absolute, unconditional, and irrevocable agreements the PTWA itself could enter into with its members under G.S. 162A-6(b).

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[1] As introduced, the bill is identical to House Bill 1421, introduced by Representatives Jones, Adams, Jeffus, and Wiley.

[2] G.S. 162A-6(b).

[3] G.S. 162A-16.

[4] Article 5 of Chapter 159 of the General Statutes authorizes municipalities to issue revenue bonds for revenue bond projects. A revenue bond project may be a water and sewer facility; a revenue bond project must be owned or leased as lessee by the issuing unit or it may be owned by one or more municipalities participating in a joint undertaking.

BILL ANALYSIS: Senate Bill 1011 would specify that a municipality could issue revenue bonds to finance the cost of water treatment facilities if all or some portion of the facilities financed is located on land leased from an authority for a term that coincides with the term of the obligation. This part of the bill could arguably be accomplished under current law.[5]

The bill also gives a municipality all the powers under G.S. 162A-6(b) of an authority created under G.S. 162A-3.1. This statute allows an authority and its participating members to enter into an agreement that would obligate the participating members to payment obligations that are 'absolute, unconditional, and irrevocable'. The terms of the agreement may also provide that the payment obligations must be performed 'without abatement or reduction under all circumstances whatsoever, including whether or not any facility of the authority is completed, operable or operating, and notwithstanding the suspension, interruption, interference, reduction or curtailment of the output of any such facility or the treated water contracted for, and such obligations may be made subject to no reduction, whether by offset or otherwise, and not conditioned upon the performance or nonperformance of the authority or any participating political subdivision under any agreement.'

Although the situation with the Randleman Dam is the impetus for this legislation, its provisions would be available to other municipalities participating in a water and sewer authority. The bill must be written as a statewide bill because it would be unconstitutional to enact a local bill relating to debt.

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

S1011e1-SMRB

[5] The City of Greensboro does not currently lease any property from the PTWA.

§ 162A-6. Powers of authority generally.

...

(b) In addition to the powers given under subsection (a) of this section, an authority created under G.S. 162A-3.1 and its participating political subdivisions may enter into agreements obligating these subdivisions to make payments to the authority for treated water delivered or made available or expected to be delivered or made available by the authority, regardless of whether treated water is actually delivered or made available. Such payments may be designed to cover the authority's operating costs (including debt service and related amounts) by allocating those costs among the participating political subdivisions and by requiring these subdivisions to pay additional amounts to make up for the nonpayment of defaulting subdivisions. The participating political subdivisions may agree to budget for and appropriate such payments. Such payment obligations may be made absolute, unconditional, and irrevocable and required to be performed strictly in accordance with the terms of such agreements and without abatement or reduction under all circumstances whatsoever, including whether or not any facility of the authority is completed, operable or operating and, notwithstanding the suspension, interruption, interference, reduction or curtailment of the output of any such facility or the treated water contracted for, and such obligations may be made subject to no reduction, whether by offset or otherwise, and not conditioned upon the performance or nonperformance of the authority or any participating political subdivision under any agreement. Such payment obligations are in consideration of any output or capacity that may at any time be available from facilities of the authority. The participating political subdivisions may agree to make such payments from limited or specified sources. To the extent such payments relate to debt service of the authority and related amounts, they may not be made from any moneys derived from exercise by the participating political subdivisions of their taxing power, and such payment obligations shall not constitute a pledge of such taxing power. The participating political subdivisions may agree (i) not to pledge or encumber any source of payment and (ii) to operate (including fixing rates and charges) in a manner that enables them to make such payments from such sources. The participating political subdivisions may also secure such payment obligations with a pledge of or lien upon any such sources of payment. Notwithstanding the provisions of G.S. 162A-9 or any other law to the contrary, an authority entering into any such agreement need not fix rates, fees and other charges for its services except as provided herein, and such rates, fees and charges need not be uniform through the authority's service areas. Notwithstanding the provisions of G.S. 160A-322 or any other law to the contrary, agreements described herein may have a term not exceeding 50 years. Notwithstanding any law to the contrary, the execution and effectiveness of any agreement authorized hereby shall not be subject to any authorizations or approvals by any entity except the parties thereto. Each authority and its participating political subdivisions shall have the power to do all acts and things necessary or convenient to carry out the powers granted by this subsection.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

SB 1011 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE MUNICIPALITIES TO ISSUE REVENUE BONDS FOR THE CONSTRUCTION OF WATER TREATMENT AND RELATED FACILITIES TO BE OWNED BY A WATER AND SEWER AUTHORITY.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

ATTACHMENT 6

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S D

SENATE BILL 32*
PROPOSED HOUSE COMMITTEE SUBSTITUTE S32-PCS75347-LB-82

Short Title: Fire Service District Tax Rate. (Public)

Sponsors:

Referred to:

February 2, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW COUNTIES IN CERTAIN DEFINED CIRCUMSTANCES TO REMOVE TERRITORY FROM AN EXISTING FIRE PROTECTION DISTRICT TAX AND ESTABLISH A NEW DISTRICT FOR SUCH PROPERTY WITH AN AD VALOREM TAX CEILING.

The General Assembly of North Carolina enacts:

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

"**§ 153A-309.3. Rate limitation in certain districts.**

(a) Any area in a service district for fire protection established pursuant to G.S. 153A-301(a)(2) may be removed from that district by resolution of the county board of commissioners and a new service district simultaneously created for the area so removed if the area is an industrial facility (and appurtenant land and structures):

(1) Subject to a contract not to annex by a municipality under which the owner of the industrial property is obligated to make payments in lieu of taxes equal to or in excess of fifty percent (50%) of the taxes such industry would pay if it were annexed and is current in making such payments.

(2) Actively served by an industrial fire brigade which meets the standards of the National Fire Protection Association and the requirements of the North Carolina Occupational Safety and Health Standards for General Industry (Title 29 Code of Federal Regulations Part 1910 incorporated by reference in 13 NCAC 07F .0101) for industrial fire brigades.

(b) Prior to removing such area from the service district and simultaneously creating a new district of that same area, the board shall hold a public hearing. Notice of the hearing shall state the date, hour, and place of the hearing and its subject. The notice shall be published at least once not less than one week before the date of the hearing. In addition, the notice shall be mailed at least two weeks before the date of the hearing to

the owners as shown by the county tax records as of the preceding January 1 of all property located within the area to be removed and a new district created. The notice may be mailed by any class of U.S. mail which is fully prepaid. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed, and his certificate shall be conclusive in the absence of fraud.

(c) In any district created under this section from area removed from an existing district, the county may not levy or collect property taxes for the purpose of financing fire protection pursuant to this Article in excess of a rate of three and one-half cents (3.5¢) on each one hundred dollars ($100.00) of property valuation subject to taxation.

(d) If any district established under this section ceases to meet the tests established by subdivisions (a)(1) and (a)(2) of this section, the board of commissioners may by resolution abolish that district and annex that territory to the district from which it was removed after a public hearing under the same provisions as set out in subsection (b) of this section.

(e) Any resolutions adopted under this section become effective the first day of July following their adoption."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 32*

House Committee Substitute Reported Without Prejudice 7/13/05

Short Title: Rockingham County Fire District Tax Rate. (Local)

Sponsors:

Referred to:

February 2, 2005

A BILL TO BE ENTITLED

AN ACT TO LIMIT FIRE PROTECTION DISTRICT TAX RATES FOR CERTAIN PROPERTY IN ROCKINGHAM COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 69-25.4 is amended by adding a new subsection to read:

"(d) In a rural fire protection district established pursuant to this Article, a county may not collect property taxes for the purpose of financing fire protection services pursuant to this Article on an industrial facility in excess of a rate of three and one-half cents (3.5¢) on each one hundred dollars ($100.00) of property valuation subject to taxation in any tax year for which such industrial facility meets all of the following qualifications:

(1) The industrial facility is subject to a contract not to annex by a municipality under which the owner of the industrial property is obligated to make payments in lieu of taxes equal to or in excess of fifty percent (50%) of the taxes such industry would pay if it were annexed and is current in making such payments.

(2) The industrial facility is actively served by an industrial fire brigade which meets the standards of the National Fire Protection Association and the requirements of the North Carolina Occupational Safety and Health Standards for General Industry (Title 29 Code of Federal Regulations Part 1910 incorporated by reference in 13 NCAC 07F .0101) for industrial fire brigades."

SECTION 2. Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-309.3. Rate limitation in certain districts.**

(a) In a service district for fire protection established pursuant to G.S. 153A-301(a)(2), a county may not collect property taxes for the purpose of financing fire protection services pursuant to this Article on an industrial facility in excess of a rate of three and one-half cents (3.5¢) on each one hundred dollars ($100.00)

of property valuation subject to taxation in any tax year for which such industrial facility meets all of the following qualifications:

(1) The industrial facility is subject to a contract not to annex by a municipality under which the owner of the industrial property is obligated to make payments in lieu of taxes equal to or in excess of fifty percent (50%) of the taxes such industry would pay if it were annexed and is current in making such payments.

(2) The industrial facility is actively served by an industrial fire brigade which meets the standards of the National Fire Protection Association and the requirements of the North Carolina Occupational Safety and Health Standards for General Industry (Title 29 Code of Federal Regulations Part 1910 incorporated by reference in 13 NCAC 07F .0101) for industrial fire brigades."

SECTION 3. Section 1 and 2 of this act apply only to Rockingham County.

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

SENATE BILL 32:
Fire Service District Tax Rate

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 18, 2005
Introduced by:		**Summary by:**	Cindy Avrette
Version:	PCS to Second Edition S32-PCS75347-LB-82		Committee Counsel

SUMMARY: The PCS for Senate Bill 32 would allow a county to remove territory from an existing fire protection tax district and establish a new tax district for the property with a tax rate limitation of 3.5 cents on each one hundred dollars of property valuation subject to taxation.

The original Senate Bill, introduced by Senator Hoyle, provided that members of the firemen's and rescue squad workers' pension fund may elect to terminate membership in the fund at anytime, but that delinquent payments alone do not terminate membership.[1] The House Rules Committee adopted a committee substitute for this bill at the request of Rep. Cole that would limit fire protection district tax rates for certain property in Rockingham County. The Finance PCS differs from the 2nd edition of the bill by making the bill a statewide bill so that it does not violate the North Carolina Constitution, which prohibits a local act pertaining to tax service districts.

CURRENT LAW: Article 16 of Chapter 153A authorizes counties to create county service districts in order to finance and provide the following types of services, facilities, or functions at a greater extent than those financed and provided for the entire county:

- Beach erosion control and flood and hurricane protection works
- Fire protection
- Recreation
- Sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems
- Solid waste collection and disposal systems
- Water supply and distribution systems.
- Ambulance and rescue
- Watershed improvement projects, drainage projects, and water resources development projects
- Cemeteries
- Law enforcement, under certain circumstances

To finance these services, facilities, or functions, a county may levy property taxes within a defined service district in addition to those levied throughout the county. The tax rate is capped at an amount that, when combined with the rate levied countywide, does not exceed $1.50 on each $100 of appraised value of property, unless a greater rate is approved by a majority of qualified voters residing within the district.

Prior to adopting a resolution creating a service district, the board of county commissioners must make the following findings, followed by notice and a public hearing:

1. There is a demonstrable need for providing one or more of the services listed above.
2. It is impossible or impracticable to provide those services on a countywide basis.

[1] House Bill 23, the companion bill to SB 32 as originally introduced, is in the Senate Pensions and Retirement Committee.

3. There is a demonstrable demand for the proposed services by persons residing in the district.

Current law provides for the extension of, consolidation of, reduction of after annexation, and abolition of service districts but does not provide for the removal of property from a service district.

BILL ANALYSIS: The PCS for Senate Bill 32 would allow the county commissioners, by resolution, to remove an area from an existing fire protection service district and simultaneously establish and place the area in a new service district if the area meets all of the following conditions:

- It is an industrial facility.
- It is subject to a contract not to annex by a municipality under which the owner of the property is obligated to make payments in lieu of taxes equal to or in excess of 50% of the taxes the industry would pay to the municipality if it were annexed.
- The owner of the property is currently making payments in lieu of taxes to a municipality.
- The property is actively served by an industrial fire brigade.

The rate of tax in a district created under this new statutory section would be limited to 3.5¢ on each $100 of property valuation subject to taxation.[2] If an area ceases to meet the requirements of this new statutory section, then the board of commissioners may, by resolution, abolish the district and annex the territory back to the district from which it was removed.

EFFECTIVE DATE: The bill would be effective when it becomes law.

BACKGROUND: Rockingham County established three fire protection service districts around the City of Eden. One of the fire protection service districts serves an industrial facility that has a contract with the City of Eden in which the City agrees to provide services to the area and to receive payments from the beneficiary of those services in lieu of not annexing the area for a certain amount of time.[3] This bill would ensure that the tax rate levied in the fire protection service district that serves this industrial facility would not exceed 3.5¢.

The General Assembly has granted authority for the following municipalities to enter into annexation agreements: the City of Washington (1993), the Town of Stanley (1993), the City of Belmont (1997), the City of Hendersonville and the Town of Laurel Park (1997), the Town of Huntersville (1997), the City of Mount Holly (2000), and the Town of Weldon (2001). Therefore, the provisions of this bill could apply to the counties in which these municipalities are located if the additional requirements of this bill are met:

- The terms of the annexation agreement. (Page 1, lines 14-18)
- The area is served by an industrial fire brigade, which meets the standards of the National Fire Protection Association and the requirements of the NC Occupational Safety and Health Standards for General Industry for industrial fire brigades. (Page 1, lines 19-23)

S0032e2-SMRB-PCS75347-LB-82

[2] G.S. 153A-309.2 and 153A-310 also allow rate limitation in certain districts.
[3] S.L. 2002-74. Authorized the City of Eden to enter into a contract with Duke Power and Miller Brewing Company to accept payments in lieu of taxes and, as part of the contract, to agree not to annex the property described in the contract prior to December 31, 2013.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒ House Committee Substitute for

SB 32 A BILL TO BE ENTITLED AN ACT TO LIMIT FIRE PROTECTION DISTRICT TAX RATES FOR CERTAIN PROPERTY IN ROCKINGHAM COUNTY.

☒ With a favorable report as to House committee substitute bill #2, which changes the title, unfavorable as to House committee substitute bill #1.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

ATTACHMENT 7

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 32*

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

S32-ARB-35 [v.1]

Date July 19 ,2005

Comm. Sub. [NO]
Amends Title [YES]
PCS75347-LB-82

[redacted] Rep. Luebke

moves to amend the bill on page 1, lines 3 and 4, by deleting the phrase "DISTRICT TAX" and substituting the phrase "TAX DISTRICT".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 420
House Committee Substitute Favorable 7/7/05

Short Title: Oak Ridge Vol. Annex./Red Cross Budget Ord. (Local)

Sponsors:

Referred to:

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWN OF OAK RIDGE TO MAKE VOLUNTARY ANNEXATIONS WITHIN A CERTAIN DESCRIBED AREA AND TO ALLOW THE TOWN OF RED CROSS TO AMEND ITS BUDGET ORDINANCES FOR THE 2002-2003 FISCAL YEAR TO SHOW CONFORMANCE WITH G.S. 136-41.2.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1.2 of the Charter of the Town of Oak Ridge, being S.L. 1998-113, reads as rewritten:

"Section 1.2. (a) Except as provided by subsection (c) of this section, Article 4A of Chapter 160A of the General Statutes does not apply to the Town of Oak Ridge until July 1, 2018.

(b) G.S. 160A-58.1(b)(2) does not apply to (i) the City of Greensboro as it relates to the Town of Oak Ridge or (ii) the Town of Kernersville as it relates to the Town of Oak Ridge.

(c) Parts 1 and 4 of Article 4A of Chapter 160A of the General Statutes apply to the Town of Oak Ridge as to the following described territory in Guilford County:

Beginning at a point located at the intersection of Haw River Road and the Forsyth/Guilford County line; thence following the Forsyth/Guilford County line north to the point at which the Forsyth/Guilford County line intersects with the corporate limits of the Town of Stokesdale; thence continuing in an easterly and southeasterly direction following the Town of Stokesdale corporate limits to Haw River Road at which point the Town of Oak Ridge corporate limits begin; thence continuing southwesterly along the southern right-of-way of Haw River Road to the point and place of beginning."

SECTION 2. The Town of Red Cross shall be considered to have complied with the provisions of G.S. 136-41.2 for the fiscal year 2002-2003 and is excused from nonconformity with respect to implementation of the four specified services.

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

SENATE BILL 420:
Oak Ridge Vol. Annex./Red Cross Budget Ord

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 19, 2005
Introduced by:	Sen. Berger of Rockingham	**Summary by:**	R. Erika Churchill
Version:	Second Edition		Committee Counsel

SUMMARY: Senate Bill 420 received a favorable report from House Finance on May 10th. This bill would authorize the Town of Oak Ridge to annex non-contiguous property by petition. The bill is back in House Finance because of a subsequent change made by the House Local Government Committee. On July 7th the bill was amended to allow the Town of Red Cross to participate in the distribution of Powell Bill funds for the fiscal year 2002-2003 without having provided at least 4 of the 8 services necessary to receive certain tax distributions. The act is effective when it becomes law.

CURRENT LAW & BILL ANALYSIS:

Section 1. G.S. 160A-58.1 governs the voluntary annexation by a municipality of noncontiguous property. All property owners in the satellite area may petition for voluntary annexation of the noncontiguous property if the property meets the following five standards in G.S. 160A-58.1(b):

1. The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.
2. No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city.
3. The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
4. If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.
5. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing city.

However, the town charter of Oak Ridge precludes it from annexing property under North Carolina statutory provisions for annexation until July 1, 2018.

Section 1 of the bill would amend the Town Charter to allow Oak Ridge to voluntarily annex in accordance with Chapter 160A certain described property that is non-contiguous to the current town property limits. The property, measuring approximately 3 square miles, is agricultural and rural residential in nature.

Section 2. G.S. 41.2 requires cities desiring to participate in the distribution of Powell bill funds to do all of the following:

- Conduct its most recent elections.
- Levy an ad valorem tax for the current fiscal year of at least 5¢ on the $100.00 valuation upon all taxable property within its corporate limits
- Collect at least fifty percent (50%) of the total ad valorem tax levied for the preceding fiscal year
- If the municipality was incorporated with an effective date of on or after January 1, 2000, provide at least four of the following municipal services:

1. Police protection
2. Fire protection
3. Solid waste collection or disposal
4. Water distribution
5. Street maintenance
6. Street construction or right-of-way acquisition
7. Street lighting
8. Zoning.

Section 2 of the bill would allow the Town of Red Cross to participate in the distribution of the funds for the fiscal year 2002-2003 without having provided at least 4 of the 8 services listed above. The Town of Red Cross was incorporated August 1, 2002, and provided zoning in that year. The Town had planned to provide police protection, fire protection, and solid waste collection in that year also. However, the county had already levied taxes and entered into contracts for those services when the Town was officially incorporated.

S0420e2-SMST

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒ House Committee Substitute for

SB 420 A BILL TO BE ENTITLED AN ACT TO ALLOW THE TOWN OF OAK RIDGE TO MAKE VOLUNTARY ANNEXATIONS WITHIN A CERTAIN DESCRIBED AREA AND TO ALLOW THE TOWN OF RED CROSS TO AMEND ITS BUDGET ORDINANCES FOR THE 2002-2003 FISCAL YEAR TO SHOW CONFORMANCE WITH G.S. 136-41.2.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 592
Finance Committee Substitute Adopted 5/25/05

Short Title: Indigent Defense Technical Revisions. (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL REVISIONS TO THE LAW GOVERNING INDIGENT DEFENSE AND ENTITLEMENT TO COUNSEL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-304(d)(1) reads as rewritten:

"(d) (1) In any criminal case in which the liability for costs, fines, restitution, attorneys' fees, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

a. Sums in restitution to the victim entitled thereto;
b. Costs due the county;
c. Costs due the city;
d. Fines to the county school fund;
e. Sums in restitution prorated among the persons other than the victim entitled thereto;
f. Costs due the State;
g. Attorney's fees, including appointment fees assessed pursuant to G.S. 7A-455.1.

(2) Sums in restitution received by the clerk of superior court shall be disbursed when:

a. Complete restitution has been received; or
b. When, in the opinion of the clerk, additional payments in restriction will not be collected; or
c. Upon the request of the person or persons entitled thereto; and
d. In any event, at least once each calendar year."

SECTION 2. G.S. 7A-451(a) reads as rewritten:

"(a) An indigent person is entitled to services of counsel in the following actions and proceedings:

(1) Any case in which imprisonment, or a fine of five hundred dollars ($500.00), or more, is likely to be adjudged;
(2) A hearing on a petition for a writ of habeas corpus under Chapter 17 of the General Statutes;
(3) A motion for appropriate relief under Chapter 15A of the General Statutes if the defendant has been convicted of a felony, has been fined five hundred dollars ($500.00) or more, or has been sentenced to a term of imprisonment;
(4) A hearing for revocation of probation;
(5) A hearing in which extradition to another state is sought;
(6) A proceeding for an inpatient involuntary commitment to a facility under Part 7 of Article 5 of Chapter 122C of the General Statutes, or a proceeding for commitment under Part 8 of Article 5 of Chapter 122C of the General Statutes.
(7) In any case of execution against the person under Chapter 1, Article 28 of the General Statutes, and in any civil arrest and bail proceeding under Chapter 1, Article 34, of the General Statutes;
(8) In the case of a juvenile, a hearing as a result of which commitment to an institution or transfer to the superior court for trial on a felony charge is possible;
(9) A hearing for revocation of parole at which the right to counsel is provided in accordance with the provisions of Chapter 148, Article 4, of the General Statutes;
(10) Repealed by Session Laws 2003, c. 13, s. 2(a), effective April 17, 2003, and applicable to all petitions for sterilization pending and orders authorizing sterilization that have not been executed as of April 17, 2003.
(11) A proceeding for the provision of protective services according to Chapter 108A, Article 6 of the General Statutes;
(12) In the case of a juvenile alleged to be ~~neglected~~ abused, neglected, or dependent under ~~Chapter 7A, Article 23~~ Subchapter I of Chapter 7B of the General Statutes;
(13) A proceeding to find a person incompetent under Subchapter I of Chapter 35A, of the General Statutes;
(14) A proceeding to terminate parental rights where a guardian ad litem is appointed pursuant to G.S. 7B-1101;
(15) An action brought pursuant to ~~Article 24B of Chapter 7A~~ Article 11 of Chapter 7B of the General Statutes to terminate an indigent person's parental rights.
(16) A proceeding involving consent for an abortion on an unemancipated minor pursuant to Article 1A, Part 2 of Chapter 90 of the General Statutes. G.S. 7A-450.1, 7A-450.2, and 7A-450.3 shall not apply to this proceeding.

(17) A proceeding involving limitation on freedom of movement or access pursuant to G.S. 130A-475 or G.S. 130A-145."

SECTION 3. G.S. 7A-455.1 reads as rewritten:

"**§ 7A-455.1. Appointment fee in criminal cases.**

(a) Each person ~~who requests the appointment of~~ for whom counsel is appointed in a criminal case at the trial level shall pay to the clerk of court ~~a nonrefundable~~ an appointment fee of fifty dollars ~~($50.00) at the time of appointment.~~ ($50.00). No fee shall be due ~~if the court finds that the person is not entitled to the appointment of counsel.~~ unless the person is convicted.

(b) ~~The appointment fee in this section is due regardless of the outcome of the proceedings. If paid in full at the time of appointment, the fifty dollars ($50.00) paid shall be credited against any amounts the court determines to be owed for the value of legal services rendered to the defendant. If not paid in full at the time of appointment, the~~ The fifty-dollar ($50.00) fee shall be added to any amounts the court determines to be owed for the value of legal services rendered to the defendant and shall be collected in the same manner as attorneys' fees are collected for such representation. ~~If the fee is not paid in full at the time of appointment, and no attorneys' fees are found due when the action is finally determined at the trial level, a judgment shall be entered, docketed, and indexed pursuant to G.S. 1-233 in the amount of fifty dollars ($50.00) and shall constitute a lien as prescribed by the general law of the State applicable to judgments.~~

~~(c) The attorney representing the defendant when the action is finally determined at the trial level shall advise the court whether the appointment fee required by this section has been paid.~~

(d) Inability, failure, or refusal to pay the appointment fee shall not be grounds for denying appointment of counsel, for withdrawal of counsel, or for contempt.

(e) The appointment fee required by this section shall be assessed only once for each ~~affidavit of indigency submitted by a defendant or other determination of indigency by the court,~~ attorney appointment, regardless of the number of cases ~~for~~ to which ~~an~~ the attorney ~~is appointed.~~ was assigned. ~~An additional appointment fee shall not be assessed for any additional cases thereafter assigned to an attorney if any cases for which a defendant was previously assessed an appointment fee are still pending. Nor shall an~~ An additional appointment fee shall not be assessed ~~if the charges for which an attorney was appointed are dismissed and subsequently refiled or if the defendant is appointed an attorney on appeal on a matter for which the defendant was assessed an appointment fee at the trial level.~~ if the charges for which an attorney was appointed were reassigned to a different attorney.

(f) Of each appointment fee collected under this section, the sum of forty-five dollars ($45.00) shall be credited to the Indigent Persons' Attorney Fee Fund and the sum of five dollars ($5.00) shall be credited to the Court Information Technology Fund under G.S. 7A-343.2. These fees shall not revert.

(g) The Office of Indigent Defense Services shall adopt rules and develop forms to govern implementation of this section."

SECTION 4. G.S. 15A-1343(e) reads as rewritten:

"(e) Costs of Court and Appointed Counsel. – Unless the court finds there are extenuating circumstances, any person placed upon supervised or unsupervised probation under the terms set forth by the court shall, as a condition of probation, be required to pay all court costs and all fees and costs for appointed ~~counsel or public defender~~ counsel, public defender, or counsel employed by or under contract with the Office of Indigent Defense Services in the case in which ~~he~~ the person was convicted. The ~~cost of~~ fees and costs for appointed ~~counsel or public defender~~ counsel, public defender, or other counsel services shall be determined in accordance with rules adopted by the Office of Indigent Defense Services. The court shall determine the amount of those costs and fees to be repaid and the method of payment."

SECTION 5. G.S. 35A-1245(c) reads as rewritten:

"(c) A copy of the petition shall be served on the ward personally. If the ward is unable to comprehend the nature of the proposed procedure and its consequences and is unable to provide an informed consent, the clerk shall appoint an attorney to represent the ~~ward.~~ ward in accordance with rules adopted by the Office of Indigent Defense Services."

SECTION 6. This act is effective when it becomes law.

SENATE BILL 592:
Indigent Defense Technical Revisions

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 14, 2005
Introduced by:	Sen. Kinnaird	**Summary by:**	Martha Walston
Version:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 592 would make technical revisions to current law governing indigent defense and entitlement to counsel to correspond with current practices and to comply with the recent North Carolina Supreme Court decision, State v. Webb.***

The 2nd edition makes an additional change in Section 3 by deleting language that prohibits the assessment of the $50 fee when there are other pending cases or when charges are dismissed and refiled. It also clarifies in Section 4 that a person placed on probation is required to pay as a condition of probation, all fees and costs for appointed counsel, as well as court costs.

SB 592 has been heard in the following committees: Senate JII, Senate Finance, and House JI.

SECTION-BY-SECTION ANALYSIS:

Section 1: G.S. 7A-304 sets out the costs and fees associated with criminal actions and the priority in which the clerk of court shall distribute them. The subsection that sets out the priority of payment does not specifically include attorney's fees in the types of funds to be disbursed by the clerk of superior court, but it is included in the payment priority list that follows. Section 1 of the bill would specifically include attorney's fees in the types of funds to be disbursed by the clerk of superior court in G.S. 7A-304(d)(1) to correspond with the payment priority list that follows.

Section 2: G.S. 7A-451(a)(12) and (a)(15) currently refer to sections of the statutes addressing termination of parental rights that have been repealed and recodified. Section 2 of the bill would adjust the references in G.S. 7A-451(a)(12) and (a)(15) to correspond to the correct sections of the statutes as recodified.

Section 3: Under current law, a person for whom counsel has been appointed must pay a $50 nonrefundable fee to the clerk of court regardless of the outcome of the proceedings pursuant to G.S. 7A-455.1. In 2004, the North Carolina Supreme Court held in *State v. Webb* that this statute violated the constitutional prohibition against compelling persons to pay costs of prosecution unless they are found guilty.[1]

Therefore, Section 3 of the bill makes changes to G.S. 7A-455.1 to bring the statute into conformity with the holding in *State v. Webb.* Subsection (a) would clarify that the $50 fee is assessed only when the defendant is convicted and deletes references relating to when a defendant fails to pay the fee at the time of appointment since the fee may only be assessed at conviction.

Although the current statute also contemplates the payment of the appointment fee for appellate appointments, the Office of Indigent Services does not direct the courts to assess the fee in appellate or post-conviction proceedings. Thus, Section 3 changes G.S. 7A-455.1 to reflect this practice by

[1] Art. I, Sec. 23 of the North Carolina State Constitution provides "In all criminal prosecutions, every person charged with crime has the right to be informed of the accusation and to confront the accusers and witnesses with other testimony, and to have counsel for defense, and not be compelled to give self-incriminating evidence, or to pay costs, jail fees, or necessary witness fees of the defense, unless found guilty."

clarifying that the fee may only be assessed at the trial level, and not in cases on appeal or in post-conviction.

Subsection (e) has been rewritten to focus on the attorney appointment rather than the determination of indigence. The 2nd edition makes one additional change by deleting language that prohibits the assessment of the $50 appointment fee when there are other pending cases against the defendant in which the fee was assessed or when the charges against the defendant have been dismissed and refiled. The Office of Indigent Defense Services has requested this change because this provision is difficult for the judges and clerks to implement and track. The 2nd edition also adds language that the fee may not be assessed a second time if a different attorney is reassigned to the defendant for the same charges for which the initial appointment fee was assessed.

Section 4: G.S. 15A-1343 includes attorney's costs with court costs that are to be paid by the convicted defendant as a condition of probation. Section 4 of the bill would clarify that attorney's fees are considered to be separate from court costs and that payment of attorney's fees may also be included as a condition of probation. The 2nd edition clarifies that a person placed on probation is required to pay all fees and costs for appointed counsel, as a condition of probation, in addition to court costs. The attorney "fees" are to reimburse appointed counsel for the actual services of legal representation and the "costs" associated with appointed counsel are those expenses incurred by the attorney during the course of representation, such as expert witness fees, investigator fees, or other out-of-pocket costs. This section is clarifying that these fees and costs are separate and apart from the actual court costs.

Section 5: Former G.S. 7A-451(a)(10) governed the entitlement to counsel in cases involving the sterilization of mentally ill and mentally retarded persons. In 2003, this provision was repealed and recodified in G.S. 35A-1245(c). G.S. 7A-452(a) provides that appointment of counsel in all cases under Article 36 of Chapter 7A shall be "in accordance with rules adopted by the Office of Indigent Defense Services. Section 5 of the bill would add language to the new G.S. 35A-1245(c) to correspond with this language that applied when the provision was previously codified in G.S. 7A-451(a)(10).

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

Trina Griffin, counsel to Senate Finance, substantially contributed to this summary.

S0592e2-SMLA

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 592 (Second Edition)

SHORT TITLE: Indigent Defense Technical Revisions.

SPONSOR(S): Senator Kinnaird

FISCAL IMPACT

Yes ( )	No (x)	No Estimate Available ( )		
FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:				
EXPENDITURES:				
POSITIONS (cumulative):				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Office of Indigent Defense Services

EFFECTIVE DATE: Upon ratification.

BILL SUMMARY: This bill makes technical corrections to the Indigent Defense Services Act. Includes revision to GS 7A-455.1 requiring appointment fee of $50 to be charged only to indigent who is convicted, to comply with the NC Supreme Court decision of State v. Webb, 358 N.C. 92 (2004)

ASSUMPTIONS AND METHODOLOGY: Since SB 592 makes technical changes that conform the statutes to existing practice, there is no impact associated with this bill.

SOURCES OF DATA: Office of Indigent Defense Services

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Douglas Holbrook

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

Official
Fiscal Research Division
Publication

DATE: May 26, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

SB 592 A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL REVISIONS TO THE LAW GOVERNING INDIGENT DEFENSE AND ENTITLEMENT TO COUNSEL.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 593

Judiciary II Committee Substitute Adopted 4/19/05

Short Title: Copy Costs in Indigent Cases. (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO EXEMPT ATTORNEYS APPOINTED TO REPRESENT INDIGENT CLIENTS FROM THE FEE CHARGED BY THE CLERK OF COURT FOR PREPARING COPIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-308 is amended by adding a new subsection to read:

"(b1) The fees set forth in subdivision (12) of subsection (a) of this section are not chargeable when copies are requested by an attorney who has been appointed to represent an indigent person at State expense, if the request is made in connection with the appointed case and during the duration of the appointment."

SECTION 2. This act becomes effective July 1, 2005, and applies to fees charged on or after that date.

SENATE BILL 593:
Copy Costs in Indigent Cases

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 14, 2005
Introduced by:	Sen. Kinnaird	**Summary by:**	Martha Walston
Version:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 593 would provide an exception to the collection of certain miscellaneous fees by the clerk of superior court. The clerk would not charge for preparing copies requested by counsel appointed to represent an indigent person at State expense so long as the request is made in connection with the appointed case and is during the period of appointment.***

Senate Bill 593 has been heard in the following committees: Senate JII and Senate Finance

CURRENT LAW: G.S. 7A-308 provides for the collection of miscellaneous fees and commissions by clerks of superior court and remittance of these fees to the State for support of the General Court of Justice. Preparation of copies is listed among these fees at $2.00 for the first page and .25 for each additional page.

Many clerk's offices currently waive the fee for preparing copies for counsel appointed in indigent cases. When the fee is charged, the cost is billed to the Office of Indigent Defense Services by the appointed counsel for reimbursement from State funds. The money paid by appointed counsel is deposited by the clerks into the State financial management system for remittance to the State General Fund.

BILL ANALYSIS: Senate Bill 593 would exempt from collection by the clerk fees for copies made at the request of counsel appointed to represent an indigent person at State expense. The bill would limit copies provided without charge to only those that are made at the request of appointed counsel in connection with the appointed case and during the duration of the appointment. Providing for appointed counsel working on indigent cases to be exempt from collection of copy costs would simplify the system and avoid any associated transaction costs.

EFFECTIVE DATE: The act would be effective on July 1, 2005 and would apply to fees charged on or after that date.

S0593e2-SMLA

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 593 (Second Edition)

SHORT TITLE: Copy Costs in Indigent Cases.

SPONSOR(S): Senator Kinnaird

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund	**No estimate available: See Assumptions and Methodology**				
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Office of Indigent Defense Services

EFFECTIVE DATE: July 1, 2005

BILL SUMMARY: Senate Bill 593 would provide an exception to the collection of certain miscellaneous fees by the clerk of superior court. The clerk would not charge for preparing copies requested by counsel appointed to represent an indigent person at State expense so long as the request is made in connection with the appointed case and is during the period of appointment.

ASSUMPTIONS AND METHODOLOGY: Many clerk's offices currently waive the fee for preparing copies for counsel appointed in indigent cases. When the fee is charged, the cost is billed to the Office of Indigent Defense Services by the appointed counsel for reimbursement from State funds. The money paid by appointed counsel is remitted by the clerk to the State General Fund.

There is no data available on which to base a projection for this legislation. Since it is already current practice for most clerks to waive the fee for indigent cases, it is likely this bill would have little, if any, fiscal impact.

SOURCES OF DATA: Office of Indigent Defense Services

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brenna Erford

Douglas Holbrook

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: May 24, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

SB 593 A BILL TO BE ENTITLED AN ACT TO EXEMPT ATTORNEYS APPOINTED TO REPRESENT INDIGENT CLIENTS FROM THE FEE CHARGED BY THE CLERK OF COURT FOR PREPARING COPIES.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 3

SENATE BILL 594

Judiciary II Committee Substitute Adopted 4/19/05
Finance Committee Substitute Adopted 5/25/05

Short Title: Recoupment by Court-Appointed Attorneys. (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING RECOUPMENT FOR LEGAL SERVICES PROVIDED TO INDIGENT PERSONS WHO ARE FINANCIALLY ABLE TO PAY A PORTION OF THE VALUE OF THOSE SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-455 reads as rewritten:

"**§ 7A-455. Partial indigency; liens; acquittals.**

(a) If, in the opinion of the court, an indigent person is financially able to pay a portion, but not all, of the value of the legal services rendered for ~~him~~that person by assigned counsel, the public defender, or the appellate defender, and other necessary expenses of representation, ~~he~~the court shall order the partially indigent person to pay such portion to the clerk of superior court for transmission to the State treasury.

(b) In all cases the court shall direct that a judgment be entered in the office of the clerk of superior court for the money value of services rendered by assigned counsel, the public defender, or the appellate defender, plus any sums allowed for other necessary expenses of representing the indigent person, including any fees and expenses that may have been allowed prior to final determination of the action to assigned counsel pursuant to G.S. 7A-458, which shall constitute a lien as prescribed by the general law of the State applicable to judgments. Any reimbursement to the State as provided in subsection (a) of this section or any funds collected by reason of such judgment shall be deposited in the State treasury and credited against the judgment. The value of services shall be determined in accordance with rules adopted by the Office of Indigent Defense Services. The money value of services rendered by the public defender and the appellate defender shall be based upon the factors normally involved in fixing the fees of private attorneys, such as the nature of the case, the time, effort, and responsibility involved, and the fee usually charged in similar cases. A district court judge shall direct entry of judgment for actions or proceedings finally determined in the district court and a superior court judge shall direct entry of judgment for actions or

proceedings originating in, heard on appeal in, or appealed from the superior court. Even if the trial, appeal, hearing, or other proceeding is never held, preparation therefor is nevertheless compensable.

(b1) In every case in which the State is entitled to a lien pursuant to this section, the public defender shall at the time of sentencing or other conclusion of the proceedings petition the court to enter judgment for the value of the legal services rendered by the public defender, and the appellate defender shall upon completion of the appeal petition or request the trial court to enter judgment for the value of the legal services rendered by the appellate defender.

(c) No order for partial payment under subsection (a) of this section and no judgment under subsection (b) of this section shall be entered unless the indigent person is convicted. If the indigent person is convicted, the order or judgment shall become effective and the judgment shall be docketed and indexed pursuant to G.S. 1-233 et seq., in the amount then owing, upon the later of (i) the date upon which the conviction becomes final if the indigent person is not ordered, as a condition of probation, to pay the State of North Carolina for the costs of his representation in the case or (ii) the date upon which the indigent person's probation is terminated or revoked if the indigent person is so ordered. No order for partial payment under subsection (a) of this section and no judgment under subsection (b) of this section shall be entered for the value of legal services rendered to perfect an appeal to the Appellate Division or in postconviction proceedings, if all of the matters that the person raised in the proceeding are vacated, reversed, or remanded for a new trial or resentencing.

(d) In all cases in which the entry of a judgment is authorized under G.S. 7A-450.1 through G.S. 7A-450.4 or under this section, the attorney, guardian ad litem, public defender, or appellate defender who rendered the services or incurred the expenses for which the judgment is to be entered shall obtain the social security number, if any, of each person against whom judgment is to be entered. This number, or a certificate that the person has no social security number, shall be included in each fee application submitted by an assigned attorney, guardian ad litem, public defender, or appellate defender, and no order for payment entered upon an application which does not include the required social security number or certification shall be valid to authorize payment to the applicant from the Indigent Persons' Attorney Fee Fund. Each judgment docketed against any person under this section or under G.S. 7A-450.3 shall include the social security number, if any, of the judgment debtor."

SECTION 2. G.S. 7B-603 reads as rewritten:

"**§ 7B-603. Payment of court-appointed attorney or guardian ad litem.**

(a) An attorney or guardian ad litem appointed pursuant to G.S. 7B-601 shall be paid a reasonable fee fixed by the court or by direct engagement for specialized guardian ad litem services through the Administrative Office of the Courts.

(a1) The court may require payment of the fee for an attorney or guardian ad litem appointed pursuant to G.S. 7B-601 from a person other than the juvenile as provided in G.S. 7A-450.1, 7A-450.2, and 7A-450.3. In no event shall the parent or guardian be required to pay the fees for a court-appointed attorney or guardian ad litem in an abuse, neglect, or dependency proceeding unless the juvenile has been adjudicated to be

abused, neglected, or dependent or, in a proceeding to terminate parental rights, unless the parent's rights have been terminated. If the party is ordered to reimburse the State for attorney or guardian ad litem fees and fails to comply with the order at the time of disposition, the court shall file a judgment against the party for the amount due the State.

(b) An attorney appointed pursuant to G.S. 7B-602 or pursuant to any other provision of the Juvenile Code for which the Office of Indigent Defense Services is responsible for providing counsel shall be paid a reasonable fee in accordance with rules adopted by the Office of Indigent Defense Services.

(b1) The court may require payment of the fee for an attorney appointed pursuant to G.S. 7B-602 or G.S. 7B-1101 from the respondent. In no event shall the respondent be required to pay the fees for a court-appointed attorney in an abuse, neglect, or dependency proceeding unless the juvenile has been adjudicated to be abused, neglected, or dependent or, in a proceeding to terminate parental rights, unless the respondent's rights have been terminated. At the dispositional hearing or other appropriate hearing, the court shall make a determination whether the respondent should be held responsible for reimbursing the State for the respondent's attorneys' fees. This determination shall include the respondent's financial ability to pay.

If the court determines that the respondent is responsible for reimbursing the State for the respondent's attorneys' fees, the court shall so order. If the respondent does not comply with the order at the time of disposition, the court shall file a judgment against the respondent for the amount due the State.

~~(c) The court may require payment of the attorney or guardian ad litem fee from a person other than the juvenile as provided in G.S. 7A-450.1, 7A-450.2, and 7A-450.3. In no event shall the parent or guardian be required to pay the fees for a court-appointed attorney or guardian ad litem in an abuse, neglect, or dependency proceeding unless the juvenile has been adjudicated to be abused, neglected, or dependent, or, in a proceeding to terminate parental rights, unless the parent's rights have been terminated. A person who does not comply with the court's order of payment may be punished for contempt as provided in G.S. 5A-21.~~"

SECTION 3. G.S. 7A-450.3 reads as rewritten:

"**§ 7A-450.3. Determination of responsibility at hearing.**

At the dispositional, sentencing or other hearing of the person who is less than 18 years old or who is at least 18 years old but remains dependent on and domiciled with a parent or guardian, the court shall make a determination whether the parent, guardian or trustee should be held responsible for reimbursing the State for the person's attorney or guardian ad litem fees. This determination shall include the financial situation of the parent, guardian or trustee, the relationship of responsibility the parent, guardian or trustee bears to the person and any showings by the parent, guardian or trustee that the person is emancipated or not dependent. The test of the party's financial ability to pay is the test applied to appointment of an attorney in cases of indigency. Any provision of any deed, trust or other writing, which, if enforced, would defeat the intent or purpose of this section is contrary to the public policy of this State and is void insofar as it may apply to prohibit reimbursement to the State.

If the court determines that the parent, guardian or trustee is responsible for reimbursing the State for the attorney or guardian ad litem fees, the court shall so order. If the party does not comply with the order ~~within 90 days,~~ at the time of disposition, the court shall file a judgment against him for the amount due the State."

SECTION 4. Sections 2 and 3 of this act become effective October 1, 2005, and apply to the appointment of counsel on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 594:
Recoupment by Court-Appointed Attorneys

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 14, 2005
Introduced by:	Sen. Kinnaird	**Summary by:**	Martha Walston
Version:	Third Edition		Committee Counsel

SUMMARY: Senate Bill 594 would amend the law governing recoupment for legal services provided to indigent persons who are financially able to pay a portion of the value of the services provided as follows:

- ***It would exempt indigent persons from paying for legal services rendered to perfect an appeal to the appellate division or in post-conviction proceedings if all of the matters raised are vacated, reversed or remanded for a new trial or resentencing.***
- ***It would allow the court to hold a parent responsible for payment of an attorney or guardian ad litem in cases where a juvenile has been adjudicated to be abused, neglected or dependent or where the parent's rights have been terminated. The parent must pay at the time of disposition.***

SB 594 has been heard in the following committees: Senate JII, Senate Finance, and House JI.

BILL ANALYSIS:

Section 1: North Carolina, like every jurisdiction, has an irrevocable constitutional duty to provide court-appointed counsel to an indigent defendant once he requests it. However, the State is not required to absorb the expenses of providing such counsel when the defendant has acquired the financial ability to pay. The current recoupment statute appears to direct entry of judgment in criminal appeals whenever the defendant's conviction is upheld.[1] It is unclear, however, whether this statute directs entry of civil judgment when the only relief available in the appellate courts is a new sentencing hearing. Section 1 of the bill would revise G.S. 7A-455(c) to clarify that recoupment of fees for legal services rendered is not appropriate when the appellant prevailed on the issues raised on appeal.

Section 2: Current statutes do not appear to authorize recoupment when counsel is provided to an adult in an abuse, neglect, or dependency, or termination of parental rights proceeding. G.S. 7B-603 states that a parent may be held responsible for counsel fees if the child is found to have been abused, neglected, or dependent or the parent's rights are terminated, thus suggesting that a parent may be required to pay for counsel services provided to the parent. However, this statute also states that the court should follow the procedures for recoupment in G.S. 7A-450.1, 7A-450.2, and 7A-450.3, which authorize the court to recoup fees for appointed counsel for services provided to a minor. Section 2 of the bill would clarify that a parent may be held responsible for paying the fees of a court-appointed attorney or guardian ad litem in those cases where a juvenile has been adjudicated to be abused, neglected or dependent, or in cases where the parent's rights have been terminated.

The original bill required persons ordered to reimburse the State for attorney or guardian ad litem fees to do so within 90 days, or have a judgment against them filed by the court. This 90-day period is consistent with language in G.S. 7A-450.3, which provides for the recoupment of attorney's fees from a parent where counsel or a guardian ad litem was appointed to represent a juvenile in an abuse, neglect, or dependency hearing or termination of parental rights hearing. However, the AOC indicated that this

[1] G.S. 7A-455(c).

90-day provision has proven unworkable for the clerks of court, and many clerks are entering judgment at the time of disposition. Therefore, AOC has recommended the language in the 3rd edition of the bill, which would require payment at the time of disposition. If a parent is unable to make payment at the time of disposition, the clerk would enter a judgment against the parent for the amount owed. This change is made to both recoupment statutes – that is, where the parent is ordered to reimburse the State for appointed counsel fees for work performed on behalf of the minor and for appointed counsel fees for work performed on behalf of the parent.

EFFECTIVE DATE: Sections 2 and 3 of the act would become effective October 1, 2005, and apply to appointment of counsel on or after that date. The remainder of the act is effective when it becomes law.

Trina Griffin, counsel to Senate Finance, substantially contributed to this summary.

S0594e3-SMLA

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 594 (Third Edition)

SHORT TITLE: Recoupment by Court-Appointed Attorneys.

SPONSOR(S): Senator Kinnaird

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund	**No estimate available: see Assumptions and Methodology**				
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Office of Indigent Defense Services

EFFECTIVE DATE:

BILL SUMMARY: Senate Bill 594 would amend the law governing recoupment for legal services provided to indigent persons who are financially able to pay a portion of the value of the services provided. It would exempt indigent persons from paying for legal services rendered to perfect an appeal to the appellate division or in post-conviction proceedings if all of the matters raised are vacated, reversed or remanded for a new trial or resentencing. It would allow the court to hold a parent responsible for payment of an attorney or guardian ad litem in cases where a juvenile has been adjudicated to be abused, neglected or dependent or where the parent's rights have been terminated.

ASSUMPTIONS AND METHODOLOGY: SB 594 gives the court the discretion to determine that an offender is capable of paying some, but not all, of their attorney cost, and that they may require the offender pay a partial fee. While the bill may improve recoupment rates, there is no available information on which to base any estimate.

SOURCES OF DATA: Office of Indigent Defense Services

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brenna Erford and Douglas Holbrook

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: July 14, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute # 2 for

SB 594 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW GOVERNING RECOUPMENT FOR LEGAL SERVICES PROVIDED TO INDIGENT PERSONS WHO ARE FINANCIALLY ABLE TO PAY A PORTION OF THE VALUE OF THOSE SERVICES.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S D

SENATE BILL 185
PROPOSED HOUSE COMMITTEE SUBSTITUTE S185-CSRB-31 [v.2]

7/18/2005 6:08:44 PM

Short Title: Windshield Replacers – Stickers w/o Fee. (Public)

Sponsors:

Referred to:

February 23, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT REPLACEMENT INSPECTION STICKERS FOR USE ON A REPLACED WINDSHIELD ARE NOT SUBJECT TO THE INSPECTION STICKER FEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-183.7(a) reads as rewritten:

"(a) Fee Amount. – When a fee applies to an inspection of a vehicle or the issuance of an inspection sticker, the fee must be collected. The following fees apply to an inspection of a vehicle and the issuance of an inspection sticker:

Type	Inspection	Sticker
Safety Only	$ 8.25	$0.85
Emissions and Safety	23.50	6.50.

The fee for performing an inspection of a vehicle applies when an inspection is performed, regardless of whether the vehicle passes the inspection. The fee for an inspection sticker applies when an inspection sticker is put on a vehicle. The fee for an inspection sticker does not apply to a replacement inspection sticker for use on a windshield replaced by a business registered with the Division pursuant to G.S. 20-183.6. The fee for inspecting after-factory tinted windows shall be ten dollars ($10.00), and the fee applies only to an inspection performed with a light meter after a safety inspection mechanic determined that the window had after-factory tint. A safety inspection mechanic shall not inspect an after-factory tinted window of a vehicle for which the Division has issued a medical exception permit pursuant to G.S. 20-127(f).

A vehicle that is inspected at an inspection station and fails the inspection is entitled to be reinspected at the same station at any time within 30 days of the failed inspection without paying another inspection fee.

The inspection fee for an emissions and safety inspection set out in this subsection is the maximum amount that an inspection station or an inspection mechanic may charge for an emissions and safety inspection of a vehicle. An inspection station or an inspection mechanic may charge the maximum amount or any lesser amount for an emissions and safety inspection of a vehicle. The inspection fee for a safety only inspection set out in this subsection may not be increased or decreased. The sticker fees set out in this subsection may not be increased or decreased."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 185

Short Title:	Windshield Replacers – Stickers w/o Fee.	(Public)
Sponsors:	Senators Holloman; Berger of Franklin, Cowell, Graham, and Kinnaird.	
Referred to:	Finance.	

February 23, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT REGISTERED BUSINESSES THAT REPLACE WINDSHIELDS MAY OBTAIN REPLACEMENT INSPECTION STICKERS WITHOUT PAYING THE STICKER FEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-183.6 reads as rewritten:

"**§ 20-183.6. Businesses that replace windshields must register with Division to get inspection stickers.**

(a) A person who is engaged in the business of replacing windshields on vehicles that are subject to inspection under this Part may register with the Division to obtain replacement inspection stickers for use on replaced ~~windshields.~~ windshields without paying the fees required by G.S. 20-183.7. A replacement inspection sticker put on a windshield that has been replaced must contain the same information and expire at the same time as the inspection sticker it replaces. A person who puts a replacement inspection sticker on a replaced windshield must remove the inspection sticker from the windshield that was replaced, attach the removed inspection sticker to a copy of the statement given the vehicle owner for replacing the windshield, and keep that copy of the statement until 18 months after the sticker was removed.

(b) A person registered under this section must keep records of replacement stickers put on replaced windshields and must be able to account for all inspection stickers received from the Division. The Division may suspend or revoke the registration of a person under this section if the person fails to keep records required by the Division or is unable to account for inspection stickers received from the Division. An auditor of the Division may review the records of a person registered under this section during normal business hours.

(c) A person who is registered under this section and has a safety inspection station license or an emissions inspection station license must keep the records of the inspection stickers used on replaced windshields separate from the records of the inspection stickers used on vehicles inspected. A person who is registered under this

section and has an inspection station license may not inspect a vehicle whose windshield is being replaced unless the inspection sticker on the windshield has expired or expires at the end of the month in which the windshield is being replaced and the person has the vehicle owner's permission to inspect the vehicle.

(d) A person who is registered under this section when obtaining the replacement stickers without paying the fees required by G.S. 20-183.7 shall present the copies of the statements that are required to be kept by subsection (a) of this section for examination by the Division."

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

SENATE BILL 185:
Windshield Replacers – Stickers w/o Fee

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 19, 2005
Introduced by:	Sen. Holloman	**Summary by:**	Cindy Avrette
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 185 provides that businesses that replace windshields may obtain replacement inspection stickers without paying the sticker fees.

CURRENT LAW: Businesses that replace windshields on vehicles may register with the Division of Motor Vehicles to obtain replacement inspection stickers for use on replaced windshields. The replacement inspection sticker must contain the same information and expire at the same time as the inspection sticker it replaces. The business must keep the removed inspection sticker, along with a copy of the statement given to the vehicle owner, for 18 months. The DMV may suspend or revoke the registration of a person who fails to keep the required records or is unable to account for the inspection stickers.

There are two types of inspection stickers placed on vehicles. A safety-only inspection sticker costs $.85 and an emissions and safety inspection sticker costs $6.50. Fees collected for inspection stickers are divided among the following accounts: the Highway Fund, the Emissions Program Account, the Telecommunications Account, the Highway Trust Fund Repayment Fee, the Volunteer Rescue/EMS Fund, the Rescue Squad Workers' Relief Fund, and the Division of Air Quality of the Department of Environment and Natural Resources.

BILL ANALYSIS: Senate Bill 185 would allow business that replace windshields on vehicles to obtain replacement inspection stickers from the Department of Motor Vehicles without paying the sticker fees upon presenting a copy of the statement prepared for the vehicle owner along with the removed inspection sticker.

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

Trina Griffin, counsel to the Senate Finance Committee, substantially contributed to this summary.

S0185e1-SMRB

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 185 (First Edition)

SHORT TITLE: Windshield Replacers – Stickers w/o Fee.

SPONSOR(S): Senator Holloman

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	**FY 2006-07**	**FY 2007-08**	**FY 2008-09**	**FY 2009-10**
REVENUES:					
Highway Fund	**($26,867)**	**($26,867)**	**($26,867)**	**($26,867)**	**($26,867)**
Highway Trust Fund	**($4,000)**	**($4,000)**	**($4,000)**	**($4,000)**	**($4,000)**
DENR – Air Quality	**($10,400)**	**($10,400)**	**($10,400)**	**($10,400)**	**($10,400)**
Other funds	**($90,655)**	**($90,655)**	**($90,655)**	**($90,655)**	**($90,655)**
Total, all funds	**($131,922)**	**($131,922)**	**($131,922)**	**($131,922)**	**($131,922)**
EXPENDITURES:					
DMV	**$10, 357**	**$1,397**	**$1,397**	**$1,397**	**$1,397**
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Dept. of Transportation, Division of Motor Vehicles, Highway Fund, Highway Trust Fund, Department of Environment and Natural Resources Division of Air Quality, Volunteer Rescue/EMS Fund, Rescue Squad Workers' Relief Fund

EFFECTIVE DATE: January 1, 2006

BILL SUMMARY: Provides that registered businesses that replace windshields may obtain replacement inspection stickers without paying the sticker fees. Requires that the person replacing the windshield shall submit copies of bills for windshield replacement with the old inspection stickers to the Division of Motor Vehicles when obtaining replacement stickers. Makes technical changes.

ASSUMPTIONS AND METHODOLOGY: There are presently 68 North Carolina counties with at least one windshield replacement center and a total of 207 windshield replacement centers in the state. The projection for this legislation is based on 2003-04 actual receipts from safety stickers and emissions stickers. During that year, DMV issued 32,850 safety stickers and 16,000 emissions stickers to windshield replacement centers.

There are two costs to DMV. The first is the transaction cost whereby DMV pays tag agencies $1.43 per transaction for windshield replacement transactions. In 2003-04, the 207 windshield replacement centers consumed 977 books of stickers, costing the DMV $1,397.

There is also an IT cost. DMV estimates that 100 hours of IT work will be needed to conform to the changes in this bill. At $80 per hour, the estimated IT cost is $8,000. There is also a $960 IT overhead (15% of programming, testing, and implementation), bringing the total IT expense to $8,960.

Funds affected by this legislation either receive money from the sale of both safety stickers and emissions stickers, or from the sale of emission stickers alone. The chart below provides detail on which funds receive money from which stickers as well as presenting the total impact to each fund under Senate Bill 185.

Senate Bill 185 - Total Impact to Various Funds					
	2005-06	**2006-07**	**2007-08**	**2008-09**	**2009-2010**
*Hwy Fund $ .55 ea.	($26,867)	($26,867)	($26,867)	($26,867)	($26,867)
IM Program $3.00 ea	($48,000)	($48,000)	($48,000)	($48,000)	($48,000)
*EMS $ .18 ea	($8,793)	($8,793)	($8,793)	($8,793)	($8,793)
*Rescue $ .12 ea	($5,862)	($5,862)	($5,862)	($5,862)	($5,862)
Hwy Trust Fund $.25 ea	($4,000)	($4,000)	($4,000)	($4,000)	($4,000)
DAQ $ .65 ea	($10,400)	($10,400)	($10,400)	($10,400)	($10,400)
Telecomm Fee $1.75 ea	($28,000)	($28,000)	($28,000)	($28,000)	($28,000)
Total, all funds	($131,922)	($131,922)	($131,922)	($131,922)	($131,922)
*The funds marked with an asterisk receive funds from both safety and emissions stickers (48,850 total). The rest receive funds from the inspections and maintenance sticker only (16,000 total).					

SOURCES OF DATA: DMV State Titling and Registration System and License & Theft Bureau

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brenna Erford and Bob Weiss

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: June 22, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

SB 185 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT REGISTERED BUSINESSES THAT REPLACE WINDSHIELDS MAY OBTAIN REPLACEMENT INSPECTION STICKERS WITHOUT PAYING THE STICKER FEES.

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 3

SENATE BILL 705

Health Care Committee Substitute Adopted 5/16/05
Third Edition Engrossed 6/1/05

Short Title: Amend NC Substance Abuse Act. (Public)

Sponsors:

Referred to:

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE LICENSURE OF SUBSTANCE ABUSE PROFESSIONALS, TO ESTABLISH THE CREDENTIAL OF CERTIFIED CRIMINAL JUSTICE ADDICTIONS PROFESSIONAL, AND TO ALLOW THE DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD CHECKS FROM STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORY OF APPLICANTS FOR CREDENTIALS UPON THE REQUEST OF THE NORTH CAROLINA SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5C of Chapter 90 of the General Statutes reads as rewritten:

"Article 5C.

"North Carolina Substance Abuse ~~Professionals Certification~~Professional Practice Act.

"**§ 90-113.30. Declaration of purpose.**

The North Carolina Substance Abuse Professional ~~Certification~~ Practice Board, established by G.S. 90-113.32, is recognized as the ~~certifying~~ registering, certifying, and licensing authority for substance abuse professionals described in this Article in order to safeguard the public health, safety, and welfare, to protect the public from being harmed by unqualified persons, to assure the highest degree of professional care and conduct on the part of ~~certified~~ credentialed substance abuse professionals, to provide for the establishment of standards for the education of ~~certified~~ credentialed substance abuse professionals, and to ensure the availability of ~~certified~~ credentialed substance abuse professional services of high quality to persons in need of these services. It is the purpose of this Article to provide for the regulation of ~~Board-certified~~Board-credentialed persons offering substance abuse counseling services, substance abuse prevention services, or any other substance abuse services for which the Board may grant ~~certification.~~registration, certification, or licensure.

"§90-113.31. Definitions.

The following definitions shall apply in this Article:

(1) Approved supervisor. – A person who provides supervision as required by the Board to persons applying for registration or certification as a substance abuse professional pursuant to this Article.

(1a) Board. – The North Carolina Substance Abuse Professional Certification Board.

(1b) Certified clinical addictions specialist. – A person certified by the Board to practice as a clinical addictions specialist in accordance with the provisions of this Article.

(1c) Certified clinical supervisor. – A person certified by the Board to practice as a clinical supervisor in accordance with the provisions of this Article.

(1d) Certified residential facility director. – A person certified by the Board to practice as a residential facility director in accordance with the provisions of this Article.

(2) Certified substance abuse counselor. – A person certified by the Board to practice as a substance abuse counselor in accordance with the provisions of this Article.

(3) Repealed by S.L. 1997-492, s. 2.

(3a) Certified substance abuse prevention consultant. – A person certified by the Board to practice substance abuse prevention in accordance with the provisions of this Article.

(4) Clinical supervisor intern. – A person designated by the Board to practice as a clinical supervisor intern for a period not to exceed three years without a showing of good cause in accordance with the provisions of this Article.

(4a) Credentialing body. – A board that licenses, certifies, or regulates a profession or practice.

(4b) Deemed status. – Recognition by the Board of the credentials offered by a professional discipline whereby the individuals certified, licensed, or otherwise recognized by the discipline as having met the standards of a substance abuse specialist may apply individually for certification as a certified clinical addictions specialist.

(4c) Human services field. – An area of study that focuses on the biological, psychological, and social aspects of human beings.

(4d) Repealed by Session Laws 1999-164, s. 1.

(5) Prevention. – The reduction, delay, or avoidance of alcohol and of other drug use behavior. "Prevention" includes the promotion of positive environments and individual strengths that contribute to personal health and well-being over an entire life and the development of strategies that encourage individuals, families, and communities to take part in assessing and changing their lifestyle and environments.

~~(6) Professional discipline. — A field of study characterized by the technical, educational, and ethical standards of a profession.~~

~~(6a) Registrant. — A person who has initiated a certification process to become a certified substance abuse counselor or a certified clinical addictions specialist pursuant to this Article and is authorized to provide DWI assessments pursuant to G.S. 122C-142.1.~~

~~(7) Substance abuse counseling. — The assessment, evaluation, and provision of counseling to persons suffering from substance, drug, or alcohol abuse or dependency.~~

~~(7a) Substance abuse counselor intern. — A person who successfully completes 300 hours of Board approved supervised practical training and a written examination in pursuit of certification as a substance abuse counselor.~~

~~(8) Substance abuse professional. — A certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director.~~

"**§ 90-113.31A. Definitions.**

The following definitions shall apply in this Article:

(1) Applicant. – A person who has initiated a process to become a substance abuse professional pursuant to this Article.

(2) Applicant supervisor. – A person who provides supervision as required by the Board to persons applying for registration, certification, or licensure as a substance abuse professional pursuant to this Article.

(3) Board. – The North Carolina Substance Abuse Professional Practice Board.

(4) Certified clinical supervisor. – A person certified by the Board to practice as a clinical supervisor in accordance with the provisions of this Article.

(5) Certified criminal justice addictions professional. – A person certified by the Board to practice as a criminal justice addictions professional who under supervision provides direct services to clients or offenders exhibiting substance abuse disorders and works in a program determined by the Board to be involved in a criminal justice setting.

(6) Certified substance abuse counselor. – A person certified by the Board to practice under the supervision of a practice supervisor as a substance abuse counselor in accordance with the provisions of this Article.

(7) Certified substance abuse prevention consultant. – A person certified by the Board to practice substance abuse prevention in accordance with the provisions of this Article.

(8) Certified substance abuse residential facility director. – A person certified by the Board to practice as a substance abuse residential facility director in accordance with the provisions of this Article.

(9) Clinical addictions specialist intern. – A person who successfully completes 300 hours of Board-approved supervised practical training and passes a written examination in pursuit of licensure as a clinical addictions specialist.

(10) Clinical supervisor intern. – A person designated by the Board to practice as a clinical supervisor under the supervision of a certified clinical supervisor for a period not to exceed three years without a showing of good cause in accordance with the provisions of this Article.

(11) Counseling. – The utilization of special skills to assist individuals, families, or groups in achieving objectives, including the following:

a. Exploring a problem and its ramifications.

b. Examining attitudes and feelings.

c. Considering alternative solutions.

d. Decision making.

(12) Credential. – Any registration, certification, or license issued by the Board.

(13) Credentialing body. – A board that licenses, certifies, registers, or otherwise regulates a profession or practice.

(14) Criminal history. – A history of conviction of a State crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice substance abuse professional services. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to

underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(15) Deemed status. – Recognition by the Board of the credentials offered by a professional discipline whereby the individuals certified, licensed, or otherwise recognized by the discipline as having met the standards of a clinical addictions specialist may apply individually for licensure as a licensed clinical addictions specialist.

(16) Dual relationship. – A relationship in addition to the professional relationship with a person to whom the substance abuse professional delivers services in the Twelve Core Functions or the performance domains, both as defined in rules adopted by the Board, or as provided in a supervisory capacity. These relationships may result in grounds for disciplinary action.

(17) Human services field. – An area of study that focuses on the biological, psychological, behavioral, and social aspects of human welfare with focus on the direct services designed to improve it.

(18) Independent study. – Any course of study that is not traditional classroom-based that must be preapproved by the Board or any organization that has deemed status with the Board.

(19) Licensed clinical addictions specialist. – A person licensed by the Board to practice as a clinical addictions specialist in accordance with the provisions of this Article.

(20) Practice supervisor. – A certified clinical supervisor, clinical supervisor intern, or licensed clinical addictions specialist who provides oversight and responsibility in a face-to-face capacity for each certified substance abuse counselor or criminal justice addictions professional.

(21) Prevention. – The reduction, delay, or avoidance of alcohol and of other drug use behavior. 'Prevention' includes the promotion of positive environments and individual strengths that contribute to personal health and well-being over an entire life and the development of strategies that encourage individuals, families, and communities to take part in assessing and changing their lifestyle and environments.

(22) Professional discipline. – A field of study characterized by the technical, educational, and ethical standards of a profession.

(23) Registrant. – A person who completes all requirements to be registered with the Board and is supervised by a certified clinical supervisor or clinical supervisor intern.

(24) Substance abuse counseling. – The assessment, evaluation, and provision of counseling and therapeutic service to persons suffering from substance abuse or dependency.

(25) Substance abuse counselor intern. – A person who successfully completes 300 hours of Board-approved supervised practical training

and passes a written examination in pursuit of credentialing as a substance abuse counselor.

(26) Substance abuse professional. – A registrant, certified substance abuse counselor, substance abuse counselor intern, certified substance abuse prevention consultant, certified clinical supervisor, clinical addictions specialist intern, licensed clinical addictions specialist, certified substance abuse residential facility director, or certified criminal justice addictions professional.

"**§ 90-113.31B. Scope of practice.**

The scope of practice is the use by all substance abuse professionals and their ongoing supervisees of principles, methods, and procedures of the Twelve Core Functions or performance domains as prescribed by the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated, and as limited by individual credential and supervisory requirements pursuant to this Article. Specifically, the scope of practice for each individual defined as a substance abuse professional under G.S. 90-113.31A is as follows:

(1) The practice of a certified substance abuse counselor consists of the Twelve Core Functions, including screening, intake, orientation, assessment, treatment planning, counseling, case management, crisis intervention, client education, report and record keeping, consultation with other professionals in regard to client treatment and services, and referral to treat addictive disorder or disease and help prevent relapse.

(2) The practice of a certified substance abuse prevention consultant is based on knowledge in the performance domains to prevent or reduce the conditions that place individuals at increased risk of developing addictive disorder or disease and help prevent relapse.

(3) The practice of a certified clinical supervisor is based on knowledge in the performance domains to supervise substance abuse professionals who work to treat, prevent, or reduce the conditions that place individuals at risk of developing addictive disorder or disease and help prevent relapse.

(4) The practice of a licensed clinical addictions specialist may be independent and consists of the Twelve Core Functions, including screening, intake, orientation, assessment, treatment planning, counseling, case management, crisis intervention, client education, report and record keeping, consultation with other professionals in regard to client treatment and services, referral to reduce the conditions that place individuals at risk of developing addictive disorder or disease with co-occurring disorders, and treatment for addictive disorder or disease. The licensed clinical addictions specialist may provide supervision to maintain a professional credential as defined by this Article.

(5) The practice of a certified substance abuse residential facility director is a voluntary credential and consists of the Twelve Core Functions,

including screening, intake, orientation, assessment, treatment planning, counseling, case management, crisis intervention, client education, report and record keeping, consultation with professionals in regard to client treatment and services, referral to prevent or reduce the conditions that place individuals at increased risk of developing addictive disorder or disease, treatment for addictive disorder or disease, and the prevention of relapse as well as academic management training.

(6) The practice of a certified criminal justice addictions professional is based on knowledge in the performance domains of dynamics of addiction in criminal behavior; legal, ethical, and professional responsibility; criminal justice system and processes; screening, intake, and assessment; case management; monitoring; and client supervision and counseling to prevent or reduce the conditions that place individuals at increased risk of developing addictive disorder or disease, treat addictive disorder or disease, and help prevent relapse.

"**§ 90-113.32. Board; composition; voting.**

(a) The Board is created as the ~~certifying~~ authority ~~for substance abuse counselors, substance abuse prevention consultants, clinical supervisors, clinical addictions specialists, and residential facility directors~~to credential substance abuse professionals in North Carolina.

(b) Until the full Board is elected or appointed pursuant to subsection (c) of this section, the Board shall consist of 16 members with one member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and one member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The remaining 14 shall be those members of the current North Carolina Substance Abuse Professional ~~Certification~~ Practice Board, Inc., who have terms that are unexpired as of the effective date of this Article. The initial Board shall appoint an initial Nominating and Elections Committee to fill immediate vacancies on the Board, using the process established in subsection (d) of this section. The election and appointment process of the initial Board shall result in a Board of 19 members by April 1, 1995. As these initial members' terms expire, their successors shall be appointed as described in subsection (c) of this section, until the permanent Board is established, as described in subsection (c) of this section. Time spent as an initial member counts in determining the limitation on consecutive terms prescribed in subsection (e) of this section.

(c) After the initial Board members' terms expire, the Board shall consist of the following members, all of whom shall reside in North Carolina, appointed or elected as follows:

(1) Eleven professionals ~~certified~~ credentialed pursuant to this Article and elected by the ~~certified~~ credentialed professionals, at least two of whom shall serve each of the four Division of Mental Health,

Developmental Disabilities, and Substance Abuse Services regions of the State. Three members shall serve as members at large.

(2) Three members at large chosen from laypersons or other professional disciplines who have shown a special interest in the field of substance abuse, nominated by the Nominating and Elections Committee established by subsection (d) of this section and elected by the Board.

(3) Two members from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, Department of Health and Human Services, appointed by the Chief of ~~Substance Abuse Services Section, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, Department of Health and Human Services,~~the North Carolina Substance Abuse Single State Agency, at least one of whom ~~is from the Substance Abuse Services Section.~~administers substance abuse services.

(4) One member of the public at large appointed by the Governor.

(5) One member of the public at large appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 and one member of the public at large appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(6) One member shall represent each of the professional disciplines granted deemed status under G.S. 90-113.41A. The member may be appointed by the professional discipline on or before a date set by the Board. If the professional discipline has at least one association in the State, the member shall be chosen from a list of nominees submitted to the association. The members appointed or elected under this subdivision shall be certified as substance abuse specialists by the professional discipline that the members represent.

No member of the General Assembly shall serve on the Board.

(c1) Every member of the Board shall have the right to vote on all matters before the Board, except for the President who shall vote only in case of a tie or when another member of the Board abstains on the question of whether the professional discipline the member represents shall retain its deemed status.

(d) The Board shall appoint five professionals from the field of substance abuse counseling and substance abuse prevention consulting to serve on the Nominating and Elections Committee. Of these five, at least three shall not be members of the Board. The Board shall appoint a member of the Nominating and Elections Committee to serve as chair. The Committee's purpose is to accept nominations from professionals certified or licensed by the Board to fill vacancies on the Board in membership categories prescribed by subdivisions (1) and (2) of subsection (c) of this section and to conduct the election of Board members. The Committee shall solicit nominations from all professionals it has certified or licensed under this Article when elected members' terms are due to expire. The certified or licensed professionals shall submit to the Committee

all nominations beginning 90 days and ending ~~14~~ 28 days before the election of new Board members. The Committee shall furnish all certified or licensed professionals with a ballot containing all the nominees for each elected Board member vacancy. In soliciting and making nominations for this process, the Committee shall give consideration to factors that promote representation on the Board by professionals certified or licensed by the Board. The Committee shall serve for a two-year term, its successors to be appointed for the same term by the Board.

(e) Members of the Board shall serve for ~~three-year~~four-year terms. No Board member shall serve for more than two consecutive terms, but a person who has been a member for two consecutive terms may be reappointed after being off the Board for a period of at least one year. When a vacancy occurs in an unexpired term, the Board shall, as soon as practicable, appoint temporary members to serve until the end of the unexpired terms. Time spent as a temporary member does not count in determining the limitation on consecutive terms.

(f) If a member becomes ineligible to serve on the Board for any reason, except when the member has committed an ethical violation that results in the suspension or revocation of the member's professional credentials, ~~the~~ that member may fulfill the remainder of ~~the member's~~his or her term on the Board.

"**§ 90-113.33. Board; powers and duties.**

The Board shall:

(1) Examine and determine the qualifications and fitness of applicants for certification and licensure to practice in this State.

(1a) Determine the qualifications and fitness of organizations applying for deemed status.

(2) Issue, renew, deny, suspend, or revoke ~~certification~~ licensure, certification, or registration to practice in this State or reprimand or otherwise discipline ~~certificate~~ a license, certificate, or registration ~~holders~~ holder in this State. ~~Denial of an applicant's certification or registration or the granting of certification or registration on a probationary or other conditional status shall be subject to substantially the same rules and procedures prescribed by the Board for review and disciplinary actions against those persons holding certificates or registrations. Disciplinary actions involving a clinical addictions specialist whose certification is achieved through deemed status shall be initially heard by the specialist's credentialing body. The specialist may appeal the body's decision to the Board. The Board shall, however, have the authority to hear the initial disciplinary action involving a clinical addictions specialist.~~

(3) Deal with issues concerning reciprocity.

(4) Conduct investigations for the purpose of determining whether violations of this Article or grounds for disciplining exists.

(5) Employ ~~the professional and clerical~~and fix the compensation of personnel and legal counsel that the Board determines is necessary to carry out the provisions of this Article. The Board's employment of

legal counsel is subject to the provisions of G.S. 114-2.3. The Board may purchase or rent necessary office space, equipment, and supplies.

(6) Conduct administrative hearings in accordance with Chapter 150B of the General Statutes when a "contested case", as defined in Chapter 150B, arises.

(7) Appoint from its own membership one or more members to act as representatives of the Board at any meeting in which it considers this representation is desirable.

(8) Establish fees for applications for examination, registration, certificates of ~~certification~~ certification, licensure, and renewal, and other services provided by the Board.

(9) Adopt any rules necessary to carry out the purpose of this Article and its duties and responsibilities pursuant to this Article.

(10) Request that the Department of Justice conduct criminal history record checks of applicants for registration, certification, or licensure pursuant to G.S. 114-19.11A.

The powers and duties enumerated in this section are granted for the purposes of enabling the Board to safeguard the public health, safety, and welfare against unqualified or incompetent practitioners and are to be liberally construed to accomplish this objective. When the Board exercises its authority under this Article to discipline a person, it may, as part of the decision imposing the discipline, charge the costs of investigations and the hearing to the person disciplined.

"§ 90-113.33A. Officers may administer oaths, and subpoena witnesses, records, and other materials.

The President or other presiding officer of the Board may administer oaths to all persons appearing before it as the Board may deem necessary to perform its duties, and may summon and issue subpoenas for the appearance of any witnesses deemed necessary to testify concerning any matter to be heard before or inquired into by the Board. The Board may order that any client records, documents, or other materials concerning any matter to be heard before or inquired into by the Board shall be produced before the Board or made available for inspection, notwithstanding any other provisions of law providing for the application of any counselor-client or physician-patient privilege with respect to such records, documents, or other materials. All records, documents, or other materials compiled by the Board are subject to the provisions of G.S. 90-113.34, except that in any proceeding before the Board, record of any hearing before the Board, and notice of charges against any person ~~certified~~ credentialed by the Board, the Board shall withhold from public disclosure the identity of a client, including information relating to dates and places of treatment, or any other information that tends to identify the client unless the client or the client's representative has expressly consented to the disclosure. Upon written request, the Board shall revoke a subpoena if, upon a hearing, it finds that the evidence sought does not relate to a matter in issue, the subpoena does not describe the evidence with sufficient particularity, or the subpoena is invalid.

"§ 90-113.34. Records to be kept; copies of records.

(a) The Board shall keep a regular record of its proceedings, together with the names of the members of the Board present, the names of the applicants for registration, certification, and licensure as well as other information relevant to its actions. The Board shall cause a record to be kept that shall show the name, last known place of business, last known place of residence, and date and number of the ~~certificate of certification as a certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director for every living certified person.~~credential assigned to each substance abuse professional meeting the standards set forth in this Article. Any interested person in the State is entitled to obtain a copy of ~~that record on~~Board records upon application to the Board and ~~upon~~ payment of a reasonable charge that is based on the costs involved in providing the copy.

(b) The Board may in a closed session receive evidence regarding the provision of substance abuse counseling or other treatment and services provided to a client who has not expressly or through implication consented to the public disclosure of such treatment as may be necessary for the protection of the rights of the client or of the accused registrant or substance abuse professional and the full presentation of relevant evidence. All records, papers, and other documents containing information collected and compiled by the Board, its members, or employees as a result of investigations, inquiries, or interviews conducted in connection with ~~a certification~~awarding a credential or a disciplinary matter shall not be considered public records within the meaning of Chapter 132 of the General Statutes, except any notice or statement of charges, or notice of hearing shall be a public record notwithstanding that it may contain information collected and compiled as a result of an investigation, inquiry, or interview. If any record, paper, or other document containing information collected and compiled by the Board as provided in this subsection is received and admitted in evidence in any hearing before the Board, it shall thereupon be a public record.

(c) Notwithstanding any provision to the contrary, the Board may, in any proceeding, record of any hearing, and notice of charges, withhold from public disclosure the identity of a client who has not expressly or through implication consented to such disclosure of treatment by the accused substance abuse professional.

"**§ 90-113.35. Disposition of funds.**

All fees and other moneys collected and received by the Board shall be used to implement this Article. The financial records of the Board shall be subjected to an annual audit and paid for out of the funds of the Board.

"**§ 90-113.36. ~~Certificates of certification.~~Credentials.**

(a) The Board shall furnish a certificate of certification or licensure to each applicant successfully completing the requirements for ~~certification.~~his or her credential.

(b) The Board may furnish a certificate of certification or licensure to any person in another state or territory if the individual's qualifications were, at the date of ~~registration or~~registration, certification, or licensure, substantially equal to the requirements under this Article. However, an out-of-state applicant shall first file application and pay any required fees.

~~"§ 90-113.37. Renewal of certification; lapse; revival.~~

~~(a) Every person certified pursuant to this Article who desires to maintain certification status shall apply to the Board for a renewal of certification every other year and pay to the secretary-treasurer the prescribed fee. Renewal of certification is subject to completion of no more than 60 hours of those continuing education requirements established by the Board. A clinical supervisor shall complete 15 hours of substance abuse clinical supervision training prior to the certificate being renewed. Certification that is not renewed automatically lapses, unless the Board provides for the late renewal of certification upon the payment of a late fee. No late renewal shall be granted more than five years after a certification expires. A suspended certification is subject to this section's renewal requirements and may be renewed as provided in this section. This renewal does not entitle the certified person to engage in the certified activity or in any other conduct or activity in violation of the order or judgment by which the certification was suspended, until the certification is reinstated. If a certification revoked on disciplinary grounds is reinstated and requires renewal, the certified person shall pay the renewal fee and any applicable late fee.~~

~~(b) The Board shall establish the manner in which lapsed certification may be revived or extended.~~

"**§ 90-113.37A. Renewal of credential; lapse.**

(a) Every person credentialed pursuant to this Article who desires to maintain his or her credentials shall apply to the Board for a renewal of certification or licensure every other year and pay to the treasurer the prescribed fee.

(b) Renewal of licensure is subject to completion of at least 40 hours of the continuing education requirements established by the Board. Renewal of substance abuse counselor or substance abuse prevention consultant certification is subject to completion of at least 60 hours of the continuing education requirements established by the Board. A certified substance abuse counselor shall submit a Board-approved supervision contract signed by the applicant and a practice supervisor documenting ongoing supervision at a ratio of one hour of supervision to every 40 hours of practice after certification is granted by the Board on a form provided by the Board. Any person certified by the Board as a certified alcoholism counselor or certified drug abuse counselor shall become a certified substance abuse counselor.

A clinical supervisor shall complete at least 15 hours of substance abuse clinical supervision training prior to the certificate being renewed. A substance abuse residential facility director shall complete at least 10 hours of substance abuse training for renewal. A certified criminal justice addictions professional shall complete at least 40 hours of continuing education that must be earned in the certified criminal justice addictions professional performance domains. A certified criminal justice addictions professional shall submit a Board-approved supervision contract signed by the criminal justice addictions professional and a practice supervisor documenting ongoing supervision at a ratio of one hour of supervision to every 40 hours of practice after certification is granted by the Board on a form provided by the Board.

(c) Independent study hours shall compose no more than fifty percent (50%) of the total number of hours required for renewal.

(d) A credential that is not renewed automatically lapses, unless the Board approves the late renewal of a credential upon the payment of a late fee.

(e) No late renewal shall be granted more than five years after a certification or licensure expires.

(f) A suspended credential may be renewed as provided in this section. This renewal does not entitle the credentialed person to engage in conduct or activity in violation of the order or judgment by which the credential was suspended, until the credential is reinstated. If a credential revoked on disciplinary grounds is reinstated and requires renewal, the credentialed person shall pay the renewal fee and any applicable late fee.

(g) The Board shall establish the manner in which lapsed certification or licensure may be revived or extended.

"**§ 90-113.38. Maximums for certain fees.**

(a) The fee to obtain a certificate of certification as a substance abuse counselor, substance abuse prevention consultant, clinical supervisor, ~~or~~ substance abuse residential facility ~~director~~ director, or certified criminal justice addictions professional may not exceed four hundred seventy-five dollars ($475.00). The fee to renew a certificate may not exceed one hundred fifty dollars ($150.00).

(b) The fee to obtain a certificate of ~~certification~~ licensure for a clinical addictions specialist pursuant to deemed status ~~may~~ shall not exceed one hundred fifty dollars ($150.00). The fee to renew a ~~certificate may~~license for a clinical addictions specialist pursuant to deemed status shall not exceed one hundred dollars ($100.00). The fee to obtain a ~~certificate of certification~~license for a clinical addictions specialist pursuant to all other procedures authorized by this Article ~~may~~ shall not exceed four hundred seventy-five dollars ($475.00). The fee to renew the ~~certificate may~~license shall not exceed one hundred fifty dollars ($150.00).

(b1) The fee to obtain a registration as a registrant shall ~~be~~ not exceed one hundred fifty dollars ($150.00). The fee to renew a registration shall ~~be~~ not exceed one hundred fifty dollars ($150.00).

(c) There shall be a reexamination fee of one hundred fifty dollars ($150.00) which shall be paid for each reexamination in addition to the fees ~~required under~~authorized pursuant to subsection (a) of this section. There shall be a fee not to exceed twenty-five dollars ($25.00) for rescheduling any examination.

(d) There shall be a fee ~~of~~ not to exceed twenty-five dollars ($25.00) to obtain a written verification ~~of certification~~or additional copy of a credential issued by the Board.

(e) There shall be a late renewal fee not to exceed one hundred twenty-five dollars ($125.00).

(f) In addition to any other prescribed fees, the Board shall charge a fee not to exceed one hundred fifty dollars ($150.00) for each administration of the test an applicant must pass to be credentialed as a United States Department of Transportation substance abuse professional.

"**§ 90-113.39. Standards for ~~certification.~~credentials.**

The Board shall establish standards ~~for certification of~~to credential substance abuse professionals. The ~~certification~~ credentialing standards of the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated and the standards adopted by professional disciplines granted deemed status or their successor organizations may be used as guidelines for the Board's standards. The Board shall publish these required ~~standards separately from its rules so as to provide easy access to the~~ standards.

"§ 90-113.40. Requirements for ~~certification.~~certification and licensure.

(a) The Board shall issue a certificate certifying an applicant as a "Certified Substance Abuse Counselor" or as a "Certified Substance Abuse Prevention Consultant" if:

(1) The applicant is of good moral character.

(2) The applicant is not and has not engaged in any practice or conduct that would be grounds for disciplinary action under G.S. 90-113.44.

(3) The applicant is qualified for certification pursuant to the requirements of this Article and any rules adopted pursuant to it.

(4) The applicant has, at a minimum, a high school diploma or a high school equivalency certificate.

(5) The applicant has signed a form attesting to the intention to adhere fully to the ethical standards adopted by the Board.

(5a) The applicant submits a complete criminal history record check pursuant to G.S. 90-113.46A.

(6) The applicant has completed 270 hours of Board-approved education. The Board may prescribe that a certain number of hours be in a course of study for substance abuse counseling and that a certain number of hours be in a course of study for substance abuse prevention consulting. Independent study hours shall not compose more than fifty percent (50%) of the total number of hours required for initial credentialing.

(7) The applicant has documented completion of a minimum of 300 hours of Supervised Practical ~~Training and~~Training, has provided a Board-approved supervision contract between the applicant and an ~~approved supervisor.~~applicant supervisor, and has been deemed recommended by the applicant supervisor to advance in the credentialing process.

(8) The applicant for substance abuse counselor has completed ~~either~~ a total of 6,000 hours of supervised experience in the field, whether paid or ~~volunteer, or, if a graduate of a Board-approved master's degree program, a total of 3,000 hours of supervised experience in the field, whether paid or~~ volunteer. The applicant for substance abuse prevention consultant has completed a total of ~~10,000~~6,000 hours supervised experience in the field, whether paid or volunteer, or 4,000 hours if the applicant has at least a bachelors degree in a human services field from a regionally accredited college or university.

(9) The applicant has ~~successfully completed~~obtained a passing score on a written ~~examination and~~examination. An applicant for certification as a substance abuse counselor must also obtain a passing score on an oral examination promulgated and administered by the Board.

(b) The Board shall issue a certificate certifying an individual as a "Certified Clinical Supervisor" if, in addition to meeting the requirements of subdivisions (a)(1) through ~~(5)~~(5a) of this section, the applicant:

(1) Submits proof of designation by the Board as a clinical supervisor intern.

(2) Prior to June 30, 1998, the applicant presents proof that the applicant has 12,000 hours experience in alcohol and drug abuse counseling and a bachelors degree or 8,000 hours experience in alcohol and drug abuse counseling and a minimum of a master's degree. After June 30, 1998, the applicant shall present proof that the applicant has a minimum of a master's degree in a human services field with a clinical application from a regionally accredited college or university.

(3) Has 6,000 hours experience as a substance abuse clinical supervisor if the applicant has a bachelors degree or 4,000 hours experience if the applicant has a master's degree in a human services field with a clinical application from a regionally accredited college or university.

(4) Has 30 hours of substance abuse clinical supervision specific education or training. These hours shall be reflective of the ~~12 core functions~~Twelve Core Functions in the applicant's clinical application and practice and may also be counted toward the applicant's ~~recertification~~ renewal as a substance abuse ~~counselor~~counselor or a clinical addictions specialist.

(5) Submits a letter of reference from a professional who can attest to the applicant's supervisory competence and two letters of reference from either counselors who have been supervised by the applicant or professionals who can attest to the applicant's competence.

(6) ~~Successfully completes~~Obtains a passing score on a written examination administered by the Board.

A person who practices as a certified clinical supervisor in addition to practicing as a certified substance abuse counselor shall be exempt from the practice supervision contract requirement.

(b1) The Board shall designate an applicant as a "Clinical Supervisor Intern" if, in addition to meeting the requirements of subdivisions (a)(1) through ~~(5)~~(5a) of this section, the applicant meets the following qualifications:

(1) Submits an application, resume, and official transcript showing that the applicant has obtained a master's degree in a human services field with a clinical application from a regionally accredited college or university.

(2) Submits verification statements.

(3) Submits proof of ~~certification~~ credentialing as a certified substance abuse ~~counselor or a certified~~counselor, a licensed clinical addictions ~~specialist.~~specialist, or certification or licensure through an organization granted deemed status by the Board.

(4) Submits documentation establishing that the applicant has completed at least fifty percent of the required clinical supervision specific training hours as defined by the Board.

(c) The Board shall issue a ~~certificate certifying~~license credentialing an applicant as a "~~Certified~~ Licensed Clinical Addictions Specialist" if, in addition to meeting the requirements of subdivisions (a)(1) through ~~(5)~~(5a) of this section, the applicant meets one of the following criteria:

(1) Criteria A. – The applicant:

a. Has a minimum of a master's degree with a clinical application in a human services field from a regionally accredited college or university.

b. Has two years postgraduate supervised substance abuse counseling experience.

c. Submits three letters of reference from ~~certified~~ licensed clinical addictions specialists or certified substance abuse counselors who have obtained master's degrees.

d. Has achieved a combined score set by the Board on a master's level written and oral examination administered by the Board.

e. Has attained 180 hours of substance abuse specific training ~~as described~~from either a regionally accredited college or university, which may include unlimited independent study, or from training events of which no more than fifty percent (50%) shall be in independent study. All hours shall be credited according to the standards set forth in G.S. 90-113.41A.

f. The applicant has documented completion of a minimum of 300 hours of supervised practical training and has provided a Board-approved supervision contract between the applicant and an ~~approved~~ applicant supervisor.

(2) Criteria B. – The applicant:

a. Has a minimum of a master's degree with a clinical application in a human services field from a regionally accredited college or university.

b. Has been certified as a substance abuse counselor.

c. Has one year of postgraduate supervised substance abuse counseling experience.

d. Has achieved a passing score on a master's level written examination administered by the Board.

e. Submits three letters of reference from ~~certified~~ either licensed clinical addictions specialists or certified substance abuse counselors who have obtained master's degrees.

(3) Criteria C. – The applicant:

a. Has a minimum of a master's degree in a human services field with both a clinical application and a substance abuse specialty from a regionally accredited college or university that includes 180 hours of substance abuse specific education and training pursuant to G.S. 90-113.41A.

b. Has one year of postgraduate supervised substance abuse counseling experience.

c. Has achieved a passing score on an oral examination administered by the Board.

d. Submits three letters of reference from ~~certified~~ licensed clinical addictions specialists or certified substance abuse counselors who have obtained master's degrees.

(4) Criteria D. – The applicant has a substance abuse certification from a professional discipline that has been granted deemed status by the Board.

(d) The Board shall issue a certificate certifying an applicant as a "Substance Abuse ~~Certified~~ Residential Facility Director" ~~if, in addition to meeting the requirements of subdivisions (a)(1) through (5) of this section,~~ if the applicant:

(1) Has been ~~certified~~ credentialed as a substance abuse counselor or a clinical addictions specialist.

(2) Has 50 hours of Board approved academic or didactic management specific training or a combination thereof. Independent study may compose up to fifty percent (50%) of the total number of hours required for initial credentialing.

(3) Submits letters of reference from the applicant's current supervisor and a colleague or coworker.

(d1) The Board shall issue a certificate certifying an applicant as a 'Certified Criminal Justice Addictions Professional', with the acronym 'CCJP', if in addition to meeting the requirements of subdivisions (a)(1) through (5a) of this section, the applicant:

(1) Has attained 270 hours of Board-approved education or training, unless the applicant has attained a minimum of a masters degree with a clinical application and a substance abuse specialty from a regionally accredited college or university whereby the applicant must only obtain 180 hours. The hours of education shall be specifically related to the knowledge and skills necessary to perform the tasks within the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated, 'IC&RC/AODA, Inc.,' criminal justice addictions professional performance domains as they relate to both adults and juveniles. Independent study may compose up to fifty percent (50%) of the total number of hours obtained for initial certification or renewal.

(2) Has documented 300 hours of Board-approved supervised practical training. This supervision shall mean the administrative, clinical, and evaluative process of monitoring, assessing, and enhancing professional performance. A minimum of 10 hours of supervision in each criminal justice domain established by the IC&RC/AODA, Inc., is required.

(3) Has provided documentation of supervised work experience providing direct service to clients or offenders involved in one of the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections. The applicant must meet one of the following criteria:

a. Criteria A. – In addition to having a high school degree or GED, the applicant has a minimum of 6,000 hours of documented work experience in direct services in criminal justice or addictions services or any combination of these services that have been obtained during the past 10 years.

b. Criteria B. – In addition to having an associate degree, the applicant has a minimum of 5,000 hours of documented work experience in direct services in criminal justice or addictions services or any combination of these services obtained during the past 10 years.

c. Criteria C. – In addition to having at least a bachelors degree, the applicant has a minimum of 4,000 hours of documented work experience in direct services in criminal justice or addictions services or any combination of these services and this experience has been obtained during the past 10 years.

d. Criteria D. – In addition to having at least a masters degree in a human services field, the applicant has a minimum of 2,000 hours of documented work experience in direct services in criminal justice or addictions services or any combination of these services that has been obtained during the past 10 years.

e. Criteria E. – In addition to having at least a masters degree in a human services field with a specialty from a regionally accredited college or university that includes 180 hours of substance abuse specific education or training, the applicant has a minimum of 2,000 hours of postgraduate supervised substance abuse counseling experience.

f. Criteria F. – In addition to having obtained the credential of a certified clinical addictions specialist or other advanced credential in a human services field from an organization that has obtained deemed status with the Board, the applicant has a minimum of 1,000 hours of documented work experience in direct services in criminal justice or addictions services that has been obtained during the past 10 years.

(4) Has passed the IC&RC/AODA, Inc., certified criminal justice addictions professional written examination.

(e) The Board shall publish from time to time information in order to provide specifics for potential applicants of an acceptable educational curriculum and the terms of acceptable supervised fieldwork experience.

(f) ~~Effective until January 1, 2001, any person who is certified as a certified clinical supervisor or who functions by his or her job description as a certified clinical supervisor shall be qualified to supervise applicants for certified clinical supervisor.~~

~~Effective from January 1, 2001 until January 1, 2003, only a person who is certified both as a certified clinical supervisor and as a certified clinical addictions specialist shall be qualified to supervise applicants for certified clinical addictions specialist, but a person who is certified as a certified clinical supervisor or a certified clinical addictions specialist shall be qualified to supervise an applicant for certification as a certified substance abuse counselor.~~

Effective January 1, 2003, only a person who is certified as a certified clinical supervisor or a clinical supervisor intern shall be qualified to supervise applicants for certified clinical supervisor and certified substance abuse counselor and applicants for ~~certified~~ licensed clinical addictions specialist who meet the qualifications of their credential other than through deemed status as provided in G.S. 90-113.40(c)(4).

"**§ 90-113.40A. Requirements for registration.**

(a) Upon application and payment of the required fee, the Board shall issue a registration designating an applicant as a registrant if the applicant:

(1) Provides documentation that he or she has received a high school diploma, or the equivalent, and evidence of any baccalaureate or advanced degrees the applicant has received.

(2) Completes a registration application on a form provided by the Board.

(3) Provides documentation of three hours of educational training in ethics.

(4) Signs a form attesting to the applicant's commitment to adhere to the ethical standards adopted by the Board.

(4a) Provides a complete criminal history record check pursuant to G.S. 90-113.46A.

(5) Signs a supervision contract provided by the Board that documents the proposed supervision process by an ~~approved~~ applicant supervisor.

(b) Registrant status shall be maintained for a period of up to five years while the registrant is in the process of completing his or her requirements for ~~certification~~ credentials pursuant to this Article. If at the end of a five-year period a registrant has not obtained ~~certification~~ a credential under this Article, the Board shall renew the registration for up to an additional five-year period after the registrant pays the required fee and complies with all requirements for registration pursuant to G.S. 90-113.40A. The Board shall terminate the registration of any registrant who fails to renew his or her registration.

(c) The registrant shall notify the Board of any criminal conviction imposed during the period of registration.

"**§ 90-113.40B. ~~Approved~~ Applicant supervision.**

The Board shall designate a person as an ~~approved~~ applicant supervisor of individuals applying for ~~registration or certification~~registration, certification, or licensure as a substance abuse professional as follows:

(1) A certified clinical supervisor shall supervise a clinical supervisor intern.

(2) A certified clinical supervisor or a clinical supervisor intern shall supervise a substance abuse residential facility director applicant, a clinical addictions specialist applicant, or a substance abuse counselor applicant.

~~(3) A certified clinical supervisor, a clinical supervisor intern, a certified clinical addictions specialist, or a certified substance abuse counselor shall supervise a registrant who provides DWI assessments.~~

(4) A certified substance abuse prevention consultant with a minimum of three years of professional experience, a certified clinical supervisor, or a clinical supervisor intern shall supervise a registrant applying for certification as a prevention consultant.

(5) Pursuant to the deemed status procedure under G.S. 90-113.41A, the supervision requirements described in subdivisions (1) through (4) of this section shall not apply to persons applying for ~~certification~~ licensure as a ~~certified~~ licensed clinical addictions specialist.

(6) A criminal justice addictions professional applicant shall be supervised by a certified clinical supervisor or clinical supervisor intern.

"**§ 90-113.41. Examination.**

(a) Except for those individuals applying for ~~certification~~ licensure under G.S. 90-113.41A, applicants for certification or licensure under this Article shall file an application at least 60 days prior to the date of examination and upon the forms and in the manner prescribed by the Board. The application shall be accompanied by the appropriate fee. No portion of this fee is refundable. Applicants who fail an examination may apply for reexamination upon the payment of another examination fee.

(b) Each applicant for certification or licensure under this Article shall be ~~examined~~ tested in an examination ~~that is consistent with the examination requirements of~~developed by the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated and the standards adopted by professional disciplines granted deemed status or their successor organizations.

(c) Applicants for certification or licensure shall be examined at a time and place and under the supervision that the Board determines. Examinations shall be given in this State at least twice each year.

(d) Applicants may obtain their examination scores and may review their examination papers in accordance with rules the Board adopts and agreements between Board-authorized test development companies.

"**§ 90-113.41A. Deemed status.**

(a) To be granted deemed status by the Board, a credentialing body of a professional discipline or its designee shall demonstrate that its substance abuse ~~certification~~ credentialing program substantially meets the following:

(1) Each person to whom the credentialing body awards credentials following the effective date of this act meets and maintains minimum requirements in substance abuse specific content areas. Each person also has a minimum of a master's degree with a clinical application in a human services field.

(2) The body requires 180 hours, or the equivalent thereof, of substance abuse specific education and training that covers the following content areas:

a. Basic addiction and cross addiction Physiology and Pharmacology of Psychoactive drugs that are abused.

b. Screening, assessment, and intake of clients.

c. Individual, group, and family counseling.

d. Treatment, planning, reporting, and record keeping.

e. Crisis intervention.

f. Case management and treatment resources.

g. Ethics, legal issues, and confidentiality.

h. Psychological, emotional, personality, and developmental issues.

i. ~~Coexisting~~ Co-occurring physical and mental disabilities.

j. Special population issues, including age, gender, race, ethnicity, and health status.

k. Traditions and philosophies of recovery treatment models and support groups.

(3) The program requires one year or its equivalent of post-degree supervised clinical substance abuse practice. At least fifty percent (50%) of the practice shall consist of direct substance abuse clinical care.

(b) The professional discipline seeking deemed status shall require its members to adhere to a code of ethical conduct and shall enforce that code with disciplinary action.

(c) The Board may grant deemed status to any professional discipline that substantially meets the standards in this section. Once such status has been granted, an individual within the professional discipline may apply to the Board for ~~certification as a certified clinical addictions specialist.~~the credential of licensed clinical addictions specialist.

(d) The Standards ~~and Credentialing~~ Committee of the Board shall review the standards of each professional discipline every third year from the date it was granted deemed status to determine if the discipline continues to substantially meet the requirements of this section. If the Committee finds that a professional discipline no longer meets the requirements of this section, it shall report its findings to the Board at the Board's next regularly scheduled meeting. The deemed status standing of a

professional discipline's credential may be discontinued by a two-thirds vote of the Board.

"§ 90-113.41B. Change of name or address.

Every person licensed, ~~certified~~ certified, or registered under the provisions of this Article shall give written notice to the Board of any change in his or her name or address within 60 business days after the change takes place.

"§ 90-113.42. ~~Exemptions.~~Violations; exemptions.

(a) It shall be unlawful for any person not licensed or otherwise credentialed as a substance abuse professional pursuant to this Article to engage in those activities set forth in the scope of practice of a substance abuse professional under G.S. 90-113.31B, unless that person is regulated by another profession or is a registrant or intern as defined by this Article.

(b) It is not the intent of this Article to regulate members of other regulated professions who provide substance abuse services or consultation in the normal course of the practice of their profession. ~~Accordingly, this~~

(c) This Article does not apply to any person registered, certified, or licensed by the State or federal government to practice any other occupation or profession while rendering substance abuse services or consultation in the performance of the occupation or profession for which the person is registered, certified, or licensed.

(d) Only individuals ~~certified~~ registered, certified, or licensed under this Article may use the title ~~certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director.~~'Certified Substance Abuse Counselor', 'Certified Substance Abuse Prevention Consultant', 'Certified Clinical Supervisor', 'Licensed Clinical Addictions Specialist', 'Certified Substance Abuse Residential Facility Director', 'Certified Criminal Justice Addictions Professional', 'Substance Abuse Counselor Intern', 'Clinical Addictions Specialist Intern', 'Clinical Supervisor Intern', or 'Registrant'.

"§ 90-113.43. Illegal practice; misdemeanor penalty.

Except as otherwise authorized in this Article, no person shall:

(1) ~~Practice,~~Offer substance abuse professional services, practice, attempt to practice, or supervise while holding himself or herself out to be a certified ~~substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director~~substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified or licensed clinical addictions specialist, clinical addictions specialist intern, substance abuse residential facility director, certified criminal justice addictions professional, clinical supervisor intern, substance abuse prevention consultant, or registrant without first having obtained a certificate of ~~certification~~ registration, certification, or licensure from the Board.

(2) Use in connection with any name any letters, words, numerical codes, or insignia indicating or implying that this person is a ~~certified~~

registrant, substance abuse counselor, ~~certified~~ substance abuse prevention consultant, certified clinical supervisor, ~~certified~~ clinical addictions specialist, ~~or~~ certified substance abuse residential facility ~~director~~ director, substance abuse counselor intern, or clinical addictions specialist intern unless this person is ~~certified~~ registered, certified, or licensed pursuant to this Article.

(3) Practice or attempt to practice as a certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, ~~certified~~ licensed clinical addictions specialist, certified criminal justice addictions professional, or certified substance abuse residential facility director with a revoked, lapsed, or suspended ~~certification.~~certification or license.

(4) Aid, abet, or assist any ~~uncertified~~ person to practice as a certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, ~~certified~~ licensed clinical addictions specialist, ~~or~~ certified substance abuse residential facility ~~director~~ director, registrant, substance abuse counselor intern, clinical addictions specialist, or clinical supervisor intern in violation of this Article.

(5) Knowingly serve in a position required by State law or rule or federal law or regulation to be filled by a registrant, certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, ~~certified~~ licensed clinical addictions specialist, ~~or~~ certified substance abuse residential facility ~~director~~ director, substance abuse counselor intern, clinical addictions specialist intern, or clinical supervisor intern unless that person is ~~certified~~ registered, certified, or licensed under this Article.

(6) Repealed by S.L. 1997-492, s. 13.

(7) Practice, supervise, or attempt to practice or supervise or knowingly serve in a position required by State law or rule or federal law or regulation to be filled by a designated substance abuse intern without being designated as such by the Board.

A person who engages in any of the illegal practices enumerated by this section is guilty of a Class 1 misdemeanor. Each act of unlawful practice constitutes a distinct and separate offense.

"**§ 90-113.44. Grounds for disciplinary action.**

(a) Grounds for disciplinary action for an applicant or credentialed professional include:

(1) The employment of fraud, deceit, or misrepresentation in obtaining or attempting to obtain ~~certification~~ licensure, certification, or registration or renewal of ~~certification~~ licensure, certification, or registration.

(2) The use of drugs or alcoholic beverages to the extent that professional competency is ~~affected, until proof of rehabilitation can be established.~~affected.

(2a) The use of drugs or alcoholic beverages to the extent that a substance abuse professional suffers impairment.

(3) Conviction of an offense under any municipal, State, or federal ~~narcotic or controlled substance law, until proof of rehabilitation can be established.~~law other than traffic laws as prescribed by Chapter 20 of the General Statutes.

(4) Conviction of a felony or other public offense involving moral ~~turpitude, until proof of rehabilitation can be established.~~turpitude. Conviction of a Class A-E felony shall result in an immediate suspension of ~~certification~~ licensure, certification, or registration for a minimum of one year.

(5) An adjudication of insanity or incompetency, until proof of recovery from this condition can be ~~established.~~established by a licensed psychologist or psychiatrist.

(6) Engaging in any act or practice in violation of any of the provisions of this Article or any of the rules adopted pursuant to it, or aiding, abetting, or assisting any other person in such a violation.

(7) The commission of an act of malpractice, gross negligence, or incompetence ~~in the practice of substance abuse counseling, substance abuse prevention consulting, clinical supervising, or in serving as a clinical addictions specialist, residential facility director, or a registrant.~~while serving as a substance abuse professional, intern, or registrant.

~~(8) Practicing as a certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist or certified residential facility director without a valid certificate or practicing as a registrant without a valid registration.~~

(9) Engaging in conduct that could result in harm or injury to the public.

(10) Entering into a dual relationship that impairs professional judgment or increases the risk of exploitation with a client or supervisee.

(11) Practicing as a credentialed substance abuse professional outside of his or her scope of practice pursuant to G.S. 90-113.31B.

(b) Denial of an applicant's licensure, certification, or registration or the granting of licensure, certification, or registration on a probationary or other conditional status shall be subject to substantially the same rules and procedures prescribed by the Board for review and disciplinary actions against any person holding a license, certificate, or registration. A suspension of a credential resulting from impairment due to substance use, mental health, or medical disorder shall be imposed for at least six months beginning from the date of successful discharge from a residential substance abuse treatment program or other appropriate treatment modality determined as a result of an assessment by a Board-approved assessor. Disciplinary actions involving a clinical addictions specialist whose licensure is achieved through deemed status shall be initially heard by the specialist's credentialing body. The specialist may appeal the body's

decision to the Board. The Board shall, however, have the discretionary authority to hear the initial disciplinary action involving a credentialed professional.

"**§ 90-113.45. Enjoining illegal practices.**

(a) The Board may, if it finds that any person is violating any of the provisions of this Article or of the rules adopted pursuant to it, apply in its own name to the superior court for a temporary or permanent restraining order or injunction to restrain that person from continuing these illegal practices. The court may grant injunctive relief regardless of whether criminal prosecution or other action has been or may be instituted as a result of the violation. In the court's consideration of the issue of whether to grant or continue an injunction sought by the Board, a showing of conduct in violation of the terms of this Article shall be sufficient to meet any requirement of general North Carolina injunction law for irreparable damage.

(b) The venue for actions brought under this section is the superior court of any county in which the illegal acts are alleged to have been committed or in the county where the defendant resides.

"**§ 90-113.46. Application of requirements of Article.**

All persons ~~certified~~ credentialed by the North Carolina Substance Abuse Professional ~~Certification~~ Practice Board, Inc., as of July 1, 1994, shall be ~~certified~~ credentialed by the Board pursuant to this Article. All these persons are subject to all the other requirements of this Article and of the rules adopted pursuant to it.

"**§ 90-113.46A. Criminal history record checks of applicants for registration, certification, or licensure.**

(a) All applicants for registration, certification, or licensure shall consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny registration, certification, or licensure to an applicant. The Board shall ensure that the State and national criminal history of an applicant is checked. The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories, the fee required by the Department of Justice for providing this service, and any additional information required by the Department of Justice. The Board shall keep all information obtained pursuant to this section confidential.

(b) If an applicant's criminal history record check reveals one or more convictions as defined in G.S. 90-113.31A(14), the conviction shall not automatically bar issuance of a credential by the Board to the applicant. The Board shall consider all of the following factors regarding the conviction:

(1) The level of seriousness of the crime.

(2) The date of the crime.

(3) The age of the person at the time of the conviction.

(4) The circumstances surrounding the commission of the crime, if known.

(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.

(6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.

(7) The subsequent commission by the person of a crime as defined in G.S. 90-113.31A(14).

If, after reviewing the factors, the Board determines that the grounds set forth in G.S. 90-113.44 exist, the Board may deny registration, certification, or licensure of the applicant. The Board may disclose to the applicant information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant. The applicant shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(c) Limited Immunity. – The Board, its officers and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying registration, certification, or licensure to an applicant based on information provided in the applicant's criminal history record check."

SECTION 2. Article 4 of Chapter 114 of the General Statutes is amended by adding the following new section to read:

"**§ 114-19.11A. Criminal record checks of applicants for registration, certification, or licensure as a substance abuse professional.**

The Department of Justice may provide to the North Carolina Substance Abuse Professional Practice Board from the State and National Repositories of Criminal Histories the criminal history of any applicant for registration, certification, or licensure pursuant to Article 5C of Chapter 90 of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant, a form signed by the applicant consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Board shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 3. All members serving on the North Carolina Substance Abuse Professional Practice Board on the effective date of this act shall complete their current three-year terms. Upon completion of their terms, newly appointed or elected members of the Board shall serve four-year terms pursuant to G.S. 90-113.33, as enacted in Section 1 of this act.

SECTION 4. Notwithstanding G.S. 90-113.40(d1), as enacted by Section 1 of this act, the North Carolina Substance Abuse Professional Practice Board may certify a person as a certified criminal justice addictions professional during a limited period of 90 days from the date this act becomes effective and the credential is approved by the

IC&RC/AODA, Inc., if the applicant qualifies based on experience providing services to clients or offenders exhibiting substance abuse disorders and is working in a program determined by the Board to be integrally involved in at least one of the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections. In addition to meeting the requirements of G.S. 90-113.40(a)(1) through (5a), the person shall do the following:

(1) Provide two letters recommending certification from a current or former peer who functions in substantially the same professional capacity as determined by the Board.

(2) Provide one letter recommending certification from a person currently supervising or who has supervised the applicant within the previous five years attesting to the applicant's competency in the fields of substance abuse and criminal justice.

(3) Pay the criminal justice addictions professional certification fee for certification not to exceed one hundred fifty dollars ($150.00).

(4) Provide one of the following:

a. A high school diploma or a high school equivalency certificate, documentation of eight years or 16,000 hours of supervised work experience providing direct service to clients or offenders determined by the Board to be integrally involved in at least one of the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections.

b. An associate degree and documentation of six years or 12,000 hours of supervised work experience providing direct service to clients or offenders determined by the Board to be integrally involved in the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections.

c. A bachelors degree in the human services field with four years or 8,000 hours of supervised work experience providing direct service to clients or offenders determined by the Board to be integrally involved in at least one of the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections.

d. A masters degree or above in the human services field with two years or 4,000 hours of supervised work experience providing direct service to clients or offenders determined by the Board to be integrally involved in the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections.

(5) Provide documentation of at least 270 clock hours of board approved education and 300 hours of board approved supervised practical training, both in the International Certification & Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated., criminal justice addiction professional performance domains."

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

SENATE BILL 705:
Amend NC Substance Abuse Act

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 15, 2005
Introduced by:	Sen. Nesbitt	**Summary by:**	Cindy Avrette
Version:	Third Edition		Committee Counsel

SUMMARY: ***Senate Bill 705 would provide for the licensure of substance abuse professionals; establish the credential of certified criminal justice addictions professional; require that applicants for registration, certification or licensure consent to a criminal history record check; and make a range of technical and conforming changes to the existing North Carolina Substance Abuse Professionals Certification Act. The bill would charge the North Carolina Substance Abuse Professional Certification Board with credentialing and licensing qualified substance abuse professionals rather than certifying them as is currently the case, and would change the Board's name to the North Carolina Substance Abuse Professional Practice Board to reflect its new role.***

The bill received a favorable report from the House Committee on Health. The bill is in Finance because of the fee provisions on page 13: the application fee for the credential of certified criminal justice addictions professional would be $475 and the renewal fee would be $150 – this fee amount is the current fee amount for other credentialed substance abuse professionals. The bill would authorize a exam rescheduling fee of not more than $25, a late renewal fee of not more than $125, and a fee not to exceed $150 for each administration of the test an applicant must pass to be credentialed as a US Department of Transportation substance abuse professional.

CURRENT LAW: The North Carolina Substance Abuse Professional Certification Board administers a certification process for professionals engaged in the assessment, evaluation, and provision of counseling and therapeutic services to persons suffering from substance abuse or dependency. The Board is directed to ensure that Board authorized professional titles cannot be used by anyone unless they have actually obtained that title officially through the Board. Titles currently authorized by the Board include the following: certified clinical addictions specialist, certified clinical supervisor, certified residential facility director, certified substance abuse counselor, certified substance abuse prevention consultant and clinical supervisor intern.

The Board has the authority to investigate complaints about professionals who are either certified by the Board or in the process of becoming certified, but has no authority to investigate or pursue complaints about unregulated professionals.

BILL ANALYSIS: Senate Bill 705 would change the name of the certification authority for substance abuse professionals from the 'North Carolina Substance Abuse Professional Certification Board' to the 'North Carolina Substance Abuse Professional Practice Board' and expand its powers and duties to include licensure. Board membership would remain unchanged[1]; however, the term of membership would increase from three-year terms to four-year terms.

[1] Eleven credentialed professionals elected by the credentialed professionals, at least two of whom shall serve each of the four Division of Mental Health, Developmental Disabilities, and Substance Abuse Services regions of the State. Three laypersons or other professional disciplines who have shown a special interest in the field of substance abuse, nominated by the Nominating

Senate Bill 705 would expand the Board's scope of authority to include practice protection, which would ensure that a person, unless otherwise exempted by statute, would be unable to practice as a substance abuse professional without successful completion of a mandatory licensing process through the Board. Those exempted by statute would include any person registered, certified, or licensed by the State or federal government to practice any other occupation or profession while rendering substance abuse services or consultation in the performance of the occupation or profession for which the person is registered, certified, or licensed[2].

The Board would offer a wide range of credentials to practitioners from entry level up to and including persons with a master's degree or higher (who would be eligible for licensure as clinical addictions specialists). The range of credentials would encompass persons who practice in substance abuse treatment, substance abuse prevention, substance abuse clinical supervision, substance abuse residential facility programs, and criminal justice settings. The bill would define substance abuse professional to include the following titles: a registrant, certified substance abuse counselor, substance abuse counselor intern, certified substance abuse prevention consultant, certified clinical supervisor, clinical addictions specialist intern, licensed clinical addictions specialist, certified substance abuse residential facility director, or certified criminal justice addictions professional. Each type of credential would carry its own educational, training, and experience requirements as determined by the Board. Credentials would require renewal every two years, conditioned upon meeting various levels of continuing education as determined by the type of credential being renewed.

The bill would set forth the scope of practice for each of the classifications of substance abuse professional[3] listed in the preceding paragraph, and make it unlawful for any person not licensed or otherwise credentialed as a substance abuse professional pursuant to Article 5C to engage in the activities included in the scope of practice given. Practicing outside of the scope of practice for which one is credentialed would subject a substance abuse professional to disciplinary action by the Board.

Any person currently certified to practice as a substance abuse professional would be considered to be credentialed and able to continue to practice in the field. Persons working the criminal justice area would be allowed to apply for status as a 'registrant' and given five years to complete the credentialing process to become a certified criminal justice addictions specialist. Section 4 of the bill provides that a person who meets all of the educational and experience requirements to be a certified criminal justice addictions specialist may be certified as such by the Board without taking the Board-administered written exam if the person applies to the Board for certification within 90 days from the date this act becomes effective.

The bill would make it a Class 1 misdemeanor to offer or provide substance abuse counseling without being credentialed by the North Carolina Substance Abuse Professional Practice Board. The Board would establish and publish required standards to credential substance abuse professionals and would be able to use the credentialing standards of the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated and the standards adopted by professional disciplines granted deemed status or their successor organizations as guidelines.

The bill also makes the following changes to the NC Substance Abuse Professional Practice Act:

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and Elections Committee, whose five members are elected by the Board. Two members from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, Department of Health and Human Services. Three public members, one appointed by each of the following people: the Governor, Speaker of the House of Representatives, and President Pro Tempore of the Senate.

[2] G.S. 90-113.42(c).

[3] G.S. 90-113.31A.

- Imposes a minimum of six months suspension for impairment due to substance abuse, mental health, or medical disorder.
- Provides that independent study may not compose more than 50% of the total number of hours required for initial credentialing.
- Specifically authorizes employment of counsel.

EFFECTIVE DATE: The act would be effective when it becomes law.

BACKGROUND: Senate Bill 705 is the product of coordinated efforts over the past year and a half by the various parties involved in substance abuse services, including the state chapters of Psychology, Psychiatry and Social Work as well as the Division of MH/DD/SA, Division of Facility Services, the Division of Medical Services and the Division of Motor Vehicles. Other states have recognized the potential for harm to the public health, safety, or welfare, as there are currently at least 70 boards in the United States and other countries that offer competency-based certification, including all branches of the US Military and the federal Indian Health Services. New York is one of many states that have certification written into state administrative regulations. Eleven states have practice protection licensure of substance abuse professionals. The Legislative Committee on New Licensing Boards recommends the licensing of substance abuse professionals.

Ben Popkin, counsel to the Senate Committee on Health Care, substantially contributed to this summary.

S0705e2-SMRB

S0705e3-SMRB

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 705 (Second Edition)

SHORT TITLE: Amend NC Substance Abuse Act.

SPONSOR(S): Senator Nesbitt

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund					
Justice	$38 per background check; less than $7,600 annually anticipated.				
Licensing Board	$1,825	$1,550	$1,425	$1,225	$1,225
EXPENDITURES:					
General Fund					
Justice	$38.33 per background check; less than $7,666 annually anticipated.				
Dept. of Correction	Exact amount cannot be determined; no substantial impact anticipated.				
Judicial Branch	Exact amount cannot be determined; no substantial impact anticipated.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Substance Abuse Professional Certification Board; Department of Justice; Department of Correction; Judicial Branch

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: Senate Bill 705 would provide for the licensure of substance abuse professionals; establish the credential of certified criminal justice addictions professional; require that applicants for registration, certification or licensure consent to a criminal history record check; and make a range of technical and conforming changes to the existing North Carolina Substance Abuse Professionals Certification Act.

The application fee for the credential of certified criminal justice addictions professional would be $475 and the renewal fee would be $150 – this fee amount is the current fee amount for other credentialed substance abuse professionals. The bill would authorize an exam rescheduling fee of

not more than $25, a late renewal fee of not more than $125, and a fee not to exceed $150 for each administration of the test an applicant must pass to be credentialed as a US Department of Transportation substance abuse professional.

ASSUMPTIONS AND METHODOLOGY: There are 1,392 certified substance abuse professionals in North Carolina according to the North Carolina Substance Abuse Professional Certification Board. The major fees for certification of substance abuse professionals, including licensure and renewal of licensure, have not been changed by this legislation. SB 705 adds a classification of licensure for criminal justice addictions professionals, which is a specialty within the field of substance abuse professionals and is estimated to generate approximately 20 extra examinations per year. Within the schedule of new fees, this only affects the projected number of examination rescheduling fees by increasing it by one per year. The following fees would be new fees:

1. *Exam rescheduling fee.* The Board administers many exams through a testing firm, and they are charged for each testing booklet ordered whether or not that booklet is actually used, in accordance with standardized testing procedures. Applicants are currently allowed 60 days before taking the test in which to reschedule in writing before they will incur a rescheduling fee. This procedure will not be changed. This fee is intended as a deterrent to those who skip examinations without giving notice.
2. *Late renewal fee.* Although the Board already has the authority to charge a late renewal fee, no maximum amount was set in statute. The Board intends to assess this fee on a graduated scale depending on the number of years a substance abuse professional's certification has lapsed, i.e., $25 for a one-year lapse, $50 for a two-year lapse, etc. Currently, the Board only handles two cases of late renewals per year. The projection assumes that a total of $125 in late renewal fees is assessed per year.
3. *Extra copy of Board-issued credential.* The Board issues approximately five extra copies of certifications per year.
4. *Fee for administering USDOT substance abuse professional exam.* The Board administers approximately five of these exams per year. The certification is required by the USDOT for substance abuse professionals who perform assessments of people working in motion-sensitive jobs involved in interstate transport, such as trucking, shipping, rail, and air.

Proposed Fee Revenues						
	Maximum fee	Fee revenue				
		2005-06	2006-07	2007-08	2008-09	2009-10
Fee for rescheduling an examination	$ 25	$ 825	$ 550	$ 425	$ 225	$ 225
Late renewal fee	$ 125	125	125	125	125	125
Extra copy of Board-issued credential	$ 25	125	125	125	125	125
USDOT test administration	$ 150	750	750	750	750	750
Total		**$ 1,825**	**$ 1,550**	**$ 1,425**	**$ 1,225**	**$ 1,225**

Criminal Record Checks: Department of Justice & NCSAP Certification Board

The Department of Justice (DOJ) provides state and national criminal background checks to non-criminal justice agencies and charges a fee to cover its costs. For a state and national check, DOJ charges $38, of which $22 is remitted to the Federal Bureau of Investigation (FBI). For each

background check conducted, DOJ would incur costs, on average, of $16.33[1] in addition to the $22 remitted to the FBI. The North Carolina Substance Abuse Professionals Certification Board would require applicants to pay the $38 charge.

The Board administers 200 credential exams per year. Many substance abuse professionals hold multiple credentials; therefore, the number of individuals applying for their first credential and requiring a background check is anticipated to be less than 200 per year. If, for example, 100 additional background checks were required, the internal cost to DOJ would be $1,633, and payments from the Board would total $1,600. In addition, DOJ would collect $2,200 to remit to the FBI.

Each employee can process an average of nearly 10,000 background checks (criminal justice and non-criminal justice) per year. DOJ currently has the capacity to perform some additional background checks without increasing the number of positions. However, DOJ has stated that increased workload may affect turnaround time.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

This bill would expand existing Class 1 misdemeanors under G.S. 90-113.43 to apply to registrants, interns, and certified criminal justice addictions professionals, in addition to the substance abuse professionals for which the current offenses apply. Presently, the Administrative Office of the Courts does not maintain an offense code for violations G.S. 90-113.43, which is some indication that these offenses are infrequently charged and rarely result in convictions.

- In FY 2003-04, 19 percent of Class 1 misdemeanors resulted in active sentences and the average estimated time served was 31 days. Offenders with active sentences of less than ninety days are housed in county jails, and DOC reimburses counties for housing offenders between thirty and ninety days at a rate of $18 per offender per day.
- The remaining 81 percent of Class 1 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Corrections (DCC) would incur costs of $1.87 per offender per day. Offenders sentenced to community service would cost $0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

Because most Class 1 misdemeanants serving active time as a result of this bill would be housed in county jails, this legislation is not expected to significantly impact prison population.

[1] In 2003, 75 percent of fee-exempt background checks were submitted via hard copy, and 25 percent were submitted electronically. This figure is a weighted average assuming the same distribution will apply to the new population.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Because AOC does not maintain an offense code for present violations of G.S. 90-113.43, no historical data is available regarding Class 1 misdemeanor charges for these offenses. As such, the number of charges that would result from making the offenses applicable to additional individuals cannot be determined. However, the lack of an offense code for existing violations of G.S. 90-113.43 may be some indication that there would be relatively few charges for these offenses.

Based on the costs of time in court, attorney preparation time, and indigent defense, the average estimated cost to process one Class 1 misdemeanor is $3,213 per trial and $284 per guilty plea. The trial cost includes an estimated $1,880 in jury fees, costs of time in court, and attorney costs and an additional $1,333 in indigent defense. *Based on prior-year data, the majority of any new Class 1 misdemeanor charges that are not dismissed are likely to be settled by plea.*

SOURCES OF DATA: North Carolina Substance Abuse Professional Certification Board; Office of State Budget and Management; Department of Justice; Department of Correction; Judicial Branch

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brenna Erford, Chloe Gossage, and Aaron Paul

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: June 1, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

SB 705 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE LICENSURE OF SUBSTANCE ABUSE PROFESSIONALS, TO ESTABLISH THE CREDENTIAL OF CERTIFIED CRIMINAL JUSTICE ADDICTIONS PROFESSIONAL, AND TO ALLOW THE DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD CHECKS FROM STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORY OF APPLICANTS FOR CREDENTIALS UPON THE REQUEST OF THE NORTH CAROLINA SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 1

SENATE BILL 341

Short Title:	Modern Escheat Investment Program.	(Public)
Sponsors:	Senators Hoyle; and Atwater.	
Referred to:	Finance.	

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A MODERN INVESTMENT PROGRAM FOR THE PRUDENT AND APPROPRIATE MANAGEMENT OF THE ESCHEAT FUND, FOR THE BENEFIT OF "NEEDY AND WORTHY" STUDENTS AS PROVIDED FOR IN THE STATE CONSTITUTION.

Whereas, the State Constitution mandates that proceeds of the Escheat Fund shall be utilized to aid needy and worthy North Carolina students enrolled in public institutions of higher education; and

Whereas, continued tuition increases are intensifying the demand on the Escheat Fund to provide North Carolina students with loans and tuition assistance to offset tuition hikes; and

Whereas, adoption of a proactive investment policy for the Escheat Fund will enable the State to realize a greater benefit from existing capital, thereby enhancing the Escheat Fund's constitutionally provided purpose; and

Whereas, the assets of the Escheat Fund have grown to nearly $600,000,000, necessitating the establishment of a modern investment allocation strategy for these funds; and

Whereas, such a policy will enable the State Treasurer to invest in those types of investments considered prudent for the Escheat Fund; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 147-69.2(b) is amended by adding a new subdivision to read:

"(12) With respect to assets of the Escheat Fund, in addition to those investments authorized by subdivisions (1) through (6) of this subsection, up to twenty percent (20%) in the investments authorized under subdivisions (7) through (9) of this subsection, notwithstanding the limitations imposed on the retirement funds under those subdivisions."

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

SENATE BILL 341:
Modern Escheat Investment Program

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 19, 2005
Introduced by:	Sen. Hoyle	**Summary by:**	Martha Walston Committee Counsel*
Version:	First Edition		

SUMMARY: Senate Bill 341 would authorize the State Treasurer to invest up to 20% of the Escheat Fund in three new classes of investment vehicles: (1) insurance contracts, trusts, limited partnerships, and LLCs whose primary purpose is investing in or owning real estate or related debt financing; (2) certain corporate stock; and (3) limited partnerships and LLCs whose primary purpose is to invest in public or private debt, public or private equity, or corporate buyout transactions.

CURRENT LAW:

Escheat Fund – Property to which the State assumes ownership under Chapter 116B of the General Statutes, either because the property is determined to be abandoned or the property was owned by a person who died and had no heirs, is held by the State in the Escheat Fund.

Investment of Escheat Fund Assets – Funds in the Escheat Fund are administered by the State Treasurer and must be invested in accord with G.S. 147-69.2. The types of instruments in which these funds may be invested is limited, but generally include the following:

1. Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States.
2. Obligations of certain specifically named entities.
3. Repurchase agreements with respect to securities issued or guaranteed by the United States government or its agencies or other securities eligible for investment under G.S. 147-69.1 by a bank or trust company or by primary or other reporting dealers to the Federal Reserve Bank of New York.
4. Obligations of the State of North Carolina.
5. Time deposits of financial institutions with a physical presence in this State for the purpose of receiving commercial or retail deposits.
6. Prime quality commercial paper bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligation.
7. General obligations of other states in the United States or of any city, county or special district in North Carolina.
8. Obligations of any legal entity that bear one of the four highest ratings of at least one nationally recognized rating service and do not bear a rating below the four highest by any nationally recognized service that rates the particular security.
9. Asset-backed securities, whether considered debt or equity that meet the requirements of item number 8 above.

Constitutional Mandate on Use of Escheat Fund Assets – Article IX, Section 10 of the North Carolina Constitution requires property in the Escheat Fund to be used to "aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State." The income derived from investment or deposit of the Escheat Fund is distributed annually on or before July 15 to the State Education Assistance Authority for grants or loans to aid worthy and needy students. An

amount determined in the annual budget is transferred annually from the Escheat Fund to the Department of Administration to partially fund the program of Scholarships for Children of War Veterans.

Additional Classes of Investments Authorized for Retirement Systems – Currently, G.S. 147-69.2(b)(7), (8), and (9) authorize the State Treasurer to invest assets of the following retirement systems in three additional classes of investment vehicles: Teacher's and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Firemen's and Rescue Workers' Pension Fund, The Local Governmental Employees' Retirement System, the Legislative Retirement System, and the North Carolina National Guard Pension Fund.

These subdivisions specify the investment option and any particular requirements and limitations on the investment.

Currently, none of the Escheat Fund assets may be invested in the options provided under G.S. 147-69.2(b)(7)-(9).

Appointment of Investment Advisory Committee – G.S. 147-69.2(b1) requires the State Treasurer to appoint a five-member Investment Advisory Committee for the investments authorized in G.S. 147-69.2(b)(8) and (9).

BILL ANALYSIS: Senate Bill 341 would allow the State Treasurer to invest up to 20% of the funds in the Escheat Fund in the investment options authorized by G.S. 147-69.2(b)(7), (8), and (9), which provide for the following:

- *G.S. 147-69.2(b)(7)* – (i) insurance contracts, (ii) group trusts, (iii) individual, common, or collective trust funds of banks and trust companies, (iv) real estate investment trusts, and (iv) limited liability partnerships and limited liability companies.[1]
- *G.S. 147-69.2(b)(8)* – preferred or common stocks invested directly or invested through individual, common, or collective trust funds of banks, trust companies, and group trust funds of advisory companies.[2]
- *G.S. 147-69.2(b)(9)* – limited partnerships interests or interests in a limited liability company if the primary purpose of the partnership or company is to invest in public or private debt, public or private equity, or corporate buyout transactions.[3]

The investments authorized in this bill do not contain the limitations currently placed upon the investment of assets of the retirement systems. The investment of Escheat Fund assets in the above options is limited by the 20% cap.

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

*Staff Attorney, Trina Griffin, contributed substantially to this summary.

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[1] The Treasurer may only invest up to 10% of the market value of all invested assets of the Retirements Systems in investments authorized by G.S. 147-69.2(b)(7).

[2] The Treasurer may only invest up to 65% of the market value of all invested assets of the Retirement Systems in investments authorized by G.S. 147-69.2(b)(8). Moreover, no more than 1½% of the market value of the Retirement Systems' assets may be invested in the stock of a single corporation, and the total number of shares in that single corporation cannot exceed 8% of the issued and outstanding stock of that corporation.

[3] The Treasurer may only invest up to 5% of the market value of all invested assets of the Retirements Systems in investments authorized by G.S. 147-69.2(b)(9).

Investments Authorized for Special Funds Held by State Treasurer
G.S. 147-69.2(b)(7), (8), and (9)

(7) With respect to Retirement Systems' assets referred to in G.S. 147-69.2(b)(8), (i) insurance contracts that provide for participation in individual or pooled separate accounts of insurance companies, (ii) group trusts, (iii) individual, common, or collective trust funds of banks and trust companies, (iv) real estate investment trusts, and (v) limited partnerships, whether described as limited liability partnerships or limited liability companies; provided the investment manager has assets under management of at least one hundred million dollars ($100,000,000); provided such investment assets are managed primarily for the purpose of investing in or owning real estate or related debt financing located within or outside the United States; and provided that the investment authorized by this subsection shall not exceed ten percent (10%) of the market value of all invested assets of the Retirement Systems.

(8) With respect to assets of the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Firemen's and Rescue Workers' Pension Fund, the Local Governmental Employees' Retirement System, the Legislative Retirement System, and the North Carolina National Guard Pension Fund (hereinafter referred to collectively as the Retirement Systems), they may be invested in preferred or common stocks issued by any company incorporated or otherwise created or located within or outside the United States provided the investments meet the conditions of this subdivision.

The investments authorized under this subdivision cannot exceed sixty-five percent (65%) of the market value of all invested assets of the Retirement Systems. Up to five percent (5%) of the amount that may be invested under this subdivision may be invested in the stocks or shares of a diversified investment company registered under the "Investment Company Act of 1940" that has total assets of at least fifty million dollars ($50,000,000).

The assets authorized under this subdivision can be invested through individual, common, or collective trust funds of banks, trust companies, and group trust funds of investment advisory companies so long as the investment manager has assets under management of at least one hundred million dollars ($100,000,000).

The assets authorized under this subdivision can also be invested directly, if all of the following conditions are met:

a. The common stock or preferred stock of such corporation is registered on a national securities exchange as provided in the Federal Securities Exchange Act or quoted through the National Association of Securities Dealers' Automated Quotations (NASDAQ) system.

b. The corporation has paid a cash dividend on its common stock in each year of the 5-year period next preceding the date of investment and the aggregate net earnings available for dividends on the common stock of

the corporation for the whole of that period have been at least equal to the amount of the dividends paid.

c. In applying the dividend and earnings test under this section to any issuing, assuming, or guaranteeing corporation, if the corporation acquired its property or any substantial part thereof within a five-year period immediately preceding the date of investment by consolidation, merger, or by the purchase of all or a substantial portion of the property of any other corporation or corporations, or acquired the assets of any unincorporated business enterprise by purchase or otherwise, the dividends and net earnings of the several predecessor or constituent corporations or enterprises shall be consolidated and adjusted so as to ascertain whether or not the applicable requirements of this subdivision have been complied with.

No more than one and one-half percent (1 1/2%) of the market value of the Retirement Systems' assets that may be invested under this subdivision can be invested in the stock of a single corporation, and the total number of shares in that single corporation cannot exceed eight percent (8%) of the issued and outstanding stock of that corporation.

d. to f. Repealed by Session Laws 2001-444, s. 2, effective October 1, 2001.

g. That investments may be made in securities convertible into common stocks issued by any such company, if such securities bear one of the four highest ratings of at least one nationally recognized rating service and do not bear a rating below the four highest by any nationally recognized rating service which may then rate the particular security.

(9) With respect to Retirement Systems' assets, as defined in subdivision (b)(8) of this subsection, they may be invested in limited partnership interests in a partnership or in interests in a limited liability company if the primary purpose of the partnership or limited liability company is to invest in public or private debt, public or private equity, or corporate buyout transactions, within or outside the United States. The amount invested under this subdivision shall not exceed five percent (5%) of the market value of all invested assets of the Retirement Systems.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 341 (First Edition)

SHORT TITLE: Modern Escheat Investment Program.

SPONSOR(S): Senator Hoyle

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
Escheats Fund		**(See "Assumptions and Methodology")**			
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

EFFECTIVE DATE: When the bill becomes law.

BILL SUMMARY: Under current law the State Treasurer may invest the excess cash balances of the Escheats Fund only in debt securities or cash. The bill would allow up to 20% to be invested in: (1) insurance contracts, trusts, limited partnerships, and limited liability companies whose primary purpose is investing in or owning real estate or related debt financing; (2) certain corporate stock; and (3) limited partnerships and limited liability companies whose primary purpose is to invest in public or private debt, public or private equity, or corporate buyout transactions

ASSUMPTIONS AND METHODOLOGY: The shift of up to 20% of the excess balances of the fund should increase the average annual investment income over the long run, when compared to the annual return under the current portfolio. In theory, the increase in annual income should be around 10%. Thus, if the expected average return were currently 5.0% under current practices, the new average annual return might be as high as 5.5%. The increase in yield will correspond to a modest rise in the volatility of the annual return. The variation in annual returns makes it impossible to predict the impact on a particular year covered by this fiscal note. Finally, a review of the recent experience of the investment of state and local pension fund

assets, the written policy guidelines of the Office of State Treasurer for the investment of pension assets, and discussions with the staff of the Office of State Treasurer suggest that the Treasurer is likely to not use all of the capacity allowed under the bill for the new investment vehicles. If this occurs, the additional investment income and the extra volatility will not be as high as the results under full usage of the new investment vehicles.

SOURCES OF DATA:

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: David Crotts

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: July 13, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

SB 341 A BILL TO BE ENTITLED AN ACT TO ESTABLISH A MODERN INVESTMENT PROGRAM FOR THE PRUDENT AND APPROPRIATE MANAGEMENT OF THE ESCHEAT FUND, FOR THE BENEFIT OF "NEEDY AND WORTHY" STUDENTS AS PROVIDED FOR IN THE STATE CONSTITUTION.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

North Carolina General Assembly

House Committee on Finance

Minutes

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July 26, 2005

The House Committee on Finance met on Tuesday, July 26, 2005 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, Luebke, McComas and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Blust, Bordsen, Capps, Carney, Dockham, England, Faison, Folwell, Glazier, Goforth, Hackney, Harrell, Holliman, Insko, Jones, Lewis, Lucas, McGee, Underhill, Vinson, Walend and Wiley. Ex-Officio member Representative Culpepper was present. Also present were Sergeant-at-Arms Bill Freeman, Fred Hines, Dusty Rhodes, and Walter Spell. Staff persons present included Cindy Avrette, Rodney Bizzell, Erika Churchill, Gerry Cohen, Brenna Erford, Ashley Huffstetler, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman McComas called the meeting to order at 8:34 am and recognized the eight (8) pages present: (1) James Rose of Cleveland County, sponsored by Representative Moore; (2) David Hopkins of Rockingham County, sponsored by Representative Cole; (3) Turner Vaughn of Gaston County, sponsored by Representative Current; (4) Elizabeth Alford of Wake County, sponsored by Representative Morgan; (5) Adam Moore of Gates County, sponsored by Representative Culpepper; (6) Nancy Warren of Person County, sponsored by Representative Wilkins; (7) Tyler White of Catawba County, sponsored by Representative Kiser; (8) Holt Broadhurst of Wake County, sponsored by Representative McComas.

The first bill under the Committee's consideration was **HB 1779 – PROPERTY TAX PAID WITH VEHICLE REGISTRATION** (see **attachment 3**). Chairman McComas first recognized Representative Howard who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Chairman McComas then recognized the bill sponsor, Representative Folwell, who explained that the bill creates a combined system for the collection of property tax and the renewal of vehicle registration. He also spoke about the problem that counties are currently having in collecting vehicle property taxes and how this bill would solve the problem by requiring individuals to pay the vehicle tax before receiving a vehicle registration. Following the explanation, Chairman McComas recognized Paul Mayer of the North Carolina Association of County Commissioners who stated that this bill will assist counties in collecting property taxes and should allow counties to receive an additional $80 million per year in collected revenue. David Baker, the Director of the Property Tax Division of the Department of Revenue, was also recognized and reported that collected revenue for vehicle property tax continues to fall annually as a result of individuals not paying the tax. He then said that he supports this bill because it will allow a greater collection rate to be achieved. Chairman McComas then recognized Andy Romanet representing the North Carolina League of Municipalities who stated that his

organization supports the bill. Patty Smithson from the Association of Tag Agents was also recognized to state her support for the bill. Chairman McComas then recognized Pete Rota of the NC Tax Collectors Association who stated that the bill makes good sense and promotes efficiency.

Representative Luebke was then recognized and moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Representative Womble was then recognized and asked about the vehicle property tax payment procedure in other states. In response, Representative Folwell was recognized and stated that many others states do not have property taxes on vehicles, but most states that levy vehicle property taxes have a similar system to the one proposed in the bill. Representative Howard was then recognized and spoke in support of the bill saying that this was one of the best bills that have been considered this session. She then asked Representative Folwell to explain in further detail the technological changes required by this bill. Chairman McComas then recognized Representative Folwell who explained in detail how the property tax system and the vehicle registration system would be integrated into one computer system. George Tatum, Director of the Division of Motor Vehicles (DMV), was then recognized and expressed the DMV's willingness to cooperate to make the new system a reality. Chairman McComas then recognized Representative Dockham who asked if the Tag Agents would be compensated for their work. Representative Folwell was recognized again and stated that the County Commissioners, in conjunction with the local tag offices, have agreed to work out a compromise through a Memorandum of Understanding (MOU) that provides the tag offices with no less than forty cents per transaction. Representative Walend was then recognized and asked if the effective date of 2007 could be moved to an earlier date. Chairman McComas then recognized Representative Folwell who said that enough time must be given for the current technology to be updated. As there was no further debate, Chairman McComas called the Luebke motion to a vote, and it carried by consent.

Chairman McComas then recognized Representative Hackney who moved for the adoption of the proposed committee substitute for **SB 612 – AMEND LOBBYING LAWS** (see **attachment 4**). The motion was adopted. Representative Hackney then explained that the proposed committee substitute amends lobbying laws by including goodwill lobbying, increasing the frequency and details of lobbyists, and prohibiting a legislator from lobbying during one year following a legislative session to which the legislator was elected or appointed. Following the explanation, Representative Hackney sent forth a technical amendment (see **attachment 5**) and moved for its adoption. Seeing no further discussion, Chairman McComas called the motion to a vote and the amendment was adopted. Representative Wainwright was then recognized and asked why the bill changes from a 2-year registration to a 1-year registration. Chairman McComas then recognized Representative Hackney who explained that some lobbyists only lobby for one session and under this bill would only pay $100 for one year's registration instead of $200 for a 2-year registration. Representative Daughtridge was then recognized and stated that the stringent regulations on executive lobbying could hurt the Department of Commerce in economic development endeavors. He then recommended that the bill be sent to a subcommittee to study the regulations regarding executive lobbying. In response, Representative Hackney was recognized and stated that lobbyists for the executive branch should be required to disclose spending amounts and opposed any recommendation of sending the bill to a subcommittee. Representative Gibson was then recognized and asked if the lobbying community would be kept at the table on the issue. Chairman McComas recognized Representative Hackney who answered in the affirmative, saying that he has received an overwhelming cooperative response from the lobbying community.

Representative Faison was then recognized and sent forth an amendment (see **attachment 6**) that prohibits legislators from leaving the General Assembly and working for an entity that the legislator sponsored legislation for or helped to attain funding for during the first year upon leaving

the legislature. This amendment would replace the "revolving door" provision that prohibits legislators or council of state members from working as a lobbyist within the first year of leaving service. Representative Faison then moved for the amendment's adoption. Speaking in opposition to the amendment, Representative Luebke was recognized and stated that the amendment would limit legislators who want to return to work after leaving the General Assembly. Representative Weiss was then recognized and said that she also opposed the amendment because the "revolving door" provision in the bill needs to be maintained. Chairman McComas then recognized Representative Wainwright who stated that the amendment would apply to a person in a full-time position but not to a person with a part-time job. He then asked how this bill would help lobbying laws. Representative Faison was then recognized and stated that the purpose of the amendment was consistent with the purpose of the bill, which is to keep undo influence out of the lawmaking process. Representative Luebke was then recognized again to announce his opposition to the amendment because of the "weakening" effect it had on the bill. Chairman McComas then recognized Representative Alexander who stated her opposition to the amendment because legislators often sponsor legislation based on their expertise and past experiences.

Representative Faison then sent forth a perfecting amendment that would both maintain the "revolving door" provision and add the language to the bill contained in the previous amendment. Chairman McComas, however, did not recognize the perfecting amendment and called the motion to adopt the original Faison amendment to a vote. The amendment failed. Representative Luebke was then recognized and moved for a favorable report to the proposed committee substitute, incorporating the Hackney technical amendment, and an unfavorable report to the original bill. Representative Howard was then recognized and stated that Representative Faison's perfecting amendment was a needed change to the bill. Representative Howard then acted to send forth an amendment (see **attachment 7**) identical to the perfecting amendment that Representative Faison previously attempted to send forth. Representative Howard stated that this change is ethically necessary and then moved for the adoption of the amendment. Chairman McComas then recognized Representative Hackney who stated that while he does not oppose the idea behind the amendment, the actual language needed to be closely reviewed and refined before he could support it. Representative Hackney further stated that the bill, once approved by the Finance Committee, had to be re-referred to the Appropriations Committee and that this amendment could be better addressed there. Representative Howard was then recognized and, stating that the issue should addressed prior to the Committee's approval, moved for the adjournment of the Committee meeting. Chairman McComas, noting that the motion was non-debatable, then called the motion for adjournment to a vote, and it carried by majority.

Thus, Chairman McComas adjourned the meeting at 9:51 am.

Respectfully submitted,

Representative Danny McComas
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:
1. Agenda

2. Visitor Registration Sheet
3. House Bill 1779 (and related materials)
4. Senate Bill 612 (and related materials)
5. Hackney Technical Amendment on SB 612 – **ADOPTED**
6. Faison Amendment on SB 612 – **FAILED**
7. Howard Amendment on SB 612
8. House Bill 237 (and related materials) – (NOT DISCUSSED)
9. House Bill 621 (and related materials) – (NOT DISCUSSED)
10. House Bill 1283 (and related materials) – (NOT DISCUSSED)
11. House Bill 1526 (and related materials) – (NOT DISCUSSED)

AGENDA

ATTACHMENT 1

House Finance Committee

July 26, 2005
8:30 a.m.
Room 544 LOB
Chaired by: Rep. McComas

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard
Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order

Introduction of Pages

Bills:

HB 237	**REVISE MORTGAGE LENDING ACT**	*Reps. Coates & Saunders*
HB 621	**SMALL INSTALLMENT CONSUMER LOANS**	*Rep. Wright*
HB 1283	**IMPROVE ENVIRONMENTAL ENFORCEMENT**	*Rep. Culpepper*
HB 1526	**AVERY COUNTY/HERITAGE PARK AUTHORITY**	*Reps. Frye & Jones*
HB 1779	**PROPERTY TAX PAID WITH VEHICLE REGISTRATION**	*Reps. Folwell, Insko, Justice, & Walker*
SB 612	**AMEND LOBBYING LAWS**	*Sen. Rand*

Adjournment

ATTACHMENT 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 26, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nancy Thompson	MCIC
[illegible]	Poyner & Spruill
Roz Smith	NC CCC
Glenn Hall	
[illegible]	
Stephanie Dorko	Charlotte Chamber
Ehren Hartz	CRL
Stella Adams	NC Fair Housing Center
David Fox	Alley Associates, Inc.
[illegible]	
Carin Savell	Rep Glazier

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 26, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Patti Smithson	License Tag Agents Assoc.
Annalee Griffin	" " " "
Jan Richmond	League of Women Voters
Ed Renfrow	COASTAL FINANCE - MOREHEAD CITY
Chris Kucka	Self-Help
R. Paul Wilms	NCHBA
Steve Roberts	AARP
Larry Heckner	HSBC
Pat Goddard	Johnston County
Ken Joyner	Durham County
Wayne Vanderford	Jones County
Paul J. Taylor	Infinex Inc.

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 26, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Boyd Williamson	Brunswick County
Brent Weisner	Cabarrus County
Steve Crysel	Alamance County
Susan Lupton	Center for Responsible Lending
Sandra Long	Madison Manitta
Bill Brooks	Exec. Building Maintenance
Jodi Powell	Carolina Journal 200 W. Morgan
Russ Dubisky	CCPS
Al Ripley	NC Justice Ctr
Vance Anderson	Friendly Chevrolet
Lorey Gamm	CitiFinancial/Citigroup

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 26, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dick Colton	atty
Charlie Walker	N.C. Ind. Ent. Assoc.
John Morris	PSF of NC
Elizabeth Seis	Sierra Club
Kate Roetzer	Sierra Club
Leonora Minnis	NCSBA
Emma Hearn	NCPBS
Emma C. Greaves	PCNC
Rodney Maddox	SOSNC
Daley Montgomery	SOS
Gayle P. Holder	SOS
Billy R. Hall	NFC

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 26, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jerrell Baughman	SQS
Kara Davis	JWP Civitas Institute
Rich Webb	NCGA
Vicki Y. Bass	Security Financial Services
Fred Bone	Bone & Asso.
Gene Ainsworth	Ainsworth & Assoc.
Henry Hutaff	N.C.S.D.A.
Kirk Boone	NC Dept of Revenue
David Baker	NCDOR
Dave Duty	NC DOR
David Barnes	Reynolds Springs

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Pete Rodda	Forsyth County
Wayne Vanderford	Jones County
Boyd Williamson	Brunswick County
Ken Joyner	Durham County
Garrett Alexander	Mecklenburg County
Ann Kelley	Gov office
Anthony Petty	N.C. Center for Nonprofits
Elliot A. Kirby	NC - Sec. of State
Mark Paxton	NC-DOT
Hope McLamb	NCDOT/DMV
Ann K. Harris	Sec. of State
George TaTum	NC DOT DMV

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Charles Jones	Div of Coastal Mgmt
Francis M. Nicks	DENR - DLR
Jim Simons	DENR DLR
Ashleigh Taylor	Rep Wainwright
Bob Hall	Democracy North Carolina
George Everett	Duke Power
Joseph A. Smith, Jr.	NC Commissioner of Banks
Brad Lamb	NC Consumers Council
Steve Wall	NC DENR
Erin Kinsey	NC Conservation Network
Gloria Nussbaum	Forsyth Co.

VISITOR REGISTRAT ON SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Michael Houser	NCAE

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, July 26, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 237 – REVISE MORTGAGE LENDING ACT – Reps. Coates & Saunders

HB 621 – SMALL INSTALLMENT CONSUMER LOANS – Rep. Wright

HB 1283 – IMPROVE ENVIRONMENTAL ENFORCEMENT – Rep. Culpepper

HB 1526 – AVERY COUNTY/HERITAGE PARK AUTHORITY – Reps. Frye & Jones

HB 1779 – PROPERTY TAX PAID WITH VEHICLE REGISTRATION – Reps. Folwell, Insko, Justice, Walker

SB 612 – AMEND LOBBYING LAWS – Sen. Rand

Respectfully,
Representatives Alexander, Gibson, Howard, Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **10:45 a.m.** on **July 21, 2005**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1779
PROPOSED COMMITTEE SUBSTITUTE H1779-CSLAf-22 [v.5]

7/25/2005 5:43:12 PM

Short Title: Property Tax Paid With Vehicle Registration. (Public)

Sponsors:

Referred to:

May 12, 2005

A BILL TO BE ENTITLED

AN ACT TO CREATE A COMBINED MOTOR VEHICLE REGISTRATION RENEWAL AND PROPERTY TAX COLLECTION SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-330 is amended by adding a new subdivision to read:

"(4) Collecting authority. The Division of Motor Vehicles or an agent contracting with the Division of Motor Vehicles.

(5) Municipal corporation. Defined in G.S. 105-273(11)."

SECTION 2. G.S. 105-330.2 reads as rewritten:

"**§ 105-330.2. Appraisal, ownership, and situs.**

(a) Date Determined. – The value of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) (registered vehicles) shall be determined as of January 1 of the year the taxes are due. If the value of a new motor vehicle cannot be determined as of that date, the value of that vehicle shall be determined for that year as of the date that model vehicle is first offered for sale at retail in this State.

The ownership, situs, and taxability of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) (registered vehicles) shall be determined annually as of the day on which a new registration is applied for or the day on which the current vehicle registration is renewed, regardless of whether the registration is renewed after it has expired.

The value of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(2) (unregistered vehicles) shall be determined as of January 1 of the year in which the motor vehicle is required to be listed pursuant to G.S. 105-330.3(a)(2). The ownership, situs, and taxability of a classified motor vehicle listed or discovered pursuant to G.S. 105-330.3(a)(2) (unregistered vehicles) shall be determined as of January 1 of the year in which the motor vehicle is required to be listed.

(b) Value; Appeal. – A classified motor vehicle shall be appraised by the assessor at its true value in money as prescribed by G.S. 105-283. The Property Tax Division of

the Department of Revenue shall annually adopt a schedule of values, standards, and rules to be used in the valuation of motor vehicles to ensure equitable statewide valuations, taking into account local market conditions and allowing adjustments for mileage and the condition of the vehicles. The owner of a classified motor vehicle may appeal the appraised value of the vehicle in the manner provided by G.S. 105-312(d) for appeals in the case of discovered property and may appeal the situs or taxability of the vehicle in the manner provided by G.S. 105-381. The owner of a classified motor vehicle must file an appeal of appraised value with the assessor within 30 days after the date of the tax notice prepared pursuant to G.S. 105-330.5. Notwithstanding G.S. 105-312(d), an owner who appeals the appraised value of a classified motor vehicle shall pay the tax on the vehicle when due, subject to a full or partial refund if the appeal is decided in the owner's favor.

(c) Administration. – The Department of Revenue, acting through the Property Tax Division, and the Department of Transportation, acting through the Division of Motor Vehicles, shall enter into a memorandum of understanding concerning the vehicle identification information, name and address of the owner, and other information that will be required on the motor vehicle registration forms to implement the tax listing and collection provisions of this Article. The memorandum of understanding shall also include a procedure for the administration of the listing, appraisal, and assessment of classified motor vehicles "

SECTION 3. G.S. 105-330.4(a) reads as rewritten:

"(a) Taxes on a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(2) ~~shall be~~are due on September 1 following the date by which the vehicle was required to be listed. Taxes on a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) ~~shall be~~are due each year on the ~~following dates:~~

~~(1) For a vehicle registered under the staggered system, taxes shall be due on the first day of the fourth month following the date the registration expires or on the first day of the fourth month following the last day of the month in which the new registration is applied for.~~date a new registration is applied for or the fifteenth day of the month following the month in which the registration renewal sticker expired pursuant to G.S. 20-66(g).

~~(2) For a vehicle newly registered under the annual system, taxes shall be due on the first day of the fourth month following the date the new registration is applied for. For a vehicle whose registration is renewed under the annual system, taxes shall be due on May 1 following the date the registration expired.~~

SECTION 4. G.S. 105-330.4(b) reads as rewritten:

(b) Subject to the provisions of G.S. 105-395.1, interest on unpaid taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) accrues at the rate of ~~two percent (2%)~~ five percent (5%) for the first month following the date the taxes were due and three-fourths percent (3/4 %) for each month thereafter until the taxes are paid, unless the ~~tax~~ notice required by G.S. 105-330.5 is prepared after the date the taxes are due. In that circumstance, the interest accrues beginning the second month following the

date of the notice until the taxes are paid. Subject to the provisions of G.S. 105-395.1, interest on delinquent taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(2) accrues as provided in G.S. 105-360(a) and discounts shall be allowed as provided in G.S. 105-360(c).

SECTION 5. G.S. 105-330.4(b), as amended by Section 4 of this act, reads as rewritten:

"(b) Subject to the provisions of G.S. 105-395.1, interest on unpaid taxes and registration fees on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) accrues at the rate of five percent (5%) for the ~~first month~~remainder of the month following the ~~date~~ month in which the registration renewal sticker expired pursuant to G.S. 20-66(g).~~the taxes were due and~~ Interest accrues at the rate of three-fourths percent (3/4 %) for each month thereafter until the taxes and fees are paid, unless the notice required by G.S. 105-330.5 is prepared after the date the taxes and fees are due. In that circumstance, the interest accrues beginning the second month following the date of the notice until the taxes and fees are paid. Subject to the provisions of G.S. 105-395.1, interest on delinquent taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(2) accrues as provided in G.S. 105-360(a) and discounts shall be allowed as provided in G.S. 105-360(c)."

SECTION 6. G.S. 105-330.5 reads as rewritten:

"**§ 105-330.5. Listing and collecting procedures.**

(a) For classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1), upon receiving the registration lists from the Division of Motor Vehicles each month, the ~~assessor~~ Property Tax Division of the Department of Revenue shall prepare a combined tax and registration notice for each ~~vehicle; the~~vehicle. The combined tax and registration notice shall contain all ~~county, municipal, and special district~~county and municipal corporation taxes and fees due on the motor ~~vehicle.~~vehicle as computed by the assessor in the county of registration. In computing the taxes, the assessor shall appraise the motor vehicle in accordance with G.S. 105-330.2 and shall use the tax rates of the various taxing units in effect on the first day of the month in which the current vehicle registration ~~expired~~ expires or the new registration ~~was~~ is applied for. This procedure shall constitute the listing and assessment of each classified motor vehicle for taxation. The combined tax and registration notice shall contain:

(1) The date of the combined tax and registration notice.
(2) The appraised value of the motor vehicle.
(3) The tax rate of the taxing units.
(4) A statement that the appraised value of the motor vehicle may be appealed to the assessor ~~within 30 days after the date of the notice.~~before the taxes and fees become delinquent.
(5) The registration fee imposed by the Division of Motor Vehicles and any other information required by the Division of Motor Vehicles to comply with the provisions of Chapter 20 of the General Statutes.

(a1) When a new registration is obtained for a vehicle registered under the annual system in a month other than December, the ~~assessor~~ taxes shall ~~prorate the taxes due~~be prorated for the remainder of the calendar year. The amount of prorated taxes due is the

product of the proration fraction and the taxes computed according to subsection (a). The numerator of the proration fraction is the number of full months remaining in the calendar year following the date the registration is applied for and the denominator of the fraction is 12.

(b) When the combined tax and registration notice required by subsection (a) is prepared, the ~~county tax collector~~Property Tax Division of the Department of Revenue or a third party contractor shall mail a copy of the notice, with appropriate instructions for payment, to the motor vehicle owner. The Department shall establish a fee equal to the actual cost of printing and sending the notice. The Department may receive a fee for each notice generated for a vehicle registered in a county or municipal corporation from the taxes and fees remitted to the county or municipal corporation in which the vehicle is registered. The collecting authority is responsible for collecting county and municipal taxes and fees assessed under this Article and ~~The county~~ may retain ~~the actual cost of~~a fee for collecting ~~municipal and special district taxes~~these taxes and fees. ~~collected pursuant to this Article,~~ The fee retained by the collecting authority ~~not to exceed one and one-half percent (1 1/2%) of the amount of taxes collected.~~shall be an amount equal to at least one-third of the compensation paid for registration renewals conducted by contract agents under G.S. 20-63(h). The ~~county finance officer~~Property Tax Division shall establish procedures to ensure that tax payments and fees received pursuant to this Article and Chapter 20 of the General Statutes are properly accounted for and taxes and fees due other taxing units and the Division of Motor Vehicles are remitted ~~to the units to which they are due~~ at least once each month. Each ~~month, a county~~collecting authority shall provide a weekly financial report containing ~~reasonable~~ information required by the Property Tax Division to the ~~municipalities and special districts located in it~~taxing units and Division of Motor Vehicles to enable them to account for ~~the tax~~ payments ~~remitted to them.~~received.

(b1) Repealed by Session Laws 1995, c. 329, s. 2.

(c) For classified motor vehicles listed pursuant to G.S. 105-330.3(a)(2), the assessor shall appraise each vehicle in accordance with G.S. 105-330.2. The assessor shall prepare a tax notice for each vehicle before September 1 following the January 31 listing date; the tax notice shall include all county and special district taxes due on the motor vehicle. In computing the taxes, the assessor shall use the tax rates of the taxing units in effect for the fiscal year that begins on July 1 following the January 31 listing date. Municipalities shall list, assess, and tax classified motor vehicles listed pursuant to G.S. 105-330.3(a)(2) as provided in G.S. 105-326, 105-327, and 105-328 and shall send tax notices as provided in this section.

(d) The county shall include taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) in the tax levy for the fiscal year in which the taxes become due and shall charge the taxes to the tax collector for that year, unless the tax notice required by subsection (a) is prepared after the date the taxes are due. If that occurs, the county shall include the taxes from that notice in the tax levy for the current fiscal year and shall charge the taxes to the tax collector for that year."

SECTION 7. G.S. 105-330.7 is repealed.

SECTION 8. Article 22A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-330.10. Disposition of interest.**

Sixty percent (60%) of the interest collected on unpaid taxes pursuant to G.S. 105-330.4 shall be transferred on a monthly basis to the Combined Motor Vehicle and Registration Account created within the Treasurer's Office. The North Carolina Association of County Commissioners shall direct the Treasurer to distribute the funds in the Account to the Division of Motor Vehicles for the purpose of developing and implementing an integrated computer system within the Division of Motor Vehicles that would allow for the combined assessment, billing, and collection of property taxes on motor vehicles and the issuance of registration plates. The Treasurer shall report to the Revenue Laws Study Committee semi-annually with the first report due by April 30, 2006. The report shall contain a detailed description of the amount of moneys transferred to the Account and distributed from the Account."

SECTION 9. G.S. 105-330.10, as enacted by Section 8 of this act, reads as rewritten:

"§ 105-330.10. Disposition of interest.

~~Sixty percent (60%) of the~~ The interest collected on unpaid ~~taxes~~ registration fees pursuant to G.S. 105-330.4 shall be transferred on a monthly basis to the ~~Combined Motor Vehicle and Registration Account created within the Treasurer's Office.~~North Carolina Highway Fund for technology improvements within the Division of Motor Vehicles. ~~The funds in this account shall be used to develop and implement an integrated computer system within the Division of Motor Vehicles that would allow for the combined assessment, billing, and collection of property taxes on motor vehicles and the issuance of registration plates. The Treasurer shall report to the Revenue Laws Study Committee semi-annually with the first report due by April 30, 2006. The report shall contain a detailed description of the amount of moneys transferred to the Account and distributed from the Account.~~"

SECTION 10. G.S. 20-50.3 is repealed.

SECTION 11. G.S. 20-50.4 reads as rewritten:

"**§ 20-50.4. Division to refuse to register vehicles on which county and municipal taxes and fees are ~~delinquent~~ not paid and when there is a failure to meet court-ordered child support obligations.**

(a) ~~Delinquent~~ Property Taxes Paid with Registration.~~Property Taxes.~~ – ~~Upon receiving the list of motor vehicle owners and motor vehicles sent by county tax collectors pursuant to G.S. 105-330.7, the~~The Division shall refuse to register ~~for the owner named in the list any vehicle identified in the list until either the vehicle owner presents the Division with a paid tax receipt identifying the vehicle for which registration was refused or the county certifies to the Division that the tax has been paid. The Division shall not refuse to register a vehicle for a person, not named in the list, to whom the vehicle has been transferred in good faith. Where a motor vehicle owner named in the list has transferred the registration plates from the motor vehicle identified in the list to another motor vehicle pursuant to G.S. 20-64 during the first vehicle's tax year, the Division shall refuse registration of the second vehicle until the vehicle owner~~

~~presents the Division with a paid tax receipt identifying the vehicle from which the plates were transferred or the county certifies to the Division that the tax has been paid. The certification must be in the form and contain the information required by the Division.~~a vehicle on which county and municipal taxes and fees have not been paid.

(b) Delinquent Child Support Obligations. – Upon receiving a report from a child support enforcement agency that sanctions pursuant to G.S. 110-142.2(a)(3) have been imposed, the Division shall refuse to register a vehicle for the owner named in the report until the Division receives certification pursuant to G.S. 110-142.2 that the payments are no longer considered delinquent."

SECTION 12. The Property Tax Division within the Department of Revenue and the Division of Motor Vehicles within the Department of Transportation shall jointly study and develop a plan for implementing an integrated computer system needed to combine the registration renewal and property tax collection for motor vehicles in the State. The Divisions shall consult with representatives from the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, the North Carolina Association of Assessing Officers, and the North Carolina Tax Collectors Association. The Divisions shall submit a report of its findings and recommendations to the Revenue Laws Study Committee and the Fiscal Research Division by April 30, 2006.

SECTION 13. Sections 4 and 8 of this act become effective January 1, 2006. Sections 1, 2, 3, 5, 6, 7, 9, 10, and 11 of this act become effective July 1, 2009 or when the Division of Motor Vehicles and the Department of Revenue certify that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first. Sections 12 and 13 of this act are effective when they become law.

HOUSE BILL 1779

Short Title:	Property Tax Paid With Vehicle Registration.	(Public)
Sponsors:	Representatives Folwell, Insko, Justice, Walker (Primary Sponsors); Langdon and Church.	
Referred to:	Finance.	

May 12, 2005

A BILL TO BE ENTITLED

AN ACT TO CREATE A COMBINED MOTOR VEHICLE REGISTRATION RENEWAL AND PROPERTY TAX COLLECTION SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-330 is amended by adding a new subdivision to read:

"(4) Collecting agency. A collecting agency shall mean the Division of Motor Vehicles, an agent contracting with the Division of Motor Vehicles, or any county tax collector."

SECTION 2. G.S. 105-330.2(b) reads as rewritten:

"(b) Value; Appeal. – A classified motor vehicle shall be appraised by the assessor at its true value in money as prescribed by G.S. 105-283. The Property Tax Division of the Department of Revenue shall annually adopt a schedule of values, standards, and rules to be used in the valuation of motor vehicles to ensure equitable statewide valuations, taking into account local market conditions and allowing adjustments for mileage and the condition of the vehicles. The owner of a classified motor vehicle may appeal the appraised value of the vehicle in the manner provided by G.S. 105-312(d) for appeals in the case of discovered property and may appeal the situs or taxability of the vehicle in the manner provided by G.S. 105-381. The owner of a classified motor vehicle must file an appeal of appraised value with the assessor within 30 days after the date of the tax notice prepared pursuant to G.S. 105-330.5. Notwithstanding G.S. 105-312(d), an owner who appeals the appraised value of a classified motor vehicle shall pay the tax on the vehicle when due, subject to a full or partial refund if the appeal is decided in the owner's favor."

SECTION 3. G.S. 105-330.4 reads as rewritten:

"**§ 105-330.4. Due date, interest, and enforcement remedies.**

(a) Taxes on a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(2) shall be due on September 1 following the date by which the vehicle was required to be

listed. Taxes on a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) shall be due each year on the following dates:

(1) For a vehicle registered under the staggered system, taxes shall be due on ~~the first day of the fourth month following the date the registration expires or on the first day of the fourth month following the last day of the month in which the new registration is applied for.~~the date the registration is renewed or a new registration is applied for.

(2) For a vehicle newly registered under the annual system, taxes shall be due on ~~the first day of the fourth month following the~~ date the new registration is applied for. For a vehicle whose registration is renewed under the annual system, taxes shall be due on May 1 following the date the registration expired.

(b) Subject to the provisions of G.S. 105-395.1, interest on unpaid taxes and registration fees on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) accrues at the rate of ~~two percent (2%)~~ ten percent (10%) for the first month following the date the taxes were due and three-fourths percent (3/4 %) for each month thereafter until the taxes are paid, unless the combined tax and registration notice required by G.S. 105-330.5 is prepared after the date the taxes are due. In that circumstance, the interest accrues beginning the second month following the date of the notice until the taxes are paid. Subject to the provisions of G.S. 105-395.1, interest on delinquent taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(2) accrues as provided in G.S. 105-360(a) and discounts shall be allowed as provided in G.S. 105-360(c).

(c) Unpaid taxes on classified motor vehicles may be collected by levying on the motor vehicle taxed or on any other personal property of the taxpayer pursuant to G.S. 105-366 and G.S. 105-367, or by garnishment of the taxpayer's property pursuant to G.S. 105-368. Notwithstanding the provisions of G.S. 105-366(b), the enforcement measures of levy, attachment, and garnishment may be used to collect unpaid taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) at any time after interest accrues. Notwithstanding the provisions of G.S. 105-355, taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) do not become a lien on real property owned by the taxpayer."

SECTION 4. G.S. 105-330.5 reads as rewritten:

"**§ 105-330.5. Listing and collecting procedures.**

(a) For classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1), upon receiving the registration lists from the Division of Motor Vehicles each month, the Property Tax Division shall prepare a combined tax and registration notice for each vehicle; the combined tax and registration notice shall contain all county, municipal, ~~and~~ special district ~~taxes~~ taxes, and registration fees due on the motor vehicle. In computing the taxes, the assessor shall appraise the motor vehicle in accordance with G.S. 105-330.2 and shall use the tax rates of the various taxing units in effect on the first day of the month in which the current vehicle registration ~~expired~~ expires or the new registration ~~was~~ is applied for. This procedure shall constitute the listing and assessment of each classified motor vehicle for taxation. The combined tax and registration notice shall contain:

(1) The date of the combined tax and registration notice.
(2) The appraised value of the motor vehicle.
(3) The tax rate of the taxing units.
(4) A statement that the appraised value of the motor vehicle may be appealed to the assessor within 30 days after the date of the notice.
(5) The registration fee imposed by the Division of Motor Vehicles and any other information required by the Division of Motor Vehicles to comply with the provisions of Chapter 20 of the General Statutes.

(a1) When a new registration is obtained for a vehicle registered under the annual system in a month other than December, the assessor shall prorate the taxes due for the remainder of the calendar year. The amount of prorated taxes due is the product of the proration fraction and the taxes computed according to subsection (a). The numerator of the proration fraction is the number of full months remaining in the calendar year following the date the registration is applied for and the denominator of the fraction is 12.

(b) When the combined tax and registration notice required by subsection (a) is prepared, the ~~county tax collector~~ Property Tax Division of the Department of Revenue shall mail a copy of the notice, with appropriate instructions for payment, to the motor vehicle owner. The ~~county~~ collecting agency may retain ~~the actual cost of~~ a fee for collecting ~~municipal and~~ county, municipal, special district ~~taxes~~ taxes, and registration fees collected pursuant to this Article and Chapter 20 of the General Statutes, not to exceed ~~one and one half percent (1 1/2%) of the amount of taxes collected.~~ the fee established by the Division of Motor Vehicles for transactions conducted by contract agents. The ~~county finance officer~~ Property Tax Division shall establish procedures to ensure that tax payments and registration fees received pursuant to this Article and Chapter 20 of the General Statutes are properly accounted for and taxes and registration fees due other taxing units and the Division of Motor Vehicles are remitted ~~to the units to which they are due~~ at least once each month. Each month, a ~~county~~ collecting agency shall provide reasonable information to the ~~municipalities and special districts located in it~~ taxing units and Division of Motor Vehicles to enable them to ~~account for~~ validate the tax payments ~~remitted to~~ received by them.

(b1) Repealed by Session Laws 1995, c. 329, s. 2.

(c) For classified motor vehicles listed pursuant to G.S. 105-330.3(a)(2), the assessor shall appraise each vehicle in accordance with G.S. 105-330.2. The assessor shall prepare a tax notice for each vehicle before September 1 following the January 31 listing date; the tax notice shall include all county and special district taxes due on the motor vehicle. In computing the taxes, the assessor shall use the tax rates of the taxing units in effect for the fiscal year that begins on July 1 following the January 31 listing date. Municipalities shall list, assess, and tax classified motor vehicles listed pursuant to G.S. 105-330.3(a)(2) as provided in G.S. 105-326, 105-327, and 105-328 and shall send tax notices as provided in this section.

(d) The county shall include taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) in the tax levy for the fiscal year in which the taxes become due and shall charge the taxes to the tax collector for that year, unless the tax notice required

by subsection (a) is prepared after the date the taxes are due. If that occurs, the county shall include the taxes from that notice in the tax levy for the current fiscal year and shall charge the taxes to the tax collector for that year."

SECTION 5. G.S. 105-330.7 reads as rewritten:

"**§ 105-330.7. List of delinquents sent to Division of Motor Vehicles.**

On the tenth day of each month the county tax collector shall prepare a list with the name and address of the owner and the vehicle identification number of every classified motor vehicle listed pursuant to G.S. 105-330.3(a)~~(1)~~ on which taxes remain unpaid on that date and on which taxes became ~~due on the first day of the fourth month preceding that date.~~ delinquent. The tax collector shall mail that list to the Division of Motor Vehicles. The list shall be in the form and contain the information required by the Division of Motor Vehicles. The Division of Motor Vehicles shall place a block on the registration and vehicle identification number of any vehicle upon which delinquent taxes are owed. In no event shall the owner of a vehicle that has had a registration and vehicle identification number blocked be able to register a vehicle that has been blocked, transfer a registration plate that has been blocked to another vehicle, or transfer ownership of a vehicle that has been blocked until all delinquent taxes are paid and the owner provides a certificate issued by the county tax collector that all taxes due have been paid."

SECTION 6. There is appropriated from the General Fund to the Department of Transportation, Division of Motor Vehicles, the sum of ten million dollars ($10,000,000) to develop and implement an integrated computer system that allows the Division of Motor Vehicles, Property Tax Division, and all county tax collectors to collect property taxes due on motor vehicles and issue registration plates for all registered vehicles.

SECTION 7. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2007.

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HOUSE BILL 1779:
Property Tax Paid With Vehicle Registration

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 26, 2005
Introduced by:	Reps. Folwell, Insko, Justice, Walker	**Summary by:**	Martha Walston
Version:	H1779-CSLAf-22 [v.5]		Committee Counsel

SUMMARY: ***House Bill 1779 would modify the collection system for property taxes and registration fees on motor vehicles in the State as follows:***

- ***Beginning July 1, 2009, or when an integrated computer system is in operation, whichever occurs first, the current system of paying the property taxes and registration fees to different entities on different dates would be replaced with a combined system in which the property taxes and registration fees on the motor vehicle are paid to the same entity on the same date.***
- ***Beginning January 1, 2006, the bill would increase the interest rate on unpaid property taxes on motor vehicles from 2% in the first month following the date the taxes were due to 5%. A portion (60%) of the interest collected would be transferred to a special account in the Treasurer's Office for the purpose of developing an integrated computer system in DMV that would allow for the implementation of the combined system.***
- ***The bill also directs the Property Tax Division within the Department of Revenue and the DMV within the Department of Transportation to jointly study and develop a plan for implementing the integrated computer system.***

CURRENT LAW: Collection of Motor Vehicle Property Taxes. Since 1993, all motor vehicles, except public service company vehicles appraised by the Department of Revenue and manufactured homes, are classified for listing, assessment, and taxation separately from other classes of property. The classified motor vehicles consist of two groups; those that are registered with the DMV and those that are not registered with the DMV.[1]

The county in which the motor vehicle is registered assesses the vehicle for property taxes on a revolving, year-round basis. To accomplish this, DMV gives each county a monthly list of all the motor vehicles in the county for which the registration was renewed or obtained two months earlier. The county then lists and appraises each vehicle and sends the owner of the vehicle a bill for the county, municipal, and special district property taxes due. The result is that a motor vehicle owner receives a tax bill for the vehicle approximately three months after the vehicle is registered or the registration is renewed. Each month, the county tax collector collects taxes on approximately one-twelfth of the motor vehicles having a tax situs in the county. If the taxes on the registered motor vehicle are not paid within one month after they become due, then the motor vehicle owner is liable for interest at the rate of 2% a month for the first month following the date the taxes were due and ¾ % for each month thereafter. Also, if the taxes are not paid, the county includes the motor vehicle on a list that is sent to the DMV. The DMV then refuses to renew the vehicle's registration the following year unless the taxpayer obtains a receipt showing that the previous year's taxes have been paid.[2] Unpaid taxes may also be collected by

[1] A vehicle is not registered with the DMV either because it is a tractor, an earthmover, or some other type of vehicle that cannot be registered with the DMV or it is a car or truck and could be, but for some reason, is not registered with the DMV.

[2] Vehicle owners may get around this block by buying a new tag on the vehicle.

levying on the motor vehicle or other personal property of the owner, but the unpaid taxes do not become a lien on the owner's real property.

Collection of Motor Vehicle Registration Fees. The DMV requires motor vehicles to be registered annually. Under G.S. 20-66, the registration of a vehicle that is renewed by means of a registration renewal sticker expires at midnight on the last day of the month designated on the sticker. It is lawful, however, to operate the vehicle on a highway until midnight on the fifteenth day of the month following the month in which the sticker expired. The DMV varies the expiration dates of registration renewal stickers for a type of vehicle so that an approximately equal number expires at the end of each month, quarter, or other period consisting of one or more months. The $20 fee is paid to the DMV and credited to the Highway Fund.

BILL ANALYSIS: House Bill 1779 would combine the motor vehicle registration and property tax billing and collection into a combined process. The goals of the combined process are to reduce the number of taxpayer interactions with government, save money, increase the overall efficiency of both functions, and improve the property tax collection rate on motor vehicles.

Sections 1 through 9 of the bill make the following changes to Chapter 105 regarding the listing, appraisal, and property tax collection of motor vehicles:

Beginning January 1, 2006, the interest rate on unpaid taxes on classified motor vehicles will increase from 2% for the first month to 5% for the first month following the date the taxes were due. Instead of going to the county that is the situs of the motor vehicle, 60% of the interest collected on unpaid taxes on registered vehicles will be transferred on a monthly basis to a special account created within the Treasurer's Office. The North Carolina Association of County Commissioners will direct the Treasurer to distribute funds from the account for the purpose of developing and implementing an integrated computer system within the DMV. The system will allow for the combined assessment, billing, and collection of property taxes on motor vehicles and the issuance of registration plates.

Beginning July 1, 2009, or when the Division of Motor Vehicles and the Department of Revenue certify that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first, the following changes will occur:

- Property Tax on registered motor vehicles will be due on the date the registration that a new registration is applied for or the fifteeth day of the month following the month in which the registration renewal sticker expired pursuant to G.S. 20-66(g). Under this statute, a registration sticker expires at midnight on the last day of the month designated on the sticker. The vehicle, however, may be lawfully driven on the highway until midnight on the fifteenth of the month following the month in which the sticker expired. For example, if the registration sticker designates August as the month of expiration, a person has the entire month of August and the first 15 days of September to renew his or her registration.
- The Property Tax Division of the Department of Revenue shall prepare and mail a combined tax and registration notice for each registered vehicle. The notice will contain the date of the notice, the appraised value of the vehicle, the tax rate of the taxing units, a statement that the appraised value of the motor vehicle may be appealed to the assessor before the taxes and fees become delinquent, and the registration fee imposed by the DMV.
- The Department of Revenue may receive a fee for each combined notice generated for a registered vehicle. The fee must be equal to the actual cost of printing and sending the combined notice and will be subtracted from the taxes and fees remitted to the county or municipal corporation in which the vehicle is registered.

- The property taxes and registration fees must be paid either to the DMV or an agent contracting with the DMV. The taxes and fees do NOT have to be paid in the county that is the situs of the vehicle.
- The DMV or its agent may retain a fee for collecting the county and municipal taxes and fees. This fee must be an amount equal to at least 1/3 of the compensation paid for registration renewals conducted by contract agents under Chapter 20 of the General Statutes. This fee is in addition to the $1.43 that is currently paid to contract agents for each registration renewal.
- The DMV or its agent must provide a weekly financial report containing information required by the Property Tax Division to the taxing units and the DMV to enable them to account for payments received.
- G.S. 105-330.7 is repealed. It will no longer be necessary for the tax collector to send a monthly list to the DMV of classified vehicles on which taxes remain unpaid, because the taxes and registration fees will be paid to the same entity at the same time.
- Interest at the rate of 5% for the remainder of the month following the month in which the registration renewal sticker expired will also accrue on unpaid registration fees on classified motor vehicles. Interest collected on unpaid registration fees will be transferred on a monthly basis to the North Carolina Highway Fund for technology improvements within the DMV. The interest collected on unpaid property taxes will no longer go into the special account in the Treasurer's office but will remain with the counties and municipal corporations.
- G.S. 20-50.3 is repealed. Once the computer system is in operation, the DMV will no longer need to furnish county tax assessors a list of registered vehicles.

Effective when the act becomes law, the Property Tax Division within the Department of Revenue and the DMV shall jointly study and develop a plan for implementing an integrated computer system needed to combine the registration renewal and property tax collection for motor vehicles in the State. The Divisions shall consult with representatives from the following organizations: the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, the North Carolina Association of Assessing Officers, and the North Carolina Tax Collectors Association.

Reporting requirements: The Treasurer must report to the Revenue Laws Study Committee semi-annually, with the first report due by April 30, 2006. The report must contain a detailed description of the moneys transferred to the special account and distributed from the special account.

The Property Tax Division within the Department of Revenue and the DMV must report findings and recommendations of its joint study to the Revenue Laws Study Committee and the Fiscal Research Division by April 30, 2006.

H1779e1-SMLA

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: July 25, 2005

TO: Representative Folwell

FROM: Rodney Bizzell, Bob Weiss and Michele Nelson
Fiscal Research Division

RE: House Bill 1779 (PCS H1779-CSLAf-22v.5)

FISCAL IMPACT ($ in millions)

	Yes (X)	No ()	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
Combined Motor Vehicle Registration Account	$2.0	$4.2	$4.3	$4.4	$4.5
Local Governments	* $72 million in estimated additional revenue beginning in FY2010. This amount would be reduced by administrative fees for processing, mailing and collection retained by DOR and DMV *				
EXPENDITURES:					
NC DMV	* Expenditures not yet known. See Assumptions and Methodology *				
NC DMV IT	* Significant IT expenditures required. See Assumptions and Methodology *				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue, NC Division of Motor Vehicles, NC Department of State Treasurer and Local Governments

EFFECTIVE DATE: Sections 4 and 8 become effective January 1, 2006. Sections 1, 2, 3, 5, 6, 7 and 9 become effective July 1, 2009 or when the Division of Motor Vehicles and the Department of Revenue certify that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first.

BILL SUMMARY:

House Bill 1779 would modify the collection system for property taxes and registration fees on motor vehicles in the State by combining the payment of these taxes and fees so that both are due at the time the registration fee is due. The implementation date would be July 1, 2009, or sooner if the integrated computer system is in operation. The bill also would increase the interest rate on unpaid property taxes on motor vehicles from 2% in the first month following the date the taxes were due to 5% beginning January 1, 2006. A portion of the interest collected would be transferred to a special account in the Treasurer's Office for the purpose of developing an integrated computer system in DMV that would allow for the combined system. The bill also directs the Property Tax Division within the Department of Revenue and the DMV within the Department of Transportation to jointly study and develop a plan for implementing the integrated computer system.

ASSUMPTIONS AND METHODOLOGY:

HB 1779 requires the payment of vehicle property taxes at the time of vehicle registration renewal. The NC Association of Tax Assessors estimates that HB 1779 would result in collection of approximately $72 million annually in additional motor vehicle property taxes that currently go uncollected. Counties would also experience savings from the elimination of resources devoted to collection of property taxes on motor vehicles, including staff time and mailings for delinquent notices. An administrative fee equal to the cost of preparing and mailing notices will be retained by the Department of Revenue. A second fee for the cost of collection of taxes and fees will be retained by the Division of Motor Vehicles and tag agents. The bill would require significant changes in DMV operations and significant costs for changing DMV computer systems. The full extent of these changes and costs is not currently known.

The assumptions and methodology for the fiscal impacts of the relevant sections of the Proposed Committee Substitute are described below:

Section 2 (Effective July 1, 2009)

G.S. 105-330.2(b) is amended to direct the Department of Revenue, Property Tax Division to adopt a schedule of values, standards, and rules in setting the valuation of motor vehicles that would ensure equity statewide, include local market conditions, and allow adjustments for mileage and the condition of vehicles. At this time the Property Tax Division does not indicate a cost in establishing a statewide schedule of vehicle valuations.

Additionally, G.S. 105-330.2(c) is amended to broaden the memorandum of understanding between the Department of Revenue, Property Tax Division and Department of Transportation to include a procedure for the administration of the listing, appraisal, and assessment of classified motor vehicles. There is no cost anticipated in producing the memorandum. The costs will be incurred in carrying out its provisions.

Section 3 (Effective July 1, 2009)

Section 3 changes the date for which property taxes are due for registered vehicles. Under current law, taxes for unregistered vehicles are due on September 1 following the date the vehicle is required to be listed. Taxes for registered vehicles are due on the first day of the fourth month following the date the registration expires. Under HB 1779, the taxes are due at the time the registration is renewed or applied for. There is no fiscal impact for this section.

Section 4 (Effective January 1, 2006)

Section 4 increases the interest rate applied to unpaid taxes on registered motor vehicles from 2% to 5% for the first month after taxes are due, and ¾% for each month thereafter until the taxes are paid. Based on the amount of delinquent taxes reported in 2004, the amount of revenue that would be generated at a 5% interest rate is $6.7 million. The Proposed Committee Substitute for HB 1779 requires that 60% of the interest from the delinquent taxes be transferred to a special account within the State Treasurer's Office for the purpose of implementing an integrated computer system within the Division of Motor Vehicles. The total amount of interest generated is projected by applying a growth rate of 2% annually. This amount is multiplied by 60% to determine the amount to be transferred to the State Treasurer's Office. The amount for the first year is adjusted by half to reflect the January 1, 2006 effective date.

Section 5 (Effective July 1, 2009)

Section 5 would collect interest on unpaid vehicle registration fees (in addition to unpaid taxes) starting on July 1, 2009 at the rate of 5% the first month and ¾% per month thereafter. No estimate is available on the amount of interest that would be collected under the arrangement in this bill.

Section 6 (Effective July 1, 2009)

Through contractual agreement, the current practice of counties and municipalities is to have a vendor mail vehicle property tax notices to motor vehicle owners. As amended, G.S. 105-330.5 (a) requires the Department of Revenue, Property Tax Division to prepare monthly a combined tax and registration notice for each vehicle containing all county or municipal taxes and fees due on the vehicle as computed by the assessor in the county of registration. G.S. 105-330.5 (b) requires either the Department of Revenue, Property Tax Division or a third party contractor to mail a copy of the notice with appropriate instructions to the motor vehicle owner for payment. To meet the responsibility the statute allows the Property Tax Division to receive a fee for each notice generated for a vehicle registered in a county or municipality from the taxes and fees remitted to the respective county or municipality in which the vehicle is registered. The mailing cost of approximately $1.8 million per year would no longer be incurred by DMV in fiscal year 2009-2010. The Department of Revenue will receive funding deducted from the vehicle tax prior to submission to the counties or municipalities that is equal to the cost of printing and mailing the notices. The current cost for counties to print and mail notices is between 45 and 50 cents per notice. At 50 cents per notice for 7 million mailings, the cost to counties in retained fees would be approximately $3.5 million.

For collecting the tax and registration payments, the collecting authority (generally DMV or the contract agent) may collect a fee of at least one-third of the compensation to contract agents for registration renewals. This would come to $0.48 cents for each transaction. DMV processes approximately 2.4 million transactions per year. The resulting fees at that level of transactions would be approximately $1.2 million per year. The contract agents would receive approximately $1.9 million for collecting the property tax payments on 4.1 million transactions at $0.48 per transaction.

The cost in fees to the counties would be 6,466,508 renewals times $0.48, or $3.1 million.

When the combined property tax/vehicle registration system is operational, the Property Tax Division will follow the same procedure as the counties and municipalities, i.e. to employ the services of a third party contractor to print and mail notices. It is anticipated that the expense to the Division would be in line with the current cost of DOT. In terms of expanded workload, the Property Tax Division would not need additional personnel if the two (2) Property Tax Valuation Specialist positions proposed in the Senate version of SB 622 – 2005 Appropriations Act are authorized by the General Assembly as a result of the conference process.

DMV notes a number of operational changes and related cost increases that can be expected with this bill. These include:

- Rewrite of certain computer systems (See Section 12)
- Increased customer service inquiries, complaints, and visits to DMV and contract agents related to tax collection, requiring additional customer service personnel, IT technicians, call center representatives, etc.
- Greater fiscal monitoring of contract agents related to increased collections.
- More intensive training of DMV and contract agent staff.
- New DMV remittance process.
- Greater costs per transaction for online renewals as the dollar value of each transaction increases due to collection of the property taxes.

The operational details of these changes and the magnitude of the cost increases is not known at this time but would presumably be identified and negotiated as the memorandum of understanding required by Section 2 (c) is completed and before the effective date of July 1, 2009.

Section 8 (Effective January 1, 2006)

Section 8 requires that 60% of the interest collected on unpaid taxes be transferred on a monthly basis to a Combined Motor Vehicle Account at the State Treasurer's Office. The calculation of the estimates for these funds is described in Section 4. The funds will be used at the direction of the NC Association of County Commissioners to develop and implement the computer system at DMV to be used for combined assessment, billing and collection of property taxes on motor vehicles and issuance of registration plates. There is no expected fiscal impact for this section.

Section 9 (Effective July 1, 2009)

The interest on unpaid vehicle registration fees shall be paid to the Highway Fund for technology improvements within the Division of Motor Vehicles. No estimate is available on this amount.

Section 12 (Effective July 1, 2009)

Section 12 requires a study and plan by DOR and DMV, with consultation from interested parties, for an integrated computer system to accomplish the purposes of this bill. DMV states that the bill will require a total rewrite of the State Titling and Registration System (STARS), which would include the interface with the counties, at a cost of over $100 million and the rewriting of related DMV systems at a cost of over $200 million, for a total of $304 million. These related systems are the International Registration Plan/Motor Carrier (IRP/MC) system, the Liability Insurance Tracking and Enforcement System (LITES), DMV Enforcement Systems, the Vehicle Accident Reporting System (CRASH), and the State Automated Driver License System (SADLS).

DMV notes that its major computer systems, STARS and SADLS, are reaching the stage where they will have to be rewritten in the next few years. SADLS, the driver license system, will require major changes to comply with the identification requirements of the REAL ID Act recently passed by Congress. The specific requirements and costs associated with that rewrite are not yet known. SADLS and STARS also need to be better integrated. It follows that whether or not this bill is passed, major DMV computer expenditures can be expected, though perhaps not in the time frame specified in this bill.

SOURCES OF DATA: NC Department of Revenue, NC Division of Motor Vehicles, NC Association of Tax Assessors, NC Department of State Treasurer, and Local Governments

TECHNICAL CONSIDERATIONS: As noted, a number of operational and technical details remain to be resolved among the entities charged with carrying out this legislation.

Rep. Daniel [redacted]cComas - New Hanover

County Only Registered Motor Vehicle Levies and Collections

County	2004 Motor vehicle valuation	2004 Motor vehicle levy	Estimated initial delinquent County taxes (33%)	Estimated Initial 5% Interest	FY 2004 Motor vehicle collection rate	Uncollected County taxes at fiscal year-end	2004 Tax Rate	Revenue Generated by 1 cent on Rate
Alamance	1,003,553,726	$5,192,397	$1,713,491	$85,675	0.8881	$581,029	$0.5200	$968,807
Alexander	243,650,697	$1,132,976	$373,882	$18,694	0.8735	$143,321	$0.4650	$203,141
Alleghany	65,404,648	$370,205	$122,168	$6,108	0.8520	$54,790	$0.5500	$103,500
Anson	139,859,620	$1,102,965	$363,978	$18,199	0.8713	$141,952	$0.7760	$118,070
Ashe	208,902,376	$1,196,237	$394,758	$19,738	0.8200	$215,323	$0.5800	$189,400
Avery	157,716,551	$835,898	$275,846	$13,792	0.7815	$182,644	$0.5300	$244,938
Beaufort	363,539,119	$2,181,234	$719,807	$35,990	0.8368	$355,977	$0.6000	$354,965
Bertie	143,467,725	$1,242,402	$409,993	$20,500	0.8283	$213,320	$0.8900	$94,800
Bladen	217,711,512	$1,872,319	$617,865	$30,893	0.7628	$444,114	$0.8425	$168,174
Brunswick	693,741,040	$3,632,730	$1,198,801	$59,940	0.8284	$623,376	$0.5200	$1,310,000
Buncombe	1,588,726,974	$9,373,508	$3,093,258	$154,663	0.9300	$656,146	$0.5900	$1,836,847
Burke	542,207,158	$3,199,022	$1,055,677	$52,784	0.8712	$412,034	$0.5900	$490,633
Cabarrus	1,146,043,737	$6,338,593	$2,091,736	$104,587	0.8883	$708,021	$0.5600	$1,379,809
Caldwell	515,260,319	$3,008,605	$992,840	$49,642	0.8546	$437,451	$0.5839	$431,788
Camden	71,065,767	$533,015	$175,895	$8,795	n/a	n/a	$0.7500	$48,515
Carteret	500,108,041	$2,100,453	$693,149	$34,657	0.8609	$292,173	$0.4200	$779,946
Caswell	117,343,157	$737,730	$243,451	$12,173	0.8722	$94,282	$0.6611	$133,400
Catawba	1,217,158,221	$5,842,359	$1,927,978	$96,399	0.8480	$888,039	$0.4800	$1,297,493
Chatham	422,830,021	$2,733,701	$902,121	$45,106	0.8989	$276,377	$0.6464	$497,204
Cherokee	187,614,197	$1,047,526	$345,684	$17,284	0.8230	$185,412	$0.5700	$215,647
Chowan	104,762,199	$738,175	$243,598	$12,180	0.8781	$89,984	$0.6900	$82,056
Clay	80,287,553	$321,150	$105,980	$5,299	0.8915	$34,845	$0.4000	$110,542
Cleveland	633,634,048	$3,869,306	$1,276,871	$63,844	0.8305	$655,847	$0.6200	$565,000
Columbus	339,504,359	$2,648,134	$873,884	$43,694	0.7256	$726,648	$0.7800	$249,753
Craven	704,033,929	$3,942,590	$1,301,055	$65,053	0.8872	$444,724	$0.5600	$574,500
Cumberland	1,662,183,977	$14,627,219	$4,826,982	$241,349	0.8122	$2,746,992	$0.8800	$1,425,100
Currituck	175,402,783	$1,087,498	$358,874	$17,944	0.8753	$135,611	$0.6200	$270,848
Dare	311,508,120	$1,682,144	$555,108	$27,755	0.8879	$188,568	$0.5400	$602,000
Davidson	1,045,878,392	$5,543,155	$1,829,241	$91,462	0.8374	$901,317	$0.5300	$960,000
Davie	316,891,721	$1,885,372	$622,173	$31,109	0.9049	$179,299	$0.5900	$291,840
Duplin	310,713,198	$2,333,504	$770,056	$38,503	0.7778	$518,505	$0.7450	$271,858
Durham	1,479,367,228	$11,420,819	$3,768,870	$188,444	0.8771	$1,403,619	$0.7630	$2,067,873
Edgecombe	304,741,244	$2,787,670	$919,931	$45,997	0.7841	$601,858	$0.9100	$250,000
Forsyth	2,356,151,700	$16,370,064	$5,402,121	$270,106	0.9057	$1,543,697	$0.6920	$2,535,500
Franklin	348,680,294	$3,356,697	$1,107,710	$55,386	0.8554	$485,378	$0.9995	$310,000
Gaston	1,199,188,893	$10,708,166	$3,533,695	$176,685	0.8588	$1,511,993	$0.8930	$1,190,641
Gates	74,975,906	$626,666	$206,800	$10,340	0.8076	$120,571	$0.8300	$48,200
Graham	69,294,040	$408,835	$134,916	$6,746	0.8045	$79,927	$0.5900	$56,697
Granville	330,890,245	$2,100,236	$693,078	$34,654	0.8458	$323,856	$0.6350	$296,856
Greene	114,671,753	$974,768	$321,673	$16,084	0.8511	$145,143	$0.8500	$71,100

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County Only Registered Motor Vehicle Levies and Collections

County	2004 Motor vehicle valuation	2004 Motor vehicle levy	Estimated initial delinquent County taxes (33%)	Estimated Initial 5% Interest	FY 2004 Motor vehicle collection rate	Uncollected County taxes at fiscal year-end	2004 Tax Rate	Revenue Generated by 1 cent on Rate
Guilford	3,346,535,683	$22,898,600	$7,556,538	$377,827	0.9400	$1,373,916	$0.7135	$3,950,000
Halifax	303,396,075	$2,633,204	$868,957	$43,448	0.8797	$316,774	$0.8650	$252,000
Harnett	635,907,601	$4,673,921	$1,542,394	$77,120	0.8239	$823,077	$0.7350	$473,232
Haywood	434,794,514	$2,652,247	$875,242	$43,762	0.8764	$327,818	$0.6100	$474,158
Henderson	726,199,941	$3,449,450	$1,138,319	$56,916	0.8482	$523,627	$0.4750	$873,639
Hertford	133,172,297	$1,211,868	$399,916	$19,996	0.9383	$74,772	$0.9100	$112,541
Hoke	213,908,228	$1,582,920	$522,364	$26,118	n/a	n/a	$0.7400	$133,865
Hyde	35,937,666	$253,095	$83,521	$4,176	0.7038	$74,967	$0.7000	$65,634
Iredell	1,327,617,217	$5,893,675	$1,944,913	$97,246	0.8930	$630,623	$0.4350	$1,349,555
Jackson	216,264,230	$961,337	$317,241	$15,862	0.8289	$164,485	$0.4800	$533,927
Johnston	1,027,901,153	$8,017,629	$2,645,818	$132,291	0.8842	$928,441	$0.7800	$922,849
Jones	67,238,069	$517,733	$170,852	$8,543	0.8400	$82,837	$0.7700	$51,488
Lee	366,936,926	$2,459,907	$811,769	$40,588	0.8658	$330,120	$0.6700	$363,982
Lenoir	380,033,152	$2,945,257	$971,935	$48,597	0.8175	$537,509	$0.7750	$315,600
Lincoln	537,244,107	$3,330,949	$1,099,213	$54,961	0.9179	$273,471	$0.6200	$525,624
Macon	293,478,132	$1,073,396	$354,221	$17,711	0.8661	$143,728	$0.3700	$532,800
Madison	154,684,570	$1,078,947	$356,053	$17,803	0.7622	$256,574	$0.7700	$160,298
Martin	156,570,582	$1,229,079	$405,596	$20,280	0.7894	$258,844	$0.7850	$150,052
McDowell	282,155,321	$1,551,855	$512,112	$25,606	0.8656	$208,569	$0.5500	$252,150
Mecklenburg	6,334,680,981	$46,975,366	$15,501,871	$775,094	0.8471	$7,182,533	$0.7364	$8,312,000
Mitchell	121,321,074	$643,001	$212,190	$10,610	0.7463	$163,129	$0.5300	$111,264
Montgomery	183,781,444	$1,101,403	$363,463	$18,173	0.8334	$183,494	$0.6050	$201,252
Moore	706,779,415	$3,357,202	$1,107,877	$55,394	0.9204	$267,233	$0.4750	$760,000
Nash	682,382,246	$4,503,723	$1,486,229	$74,311	0.8721	$576,026	$0.6600	$531,000
New Hanover	1,415,155,235	$9,623,056	$3,175,608	$158,780	0.8795	$1,159,578	$0.6800	$1,786,000
Northampton	143,917,992	$1,322,508	$436,428	$21,821	0.8497	$198,773	$0.8800	$116,312
Onslow	701,226,096	$4,710,584	$1,554,493	$77,725	0.8483	$714,596	$0.6700	$615,238
Orange	793,217,031	$6,883,530	$2,271,565	$113,578	0.9315	$471,522	$0.8450	$1,023,286
Pamlico	92,442,747	$665,511	$219,619	$10,981	0.8587	$94,037	$0.7445	$109,919
Pasquotank	236,039,651	$2,029,941	$669,881	$33,494	0.8400	$324,791	$0.8600	$153,863
Pender	332,869,663	$1,963,931	$648,097	$32,405	0.8391	$315,996	$0.5900	$350,138
Perquimans	92,473,335	$588,225	$194,114	$9,706	0.8439	$91,822	$0.6300	$78,690
Person	275,954,254	$1,848,894	$610,135	$30,507	0.8804	$221,128	$0.6700	$319,000
Pitt	939,300,536	$6,575,104	$2,169,784	$108,489	0.9167	$547,706	$0.7000	$824,000
Polk	154,416,610	$907,342	$299,423	$14,971	0.8876	$101,985	$0.5876	$165,391
Randolph	1,037,263,498	$5,186,317	$1,711,485	$85,574	0.8988	$524,855	$0.5000	$845,000
Richmond	264,885,758	$2,153,787	$710,750	$35,537	0.8374	$350,206	$0.8200	$230,059
Robeson	634,109,011	$5,770,392	$1,904,229	$95,211	0.2297	$4,444,933	$0.9100	$370,000
Rockingham	657,853,261	$4,177,414	$1,378,547	$68,927	0.8910	$455,338	$0.6350	$554,500
Rowan	914,706,508	$5,762,651	$1,901,675	$95,084	0.8957	$601,044	$0.6300	$945,000
Rutherford	364,808,690	$2,261,814	$746,399	$37,320	0.8421	$357,140	$0.6200	$394,959

414,000 ± Wilmington

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County Only Registered Motor Vehicle Levies and Collections

County	2004 Motor vehicle valuation	2004 Motor vehicle levy	Estimated initial delinquent County taxes (33%)	Estimated Initial 5% Interest	FY 2004 Motor vehicle collection rate	Uncollected County taxes at fiscal year-end	2004 Tax Rate	Revenue Generated by 1 cent on Rate
Sampson	416,589,640	$2,811,980	$927,953	$46,398	0.8369	$458,634	$0.6750	$310,300
Scotland	204,648,718	$2,077,962	$685,727	$34,286	0.7783	$460,684	$0.9900	$164,796
Stanly	397,768,351	$2,655,138	$876,196	$43,810	0.9077	$245,069	$0.6675	$356,500
Stokes	321,516,201	$1,993,400	$657,822	$32,891	0.8557	$287,648	$0.6200	$264,133
Surry	543,454,876	$3,449,332	$1,138,280	$56,914	0.8954	$360,800	$0.6400	$454,251
Swain	75,774,009	$416,744	$137,526	$6,876	0.7722	$94,934	$0.5500	$58,190
Transylvania	243,046,468	$1,166,623	$384,986	$19,249	0.9185	$95,080	$0.4800	$350,000
Tyrrell	23,887,980	$238,880	$78,830	$3,942	n/a	n/a	$1.0000	$23,342
Union	1,262,833,563	$6,679,375	$2,204,194	$110,210	0.9169	$555,056	$0.5300	$1,318,444
Vance	264,958,777	$2,384,628	$786,927	$39,346	0.8529	$350,779	$0.9000	$200,564
Wake	6,456,485,355	$38,997,171	$12,869,066	$643,453	0.9150	$3,314,760	$0.6040	$7,077,500
Warren	107,028,069	$881,179	$290,789	$14,539	0.8395	$141,429	$0.8200	$128,775
Washington	87,593,604	$889,084	$293,398	$14,670	0.7820	$193,820	$1.0150	$53,706
Watauga	351,301,910	$1,230,094	$405,931	$20,297	0.9124	$107,756	$0.3500	$536,840
Wayne	721,056,875	$4,758,975	$1,570,462	$78,523	0.8004	$949,891	$0.6600	$571,441
Wilkes	487,514,365	$2,975,276	$981,841	$49,092	0.8871	$335,909	$0.6100	$450,261
Wilson	535,576,860	$3,856,153	$1,272,530	$63,627	0.8452	$596,932	$0.7200	$481,474
Yadkin	260,468,631	$1,684,937	$556,029	$27,801	0.8147	$312,219	$0.6400	$205,000
Yancey	144,458,864	$722,294	$238,357	$11,918	0.8108	$136,658	$0.5000	$135,440
	62,134,189,804	408,402,033	$134,772,671	$6,738,634		$55,420,241		

Methodology:
The motor vehicle valuation and motor vehicle levy information is the actual information certified by the counties to the Tax Research Division of the NC Department of Revenue on the 2004 TR-1 report

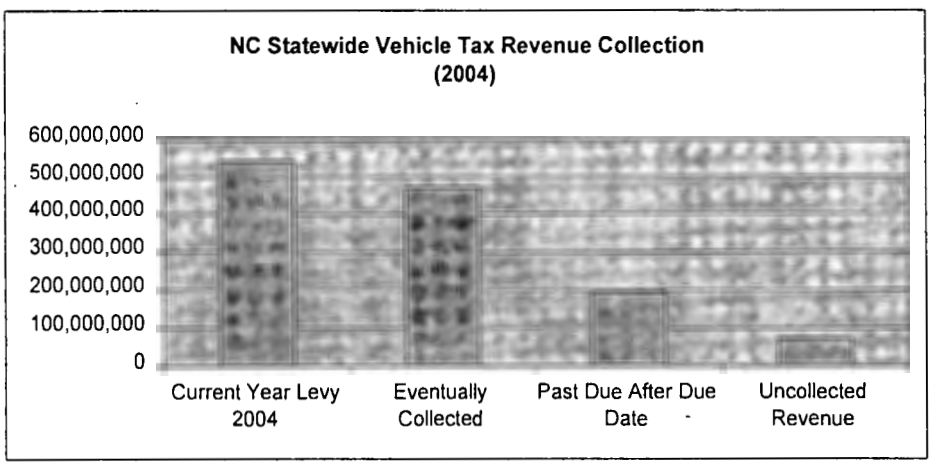
The average state-wide at-par collection rate was determined to be 67% by a ptax listserv request compiled by Forsyth County Tax Assessor/Collector William A.(Pete) Rodda, CAE. This translates to an initial delinquency rate of 33%.

The motor vehicle collection rate for each county is the actual rate reported by the Department of State Treasurer in memorandum #1030 for the fiscal year ending June 30, 2004.

County	Motor vehicle valuation	Motor vehicle levy	Estimated initial delinquent City taxes (33%)	Estimated Initial 5% Interest	FY 2004 Motor vehicle collection rate	Uncollected City taxes at fiscal year-end
Asheville	483,479,811	$2,562,443	$845,606	$42,280	0.9243	$193,977
Charlotte	4,694,426,985	$19,716,594	$6,506,476	$325,324	0.8823	$2,320,643
Durham	1,168,767,696	$6,517,944	$2,150,922	$107,546	0.8880	$730,010
Fayetteville	796,063,962	$4,219,139	$1,392,316	$69,616	0.8037	$828,217
Greensboro	1,607,699,729	$9,679,825	$3,194,342	$159,717	0.9252	$724,051
Raleigh	2,556,421,897	$9,907,143	$3,269,357	$163,468	0.8782	$1,206,690
Wilmington	660,629,920	$3,087,394	$1,018,840	$50,942	0.8659	$414,020
Winston-Salem	1,256,957,172	$6,285,584	$2,074,243	$103,712	0.8850	$722,842

FORSYTH COUNTY FIRE DISTRCTS

	Motor vehicle valuation	Motor vehicle levy	Estimated initial delinquent Fire taxes (33%)	Estimated Initial 5% Interest
Beeson Crossing	48,296,180	$33,401.95	$11,023	$551
Belews Creek	29,071,420	$12,859.07	$4,243	$212
City View	13,101,840	$10,354.86	$3,417	$171
Clemmons Fire	172,213,480	$84,998.53	$28,050	$1,402
Forest Hill	1,701,200	$849.75	$280	$14
Griffith	29,807,410	$16,042.59	$5,294	$265
Gumtree	12,309,690	$10,284.12	$3,394	$170
Horneytown	21,199,140	$20,939.97	$6,910	$346
King Fire	7,111,990	$3,232.41	$1,067	$53
Lewisville Fire	138,391,230	$68,399.49	$22,572	$1,129
Mineral Springs	35,174,770	$13,859.49	$4,574	$229
Mineral Springs SD	175,830	$70.34	$23	$1
Mt Tabor	14,454,020	$9,313.22	$3,073	$154
Old Richmond	60,942,990	$36,127.68	$11,922	$596
Piney Grove	59,803,150	$44,819.44	$14,790	$740
Salem Chapel	7,626,960	$4,488.52	$1,481	$74
South Fork	4,693,100	$2,268.15	$748	$37
Suburban	41,126,350	$15,565.67	$5,137	$257
Talley's Cross	23,383,420	$15,341.16	$5,063	$253
Triangle	21,811,880	$7,517.08	$2,481	$124
Union Cross	24,585,610	$16,971.25	$5,601	$280
Vienna	73,653,260	$47,346.81	$15,624	$781
Walkertown Fire	38,600,700	$22,714.64	$7,496	$375
West Bend	3,843,740	$1,905.49	$629	$31
TOTALS	883,079,360	$499,671.68	$164,892	$8,245



City	Motor vehicle valuation	Motor vehicle levy	Estimated initial delinquent City taxes (33%)	Estimated Initial 2% Interest	Estimated Initial 5% Interest	Estimated Initial 10% Interest	FY 2004 Motor vehicle collection rate	Uncollected City taxes at fiscal year-end
Asheville	483,479,811	$2,562,443	$845,606	$16,912	$42,280	$84,561	0.9243	$193,977
Charlotte	4,694,426,985	$19,716,594	$6,506,476	$130,130	$325,324	$650,648	0.8823	$2,320,643
Durham	1,168,767,696	$6,517,944	$2,150,922	$43,018	$107,546	$215,092	0.8880	$730,010
Fayetteville	796,063,962	$4,219,139	$1,392,316	$27,846	$69,616	$139,232	0.8037	$828,217
Greensboro	1,607,699,729	$9,679,825	$3,194,342	$63,887	$159,717	$319,434	0.9252	$724,051
Raleigh	2,556,421,897	$9,907,143	$3,269,357	$65,387	$163,468	$326,936	0.8782	$1,206,690
Wilmington	660,629,920	$3,087,394	$1,018,840	$20,377	$50,942	$101,884	0.8659	$414,020
Winston-Salem	1,256,957,172	$6,285,584	$2,074,243	$41,485	$103,712	$207,424	0.8850	$722,842

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 1779 A BILL TO BE ENTITLED AN ACT TO CREATE A COMBINED MOTOR VEHICLE REGISTRATION RENEWAL AND PROPERTY TAX COLLECTION SYSTEM.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 612*
Judiciary I Committee Substitute Adopted 3/31/05
Finance Committee Substitute Adopted 4/11/05
Fourth Edition Engrossed 4/14/05
House Committee Substitute Favorable 7/20/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S612-CSSTf-82 [v.6]

7/25/2005 8:45:32 PM

Short Title: Amend Lobbying Laws. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LOBBYING LAWS BY INCREASING THE INFORMATION REQUIRED TO BE REPORTED ON LOBBYING ACTIVITIES AND BY REQUIRING REGISTRATION AND REPORTING OF LOBBYING ACTIVITIES OF EXECUTIVE BRANCH OFFICERS, AND TO APPROPRIATE FUNDS TO IMPLEMENT THE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9A of Chapter 120 of the General Statutes reads as rewritten:

"Article 9A.

"Legislative Branch Lobbying.

"§ 120-47.1. Definitions.

~~For the purposes of this Article, the following terms shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:~~The following definitions shall apply in this Article:

(1) The term "covered person" means a legislator, the Governor, or the Lieutenant Governor.

~~(1)~~(1a) The ~~terms "contribution," "compensation" and~~ term "expenditure" ~~mean~~ means any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge or ~~anything~~ thing of value greater than ten dollars ($10.00), ~~and any~~or ~~contracta~~ contract, agreement, promise or other obligation whether or not legally enforceable, ~~but those terms do not include prizes, awards, or compensation not exceeding one~~

~~hundred dollars ($100.00) in a calendar year.~~that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of a covered person, legislative employee, or that person's immediate family member.

(1b) The term "executive lobbyist" means a lobbyist registered pursuant to Article 4C of Chapter 147 of the General Statutes.

(2), (3) Repealed by Session Laws 1991, c. 740, s. 1.1.

(3a) The term "immediate family member" means spouse, descendant, or ascendant.

(4) The term "legislative action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter by the legislature or by a member or employee of the legislature acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.

(4a) The term "legislative employee" means employees and officers of the General Assembly.

(4b) The term "legislative liaison personnel" means any State ~~officer or employee~~officer whose principal ~~duties~~ duties, in practice or as set forth in that person's job ~~description~~ description, ~~involve~~ include lobbying the General Assembly.

(4c) The term "legislative lobbyist" means any lobbyist for or against legislative action.

(4d) The term "legislator" means a member of the General Assembly or a person elected or appointed a member of the General Assembly prior to taking office.

(5) The term "lobbying" ~~means:~~means any of the following:

a. Influencing or attempting to influence legislative action through direct ~~oral or written~~ communication or activities with a ~~member of the General Assembly; or~~covered person, legislative employee, or that person's immediate family member.

b. Solicitation of others by legislative lobbyists or lobbyists' principals to influence legislative action.

c. Developing goodwill through communications or activities with a covered person, legislative employee, or that person's immediate family with the intention of influencing current or future legislative action, but does not include communications or activities with a covered person, legislative employee, or that person's immediate family member in a business, civic,

religious, fraternal, or commercial relationship which is not connected to legislative action.

(6) The term "lobbyist" means an individual ~~who:~~who meets any of the following criteria:

a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of ~~lobbying; or~~lobbying.

b. Represents another person and receives compensation for the purpose of lobbying.

c. Is legislative liaison personnel.

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 120-47.8. For the purpose of determining whether an individual is a lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involve lobbying before the General Assembly.

(7) The terms "lobbyist's principal" and "principal" mean the ~~entity in~~person on whose behalf the legislative lobbyist ~~influences or attempts to influence legislative action.~~lobbies. In the case where a lobbyist is compensated by a law firm, consulting firm, or other entity retained by a person for legislative lobbying, the principal is the person whose interests the lobbyist represents in lobbying.

(8) The term "person" means any individual, firm, partnership, committee, association, corporation, business entity, or any other organization or group of ~~persons.~~persons which has an independent legal existence.

(9) The General Assembly is in "regular session" from the date set by law or resolution that the General Assembly convenes until the General Assembly either:

a. Adjourns sine die; or

b. Recesses or adjourns for more than 10 days.

"§ 120-47.2. Registration procedure.

(a) A legislative lobbyist shall file a registration statement with the Secretary of State before engaging in any ~~lobbying.~~lobbying, in a manner prescribed by the Secretary of State. It shall be unlawful for a person to lobby without registering unless exempted by this Article. A separate registration statement is required for each lobbyist's principal. The registration shall indicate whether it is registration as a legislative lobbyist, executive lobbyist, or both, and a separate registration fee shall be paid for each separate type of registration.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, ~~and~~ complete ~~address;~~address and telephone number; the registrant's place of business; the full ~~name and~~name, complete address and telephone number of each person by whom the registrant is employed or

retained; and a general description of the matters on which the registrant expects to act as a legislative lobbyist. The Secretary of State shall make available as soon as practicable the registrations of the lobbyists and lobbyists' principals in an electronic, searchable format.

(c) Each legislative lobbyist shall ~~register again~~file an amended registration form with the Secretary of State no later than 10 days after any change in the information supplied in ~~his~~ the legislative lobbyist's last registration under subsection (b). Each supplementary registration shall include a complete statement of the information that has changed.

(d) Within 20 days after the convening of each session of the General Assembly, the Secretary of State shall furnish each member of the General Assembly and the State Legislative Library a list of all persons who have registered as executive or legislative lobbyists and whom they represent. Within 20 days after the beginning of the term of a Governor, the Secretary of State shall furnish the Governor, each other member of the Council of State, the head of each principal department of the Executive Branch, and the State Legislative Library a list of all persons who have registered as executive or legislative lobbyists and whom they represent. A supplemental list of legislative lobbyists shall be furnished periodically each 20 days thereafter as the session progresses. A supplemental list of executive lobbyists shall be furnished periodically each 60 days thereafter. All lists required by this section may be furnished electronically.

(e) Each registration statement of a legislative lobbyist required under this Article shall be effective from the date of filing until January 1 of the following ~~odd-numbered~~ year. The legislative lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

"§ 120-47.3. Registration fee.

(a) Every lobbyist's principal shall pay to the Secretary of State a fee of ~~two hundred dollars ($200.00)~~ one hundred dollars ($100.00) that is due and payable by either the legislative lobbyist or the lobbyist's principal at the time of registration. If the legislative lobbyist is also registering as an executive lobbyist for that lobbyist's principal, the fee shall be seventy-five dollars ($75.00) to register as a legislative lobbyist.

(b) A separate registration, together with a separate registration ~~two hundred dollars ($200.00)~~ one hundred dollars ($100.00 is required for each lobbyist's principal for which a person acts as a legislative lobbyist. No lobbyist's principal shall be charged a registration fee for legislative lobbyist more than one time per year.

(c) ~~Fees so collected shall be deposited in the General Fund of the State.~~ All fees shall be paid to the Department of the Secretary of State and deposited into the Lobbyist Registration Fund to be used to pay the costs incurred in administering and enforcing this Article.

(d) The Secretary of State may allow fees required under this section to be paid electronically, but may not require those fees to be paid electronically.

"§ 120-47.4. Written authority from lobbyist's principal to be filed.

Each legislative lobbyist shall file with the Secretary of State within 10 days after ~~his~~ the legislative lobbyist's registration a written authorization to act as such, signed by the lobbyist's principal.

"**§ 120-47.5. Contingency lobbying fees and election influence prohibited.**

(a) No person shall act as a legislative lobbyist for compensation that is dependent upon the result or outcome of any legislative action. ~~which is dependent in any manner upon the passage or defeat of any proposed legislation or upon any other contingency connected with any action of the General Assembly, the House, the Senate or any committee thereof.~~

(b) No ~~person~~ legislative lobbyist or legislative lobbyist's principal shall attempt to influence the action of any ~~member of the General Assembly~~ covered person by the promise of financial support of the ~~member's~~covered person's candidacy, or by threat of financial ~~contribution~~ support in opposition to the ~~member's~~ covered person's candidacy in any future election.

"**§ 120-47.5A. Exemptions and inclusions for reporting purposes.**

(a) For purposes of G.S. 120-47.6 and G.S. 120-47.7, the following expenditures need not be reported:

(1) Gifts from an immediate family member or person who is the child, stepchild, parent, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild of the covered person or legislative employee.

(2) Lawful campaign contributions.

(b) For purposes of G.S. 120-47.6 and G.S. 120-47.7, all expenditures made for the purpose of lobbying shall be reported, including the following:

(1) Expenditures benefiting or made on behalf of a covered person, a legislative employee, or those persons' immediate family members, in the regular course of that person's nonlegislative employment.

(2) Contractual arrangements or direct business relationships between a legislative lobbyist or legislative lobbyist's principal and a covered person, legislative employee, or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Amounts reimbursed to a legislative lobbyist in the ordinary course of business by the lobbyist's principal or other employer.

"**§ 120-47.6. Statements of legislative lobbyist's lobbying ~~expenses~~ expenditures required.**

(a) Each legislative lobbyist shall file ~~an expense report with the Secretary of State with respect to each principal within 60 days after the last day of the regular session. This expense report shall include all expenditures made between January 1 and the last day of the regular session. The lobbyist shall file a supplemental report including all expenditures made after the last day of the regular session, but during the calendar year, by February 28 of the following year.~~ monthly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State including electronically, with respect to each lobbyist's principal, while the General

Assembly is in regular session, and quarterly thereafter. The expenditure report shall include all expenditures during the reporting period and shall be due 10 business days after the end of the reporting period. The legislative lobbyist shall file ~~both~~ expense reports whether or not expenditures are made.

(b) Each ~~expense~~ expenditure report shall set forth the ~~date of each expenditure, to whom paid, the name of any legislator who benefitted from each expenditure, and the amount of each expenditure made during the previous reporting period in connection with lobbying, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty-five dollars ($25.00) and (6) contributions made, paid, incurred or promised, directly or indirectly. It shall not be necessary to report expenditures of twenty-five dollars ($25.00) or less, nor shall it be necessary to report any expenditures made in connection with the attendance of a legislator at any fund-raising function or event sponsored by a nonprofit organization qualified under 26 U.S.C. § 501(c). When more than 10 members of the General Assembly benefitted or were invited to benefit from an expenditure, the lobbyist shall not be required to report the name of any legislator, but shall be required to report the number of legislators or, with particularity, the basis for their selection.~~amount, date, a description of the expenditure, name and address of the payee, and name of any covered person, legislative employee, or that person's immediate family member benefiting from the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Solicitation of others to lobby.
(6) Other expenditures.

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public ~~inspection.~~inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of legislative employees and immediate family members of covered persons and legislative employees who benefited from the expenditure shall be listed separately.

(d) When a legislative lobbyist fails to file ~~a lobbying expense~~an expenditure report as required ~~herein,~~in this section, the Secretary of State shall send a certified or registered letter advising the legislative lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the legislative lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an

additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an ~~expense~~ expenditure report in one of the manners prescribed ~~herein~~ in this section shall result in revocation of any and all registrations of a legislative lobbyist under this Article. No legislative lobbyist may register or reregister under this Article until ~~he~~ the legislative lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate complete and timely disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes.

"§ 120-47.7. Statements of legislative lobbyist's principal lobbying ~~expenses~~ expenditures required.

(a) Each legislative lobbyist's principal shall file ~~an expense report with the Secretary of State within 60 days after the last day of the regular session. This expense report shall include all expenditures made between January 1 and the last day of the regular session. The 'principal shall file a supplemental expense report, including all expenditures made after the last day of the regular session, but during the calendar year, by February 28 of the following year.~~ monthly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State including electronically, while the General Assembly is in regular session, and quarterly thereafter. The expenditure report shall include all expenditures during the reporting period, and shall be due 10 business days after the end of the reporting period. The lobbyist's principal shall file ~~both expense~~ the expenditure reports whether or not expenditures are made during a reporting period.

(b) Each ~~expense~~ expenditure report shall set forth ~~the name and address of each lobbyist employed, appointed, or retained by the lobbyist's principal, the date of each expenditure made, to whom paid, name of any legislator who benefitted from each expenditure, and amount of each expenditure made during the previous reporting period in connection with lobbying, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty-five dollars ($25.00), (6) contributions made, paid, incurred or promised, directly or indirectly, and (7) compensation to lobbyists in connection with their lobbying activities. It shall not be necessary to report expenditures of twenty-five dollars ($25.00) or less, nor shall it be necessary to report any expenditures made in connection with the attendance of a legislator at any fund-raising function or event sponsored by a nonprofit organization qualified under 26 U.S.C. § 501(c). When more than 10 members of the General Assembly benefitted or were invited to benefit from an expenditure, the principal shall not be required to report the name of any legislator, but shall be required to report the number of legislators or the basis for their selection. In~~

~~the category of compensation to lobbyists the principal shall estimate and report the compensation paid or promised directly or indirectly, to all lobbyists based on the estimated time, effort and expense in connection with lobbying activities on behalf of the principal. If a lobbyist is a full-time employee of the principal, or is compensated by means of an annual fee or retainer, the principal shall estimate and report the portion of all such lobbyists' salaries or retainers that compensate the lobbyists for lobbying.~~ amount, date, a description of the expenditure, name and address of the payee, and name of any covered person, legislative employee, or that person's immediate family member affected by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Solicitation of others to lobby.
(6) The compensation paid or agreed to be paid to all legislative lobbyists. If a legislative lobbyist is a full-time employee of the lobbyist's principal, or is compensated by means of an annual fee or retainer, the lobbyist's principal shall estimate and report the portion of the salary, fee, or retainer that compensates for lobbying. The lobbyist's principal's expenditure report shall include an itemized description of all expenditures reimbursed or paid to legislative lobbyists for lobbying that are not reported on the legislative lobbyists' reports. For purposes of this subsection, amounts reimbursed in the ordinary course of business shall be considered compensation if a significant part of the individual's duties involves legislative lobbying, whether reimbursed by the principal or another source.
(7) Other expenditures.

(c) All reports shall be in the form prescribed by the Secretary of State and open to public ~~inspection.~~inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of legislative employees and immediate family members of covered persons and legislative employees who benefited from the expenditure shall be listed separately.

(d) When a lobbyist's principal fails to file ~~a lobbying expense~~an expenditure report as required ~~herein,~~in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall

deliver or post by United States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section. Failure to file an expenditure report in one of the manners prescribed in this section shall result in revocation of any and all registrations of a lobbyist's principal under this Article. No lobbyist's principal may register or reregister under this Article until the lobbyist's principal has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate complete and timely disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes.

"**§ 120-47.7B. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis to assure complete and timely disclosure of expenditures.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.

"**§ 120-47.7C. Prohibitions.**

(a) No member or former member of the General Assembly may be employed as an executive or legislative lobbyist by a lobbyist's principal to lobby as defined in this Article or Article 4C of Chapter 147 of the General Statutes within one year after the expiration of the term for which the member was elected or appointed to serve.

(b) No person serving as Governor, as a member of the Council of State, or as a head of a principal State department listed in G.S. 143B-6 may be employed as an executive or legislative lobbyist by a lobbyist's principal to lobby as defined in this Article or Article 4C of Chapter 147 of the General Statutes within one year after separation from employment or leaving office, whichever is later.

(c) No individual registered as a legislative lobbyist shall serve as a campaign manager or a campaign treasurer under Chapter 163 of the General Statutes for a campaign for election as a member of the General Assembly.

(d) A legislative or executive lobbyist shall not be eligible for appointment to any body created under the laws of this State that has regulatory authority over the activities

of a person that the lobbyist represented within one year after the expiration of the lobbyist's registration representing that person.

(e) No legislative or executive lobbyist or another acting on the lobbyist's behalf shall permit a covered person, legislative employee, executive branch officer, or that person's immediate family member, to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure.

"**§ 120-47.8. Persons exempted from provisions of Article.**

~~The~~ Except as otherwise provided in this Article, the provisions of this Article shall not be construed to apply to any of the following:

(1) An ~~individual, not acting as a lobbyist,~~ individual solely engaged in expressing a personal opinion or stating facts or recommendations on legislative matters to ~~his own legislative delegation or other~~ members of the General ~~Assembly.~~Assembly and not acting as a legislative lobbyist.

(2) A person appearing before a legislative committee at the invitation or request of the committee or a member thereof and who engages in no further activities as a legislative ~~lobbyist in connection with that or any other legislative matter.~~lobbyist.

(3) a. A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to ~~his~~ the office and public duties.

b. Notwithstanding the persons exempted in this Article, the Governor, Council of State, and all appointed heads of State departments, agencies and institutions, shall designate all authorized official legislative liaison personnel and shall file and maintain current lists of designated legislative liaison personnel with the Secretary of ~~State and shall likewise file with the Secretary of State a full and accurate accounting of all money expended on lobbying, other than the salaries of regular full-time employees, at the same times lobbyists are required to file expense reports under G.S. 120-47.6.~~State.

(4) A person performing professional services in drafting bills or in advising and rendering opinions to clients, or to ~~legislators~~ covered persons on behalf of clients, as to the construction and effect of proposed or pending legislation where the professional services are not ~~otherwise, directly or indirectly,~~ otherwise connected with legislative action.

(5) A person who owns, publishes or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news ~~medium.~~medium as defined in G.S. 8-53.11.

(6) Repealed by Session Laws 1991, c. 740, s. 1.1.

(7) ~~Members of the General Assembly.~~Covered persons and legislative employees.

(8) A person responding to inquiries from a member of the General Assembly or a legislative employee, and who engages in no further activities as a legislative lobbyist in connection with that or any other legislative matter.

(9) ~~An individual giving facts or recommendations pertaining to legislative matters to his own legislative delegation only.~~An employee who represents the employer's interests in legislative action for no more than three hours in a quarter, provided that neither the employee nor the employer makes any expenditure as defined in G.S. 120-47.1.

"**§ 120-47.8A. Expenditures made by persons exempted or not covered by this Article.**

(a) If a covered person or a legislative employee accepts an expenditure made for the purpose of lobbying valued over two hundred dollars ($200.00) from a person exempted or not covered by this Article, the person making the expenditure shall report the date, a description of the expenditure, the name and address of the person making the expenditure, the name of the covered person or legislative employee accepting the expenditure, and the estimated fair market value of the expenditure.

(b) If the person making the expenditure in subsection (a) of this section is outside North Carolina, the covered person or legislative employee accepting the expenditure shall be responsible for filing the report.

(c) If a covered person or a legislative employee accepts a scholarship valued over two hundred dollars ($200.00) from a person exempted or not covered by this Article, the person granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person granting the scholarship, the name of the covered person or legislative employee accepting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the covered person or legislative employee accepting the scholarship shall be responsible for filing the report.

(e) This section shall not apply to any of the following:

(1) Lawful campaign contributions.

(2) Any gift from a family member to a covered person or legislative employee.

(3) Gifts associated primarily with the covered person's, legislative employee's, or that person's immediate family member's nonlegislative employment.

(4) Gifts, other than food, beverages, travel, and lodging, which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(f) Reports required by this section shall be filed by the end of the quarter following the expenditure with the Secretary of State in a manner prescribed by the Secretary of State, including electronically.

"**§ 120-47.9. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no legislative lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as a legislative or executive lobbyist for a period of two years following ~~his~~ conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for willful false or incomplete reporting up to five thousand dollars ($5,000) per violation.

"**§ 120-47.10. Enforcement of Article by Attorney General.**

The Secretary of State shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon ~~complaint made to him of violations of this Article,~~ complaint, make an appropriate investigation thereof, and ~~he~~ the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

"**§ 120-47.11. Rules and forms.**

The Secretary of State shall ~~make, amend, and rescind~~adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article.

"**§ 120-47.12. Limitations on agency legislative ~~liaisons.~~liaison personnel.**

(a) No ~~principal~~ State department may use State funds to contract with persons who are not employed by the State to lobby the General Assembly.

(b) No more than two persons in each ~~principal~~ State department and constituent institution of The University of North Carolina may be registered to lobby the General Assembly or designated as legislative ~~liaisons~~ liaison personnel pursuant to this Article.

(c) All persons designated as legislative liaison personnel pursuant to this Article and the State department or constituent institution of The University of North Carolina that employs the legislative liaison personnel shall report all expenditures made for lobbying purposes in the same manner as required for legislative lobbyists under G.S. 120-47.6 and lobbyists' principals under G.S. 120-47.7."

SECTION 2. Chapter 147 of the General Statutes is amended by adding a new Article to read:

"Article 4C.

"Executive Branch Lobbying.

"**§ 147-54.31. Definitions.**

The following definitions shall apply in this Article:

(1) The term "executive action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, adoption, tabling, postponement, defeat, or rejection of a rule, regulation, executive order, policy, resolution, contract, request for proposal, amendment, motion, report, nomination, or appointment by the executive branch or by a member or employee of the executive

branch acting or purporting to act in an official capacity. This term shall not include any action by an attorney representing a client with respect to the executive action.

(2) The term "executive branch officers" means the Governor, any member of the Council of State, and heads of those departments listed in G.S. 143-6, and the Board of Governors and the presidents of the universities of The University of North Carolina System.

(3) The term "executive lobbyist" means any lobbyist for or against executive action.

(4) The term "expenditure" means any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge, or thing of value greater than ten dollars ($10.00), or a contract, agreement, promise, or other obligation whether or not legally enforceable, that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of an executive branch officer or that person's immediate family member.

(5) The term "immediate family member" means spouse, descendant or ascendant.

(6) The term "lobbying" means any of the following:

a. Influencing or attempting to influence executive action through direct communication or activities with an executive branch officer.

b. Solicitation of others by an executive lobbyist or lobbyist's principal to influence executive action.

c. Developing executive goodwill through communications or activities with an executive branch officer or that person's immediate family with the intention of influencing current or future executive action, but does not include communications or activities with executive branch officers or that person's immediate family member in a business, civic, religious, fraternal, or commercial relationship which is not connected to executive action.

(7) The term "lobbyist" means an individual who meets any of the following criteria:

a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of lobbying.

b. Represents another person and receives compensation for the purpose of lobbying.

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 147-54.40. For the purpose of determining whether an individual is an executive lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these

expenses shall be considered compensation if a significant part of the individual's duties involves executive lobbying.

(8) The terms "lobbyist's principal" and "principal" mean the person on whose behalf the executive lobbyist lobbies. In the case where a lobbyist is compensated by a law firm, consulting firm, or other entity retained by a person for executive lobbying, the principal is the person whose interests the lobbyist represents in lobbying.

(9) The term "person" means any individual, firm, partnership, committee, association, corporation, business entity, or any other organization or group of persons which has an independent legal existence.

"**§ 147-54.32. Registration procedure.**

(a) An executive lobbyist shall file a registration statement with the Secretary of State before engaging in any lobbying in a manner prescribed by the Secretary of State. It shall be unlawful for a person to lobby without registering unless exempted by this Article. A separate registration statement is required for each lobbyist's principal. The registration shall indicate whether it is registration as a legislative lobbyist, executive lobbyist, or both, and a separate registration fee shall be paid for each separate type of registration.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, and complete address and telephone number; the registrant's place of business; the full name and complete address and telephone number of each person by whom the registrant is employed or retained; and a general description of the matters on which the registrant expects to act as an executive lobbyist. The Secretary of State shall make available as soon as practicable the registrations of the lobbyists and lobbyists' principals in an electronic, searchable format.

(c) Each executive lobbyist shall file an amended registration form with the Secretary of State no later than 10 days after any change in the information supplied in the executive lobbyist's last registration under subsection (b). Each supplementary registration shall include a complete statement of the information that has changed.

(d) Each registration statement of an executive lobbyist required under this Article shall be effective from the date of filing until January 1 of the following year. The executive lobbyist shall file a new registration statement after that date.

"**§ 147-54.33. Registration fee.**

(a) Every lobbyist's principal shall pay to the Secretary of State a fee of one hundred dollars ($100.00) that is due and payable by either the executive lobbyist or the lobbyist's principal at the time of registration. If the executive lobbyist is also registering as a legislative lobbyist for that lobbyist's principal, the fee shall be seventy-five dollars ($75.00) to register as an executive lobbyist.

(b) A separate registration, together with a separate registration one hundred dollars ($100.00 is required for each lobbyist's principal for which a person acts as a legislative lobbyist. No lobbyist's principal shall be charged a registration fee for legislative lobbyist more than one time per year.

(c) All fees shall be paid to the Department of the Secretary of State and deposited into the Lobbyist Registration Fund to be used to pay the costs incurred in administering and enforcing this Article.

(d) The Secretary of State may allow fees required under this section to be paid electronically, but may not require those fees to be paid electronically.

"**§ 147-54.34. Written authority from lobbyist's principal to be filed.**

Each executive lobbyist shall file with the Secretary of State within 10 days after the executive lobbyist's registration a written authorization to act as such, signed by the lobbyist's principal.

"**§ 147-54.35. Contingency lobbying fees and election influence prohibited.**

(a) No person shall act as an executive lobbyist for compensation that is dependent upon the result or outcome of any executive action.

(b) No executive lobbyist or executive lobbyist's principal shall attempt to influence the action of an executive branch officer by the promise of financial support of the executive branch officer's candidacy or appointment, or by threat of financial support in opposition to the executive branch officer's candidacy in any future election or future re-appointment.

"**§ 147-54.36. Exemptions and inclusions for reporting purposes.**

(a) For purposes of G.S. 147-54.37 and G.S. 147-54.38, the following expenditures need not be reported:

(1) Gifts from an immediate family member or person who is the child, stepchild, parent, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild of the executive branch officer.

(2) Lawful campaign contributions.

(b) For purposes of G.S. 147-54.37 and G.S. 147-54.38, all expenditures made for the purpose of lobbying need to be reported, including:

(1) Expenditures benefiting or made on behalf of an executive branch officer or that person's immediate family members, in the regular course of that person's nonexecutive employment.

(2) Contractual arrangements or direct business relationships between an executive lobbyist or executive lobbyist's principal and an executive branch officer or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Amounts reimbursed to an executive lobbyist in the ordinary course of business by the lobbyist's principal or other employer.

"**§ 147-54.37. Statements of executive lobbyist's lobbying expenditures required.**

(a) Each executive lobbyist shall file quarterly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State, including electronically, with respect to each lobbyist's principal within 10 days after the end of the reporting period. The expenditure report shall include all expenditures during the reporting period. The executive lobbyist shall file an expenditure report whether or not expenditures are made.

(b) Each expenditure report shall set forth the amount, date, a description of the expenditure, name and address of the payee, and name of any executive branch officer, or that person's immediate family member benefiting by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Solicitation of others to lobby.
(6) Other expenditures.

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public inspection upon filing. When more than 15 executive branch officers benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of executive branch officers benefiting and, with particularity, the basis for their selection. The approximate number of immediate family members who benefited from the expenditure shall be listed separately.

(d) When an executive lobbyist fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the executive lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the executive lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all registrations of an executive lobbyist under this Article. No executive lobbyist may register or reregister under this Article until the executive lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate complete and timely disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes.

"**§ 147-54.38. Statements of lobbyist's principal lobbying expenses required.**

(a) Each executive lobbyist's principal shall file quarterly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State including electronically, within 10 days after the end of the reporting period. The expenditure report shall include all expenditures during the reporting period. The lobbyist's principal shall file an expenditure report whether or not expenditures are made during a reporting period.

(b) Each expenditure report shall set forth the amount, date, a description of the expenditure, name and address of the payee, and name of any executive branch officers,

or that person's immediate family member affected by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Solicitation of others to lobby.
(6) Other expenditures.

(c) All reports shall be in the form prescribed by the Secretary of State and open to public inspection upon filing. When more than 15 executive branch officers benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of executive branch officers benefiting and, with particularity, the basis for their selection. The approximate number of immediate family members who benefited from the expenditure shall be listed separately.

(d) When a lobbyist's principal fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all registrations of an executive lobbyist under this Article. No executive lobbyist may register or reregister under this Article until the executive lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate complete and timely disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes.

"**§ 147-54.39. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under G.S. 147-54.37 and G.S. 147-54.38 on a regular basis to assure complete and timely disclosure of expenditures.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.

"**§ 147-54.40. Persons exempted from provisions of Article.**

Except as otherwise provided in this Article, the provisions of this Article shall not be construed to apply to any of the following:

(1) An individual solely engaged in expressing a personal opinion on an executive action and not acting as an executive lobbyist.

(2) A person appearing before a committee, commission, board, council, or other collective body at the invitation or request of the collective body or a member thereof and who engages in no further activities as an executive lobbyist in connection with that or any other executive action.

(3) A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district, or other governmental agency, when appearing solely in connection with matters pertaining to the office and its public duties.

(4) A person performing professional services in advising and rendering opinions to clients, or executive branch officers on behalf of clients, as to the construction and effect of proposed or pending executive action where the professional services are not otherwise connected with executive action.

(5) A person who owns, publishes, or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium as defined in G.S. 8-53.11.

(6) A person responding to inquiries from an executive branch officer and who engages in no further activities as an executive lobbyist in connection with that or any other executive action.

(7) A person appearing before an executive branch agency or department on behalf of another person, on an individual application for a license or permit, or a disciplinary action on a license or permit.

(8) An employee who represents the employer's interests in executive action for no more than six hours during a six-month reporting period, provided that neither the employee nor the employer make any expenditure as defined in G.S. 147-54.31.

"**§ 147-54.41. Expenditures made by persons exempted or not covered by this Article.**

(a) If an executive branch officer accepts an expenditure made for the purpose of lobbying valued over two hundred dollars ($200.00) from a person exempted or not covered by this Article, the person making the expenditure shall report the date, a description of the expenditure, the name and address of the person making the expenditure, the name of the executive branch officer accepting the expenditure, and the estimated fair market value of the expenditure.

(b) If the person making the expenditure in subsection (a) of this section is outside North Carolina, the executive branch officer accepting the expenditure shall be responsible for filing the report.

(c) If a covered person or a legislative employee accepts a scholarship valued over two hundred dollars ($200.00) from a person exempted or not covered by this Article, the person granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person granting the scholarship, the name of the executive branch officer accepting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the covered person or legislative employee accepting the scholarship shall be responsible for filing the report.

(e) This section shall not apply to any of the following:

(1) Lawful campaign contributions.

(2) Any gift from a family member to a covered person or legislative employee.

(3) Gifts associated primarily with the executive branch officer's or that person's immediate family member's nonexecutive employment.

(4) Gifts, other than food, beverages, travel, and lodging, received by an executive branch officer which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(f) Reports required by this section shall be filed by the end of the quarter following the expenditure with the Secretary of State in a manner prescribed by the Secretary of State, including electronically.

"**§ 147-54.42. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no executive lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as an executive or legislative lobbyist for a period of two years following conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for willful false or incomplete reporting up to five thousand dollars ($5,000) per violation.

"**§ 147-54.43. Enforcement of Article by Attorney General.**

The Secretary of State shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60, of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

"**§ 147-54.44. Rules and forms.**

The Secretary of State shall adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article."

SECTION 3. Article 4 of Chapter 147 of the General Statutes is amended by adding a new section to read:

"**§ 147-54.8. No gifts registry.**

(a) The Secretary of State shall establish a 'No Gifts' registry for persons subject to Article 9A of Chapter 120 of the General Statutes or Article 4C of this Chapter. The 'No Gifts' registry shall be published and updated with the list of lobbyists and lobbyists' principals required under G.S. 120-47.2.

(b) Executive lobbyists, legislative lobbyists, and lobbyists' principals shall not give gifts to persons placing their names on the registry.

(c) The Secretary shall have the authority to adopt rules to implement this section in compliance with the following criteria:

(1) The registration is valid from the time the person registers until January 1 of the following year, unless the person requests in writing the removal of that person's name.

(2) The registration shall be in writing.

(d) For purposes of this section, the term "gift" means any payment, entertainment, advance, services, forgiveness of an obligation or debt, or thing of value, unless consideration of equal or greater value has been given therefor."

SECTION 4. There is appropriated from the General Fund to the Office of the Secretary of State the sum of two hundred thousand dollars ($200,000) for the 2005-2006 fiscal year to provide for the enforcement personnel, administrative staff, and expenses necessary to implement this act.

SECTION 5. There is appropriated from the General Fund to the Office of the Secretary of State the sum of one hundred twelve thousand dollars ($112,000) for the 2005-2006 fiscal year to provide for the implementation of electronic filing of all lobbyists' and lobbyists' principals' reports required under Article 9A of Chapter 120 of the General Statutes and to provide public access via the Internet to all these filings. The Secretary of State shall implement electronic filing of all lobbyists' and lobbyists' principals' reports required under Article 9A of Chapter 120 of the General Statutes and provide public access via the Internet to all these filings as soon as practicable.

SECTION 6. Sections 4, 5, and 6 of this act become effective July 1, 2005. G.S. 120-47.7C(d), as enacted by Section 1 of this act, shall apply to appointments made on or after January 1, 2007. The remainder of this act becomes effective January 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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SENATE BILL 612*
Judiciary I Committee Substitute Adopted 3/31/05
Finance Committee Substitute Adopted 4/11/05
Fourth Edition Engrossed 4/14/05
House Committee Substitute Favorable 7/20/05

Short Title: Amend Lobbying Laws. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LOBBYING LAWS BY INCREASING THE INFORMATION REQUIRED TO BE REPORTED ON LOBBYING ACTIVITIES AND BY REQUIRING REPORTING OF LOBBYING ACTIVITIES OF EXECUTIVE BRANCH OFFICERS, AND TO APPROPRIATE FUNDS TO IMPLEMENT THE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9A of Chapter 120 of the General Statutes reads as rewritten:

"Article 9A.

"Legislative Branch Lobbying.

"§ 120-47.1. Definitions.

~~For the purposes of this Article, the following terms shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:~~The following definitions shall apply in this Article:

(1) The term "covered person" means a legislator, the Governor, or the Lieutenant Governor.

~~(1)~~(1a) The ~~terms "contribution," "compensation" and~~ term "expenditure" ~~mean~~ means any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge or ~~anything~~ thing of value greater than ten dollars ($10.00), ~~and any~~or ~~contracta~~ contract, agreement, promise or other obligation whether or not legally enforceable, ~~but those terms do not include prizes, awards, or compensation not exceeding one hundred dollars ($100.00) in a calendar year.~~that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of a

covered person, legislative employee, or that person's immediate family member.

(1b) The term "executive lobbyist" means a lobbyist registered pursuant to Article 4C of Chapter 147 of the General Statutes.

(2), (3) Repealed by Session Laws 1991, c. 740, s. 1.1.

(3a) The term "immediate family member" means spouse, descendant, or ascendant.

(4) The term "legislative action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter by the legislature or by a member or employee of the legislature acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.

(4a) The term "legislative employee" means employees and officers of the General Assembly.

(4b) The term "legislative liaison personnel" means any State ~~officer or employee~~officer whose principal ~~duties~~ duties, in practice or as set forth in that person's job ~~description~~ description, ~~involve~~ include lobbying the General Assembly.

(4c) The term "legislative lobbyist" means any lobbyist for or against legislative action.

(4d) The term "legislator" means a member of the General Assembly or a person elected or appointed a member of the General Assembly prior to taking office.

(5) The term "lobbying" ~~means:~~means any of the following:

a. Influencing or attempting to influence legislative action through direct ~~oral or written~~ communication or activities with a ~~member of the General Assembly; or~~covered person, legislative employee, or that person's immediate family member.

b. Solicitation of others by legislative lobbyists or lobbyists' principals to influence legislative action.

c. Developing goodwill through communications or activities with a covered person, legislative employee, or that person's immediate family with the intention of influencing current or future legislative action, but does not include communications or activities with a covered person, legislative employee, or that person's immediate family member in a business, civic, religious, fraternal, or commercial relationship which is not connected to legislative action.

(6) The term "lobbyist" means an individual ~~who:~~who meets any of the following criteria:
a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of ~~lobbying; or~~lobbying.
b. Represents another person and receives compensation for the purpose of lobbying.
c. Is legislative liaison personnel.

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 120-47.8. For the purpose of determining whether an individual is a lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involve lobbying before the General Assembly.

(7) The terms "lobbyist's principal" and "principal" mean the ~~entity in~~person on whose behalf the legislative lobbyist ~~influences or attempts to influence legislative action.~~lobbies. In the case where a lobbyist is employed by a law firm, consulting firm, or other entity retained by a person for legislative lobbying, the principal is the person whose interests the lobbyist represents in lobbying.

(8) The term "person" means any individual, firm, partnership, committee, association, corporation, business entity, or any other organization or group of ~~persons.~~persons which has an independent legal existence.

(9) The General Assembly is in "regular session" from the date set by law or resolution that the General Assembly convenes until the General Assembly either:
a. Adjourns sine die; or
b. Recesses or adjourns for more than 10 days.

"**§ 120-47.2. Registration procedure.**

(a) A legislative lobbyist shall file a registration statement with the Secretary of State before engaging in any ~~lobbying.~~lobbying, in a manner prescribed by the Secretary of State. It shall be unlawful for a person to lobby without registering unless exempted by this Article. A separate registration statement is required for each lobbyist's principal. The registration shall indicate whether it is registration as a legislative lobbyist, executive lobbyist, or both, and a separate registration fee shall be paid for each separate type of registration.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, ~~and~~ complete ~~address;~~address and telephone number; the registrant's place of business; the full ~~name and~~name, complete address and telephone number of each person by whom the registrant is employed or retained; and a general description of the matters on which the registrant expects to act as a legislative lobbyist. The Secretary of State shall make available as soon as

practicable the registrations of the lobbyists and lobbyists' principals in an electronic, searchable format.

(c) Each legislative lobbyist shall ~~register again~~file an amended registration form with the Secretary of State no later than 10 days after any change in the information supplied in ~~his~~ the legislative lobbyist's last registration under subsection (b). Each supplementary registration shall include a complete statement of the information that has changed.

(d) Within 20 days after the convening of each session of the General Assembly, the Secretary of State shall furnish each member of the General Assembly and the State Legislative Library a list of all persons who have registered as executive or legislative lobbyists and whom they represent. Within 20 days after the beginning of the term of a Governor, the Secretary of State shall furnish the Governor, each other member of the Council of State, the head of each principal department of the Executive Branch, and the State Legislative Library a list of all persons who have registered as executive or legislative lobbyists and whom they represent. A supplemental list of legislative lobbyists shall be furnished periodically each 20 days thereafter as the session progresses. A supplemental list of executive lobbyists shall be furnished periodically each 60 days thereafter. All lists required by this section may be furnished electronically.

(e) Each registration statement of a legislative lobbyist required under this Article shall be effective from the date of filing until January 1 of the following ~~odd-numbered~~ year. The legislative lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

"**§ 120-47.3. Registration fee.**

(a) Every lobbyist's principal shall pay to the Secretary of State a fee of ~~two hundred dollars ($200.00)~~ one hundred dollars ($100.00) that is due and payable by either the legislative lobbyist or the lobbyist's principal at the time of registration. If the legislative lobbyist is also registering as an executive lobbyist for that lobbyist's principal, the fee shall be seventy-five dollars ($75.00) to register as a legislative lobbyist.

(b) A separate registration, together with a separate registration fee of ~~two hundred dollars ($200.00)~~ one hundred dollars ($100.00) is required for each lobbyist's principal for which a person acts as a legislative lobbyist. If the lobbyist's principal is also registering under Article 4C of Chapter 147 of the General Statutes, the fee shall be seventy-five dollars ($75.00).

(c) ~~Fees so collected shall be deposited in the General Fund of the State.~~ All fees shall be paid to the Department of the Secretary of State and deposited into the Lobbyist Registration Fund to be used to pay the costs incurred in administering and enforcing this Article.

(d) The Secretary of State may prescribe that fees required under this section may be paid electronically, but may not require that fees be paid electronically.

"**§ 120-47.4. Written authority from lobbyist's principal to be filed.**

Each legislative lobbyist shall file with the Secretary of State within 10 days after ~~his~~ the legislative lobbyist's registration a written authorization to act as such, signed by the lobbyist's principal.

"§ 120-47.5. Contingency lobbying fees and election influence prohibited.

(a) No person shall act as a legislative lobbyist for compensation that is dependent upon the result or outcome of any legislative action. ~~which is dependent in any manner upon the passage or defeat of any proposed legislation or upon any other contingency connected with any action of the General Assembly, the House, the Senate or any committee thereof.~~

(b) No ~~person~~ legislative lobbyist or legislative lobbyist's principal shall attempt to influence the action of any ~~member of the General Assembly~~ covered person by the promise of financial support of the ~~member's~~covered person's candidacy, or by threat of financial ~~contribution~~ support in opposition to the ~~member's~~ covered person's candidacy in any future election.

"§ 120-47.5A. Exemptions and inclusions for reporting purposes.

(a) For purposes of G.S. 120-47.6 and G.S. 120-47.7, the following expenditures need not be reported:

(1) Gifts from an immediate family member or person who is the child, stepchild, parent, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild of the covered person or legislative employee.

(2) Lawful campaign contributions.

(b) For purposes of G.S. 120-47.6 and G.S. 120-47.7, all expenditures made for the purpose of lobbying shall be reported, including the following:

(1) Expenditures benefiting or made on behalf of a covered person, a legislative employee, or those persons' immediate family members in the regular course of that person's nonlegislative employment.

(2) Contractual arrangements or direct business relationships between a legislative lobbyist or legislative lobbyist's principal and a covered person, legislative employee, or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Amounts reimbursed by a principal to a legislative lobbyist in the ordinary course of business by the lobbyist's principal or other employer.

"§ 120-47.6. Statements of legislative lobbyist's lobbying ~~expenses~~ expenditures required.

(a) Each legislative lobbyist shall file ~~an expense report with the Secretary of State with respect to each principal within 60 days after the last day of the regular session. This expense report shall include all expenditures made between January 1 and the last day of the regular session. The lobbyist shall file a supplemental report including all expenditures made after the last day of the regular session, but during the calendar year, by February 28 of the following year.~~ monthly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State

including electronically, with respect to each lobbyist's principal, while the General Assembly is in regular session, and quarterly thereafter. The expenditure report shall include all expenditures during the reporting period and shall be due 10 business days after the end of the reporting period. The legislative lobbyist shall file ~~both~~ expense reports whether or not expenditures are made.

(b) Each ~~expense~~ expenditure report shall set forth the ~~date of each expenditure, to whom paid, the name of any legislator who benefitted from each expenditure, and the amount of each expenditure made during the previous reporting period in connection with lobbying, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty-five dollars ($25.00) and (6) contributions made, paid, incurred or promised, directly or indirectly. It shall not be necessary to report expenditures of twenty-five dollars ($25.00) or less, nor shall it be necessary to report any expenditures made in connection with the attendance of a legislator at any fund-raising function or event sponsored by a nonprofit organization qualified under 26 U.S.C. § 501(c). When more than 10 members of the General Assembly benefitted or were invited to benefit from an expenditure, the lobbyist shall not be required to report the name of any legislator, but shall be required to report the number of legislators or, with particularity, the basis for their selection.~~amount, date, a description of the expenditure, name and address of the payee, and name of any covered person, legislative employee, or that person's immediate family member benefiting from the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Solicitation of others to lobby.
(6) Other expenditures.

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public ~~inspection.~~inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of legislative employees and immediate family members of covered persons and legislative employees who benefited from the expenditure shall be listed separately.

(d) When a legislative lobbyist fails to file ~~a lobbying expense~~an expenditure report as required ~~herein,~~in this section, the Secretary of State shall send a certified or registered letter advising the legislative lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the legislative lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an

additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an ~~expense~~ expenditure report in one of the manners prescribed ~~herein~~ in this section shall result in revocation of any and all registrations of a legislative lobbyist under this Article. No legislative lobbyist may register or reregister under this Article until ~~he~~ the legislative lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes.

"§ 120-47.7. Statements of legislative lobbyist's principal lobbying ~~expenses~~ expenditures required.

(a) Each legislative lobbyist's principal shall file ~~an expense report with the Secretary of State within 60 days after the last day of the regular session. This expense report shall include all expenditures made between January 1 and the last day of the regular session. The 'principal shall file a supplemental expense report, including all expenditures made after the last day of the regular session, but during the calendar year, by February 28 of the following year.~~ monthly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State including electronically, while the General Assembly is in regular session, and quarterly thereafter. The expenditure report shall include all expenditures during the reporting period, and shall be due 10 business days after the end of the reporting period. The lobbyist's principal shall file ~~both expense~~ the expenditure reports whether or not expenditures are made during a reporting period.

(b) Each ~~expense~~ expenditure report shall set forth the ~~name and address of each lobbyist employed, appointed, or retained by the lobbyist's principal, the date of each expenditure made, to whom paid, name of any legislator who benefitted from each expenditure, and amount of each expenditure made during the previous reporting period in connection with lobbying, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty-five dollars ($25.00), (6) contributions made, paid, incurred or promised, directly or indirectly, and (7) compensation to lobbyists in connection with their lobbying activities. It shall not be necessary to report expenditures of twenty-five dollars ($25.00) or less, nor shall it be necessary to report any expenditures made in connection with the attendance of a legislator at any fund-raising function or event sponsored by a nonprofit organization qualified under 26 U.S.C. § 501(c). When more than 10 members of the General Assembly benefitted or were invited to benefit from an expenditure, the principal shall not be required to report the name of any legislator, but shall be required to report the number of legislators or the basis for their selection. In~~

~~the category of compensation to lobbyists the principal shall estimate and report the compensation paid or promised directly or indirectly, to all lobbyists based on the estimated time, effort and expense in connection with lobbying activities on behalf of the principal. If a lobbyist is a full-time employee of the principal, or is compensated by means of an annual fee or retainer, the principal shall estimate and report the portion of all such lobbyists' salaries or retainers that compensate the lobbyists for lobbying.~~ amount, date, a description of the expenditure, name and address of the payee, and name of any covered person, legislative employee, or that person's immediate family member affected by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Solicitation of others to lobby.
(6) The compensation paid or agreed to be paid to all legislative lobbyists. If a legislative lobbyist is a full-time employee of the lobbyist's principal, or is compensated by means of an annual fee or retainer, the lobbyist's principal shall estimate and report the portion of the salary or retainer that compensates for direct and indirect lobbying. The lobbyist's principal's expenditure report shall include an itemized description of all expenditures reimbursed or paid to legislative lobbyists for lobbying that are not reported on the legislative lobbyists' reports. For purposes of this subsection, amounts reimbursed in the ordinary course of business shall be considered compensation if a significant part of the individual's duties involves legislative lobbying, whether reimbursed by the principal or another source.
(7) Other expenditures.

(c) All reports shall be in the form prescribed by the Secretary of State and open to public ~~inspection.~~inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of legislative employees and immediate family members of covered persons and legislative employees who benefited from the expenditure shall be listed separately.

(d) When a lobbyist's principal fails to file ~~a lobbying expense~~an expenditure report as required ~~herein,~~in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall

deliver or post by United States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section. Failure to file an expenditure report in one of the manners prescribed in this section shall result in revocation of any and all registrations of a lobbyist's principal under this Article. No lobbyist's principal may register or reregister under this Article until the lobbyist's principal has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes.

"**§ 120-47.7B. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic audits of reports required to be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.

"**§ 120-47.7C. Prohibitions.**

(a) No member or former member of the General Assembly may be employed as an executive or legislative lobbyist by a lobbyist's principal to lobby as defined in this Article or Article 4C of Chapter 147 of the General Statutes within one year after the expiration of the term for which the member was elected or appointed to serve.

(b) No person serving as Governor, as a member of the Council of State, or as a head of a principal State department listed in G.S. 143B-6 may be employed as an executive or legislative lobbyist by a lobbyist's principal to lobby as defined in this Article or Article 4C of Chapter 147 of the General Statutes within one year after separation from employment or leaving office, whichever is later.

(c) No individual registered as a legislative lobbyist shall serve as a campaign manager or a campaign treasurer under Chapter 163 of the General Statutes for a campaign for election as a member of the General Assembly.

(d) A legislative or executive lobbyist shall not be eligible for appointment to any board, authority, commission, or other body established by the laws of this State that regulates the activities of a person that the lobbyist represented within one year after the expiration of the lobbyist's registration.

(e) No legislative or executive lobbyist or another acting on the lobbyist's behalf shall permit a covered person, legislative employee, executive branch officer, or that person's immediate family member to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure.

"**§ 120-47.8. Persons exempted from provisions of Article.**

~~The~~ Except as otherwise provided in this Article, the provisions of this Article shall not be construed to apply to any of the following:

(1) An ~~individual, not acting as a lobbyist,~~ individual solely engaged in expressing a personal opinion or stating facts or recommendations on legislative matters to ~~his own legislative delegation or other~~ members of the General Assembly.

(2) A person appearing before a legislative committee at the invitation or request of the committee or a member thereof and who engages in no further activities as a legislative ~~lobbyist in connection with that or any other legislative matter.~~lobbyist.

(3) a. A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to ~~his~~ the office and public duties.

b. Notwithstanding the persons exempted in this Article, the Governor, Council of State, and all appointed heads of State departments, agencies and institutions, shall designate all authorized official legislative liaison personnel and shall file and maintain current lists of designated legislative liaison personnel with the Secretary of ~~State and shall likewise file with the Secretary of State a full and accurate accounting of all money expended on lobbying, other than the salaries of regular full-time employees, at the same times lobbyists are required to file expense reports under G.S. 120-47.6.~~State.

(4) A person performing professional services in drafting bills or in advising and rendering opinions to clients, or to ~~legislators~~ covered persons on behalf of clients, as to the construction and effect of proposed or pending legislation where the professional services are not ~~otherwise, directly or indirectly,~~ otherwise connected with legislative action.

(5) A person who owns, publishes or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.

(6) Repealed by Session Laws 1991, c. 740, s. 1.1.

(7) ~~Members of the General Assembly.~~Covered persons and legislative employees.

(8) A person responding to inquiries from a member of the General Assembly or a legislative employee, and who engages in no further

activities as a legislative lobbyist in connection with that or any other legislative matter.

(9) ~~An individual giving facts or recommendations pertaining to legislative matters to his own legislative delegation only.~~An employee who represents the employer's interests in legislative action for no more than three hours in a quarter, provided that neither the employee nor the employer makes any expenditure as defined in G.S. 120-47.1.

"**§ 120-47.8A. Expenditures made by persons exempted or not covered by this Article.**

(a) If a covered person or a legislative employee accepts an expenditure made for the purpose of lobbying valued over two hundred dollars ($200.00) from a person exempted or not covered by this Article, the person making the expenditure shall report the date, a description of the expenditure, the name and address of the person making the expenditure, and the estimated fair market value of the expenditure.

(b) If the person making the expenditure in subsection (a) of this section is outside North Carolina, the covered person or legislative employee accepting the expenditure shall be responsible for filing the report.

(c) If a covered person or a legislative employee accepts a scholarship valued over two hundred dollars ($200.00) from a person exempted or not covered by this Article, the person granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person granting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the covered person or legislative employee accepting the scholarship shall be responsible for filing the report.

(e) This section shall not apply to any of the following:

(1) Lawful campaign contributions.

(2) Any gift from a family member to a covered person or legislative employee.

(3) Gifts associated primarily with the covered person, legislative employee, or that person's immediate family member's nonlegislative employment.

(4) Gifts, other than food, beverages, travel, and lodging, which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(f) Reports required by this section shall be filed by the end of the quarter following the gift with the Secretary of State in a manner prescribed by the Secretary of State, including electronically.

"**§ 120-47.9. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no legislative lobbyist who is convicted of a violation

of the provisions of this Article shall in any way act as a legislative or executive lobbyist for a period of two years following ~~his~~ conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for willful false or incomplete reporting up to five thousand dollars ($5,000) per violation.

"**§ 120-47.10. Enforcement of Article by Attorney General.**

The Secretary of State shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon ~~complaint made to him of violations of this Article,~~ complaint, make an appropriate investigation thereof, and ~~he~~ the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

"**§ 120-47.11. Rules and forms.**

The Secretary of State shall ~~make, amend, and rescind~~adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article.

"**§ 120-47.12. Limitations on agency legislative ~~liaisons.~~liaison personnel.**

(a) No ~~principal~~ State department may use State funds to contract with persons who are not employed by the State to lobby the General Assembly.

(b) No more than two persons in each ~~principal~~ State department and constituent institution of The University of North Carolina may be registered to lobby the General Assembly or designated as legislative ~~liaisons~~ liaison personnel pursuant to this Article.

(c) All persons designated as legislative liaison personnel pursuant to this Article and the State department or constituent institution of The University of North Carolina who employs the legislative liaison personnel shall report all expenditures made for lobbying purposes in the same manner as required for legislative lobbyists under G.S. 120-47.6 and lobbyists' principals under G.S. 120-47.7."

SECTION 2. Chapter 147 of the General Statutes is amended by adding a new Article to read:

"Article 4C.

"Executive Branch Lobbying.

"**§ 147-54.31. Definitions.**

The following definitions shall apply in this Article:

(1) The term "executive action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, adoption, tabling, postponement, defeat, or rejection of a rule, regulation, executive order, policy, resolution, contract, request for proposal, amendment, motion, report, nomination, or appointment by the executive branch or by a member or employee of the executive branch acting or purporting to act in an official capacity. This term shall not include any action by an attorney representing a client with respect to the executive action.

(2) The term "executive branch officers" means the Governor, any member of the Council of State, and heads of those departments listed

in G.S. 143-6, and the Board of Governors and the presidents of the universities of The University of North Carolina System.

(3) The term "executive lobbyist" means any lobbyist for or against executive action.

(4) The term "expenditure" means any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge, or thing of value greater than ten dollars ($10.00), or a contract, agreement, promise, or other obligation whether or not legally enforceable, that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of an executive branch officer or that person's immediate family member.

(5) The term "immediate family member" means spouse, descendant or ascendant.

(6) The term "lobbying" means any of the following:

a. Influencing or attempting to influence executive action or through direct communication or activities with an executive branch officer.

b. Solicitation of others by an executive lobbyist or lobbyist's principal to influence executive action.

c. Developing executive goodwill through communications or activities with an executive branch officer or that person's immediate family with the intention of influencing current or future executive action, but does not include communications or activities with executive branch officers or that person's immediate family member in a business, civic, religious, fraternal, or commercial relationship which is not connected to executive action.

(7) The term "lobbyist" means an individual who meets any of the following criteria:

a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of lobbying.

b. Represents another person and receives compensation for the purpose of lobbying.

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 147-54.40. For the purpose of determining whether an individual is an executive lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involves executive lobbying.

(8) The terms "lobbyist's principal" and "principal" mean the person on whose behalf the executive lobbyist lobbies. In the case where a lobbyist is employed by a law firm, consulting firm, or other entity

retained by a person for executive lobbying, the principal is the person whose interests the lobbyist represents in lobbying.

(9) The term "person" means any individual, firm, partnership, committee, association, corporation, business entity, or any other organization or group of persons which has an independent legal existence.

"**§ 147-54.32. Registration procedure.**

(a) An executive lobbyist shall file a registration statement with the Secretary of State before engaging in any lobbying in a manner prescribed by the Secretary of State. It shall be unlawful for a person to lobby without registering unless exempted by this Article. A separate registration statement is required for each lobbyist's principal. The registration shall indicate whether it is registration as a legislative lobbyist, executive lobbyist, or both, and a separate registration fee shall be paid for each separate type of registration.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, and complete address and telephone number; the registrant's place of business; the full name and complete address and telephone number of each person by whom the registrant is employed or retained; and a general description of the matters on which the registrant expects to act as an executive lobbyist. The Secretary of State shall make available as soon as practicable the registrations of the lobbyists and lobbyists' principals in an electronic, searchable format.

(c) Each executive lobbyist shall register file an amended registration form with the Secretary of State no later than 10 days after any change in the information supplied in the executive lobbyist's last registration under subsection (b). Each supplementary registration shall include a complete statement of the information that has changed.

(d) Each registration statement of an executive lobbyist required under this Article shall be effective from the date of filing until January 1 of the following year. The executive lobbyist shall file a new registration statement after that date.

"**§ 147-54.34. Written authority from lobbyist's principal to be filed.**

Each executive lobbyist shall file with the Secretary of State within 10 days after the executive lobbyist's registration a written authorization to act as such, signed by the lobbyist's principal.

"**§ 147-54.35. Contingency lobbying fees and election influence prohibited.**

(a) No person shall act as an executive lobbyist for compensation that is dependent upon the result or outcome of any executive action.

(b) No executive lobbyist or executive lobbyist's principal shall attempt to influence the action of an executive branch officer by the promise of financial support of the executive branch officer's candidacy or appointment, or by threat of financial support in opposition to the executive branch officer's candidacy in any future election.

"**§ 147-54.36. Exemptions and inclusions for reporting purposes.**

(a) For purposes of G.S. 147-54.36 and G.S. 147-54.37, the following expenditures need not be reported:

(1) Gifts from an immediate family member or person who is the child, stepchild, parent, sibling, mother-in-law, father-in-law, son-in-law,

daughter-in-law, grandparent, or grandchild of the executive branch officer.

(2) Lawful campaign contributions.

(b) For purposes of G.S. 147-54.36 and G.S. 147-54.37, all expenditures made for the purpose of lobbying need to be reported, including:

(1) Expenditures benefiting or made on behalf of an executive branch officer or that person's immediate family members in the regular course of that person's nonexecutive employment.

(2) Contractual arrangements or direct business relationships between an executive lobbyist or executive lobbyist's principal and an executive branch officer or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Amounts reimbursed by a principal to an executive lobbyist in the ordinary course of business by the lobbyist's principal or other employer.

"**§ 147-54.37. Statements of executive lobbyist's lobbying expenditures required.**

(a) Each executive lobbyist shall file quarterly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State, including electronically, with respect to each lobbyist's principal within 10 days after the end of the reporting period. The expenditure report shall include all expenditures during the reporting period. The executive lobbyist shall file an expenditure report whether or not expenditures are made.

(b) Each expenditure report shall set forth the amount, date, a description of the expenditure, name and address of the payee, and name of any executive branch officer, or that person's immediate family member affected by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.

(2) Entertainment, food, and beverages.

(3) Meetings and events.

(4) Gifts.

(5) Solicitation of others to lobby.

(6) Other expenditures.

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public inspection upon filing. When more than 15 executive branch officers benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of executive branch officers benefiting and, with particularity, the basis for their selection. The approximate number of immediate family members who benefited from the expenditure shall be listed separately.

(d) When an executive lobbyist fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the executive lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the executive lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all registrations of an executive lobbyist under this Article. No executive lobbyist may register or reregister under this Article until the executive lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes.

"**§ 147-54.38. Statements of lobbyist's principal lobbying expenses required.**

(a) Each executive lobbyist's principal shall file quarterly expenditure reports under oath with the Secretary of State within 10 days after the end of the reporting period. The expenditure report shall include all expenditures during the reporting period. The lobbyist's principal shall file an expenditure report whether or not expenditures are made during a reporting period.

(b) Each expenditure report shall set forth the amount, date, a description of the expenditure, name and address of the payee, and name of any executive branch officers, or that person's immediate family member affected by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Solicitation of others to lobby.
(6) Other expenditures.

(c) All reports shall be in the form prescribed by the Secretary of State and open to public inspection upon filing. When more than 15 executive branch officers benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of executive branch officers benefiting and, with particularity, the basis for their selection. The approximate number of immediate family members who benefited from the expenditure shall be listed separately.

(d) When a lobbyist's principal fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all

registrations of an executive lobbyist under this Article. No executive lobbyist may register or reregister under this Article until the executive lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes.

"**§ 147-54.39. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic audits of reports required to be filed under G.S. 147-54.36 and G.S. 147-54.37 on a regular basis.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.

"**§ 147-54.40. Persons exempted from provisions of Article.**

The provisions of this Article shall not be construed to apply to any of the following:

(1) An individual solely engaged in expressing a personal opinion on an executive action.

(2) A person appearing before a committee, commission, board, council, or other collective body at the invitation or request of the collective body or a member thereof and who engages in no further activities as an executive lobbyist in connection with that or any other executive action.

(3) A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district, or other governmental agency, when appearing solely in connection with matters pertaining to the office and its public duties.

(4) A person performing professional services in advising and rendering opinions to clients, or executive branch officers on behalf of clients, as to the construction and effect of proposed or pending executive action where the professional services are not otherwise connected with executive action.

(5) A person who owns, publishes, or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.

(6) A person responding to inquiries from an executive branch officer and who engages in no further activities as an executive lobbyist in connection with that or any other executive action.

(7) A person appearing before an executive branch agency or department on behalf of another person, on an individual application for a license or permit, or a disciplinary action on a license or permit.

(8) An employee who represents the employer's interests in executive action for no more than six hours during a six-month reporting period, provided that neither the employee nor the employer make any expenditure as defined in G.S. 147-54.31.

"**§ 147-54.41. Expenditures made by persons exempted or not covered by this Article.**

(a) If an executive branch officer accepts an expenditure made for the purpose of lobbying valued over two hundred dollars ($200.00) from a person exempted or not covered by this Article, the person making the expenditure shall report the date, a description of the expenditure, the name and address of the person making the expenditure, and the estimated fair market value of the expenditure.

(b) If the person making the expenditure in subsection (a) of this section is outside North Carolina, the executive branch officer accepting the expenditure shall be responsible for filing the report.

(c) If a covered person or a legislative employee accepts a scholarship valued over two hundred dollars ($200.00) from a person exempted or not covered by this Article, the person granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person granting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the covered person or legislative employee accepting the scholarship shall be responsible for filing the report.

(e) This section shall not apply to any of the following:

(1) Lawful campaign contributions.

(2) Any gift from a family member to a covered person or legislative employee.

(3) Gifts associated primarily with the executive branch officer or that person's immediate family member's nonexecutive employment.

(4) Gifts, other than food, beverages, travel, and lodging, received by an executive branch officer which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(f) Reports required by this section shall be filed by the end of the quarter following the gift with the Secretary of State in a manner prescribed by the Secretary of State, including electronically.

"**§ 147-54.42. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no executive lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as an executive or legislative lobbyist for a period of two years following conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for willful false or incomplete reporting up to five thousand dollars ($5,000) per violation.

"**§ 147-54.43. Enforcement of Article by Attorney General.**

The Secretary of State shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60, of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

"**§ 147-54.44. Rules and forms.**

The Secretary of State shall adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article."

SECTION 3. Article 4 of Chapter 147 of the General Statutes is amended by adding a new section to read:

"**§ 147-54.8. No gifts registry.**

(a) The Secretary of State shall establish a 'No Gifts' registry for persons subject to Article 9A of Chapter 120 of the General Statutes or Article 4C of this Chapter. The 'No Gifts' registry shall be published and updated with the list of lobbyists and lobbyists' principals required under G.S. 120-47.2.

(b) Executive lobbyists, legislative lobbyists, and lobbyists' principals shall not give gifts to persons placing their names on the registry.

(c) The Secretary shall have the authority to adopt rules to implement this section in compliance with the following criteria:

(1) The registration is valid from the time the person registers until January 1 of the following year, unless the person requests in writing the removal of that person's name.

(2) The registration shall be in writing.

(d) For purposes of this section, the term "gift" means any payment, entertainment, advance, services, forgiveness of an obligation or debt, or thing of value, unless consideration of equal or greater value has been given therefor."

SECTION 4. There is appropriated from the General Fund to the Office of the Secretary of State the sum of two hundred thousand dollars ($200,000) for the 2005-2006 fiscal year to provide for the enforcement personnel, administrative staff, and expenses necessary to implement this act.

SECTION 5. There is appropriated from the General Fund to the Office of the Secretary of State the sum of one hundred twelve thousand dollars ($112,000) for the 2005-2006 fiscal year to provide for the implementation of electronic filing of all lobbyists' and lobbyists' principals' reports required under Article 9A of Chapter 120 of the General Statutes and to provide public access via the Internet to all these filings. The Secretary of State shall implement electronic filing of all lobbyists' and lobbyists'

principals' reports required under Article 9A of Chapter 120 of the General Statutes and provide public access via the Internet to all these filings as soon as practicable.

SECTION 6. Sections 4, 5, and 6 of this act become effective July 1, 2005. G.S. 120-47.7C(d), as enacted by Section 1 of this act, shall apply to appointments made on or after January 1, 2007. The remainder of this act becomes effective January 1, 2007.

SENATE BILL 612:
Amend Lobbying Laws

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 25, 2005
Introduced by:	Sen. Rand	**Summary by:**	R. Erika Churchill
Version:	PCS to Fifth Edition S612-CSSTf-82 v6		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 612 would amend the lobbying laws by including goodwill lobbying, increasing the frequency and details of legislative lobbyists' and lobbyist's principals' reports, and prohibiting a legislator from lobbying during one year following a legislative session to which the legislator was elected or appointed. The bill also creates lobbying laws governing executive branch lobbying.***

CURRENT LAW:

Under current law, a person who is paid to try to influence legislative action (action on a specific bill, resolution, amendment, etc.) is required to register as a lobbyist with the Secretary of State and report at the end of each regular session, expenditures in excess of $25 spent on lobbying legislators. Expenditures spent for the general goodwill of legislators not tied to specific legislative action do not need to be reported, nor do expenditures spent on legislative staff or legislators' family members. There is no limitation on the types or amount of expenditures that at lobbyist can spend on a legislator for lobbying purposes. Every principal who hires the services of a lobbyist also has to file reports on expenditures they made for lobbying, including the amount of compensation paid to lobbyists. Exempt from the lobbying laws are persons who lobby on their own behalf, persons appearing before the General Assembly at the General Assembly's request, elected and appointed local government officials and employees lobbying on behalf of their local governments, State agency legislative liaison personnel, and members of the General Assembly. Violation of this law is punished as a Class 1 misdemeanor.

Currently executive branch lobbying is not regulated.

BILL ANALYSIS:

Section 1 amends the legislative lobbying law in the following ways:

- Includes lobbying the Governor in relation to the Governor's veto.
- Includes developing goodwill as part of the definition of lobbying.
- Permits gifts from lobbyists to their family members who are legislators or legislative employees. Also exempts lawful campaign contributions.
- Defines "expenditure" to include anything of value over $10.
- Expenditures by legislative liaison personnel and State agencies are subject to the same reporting requirements as expenditures by other lobbyists.
- The registration period for a lobbyist is one year, rather than the current two years.
- Increases the frequency of expenditure reports to monthly when the General Assembly is in session, quarterly thereafter.
- Increases the details of lobbying expenditure reports to include the amount, date, a description of the expenditure, name and address of the payee, name of any covered person benefiting from the expenditure (or legislative employee or those person's immediate family members) in each of the following categories:
    - Transportation and lodging
    - Entertainment, food, and beverages
    - Meetings and events
    - Gifts
    - Solicitation of others to lobby
    - Other expenditures

If more than 15 covered persons benefit from the expenditure, the lobbyist may elect to report the approximate number of covered persons benefiting and, with particularity, the basis for their selection. The approximate number of legislative employees and immediate family members shall be reported separately.

The Secretary of State is granted rulemaking authority to facilitate disclosure of expenditures, including the format of the report and additional categories. The rules are also to protect the address of payees under a Chapter 50B protective order or participating in the Address Confidentiality Program.

- The lobbyist's principal must also report, in addition to the expenditures reported by the lobbyist, the compensation paid or agreed to be paid to each lobbyist.
- Prohibits a legislator or former legislator from being employed as a legislative or executive branch lobbyist within 1 year after the expiration of the term for which the legislator was elected or appointed to serve.
- Prohibits the Governor or Council of State member or head of a cabinet department from being employed as a legislative or executive branch lobbyist within 1 year after separation from employment or leaving office, whichever is later.
- Prohibits a lobbyist from serving as a campaign manager or campaign treasurer for a legislative campaign.
- Prohibits a lobbyist from being appointed to body created under State law with regulatory authority over the activities of a person that the lobbyist represented within one year of end of that representation.
- Prohibits a lobbyist from allowing a covered person, legislative employee, or that person's immediate family member to use the lobbyist's cash or credit for the purpose of lobbying without the lobbyist being present at the time of the expenditure.
- An additional exception to the registration and reporting law is made for an employee who represents an employer's interest before the General Assembly for no more than 3 hours in a quarter, and who does not spend money on a legislator, legislative employee or an immediate family member that would otherwise be required to be reported by a registered lobbyist.
- Requires expenditures of $200 made for the purpose of lobbying from persons not required to register and report as lobbyists or lobbyist's principals or more to be reported. If the person giving the gift is in North Carolina, that person shall make the report. If the person giving the gift is outside North Carolina, the person accepting the gift shall make the report. Certain exceptions apply.
- Requires scholarships valued over $200 to be reported.
- Allows for a civil fine up to $5,000 per violation in addition to any criminal penalties.

Section 2 creates a new article to regulate executive branch lobbying much the same as legislative lobbying is regulated with the following differences:

- Lobbying is defined as the influencing of "executive action" which is defined as being the consideration of a rule, regulation, executive order, policy, resolution, contract, request for proposal, nomination or appointment by the Governor, member of the Council of State, heads of the cabinet, and the Board of Governors and university presidents.
- Executive branch lobbying does not include action by an attorney.
- Lobbyist and lobbyist's principals' reports are due every 6 months.
- Prohibits the Governor or a member of the Council of State from acting as a legislative or executive branch lobbyist during the time of the biennial legislative session in which the person served in office.

Section 3 requires the Secretary of State to create a "No Gifts" registry.

Section 4 appropriates $200,000 for the '05-'06 fiscal year to the Secretary of State for personnel and expenses to implement the act.

Section 5 appropriates $112,000 for the '05-'06 fiscal year to the Secretary of State for the implementation of electronic filing of reports required by the act.

EFFECTIVE DATE: The appropriations are effective July 1, 2005. The remainder of the act is effective January 1, 2007.

S0612e5-SMST-CSSTf-82 v6 *O. Walker Regan contributed to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: July 26, 2005

TO: Representative Hackney

FROM: Marilyn Chism
Fiscal Research Division

RE: PCS-S612-CSSTf-82[v.6]

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	**FY 2006-07**	**FY 2007-08**	**FY 2008-09**	**FY 2009-10**
REVENUES:					
General Fund	$0	($466,000)	($96,000)	($466,000)	($96,000)
Lobbyist Reg. Fund	Between $192,800 and $289,200 annually, See Assumptions and Methodology				
EXPENDITURES:					
General Fund					
Correction	Exact amount cannot be determined, no substantial impact anticipated				
Judicial	Exact amount cannot be determined, no substantial impact anticipated				
Secretary of State	$150,045	$517,486	$404,660	$404,660	$404,660
	Expenditures will be offset by Lobbyist Registration Fund Revenue				
POSITIONS (cumulative):		9	9	9	9

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of the Secretary of State, Department of Correction, Judicial Branch

EFFECTIVE DATE: Sections 4, 5, & 6 become effective July 1, 2005. The remainder of the sections is effective January 1, 2007.

BILL SUMMARY: (in pertinent part):

This bill amends the lobbying laws that currently govern legislative lobbying to reduce the registration period from two years to one year and to reduce the fee from $200 per registration to $100 per registration. Under this bill, each lobbyist would be required to file a registration statement for each of its principals. However, the bill would eliminate the requirement that the principal file a separate registration statement for each of its lobbyists. The bill would add new Article 4C to Chapter 147 of the General Statutes to govern executive branch lobbying. The new Article would impose the same registration requirement and fee structure for executive lobbyists and principal registrations as would be provided for the legislative lobbying. The bill, however, would reduce the registration fee to $75 each if a lobbyist registers as a legislative lobbyist and executive lobbyist for the same principal. The bill would require all fees to go to a Lobbyist Registration Fund to be used to offset the cost of administering the Lobbyist Registration Laws.

The bill increases the frequency with which expenditure reports must be filed and it would require the Department of the Secretary of State to perform systematic reviews of the expenditure reports. The Department would also be required to implement a system that allows for electronic filings.

The bill also provides that any willful violation of Articles 9A or 4C of Chapters 120 and 147, respectively, would constitute a Class 1 misdemeanor. Among the activities prohibited in relation to executive or legislative lobbying would be failure to abide by expense and other reporting requirements.

ASSUMPTIONS AND METHODOLOGY:

Fees:

The bill would amend the registration period and registration fees for lobbyists who engage in legislative lobbying. It would also create lobbying laws that govern executive branch lobbying.

Under current law a lobbyist is required to file a separate registration statement with the Secretary of State for each lobbyist's principal before engaging in legislative lobbying. A fee of $200 per registration statement is due at the time of registration. The registration is effective from the date of filing until January 1 of the following ***odd numbered*** year. Thus, it essentially covers a legislative session, which is two years. This bill would make the registration effective from the date of filing until January 1 of the following year, thereby reducing the registration period for a legislative lobbyist from two years to one year. This bill would also require an executive lobbyist to file a registration statement with the Secretary of State for each lobbyist's principal before engaging in executive branch lobbying. The registration period for an executive lobbyist would also be for one year-effective from the date of filing until January 1 of the following year. Under this bill, a $100 fee per registration statement is due at the time of each legislative lobbyist registration, except that if the legislative lobbyist is also registering as an executive lobbyist for the same lobbyist's principal, the registration fee is $75. Similarly, a $100 fee per registration statement is due at the time of each executive lobbyist registration except that if the executive lobbyist is also registering as a legislative lobbyist for the same lobbyist's principal, the registration fee is $75.

Also, under current law, a separate registration, together with a separate registration fee of $200 is required for each lobbyist's principal for which a person acts as a legislative lobbyist. The bill would amend the existing law to require a lobbyist's principal to register only one time rather than once for each lobbyist that works for the principal. The registration fee for the lobbyist's principal is $100 annually.

The bill would also require all fees to be deposited into a Lobbyist Registration Fund to be used by the Secretary of State to pay the cost incurred in administering and enforcing Article 9A of Chapter 120 and Article 4C of Chapter 147. This requirement of the bill would redirect the fees from the General Fund where lobbyists' registration fees are currently deposited.

Based on information provided by the Secretary of State, for the 2004-05 fiscal year, there were approximately 1,255 lobbyist's registrations for the 2005 Session of the General Assembly. In addition to the lobbyist's registrations, there were approximately 673 individual lobbyist's principals. Combining the two groups, Fiscal Research estimates that there would be 1,928 registrations annually. Please note that under current law, a registration can cover both the odd year (Long Session) and the even year (Short Session) of a two-year Legislative Session. Changing the registration from two years to one year, as this bill would, may result in fewer registrations for the even years. However, we have no data upon which to determine the number, if any, of lobbyists and principals that may not register for the even years. Also, there is some data that indicates that there are lobbyists and principals that register for the second year only. Therefore, considering that, under this bill, some registrations will only be for one year of the two-year Legislative Session, our estimate will assume that the number of registrations will remain constant.

This bill would also require executive lobbyists and principals to register. Presently, there is no data upon which to estimate the number of executive lobbyists and principals that may be required to register with the Secretary of State. Fiscal Research, however, believes that it is reasonable to assume that the executive lobbyists and principals will be a subset of the lobbyists and principals that register as legislative lobbyists. Therefore, the 1,928 lobbyists and principals would pay a $100 fee to register as legislative lobbyists/principals ***or*** as executive lobbyists/principals or they would pay $75 to register as a legislative lobbyist/principal ***and*** another $75 to register an executive lobbyist/principal. Fiscal Research therefore estimates that the annual revenue would range from $192,800 (1,928 registrations * $100 -- assuming all 1,928 lobbyists and principals registered for legislative or executive lobbying) to $289,200 (1,928 registrations * $150 -- assuming all 1,928 lobbyists and principals registered for both legislative lobbying and executive lobbying).

Because the bill requires the fees to be deposited to the Lobbyist Registration Fund, there would be a loss of revenue to the General Fund. Currently, there are 2,33 registration relationships for the odd years and another 480 for the even years. Based on these numbers the projected revenue loss to the General Fund is $466,000 in the odd years and $96,000 in the even years.

Operating Expenses – Secretary of State

Under current law, each lobbyist and principal must file two expense reports each year during the Legislative Session for which they have registered. The first report is due within 60 days after the last day of the regular session. The second is a supplemental report that captures expenditures

made after the last day of the regular session but during the calendar year. This bill would require each lobbyist to file monthly expenditure reports with respect to each of its principals while the General Assembly was in regular session and quarterly thereafter. It would also require each principal to file monthly expenditure reports while the General Assembly was in regular session and quarterly thereafter. Executive lobbyists and principals and well as legislative liaisons would be subject to the same reporting requirement.

Under this bill, nine reports would be required in each odd year and six in each even year for each of the 1,928 legislative lobbyist and principal registrations. Four additional reports would be required annually for those who were also registered as executive lobbyists and/or principals. Currently there are approximately 89 legislative liaisons for 52 State entities. This bill would require the 89 liaisons and the 52 State entities that they represent to file nine reports in each odd year and six reports in the even years. Based on this data, Fiscal Research estimates that the Secretary of State will receive between 12,414 and 20,126 reports in each even year and between 18,621 and 26,333 reports in each odd year. Under the bill, the reports could be filed manually or electronically.

	Legislative Lobbying Only			***Legislative and Executive Lobbying***		
	Even Years			**Even Years**		
	# Registrations	# of Reports per Registrations	Total	# Registrations	# of Reports per Registrations	Total
Lobbyists/Principals	1,928	6	11,568	1,928	10	19,280
Liaisons/State Entities	141	6	846	141	6	846
Total			**12,414**			**20,126**
	Odd Years			**Odd Years**		
Lobbyists/Principals	1,928	9	17,352	1,928	13	25,064
Liaisons/State Entities	141	9	1,269	141	9	1,269
Total			**18,621**			**26,333**

The Department of the Secretary of State estimates that it would need 18 additional positions to fulfill the requirements of this bill. This estimates includes funding for the salaries, benefits and operating costs for a Lobbyist Director (grade 78), an Assistant Director/Auditor Supervisor (grade 73), 7 Investigator/Auditors (grade 71), an Assistant Registrar (grade 68), and 8 Administrative Assistant Is (grade 63). The Department believes that this staffing level would allow it to properly oversee and administer the Lobbyist Section, to register and index the legislative and executive registrations and expenditure reports, to respond to public inquiries, to post lobbyist records for public inspection, to publish the lobbyist directories, to perform systematic audits at a rate of 25% of the reports filed each year, and to perform investigatory audits as warranted by complaints and the results of the systematic audits.

The Department also provided an alternative estimate that would require 9 additional positions (instead of 18). The alternative estimate includes funding for the salaries, benefits, and operating costs for a Lobbyist Director (grade 78), an Assistant Director/Auditor Supervisor (grade 73), 1 Investigator/Auditors (grade 71) instead of 7 as included in the Departments preferred estimated,

an Assistant Registrar (grade 68), and 5 Administrative Assistant Is (grade 63) instead of 8 as included in the preferred estimate. With this staffing level, the Department estimates that it could only perform audits as driven by complaints and other indications of possible lobbying misconduct versus performing systematic audits.

The bill would require the Department to perform systematic reviews of the expenditure reports to ensure complete and timely disclosure of expenditures. The Fiscal Research Division believes that the requirements imposed upon the Secretary of State by this bill to review expenditures reports, and make them available for public inspection are very similar to the requirements imposed upon the Campaign Reporting Office of the State Board of Elections by the campaign finance laws prescribed in Articles 22A, 22B, 22C and 22D of Chapter 163 of the North Carolina General Statutes. The Campaign Reporting Office is responsible for the manual auditing of the campaign finance reports filed by over 2,000 political committees, providing public access to the reports, providing assistance to the committees and the county elections staff on the application of the campaign finance laws, maintaining a campaign finance disclosure system, and corresponding with the political committees and county elections staff to ensure timely and accurate compliance with the laws. The Campaign Reporting Office receives at least 2 reports from each political committee in an off-election year and at least 4 reports from each during an election years. In addition, it also receives reports of independent expenditures and 48-hour reports as required by statute. There is 100% auditing of these reports that include adjusting accounting discrepancies, cross-checking data, information validity assurance, and correspondence with the committees based on the audit results. The Office has a staff of 5 permanent full-time positions and 3.25 temporary positions. The 5 permanent staff include a Deputy Director for Campaign Reporting (grade 75), 3 grade 65 level Administrative Assistant IIs who are primarily responsible for the auditing and education responsibilities of the office, and a grade 57 level Office Assistant III position who provides support to the professional staff. The temporary staff employees assist with scanning reports for public inspection and data entry of reports that are filed manually.

Because of the similarities between the requirements imposed upon the Secretary of State by this bill and the existing requirements imposed upon the State Board of Elections' Campaign Reporting Office, Fiscal Research believes that the staffing level and structure that is in place for the Campaign Reporting Office is a reasonable one for the Secretary of State's Lobbyist Section. We therefore estimate that the Secretary of State would need 9 additional positions to fulfill the requirements of this bill. We believe, however, that the 9 positions should include 5 grade level 65 Administrative Assistant II, and 3 grade level 61 Processing Assistant IVs, and 1 grade level 75 Lobbyist Director. The estimated cost for the salaries, benefits, and operating cost for the 9 positions is estimated to be $504,701 for fiscal year 2006-07 and $391,875 for subsequent fiscal years. Se the summary that follows.

Summary of FRD's Estimate of Additional Staffing Needs

	FY 2006-07	FY 2007-08
SPA - Reg Salaries (9 positions)	$245,109	$245,109
Social Security Contributions	$18,751	$18,751
Retirement	$14,253	$14,253
Insurance	$30,888	$30,888
Transportation	$6,000	$6,000
Employee Education & Training	$7,200	$7,200
Telephone Service	$9,000	$1,674
Office Supplies	$9,000	$9,000
Postage	$2,500	$5,000
Rent/Lease-Building/Offices	$54,000	$54,000
Total Recurring	$396,701	$391,875
Office Furniture	$31,100	$0
Office Equipment	$56,200	$0
Personal Computers & Printers	$20,700	$0
Total Non-recurring	$108,000	

The bill also requires the Secretary of State to implement a system that would allow for the electronic filing of all lobbyists' and lobbyists' principals' reports and to provide public access via the Internet to all of the filings. The Secretary of State believes that a more advanced computer program than the one that currently is in place for electronic access to the filings and for the searchable database would be required. To meet the requirements of the bill, the Department would develop a Knowledge Base System for Lobbyist that parallels in-house systems that it has developed for its Uniform Commercial Code and Notary systems. The Departments estimates that the initial cost of developing the system would be $150,045. Recurring maintenance cost would be approximately $12,785 each year thereafter. Fiscal Research believes this approach to developing the system is reasonable.

Civil Penalties

As with existing law, the bill would allow the Secretary of State to impose a late filing fee for each day that a required report is late. The late filing fee is equivalent to the fee set forth in G.S. 163-278.34(a)(2), which is currently $50 per day up to a maximum of $500. Fiscal Research believe that the frequency of untimely filed reports will increase as a result of the increase in the frequency with which the reports must be filed. However, we have no data upon which to estimate the amount of late filing fees that may be imposed.

The bill would also allow the Secretary of State to levy civil penalties in addition to the criminal penalties discussed below for willful false or incomplete reporting up to $5,000. Again, Fiscal Research has no data upon which to estimate the extent to which civil penalties might be levied. We note, however, that any late filing fees or civil penalties would be deposited to the Civil Penalties Fund for the benefit of the public education system.

Criminal Penalties:

This bill would expand the scope of an existing Class 1 misdemeanor for violations related to legislative lobbying and create a new Class 1 misdemeanor for violations related to executive lobbying and would therefore be expected to result in additional charges and convictions. Due to the lack of an Administrative Office of the Courts (AOC) offense code for violations of Chapter 120, no historical data is available with respect to the numbers of charges and convictions for the existing offenses. However, the lack of an offense code is some indication that the existing offenses are infrequently charged and rarely result in convictions. As such, few additional charges and convictions would be expected due to this bill, and no substantial impact is anticipated to result from the criminal penalties in this legislation.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

- In FY 2003-04, 81 percent of Class 1 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Corrections (DCC) would incur costs of $1.87 per offender per day. Offenders sentenced to community service would cost $0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

- The remaining 19 percent of Class 1 misdemeanors resulted in active sentences and the average estimated time served was 31 days.

- Offenders with active sentences of less than ninety days are housed in county jails, and DOC reimburses counties for housing offenders sentenced to between thirty and ninety days at a rate of $18 per day per offender.

- Because most Class 1 misdemeanants serving active time as a result of this bill would be housed in county jails, this legislation is not expected to significantly impact prison population.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Due to the lack of an offense code for current violations of Chapter 120—an indication that there are presently few charges for violations related to legislative lobbying—AOC does not anticipate a

substantial number of new charges to result from this bill. Based on the costs of time in court, attorney preparation time, and indigent defense, the average estimated cost to process one Class 1 misdemeanor via trial is $3,224 per trial and $284 per guilty plea. The trial cost includes an estimated $2,627 in jury fees, costs of time in court, and attorney costs and an additional $2,373 in indigent defense. Based on prior-year data, the majority of any new Class 1 misdemeanor charges are likely to be settled by plea.

SOURCES OF DATA: Department of the Secretary of State, Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

TECHNICAL CONSIDERATIONS: None

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 5

EDITION No. _____

H. B. No. _____ DATE 7-26-05

S. B. No. 612 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.) Hackney
Sen.)

moves to amend the bill on page 14, line 43

( ) WHICH CHANGES THE TITLE

by deleting "legislative" and substituting "executive";

and on page 14 line 42 by deleting "legislative" and substituting "executive"

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 6

EDITION No. _____

H. B. No. _____ DATE July 26, 2005

S. B. No. 612 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Sen.) Faison

moves to amend the bill on page 9, line 30

( ) WHICH CHANGES THE TITLE

by deleting "as";

31-32

and on page 9, lines by deleting those lines and substituting the following:

"full time by any person that the member or former member was a primary sponsor of legislation related to that person's business or assisted in securing funding for that person within one year after the";

and on page 9, lines 34-38 by deleting those lines and renumbering the remaining subsections accordingly.

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 7

EDITION No. _____

H. B. No. _____ DATE July 26, 2005

S. B. No. 612 ✓ Amendment No. _____

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) ~~Patson~~ Howard

Sen.)

1 moves to amend the bill on page 9, line 32

2 ( ) WHICH CHANGES THE TITLE

3 by _____

4 inserting the following between "Statutes" and

5 "within":

6

7 "or employed full time by a person that the

8 member or former member was a primary

9 sponsor of legislation directly related to

10 that person's business or assisted in

11 securing funding for that person".

12

13

14

15

16

17

18

19

SIGNED _____ Howard

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 237*
Committee Substitute Favorable 7/6/05

Short Title: Revise Mortgage Lending Act. (Public)

Sponsors:

Referred to:

February 16, 2005

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE MORTGAGE LENDING ACT BY ALLOWING REGISTRATION OF LIMITED LOAN OFFICERS OF DEFINED AFFILIATED MORTGAGE BANKERS AND TO ESTABLISH ADDITIONAL SUPERVISION AND ENFORCEMENT AUTHORITY FOR THE COMMISSIONER OF BANKS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-243.01 reads as rewritten:

"**§ 53-243.01. Definitions.**

The following definitions apply in this Article:

(1) Act as a mortgage broker. – To act, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, by accepting or offering to accept an application for a mortgage loan, soliciting or offering to solicit a mortgage loan, negotiating the terms or conditions of a mortgage loan, issuing mortgage loan commitments or interest rate guarantee agreements to borrowers, or engaging in tablefunding of mortgage loans, whether such acts are done through contact by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers.

(2) Act as a mortgage lender. – To engage in the business of making mortgage loans for compensation or gain.

(2a) Affiliate. – Any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841), et seq., as amended from time to time. For purposes of this subdivision, the term control means ownership of all of the voting stock or comparable voting interest of the controlled person.

(2b) Affiliated mortgage banker. – A licensed mortgage banker that meets the criteria of either sub-subdivisions a., b., and c. of this subdivision or sub-subdivisions d. and e. of this subdivision:

a. The licensee, by itself or with its affiliates, is licensed in five or more states to engage in the mortgage lending business and (i) is supervised by a state or federal regulatory agency whose regulatory scheme has been determined by the Commissioner to be substantially similar to that of North Carolina, (ii) is organized and supervised under the laws of a state that has adopted a model licensing law endorsed by the Commissioner; or (iii) is supervised by a state or federal agency that is a party to an interstate compact, or has otherwise entered into a cooperative reciprocal agreement by which the state or federal regulatory agency and the State of North Carolina, directly or by duly authorized act of the Commissioner, have mutually agreed to recognize state licensing laws which have specific enumerated criteria.

b. The licensee, including its affiliates and wholly owned subsidiaries, has more than 100 employees that are licensed pursuant to this Article.

c. The licensee has a consolidated net worth of one hundred million dollars ($100,000,000) or more, or if the licensee does not have the required net worth, its parent shall provide to the Commissioner (i) evidence satisfactory to the Commissioner that the parent has a net worth of one hundred million dollars ($100,000,000) or more, and (ii) an unconditional guarantee or comparable instrument of surety satisfactory to the Commissioner of the performance of the licensee of its obligations under this Article.

d. The licensee is a direct or indirect wholly owned subsidiary of a bank holding company or financial services holding company subject to regulation by the Federal Reserve Board or the Office of Thrift Supervision.

e. The licensee has a net worth of one hundred million dollars ($100,000,000) or, if the licensee does not have the required net worth, (i) its parent, if it is not a bank holding company or financial holding company, meets the requirements of sub-subdivision c. of this subdivision or (ii) its parent, if such parent is a bank holding company or financial holding company, has total assets in excess of ten billion dollars ($10,000,000,000) and provides the Commissioner with the unconditional guarantee or comparable instrument of surety required by sub-subdivision c. of this subdivision.

(3) Branch manager. – The individual whose principal office is physically located in, who is in charge of, and who is responsible for the business operations of a branch office of a mortgage broker or mortgage banker.

(4) Branch office. – An office of the licensee acting as a mortgage broker or mortgage banker that is separate and distinct from the licensee's principal office.

(5) Commissioner. – The North Carolina Commissioner of Banks and the Commissioner's designees. For purposes of compliance with this Article by credit unions, Commissioner means the Administrator of the Credit Union Division of the Department of Commerce.

(6) Control. – ~~The~~ Except as provided in subdivision (2a) of this section, "control" means the power to vote more than twenty percent (20%) of outstanding voting shares or other interests of a corporation, partnership, limited liability company, association, or trust.

(7) Employee. – An individual, who has an employment relationship, acknowledged by both the individual and the mortgage broker or mortgage banker and is treated as an employee for purposes of compliance with the federal income tax laws.

(7a) Exclusive mortgage broker. – An individual who acts as a mortgage broker exclusively for a single mortgage banker or single exempt person and who is licensed under the provisions of G.S. 53-243.05(c)(1a).

(8) Exempt person. – The term includes any of the following:

a. Any agency of the federal government or any state or municipal government granting mortgage loans under specific authority of the laws of any state or the United States.

b. Any employee of a licensee whose responsibilities are limited to clerical and administrative tasks for his or her employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer.

c. Any person authorized to engage in business as a bank or a wholly owned subsidiary of a bank, a farm credit system, savings institution, or a wholly owned subsidiary of a savings institution, or credit union or a wholly owned subsidiary of a credit union, under the laws of the United States, this State, or any other state. Except for G.S. 53-243.11 and G.S. 53-243.15, this Article does not apply to the exempt persons set forth in this sub-subdivision (8)c.

d. Any licensed real estate agent or broker who is performing those activities subject to the regulation of the North Carolina Real Estate Commission. Notwithstanding the above, an exempt person does not include a real estate agent or broker who receives compensation of any kind in connection with the referral, placement, or origination of a mortgage loan.

e. Any officer or employee of an exempt person described in sub-subdivision c. of this subdivision when acting in the scope of employment for the exempt person.

f. Any person who, as seller, receives in one calendar year no more than five mortgages, deeds of trust, or other security instruments on real estate as security for a purchase money obligation.

g. The North Carolina Housing Finance Agency as established by Article 122A of the General Statutes and the North Carolina Agricultural Finance Authority as established by Article 122D of the General Statutes.

h. Any nonprofit corporation qualifying under section 501(c)(3) of the Internal Revenue Code which makes mortgage loans to promote home ownership or home improvements for the disadvantaged, provided that such corporation is not primarily in the business of soliciting or brokering mortgage loans.

i. Any life insurance companies licensed to do business in North Carolina with regard to provisions concerning mortgage lenders.

(9) Licensee. – A loan officer, limited loan officer, mortgage broker, or mortgage banker who is licensed pursuant to this Article.

(10) Loan officer. – An individual who, in exchange for compensation as an employee of another person, accepts or offers to accept applications for mortgage loans. The definition of loan officer shall not include any exempt person described in sub-subdivision (8)b. of this section.

(10a) Limited loan officer. – An individual who, in exchange for compensation as an employee of an affiliated mortgage banker, directly solicits, negotiates, offers, or makes commitments for mortgage loans. The definition of limited loan officer shall not include any exempt person described in sub-subdivision (8)b. of this section.

(11) Make a mortgage loan. – To close a mortgage loan, to advance funds, to offer to advance funds, or to make a commitment to advance funds to a borrower under a mortgage loan.

(12) Managing principal. – A person who meets the requirements of G.S. 53-243.05(c) and who agrees to be primarily responsible for the operations of a licensed mortgage broker or mortgage banker.

(13) Mortgage banker. – A person who acts as a mortgage lender as that term is defined in subdivision (2) of this section. However, the definition does not include a person who acts as a mortgage lender only in tablefunding transactions.

(14) Mortgage broker. – A person who acts as a mortgage broker as that term is defined in subdivision (1) of this section. The term "mortgage broker" includes an exclusive mortgage broker, except when expressly provided otherwise.

(15) Mortgage loan. – A loan made to a natural person or persons primarily for personal, family, or household use, primarily secured by either a

mortgage or a deed of trust on residential real property located in North Carolina.

(15a) Parent. – The person that controls an affiliated mortgage banker, as control is defined in subdivision (2a) of this section.

(16) Person. – An individual, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities, however organized.

(17) Qualified lender. – A person who is engaged as a mortgage lender in North Carolina and is either a supervised or a nonsupervised institution, as these terms are defined in 24 C.F.R. § 202.2, approved by the United States Department of Housing and Urban Development.

(18) Qualified person. – A person who is employed as a loan officer by a qualified lender, or by a mortgage banker or broker registered with the Commissioner under former Article 19 of this Chapter, or who is a general partner, manager, or officer of a qualified lender, registered mortgage banker, or registered mortgage broker.

(19) Residential real property. – Real property located in the State of North Carolina upon which there is located or is to be located one or more single-family dwellings or dwelling units.

(20) Tablefunding. – A transaction where a licensee closes a loan in its own name with funds provided by others, and the loan is assigned simultaneously to the mortgage lender providing the funding within one business day of the funding of the loan."

SECTION 2. G.S. 53-243.02 reads as rewritten:

"**§ 53-243.02. License required; licensee records.**

(a) Other than an exempt person, it is unlawful for any person in this State to act as a mortgage broker or mortgage banker, or directly or indirectly to engage in the business of a mortgage broker or a mortgage banker, without first obtaining a license from the Commissioner under the provisions of this Article.

(b) It is unlawful for any natural person to engage in the solicitation and acceptance of applications for mortgage loans without first obtaining a license as a loan officer, limited loan officer, mortgage banker, or mortgage broker issued by the Commissioner under the provisions of this Article. It is unlawful for any person to employ, to compensate, or to appoint as its agent a loan officer unless the loan officer is licensed as a loan officer under this Article. Exempt persons shall not be subject to this subsection.

(c) The license of a loan officer or limited loan officer is not effective during any period when that person is not employed by a mortgage ~~broker~~ broker, affiliated mortgage banker, or mortgage banker licensed under this Article. The license of an exclusive mortgage broker is not effective during any period when that person is not authorized to act as a single licensee or exempt person pursuant to G.S. 53-243.05(c)(1a).

When a loan officer or a limited loan officer ceases to be employed by a mortgage ~~broker~~ broker, affiliated mortgage banker, or mortgage banker licensed under this

Article, the loan ~~officer~~ officer, limited loan officer, and the mortgage ~~broker~~ broker, affiliated mortgage banker, or mortgage banker licensed under this Article by whom that person is employed shall promptly notify the Commissioner in writing. When the authority of an exclusive mortgage broker to act on behalf of the principal licensee or exempt person identified in G.S. 53-243.05(c)(1a) has been terminated, the exclusive mortgage broker and the licensee or exempt person for whom the exclusive mortgage broker is an agent shall promptly notify the Commissioner in writing. The mortgage broker, affiliated mortgage banker, mortgage banker, or exempt person's notice shall include a statement of the specific reason or reasons for, as applicable, the termination of the loan officer's or limited loan officer's employment or exclusive mortgage broker's authority.

A loan officer or limited loan officer shall not be employed simultaneously by more than one mortgage broker or mortgage banker licensed under this Article.

(d) Each mortgage broker and mortgage banker licensed under this Article shall maintain on file with the Commissioner a list of all loan officers or limited loan officers who are employed with the mortgage broker or mortgage banker.

(e) No person, other than an exempt person, shall hold himself or herself out as a mortgage banker, a mortgage broker, limited loan officer, or loan officer unless such person is licensed in accordance with this Article.

(f) Any person who has completed and filed with the Commissioner the application and all documents required for licensure as a loan officer other than documents relating to the required examination and the mortgage lending fundamentals course may act as a loan officer during the period before action is taken on the application by the Commissioner, if:

(1) The Commissioner has not denied, revoked, or taken any adverse action with respect to an application filed by or license held by such person during the five-year period ending on the date of filing of the application;

(2) The loan officer is employed by a licensed mortgage broker or mortgage lender, and the managing principal of such mortgage broker or mortgage lender (i) certifies to the Commissioner in writing that the managing principal reasonably believes that the application of the person for licensure as a loan officer meets or exceeds all of the relevant requirements of this Article for licensure and (ii) undertakes in writing that the managing principal and the employer will be responsible for the acts of the applicant during the period that such application is pending; and

(3) The person is currently or has within the six-month period prior to the date of the application been employed as and acting as a loan officer for an exempt entity which entity is exempt by virtue of an exemption claimed under G.S. 53-243.01(8)c.

(g) The Commissioner may deny or suspend the rights of a mortgage broker or mortgage lender to employ a loan officer acting under subsection (f) of this section if the Commissioner finds that the mortgage broker or mortgage lender, or the managing

principal thereof, makes the certification or undertaking set forth in subdivision (2) of subsection (f) of this section not in good faith."

SECTION 3. G.S. 53-243.05(c)(1) reads as rewritten:

"(c) In addition to the requirements under subsection (a) of this section, each applicant for licensure as a mortgage broker or mortgage banker at the time of application and at all times thereafter shall comply with the following requirements:

(1) Except as provided for in subdivision (1a) of this subsection, if the applicant is a sole proprietor, the applicant shall have at least three years of experience in residential mortgage lending or other experience or competency requirements as the Commissioner may impose. Experience as an exclusive mortgage broker or as a limited loan officer shall not constitute mortgage-lending experience under this subdivision."

SECTION 4. G.S. 53-243.05(e) reads as rewritten:

"(e) Every applicant for initial licensure shall pay a filing fee of one thousand dollars ($1,000) for licensure as a mortgage broker or mortgage banker or fifty dollars ($50.00) for licensure as a loan ~~officer,~~ officer or limited loan officer, in addition to the actual cost of obtaining credit reports and State and national criminal history record checks."

SECTION 5. Article 19A of Chapter 53 of the General Statutes is amended by adding a new section to read:

"**§ 53-243.05A. Licensing for limited loan officers; qualifications, revoked, suspended, or barred.**

(a) An affiliated mortgage banker shall notify the Commissioner when it hires a limited loan officer on forms prescribed by the Commissioner. The form shall contain any information the Commissioner deems necessary including the name, social security number, address, and business location of the limited loan officer. Limited loan officers employed by an affiliated mortgage banker shall:

(1) Be at least 18 years of age.

(2) Work exclusively for an affiliated mortgage banker. The affiliated mortgage banker who hires the limited loan officer shall:

a. Supervise the limited loan officer as required by this Article.

b. Sign the notification form regarding the hiring of the applicant.

c. Certify the applicant is qualified as a limited loan officer subject to background checks, training, testing, and fundamental education requirements.

d. Be jointly and severally liable for any and all claims and damages of any type, including punitive damages pursuant to Chapter 1D of the General Statutes arising out of the limited loan officer's mortgage lending activities, as allowed by law.

(b) An applicant for a limited loan officer license may act provisionally as a limited loan officer during the pendency of the application before the Commissioner upon submission of the completed forms identified in subsection (a) of this section and

a written undertaking by the employing affiliated mortgage banker that it will be responsible for all the applicant's mortgage banking activities.

(c) Systems, programs, and procedures used by the affiliated mortgage banker for employment background checks, training, testing, and education by the affiliated mortgage banker shall be submitted to and reviewed by the Commissioner who may approve those which are comparable and functionally equivalent to those for loan officers under G.S. 53-243.05 and G.S. 53-243.07. The Commissioner must be notified of any material changes or modifications to such approved systems, programs, and procedures. The Commissioner may approve those systems, programs, and procedures used by the affiliated mortgage banker for these purposes that meet or exceed programs otherwise accredited by the Commissioner or that have been approved for the affiliated mortgage banker by at least five other states in which the affiliated mortgage banker is licensed and whose licensing requirements are substantially similar to those of North Carolina.

(d) Except as specified in this section, limited loan officers are subject to licensing standards and disciplinary authority in the same way as loan officers under this Article.

(e) A person whose license is revoked, suspended, or barred under this section is prohibited from participating in the mortgage lending business in this State."

SECTION 6. G.S. 53-243.08 reads as rewritten:

"**§ 53-243.08. Managing principals and branch managers.**

Each mortgage broker or mortgage banker licensed under this Article shall have a managing principal who operates the business under that person's full charge, control, and supervision. Mortgage bankers and mortgage brokers, other than exclusive mortgage brokers, may operate branch offices subject to the requirements of this Article. Each principal and branch office of a mortgage broker or mortgage banker licensed under this Article, ~~other than an exclusive mortgage broker qualifying under G.S. 53-243.05(e)(1a),~~ shall have a branch manager who meets the experience requirements under ~~G.S. 53-243.05(e)(1).~~ G.S. 53-243.05(c)(1); provided, that an affiliated mortgage banker may designate a branch manager who does not meet the experience requirements so long as at or before the designation, it certifies that the person is competent in terms of training and experience to perform the duties of a branch manager. The managing principal for a licensee's business may also serve as the branch manager of one of the licensee's branch offices. Each mortgage broker or mortgage banker licensed under this Article shall file a form as prescribed by the Commissioner indicating the business's designation of managing principal and branch manager for each branch and each individual's acceptance of the responsibility. Each mortgage broker or mortgage banker licensed under this Article shall notify the Commissioner of any change in its managing principal or branch manager designated for each branch. Any licensee who does not comply with this provision shall have the licensee's license suspended pursuant to G.S. 53-243.12 until the ~~licensee, other than an exclusive mortgage broker,~~ licensee complies with this section. Any individual licensee who operates as a sole proprietorship shall be considered a managing principal for the purposes of this Article."

SECTION 7. G.S. 53-243.12(a) reads as rewritten:

"(a) The Commissioner may, by order, deny, suspend, revoke, or refuse to issue or renew a license of a licensee or applicant under this Article or may restrict or limit the activities relating to mortgage loans of any licensee or any person who owns an interest in or participates in the business of a licensee, if the Commissioner finds both of the following:

(1) That the order is in the public interest.

(2) That any of the following circumstances apply to the applicant, licensee, or any partner, member, manager, officer, director, loan officer, limited loan officer, managing principal, or any person occupying a similar status or performing similar functions or any person directly or indirectly controlling the applicant or licensee. The person:

a. Has filed an application for license that, as of its effective date or as of any date after filing, contained any statement that, in light of the circumstances under which it was made, is false or misleading with respect to any material fact.

b. Has violated or failed to comply with any provision of this Article, rule adopted by the Commissioner, or order of the Commissioner.

c. Has been convicted of any felony, or, within the past 10 years, has been convicted of any misdemeanor involving mortgage lending or any aspect of the mortgage lending business, or any offense involving breach of trust, moral turpitude, or fraudulent or dishonest dealing.

d. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the mortgage lending business.

e. Is the subject of an order of the Commissioner denying, suspending, or revoking that person's license as a mortgage broker or mortgage banker.

f. Is the subject of an order entered within the past five years by the authority of any state with jurisdiction over that state's mortgage brokerage or mortgage banking industry denying or revoking that person's license as a mortgage broker or mortgage banking industry or denying or revoking that person's license as a mortgage broker or mortgage banker.

g. Does not meet the qualifications or the financial responsibility, character, or general fitness requirements under G.S. 53-243.05 or any bond or capital requirements under this Article.

h. Has been the executive officer or controlling shareholder or owned a controlling interest in any mortgage broker or

mortgage banker who has been subject to an order or injunction described in sub-subdivision d., e., or f. of this subdivision.

i. Has failed to pay the proper filing or renewal fee under this Article. However, the Commissioner may enter only a denial order under this sub-subdivision, and the Commissioner shall vacate the order when the deficiency has been corrected.

j. Has falsely certified attendance or completion of hours at an approved mortgage lending continuing education course."

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

HOUSE BILL 237:
Revise Mortgage Lending Act

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 25, 2005
Introduced by:	Reps. Coates, Saunders	**Summary by:**	Karen Cochrane-Brown
Version:	Second Edition		Staff Attorney

SUMMARY: House Bill 237 amends the Mortgage Lending Act to authorize the licensure of limited loan officers that are employed by affiliated mortgage bankers. The bill also authorizes the Commissioner of Banks to allow certain loan officer applicants to act as a loan officer during the pendency of their application and provides that exclusive mortgage brokers shall have branch managers to the same extent as other mortgage brokers or bankers. Finally, the bill provides that the Commissioner may discipline a licensee or applicant for falsely certifying attendance or completion of a continuing education course.

CURRENT LAW:

The Mortgage Lending Act, which was enacted in 2001, is a licensing and regulatory statute for the mortgage lending industry. It replaced a registration law, which did not provide for uniform standards, education or experience, and gave the Commissioner only limited authority to enforce the prohibitions.

Under the current law, mortgage bankers, mortgage brokers, and loan officers are required to be licensed by the Commissioner of Banks before engaging in the business of mortgage lending or mortgage brokering, unless exempt. The law exempts from licensing depository institutions (banks, wholly owned subsidiaries of banks, savings and loans, credit unions), life insurance companies, governmental lenders, nonprofits that make mortgage loans, persons that make no more than five loans a year, and real estate brokers who do not receive compensation for making loans.

A loan officer, under current law, is a compensated employee who accepts or offers to accept applications for mortgage loans. To be licensed, a loan officer must be 18 years of age and have completed within the previous three years an approved mortgage lending fundamentals course. The application and renewal fee for loan officers is $50.00.

The Commissioner of Banks has broad enforcement powers, including the power to revoke licenses and impose civil fines for violations of the law. Engaging in the mortgage banking or brokering business without a license is a Class I felony.

BILL ANALYSIS:

House Bill 237 makes several changes to the Mortgage Lending Act.

Section 1 creates several new definitions, including:

- Affiliate, means any company that controls or is controlled by another person. For purposes of the definition, the term control means ownership of all of the voting stock or comparable interest of the controlled person.
- Affiliated mortgage banker, means a licensed mortgage banker that meets one of two sets of criteria. The first set of criteria relate to (1) licensure or supervision by other jurisdictions or under a compact or agreement authorized by the Commissioner, (2) the number of licensed

employees, and (3) the licensee's net worth. The second set of criteria relate to (1) whether the licensee is a subsidiary of a company regulated by the Federal Reserve Board or the Office of Thrift Supervision, and (2) the licensee's net worth.

- Limited loan officer, means an employee of an affiliated mortgage banker that directly solicits, negotiates, offers or makes commitments for mortgage loans.
- Parent, means the person that controls an affiliated mortgage banker, as control is defined under the term affiliate.

Section 2 amends the law related to required licenses under the Mortgage Lending Act to include a requirement that limited loan officers be licensed.

This section also adds new language allowing certain loan officer applicants to act as a loan officer while their application for licensure is pending. In order to qualify for this treatment, the applicant must (1) have had no negative action taken on an application or license in the preceding five years, (2) be employed by a licensed mortgage broker or lender that certifies that the applicant is qualified and that undertakes to be responsible for the acts of the applicant, and (3) currently be or have been employed as a loan officer within the previous six months by an exempt depository institution. The Commissioner can deny or suspend this treatment if the Commissioner finds that the certification and undertaking have not been made in good faith.

Section 3 excludes experience as a limited loan officer from the kinds of experience required to qualify for licensure as a mortgage broker or mortgage banker.

Section 4 subjects limited loan officers to the same $50.00 fee requirement as currently applies to loan officers.

Section 5 establishes licensing requirements for limited loan officers and the affiliated mortgage bankers that employ them. A limited loan officer must be at least 18 and must work exclusively for an affiliated mortgage banker. An affiliated mortgage banker must notify the Commissioner when it hires a limited loan officer and provide any required information. It must also certify that the limited loan officer is qualified and agree to be liable for any claims and damages, including punitive damages arising from the limited loan officer's lending activities. The limited loan officer may act provisionally during the pendency of an application if the employer makes a written undertaking to be responsible for the applicant's activities. The Commissioner must approve the employer's systems, programs and procedures for checking, training and testing a limited loan officer. Except as provided in this section, a limited loan officer is subject to all of the other requirements applied to loan officers under the Act. Any person whose license is revoked, suspended or barred under this section is prohibited from participating in the mortgage lending business in this State.

Section 6 allows affiliated mortgage bankers to designate a branch manager who does not meet the experience requirement if it certifies that the person is competent to perform the duties of a branch manager.

Section 7 adds a new item to the list of actions that the Commissioner may use as the basis for disciplining a licensee or applicant. The Commissioner may take action against a licensee or applicant who has falsely certified attendance or completion of hours at a continuing education course.

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

H0237e2-SMRO

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 621

Short Title:	Small Installment Consumer Loans.	(Public)
Sponsors:	Representative Wright.	
Referred to:	Financial Institutions, if favorable, Finance.	

March 14, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW ALTERNATIVE INTEREST RATES AND MATURITIES FOR LOANS NOT EXCEEDING TWELVE HUNDRED DOLLARS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 53 of the General Statutes is amended by adding a new Article to read:

"Article 15A.

"Small Installment Consumer Loans.

"**§ 53-191.10. Title.**

This Article shall be known and cited as the "Small Installment Consumer Loan Act".

"**§ 53-191.11. Definitions.**

As used in this Article, the following terms mean:

(1) Actuarial method. – The Actuarial Method as defined by the federal Consumer Credit Protection Act (15 U.S.C. § 1601, et. seq., commonly referred to as the Truth-In-Lending Act or TILA), as amended from time to time, together with the regulations issued from time to time by the Board of Governors of the Federal Reserve System pursuant to that Act.

(2) Amount of the loan. – The aggregate of the cash advance and the charges authorized by G.S. 53-191.15.

(3) Borrower. – Any person who borrows money from any licensee or who pays or obligates himself or herself to pay any money or otherwise furnishes any valuable consideration to any licensee for any act of the licensee as a licensee.

(4) Cash advance. – The Amount Financed as defined by the federal Consumer Credit Protection Act (15 U.S.C. § 1601, et. seq., commonly referred to as the Truth-In-Lending Act or TILA), as amended from time to time, together with the regulations issued from

time to time by the Board of Governors of the Federal Reserve System pursuant to that Act.

(5) Commission. – The State Banking Commission.

(6) Commissioner. – The Commissioner of Banks.

(7) Deputy commissioner. – The deputy commissioner of banks.

(8) Lender. – A person who makes a loan under this Article.

(9) License. – The certificate issued by the Commissioner under the authority of this Article to conduct a consumer loan business.

(10) Licensee. – A person to whom one or more licenses have been issued.

(11) Loanable assets. – Cash, bank deposits, or installment loans made as a licensee pursuant to this Article as the Commissioner may approve.

(12) Person. – Any person, firm, partnership, association, or corporation.

"**§ 53-191.12. Scope of Article; evasions; penalties; loans in violation of Article void.**

(a) Scope. – Except as otherwise permitted under Article 15 of this Chapter, no person shall engage in the business of lending in amounts of one thousand two hundred dollars ($1,200) or less and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, or any other purpose whatsoever, which in the aggregate are greater than permitted by Chapter 24 of the General Statutes, except as provided in and authorized by this Article, and without first having obtained a license from the Commissioner. The word "lending" as used in this section includes endorsing or otherwise securing loans or contracts for the repayment of loans.

(b) Evasions. – The provisions of subsection (a) of this section shall apply to any person who seeks to avoid its application by any device, subterfuge, or pretense whatsoever.

(c) Penalties; Commissioner to Provide and Testify as to Facts in Commissioner's Possession. – Any person not exempt from this Article, or any officer, agent, employee, or representative thereof, who intentionally fails to comply with or who otherwise intentionally violates any of the provisions of this Article, or any rule adopted pursuant to this Article, shall be guilty of a Class 1 misdemeanor. Each violation shall be considered a separate offense. It shall be the duty of the Commissioner to provide the district attorney of the court having jurisdiction of any such offense with all facts and evidence in the Commissioner's actual or constructive possession and to testify as to those facts upon the trial of any person for any such offense.

(d) Additional Penalties. – Any contract of loan, the making or collecting of which violates any provision of this Article or any rules adopted pursuant to the authority granted in this Article, except as a result of accidental or bona fide error of computation, shall be void, and the licensee or any other party in violation shall have no right to collect, receive, or retain any principal or charges whatsoever with respect to such loan.

"**§ 53-191.13. Expense of supervision.**

Each licensee, for the purpose of defraying necessary expenses of the Commissioner and the Commissioner's agents in supervising them, shall pay to the Commissioner the fees prescribed in G.S. 53-122 at the times therein specified.

"**§ 53-191.14. License required; showing financial responsibility; investigation of applicants; hearings; existing businesses; contents of license; transfer; posting.**

(a) Necessity for License; Prerequisites to Issuance. – No person shall engage in or offer to engage in the business regulated by this Article unless and until a license has been issued by the Commissioner, and the Commissioner shall not issue any such license unless and until the Commissioner finds all of the following:

(1) The financial responsibility, experience, character, and general fitness of the applicant are such as to command the confidence of the public and to warrant the belief that the business will be operated lawfully and fairly within the purposes of this Article.

(2) The applicant has available for the operation of the business at the specified location loanable assets of at least fifty thousand dollars ($50,000).

(b) Investigation of Applicants. – Upon the receipt of an application, the Commissioner shall investigate the facts. If the Commissioner determines from such preliminary investigation that the applicant does not satisfy the conditions set forth in subsection (a) of this section, the Commissioner shall so notify the applicant who shall then be entitled to an informal hearing thereon provided the applicant so requests in writing within 30 days after the Commissioner has caused the notice to be mailed to the applicant. In the event of a hearing, to be held in the offices of the Commissioner of Banks in Raleigh, the Commissioner shall reconsider the application and, after the hearing, issue a written order granting or denying the application. At the time of making the application, the applicant shall pay the Banking Department the sum of two hundred fifty dollars ($250.00) as a fee for investigating the application, which shall be retained irrespective of whether or not a license is granted the applicant.

(c) Required Assets Available. – Each licensee shall continue at all times to have available for the operation of the business at the specified location loanable assets of at least fifty thousand dollars ($50,000). The requirements and standards of this subsection and subdivision (a)(2) of this section shall be maintained throughout the period of the license and failure to maintain these requirements or standards shall be grounds for the revocation of a license under the provisions of this Article.

(d) License; Posting; Continuing. – Each license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a partnership or association, the names of the members thereof, and if a corporation, the date and place of its incorporation. Transfer or assignment of a license by one person to another by sale or otherwise is prohibited without the prior approval of the Commissioner. Each license shall be kept posted in the licensed place of business. Each license shall remain in full force and effect until surrendered, revoked, or suspended as provided in this Article.

"**§ 53-191.15. Alternative rates and maturities for loans not exceeding $1,200.**

(a) Notwithstanding any other provisions of law, a licensee may elect to make installment loans with cash advances not exceeding one thousand two hundred dollars ($1,200) under the following terms and conditions:

(1) No acquisition charge in excess of ten percent (10%) of the cash advance of the loan may be charged.

(2) On any loan with a cash advance of not more than three hundred dollars ($300.00), no installment account handling charge in excess of four and one-half percent (4.5%) of the cash advance per month may be charged.

(3) On any loan with a cash advance in excess of three hundred dollars ($300.00) but not more than five hundred dollars ($500.00), no installment account handling charge in excess of four percent (4%) of the cash advance per month may be charged.

(4) On any loan with a cash advance in excess of five hundred dollars ($500.00) but not more than seven hundred dollars ($700.00), no installment account handling charge in excess of three percent (3%) of the cash advance per month may be charged.

(5) On any loan with a cash advance in excess of seven hundred dollars ($700.00) but not more than one thousand dollars ($1,000), no installment account handling charge in excess of two and one-half percent (2.5%) of the cash advance per month may be charged.

(6) On any loan with a cash advance in excess of one thousand dollars ($1,000) but not more than one thousand two hundred dollars ($1,200), no installment account handling charge in excess of two percent (2%) of the cash advance per month may be charged.

(7) The minimum term for any loan made under this section shall be three months and the maximum term shall be 18 months.

(b) If a loan made under this section is prepaid in full, including payment in cash or by a new loan or the renewal of the loan, or if the licensee demands payment in full of the unpaid balance, the licensee shall refund or credit to the borrower that portion of the installment account handling charge contracted for on the loan, the acquisition charge being fully earned as of the date of the loan, determined by the actuarial method computed as of the next scheduled installment due date next following the date of prepayment.

(c) On any loan established under this section, no insurance charge or any other charge of any nature whatsoever is permitted except as provided in this section, and except for the following:

(1) A delinquent payment charge of ten dollars ($10.00) on any installment not paid within 10 days after its due date.

(2) The return check charge permitted under G.S. 25-3-506.

(3) Fees actually paid to any public official or agency of a county or the State to file, record, or perfect, pursuant to Article 9 of Chapter 25 of the General Statutes, or G.S. 20-58, the lender's security interest in any collateral securing the loan.

(4) Interest after maturity on the outstanding balance at a rate equal to eight percent (8%) per annum.

(d) The loan charges allowed under this section may not be imposed on a loan to a borrower who has one or more loans outstanding under this Article with the same lender or an affiliated lender except that a licensee may make a loan having the charges allowed under this section to pay off the balance due under any other loan or loans made by the lender or its affiliates provided that the aggregate payoff balance of the loan or loans being paid off does not exceed one thousand two hundred dollars ($1,200). The acquisition by a lender or an affiliate of a lender in a bulk transaction of loans made under this Article to a borrower who, at the time of the acquisition, has a loan under this section from the acquiring licensee or an affiliate of the licensee shall not be a violation of this section.

(e) Any loan made under this section must provide for repayment in substantially equal monthly installments. No loan made under this section may be prepaid by a loan from the same licensee or an affiliate of the same licensee who made the initial loan until at least 61 days after the initial loan date nor may a licensee or an affiliate of the same licensee under this section make a new loan to the same borrower until at least 61 days after the initial loan date.

"**§ 53-191.16. Businesses exempted.**

Nothing in this Article shall be construed to apply to any person, firm, or corporation doing business under the authority of any law of this State or of the United States relating to banks, trust companies, savings and loan associations, cooperative credit unions, agricultural credit corporations or associations organized under the laws of North Carolina, production credit associations organized under the act of Congress known as the Farm Credit Act of 1933, pawnbrokers lending or advancing money on specific articles of personal property, industrial banks, the business of negotiating loans on real estate as defined in G.S. 105-41, nor to installment paper dealers as defined in G.S. 105-83 other than persons, firms, and corporations engaged in the business of accepting fees for endorsing or otherwise securing loans or contracts for repayment of loans.

"**§ 53-191.17. Applicable provisions.**

The provisions of the following sections shall apply to loans, borrowers, and lenders governed by this Article as if these transactions were transactions under Article 15 of this Chapter: G.S. 53-169 through G.S. 53-172 and G.S. 53-181 through G.S. 53-188."

SECTION 2. G.S. 53-169 reads as rewritten:

"**§ 53-169. Application for license.**

The application for license shall be made on a form prepared and furnished by the Commissioner of Banks and shall state:

(1) The fact that the applicant desires to engage in business under this ~~Article;~~ Article or under Article 15A of this ~~and~~Chapter; and

(2) Whether the applicant is an individual, partnership, association or corporation; and

(3) The name and address of the person who will manage and be in immediate control of the business; and

(4) The name and address of the owners and their percentage of equity in the company, except when the Commissioner does not deem it feasible to furnish such information because of the number of stockholders involved; and

(5) When the applicant proposes to commence doing business; and

(6) Such other information as the Commissioner of Banks deems necessary.

The statements made in such application shall be sworn to by the applicant or persons making application on the applicant's behalf."

SECTION 3. G.S. 53-172(a) reads as rewritten:

"(a) No licensee shall conduct the business of making loans under ~~this Article~~ Article 15 or Article 15A of this Chapter within any office, suite, room, or place of business in which any other business is solicited or transacted.

~~Installment~~ The business of installment paper dealers as defined in G.S. 105-83, small installment consumer lenders under Articles 15 and 15A of this Chapter, check-cashing under G.S. 53-276, and the collection by a licensee of loans legally made in North Carolina, or another state by another government regulated lender or lending agency, shall not be considered as being ~~any~~ other business within the meaning of this section."

SECTION 4. G.S. 53-173 is amended by adding a new subsection to read:

"(b1) Delinquent Payment Charge. – In addition to the interest and fees permitted under this section, a licensee may collect a delinquent payment charge of the greater of ten dollars ($10.00) or five percent (5%) of the amount of the payment due not paid within 10 days after its due date."

SECTION 5. G.S. 53-176(c) reads as rewritten:

"(c) The provisions of G.S. 53-173(b), (b1), (c) and (d) and G.S. 53-180(b), (c), (d), (e), (f), (g), (h) and (i) shall apply to loans made pursuant to this section."

SECTION 6. This act becomes effective October 1, 2005.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 621

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

H621-ARO-37 [v.1]

Date _____,2005

Comm. Sub. [YES]
Amends Title [NO]
H621-CSRUf-79[2]

Representative McGee

moves to amend the bill on page 4, line 6, by inserting the following after the word "loan,":

"made more than six months after the initial loan date,";

and on page 5, line 20, by deleting the number "91", and substituting the number "181";

and on page 5, line 24, by adding the following at the end of the line:

"A licensee or an affiliate of the licensee may make a loan to prepay an existing loan within 181 days of the initial loan date but may not charge a new acquisition fee except to the extent that the cash advance from the renewed loan exceeds the amount of the original loan.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1283
PROPOSED COMMITTEE SUBSTITUTE H1283-PCS30348-RTf-43

Short Title: Improve Environmental Enforcement. (Public)

Sponsors:

Referred to:

April 19, 2005

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE ENFORCEMENT OF VARIOUS ENVIRONMENTAL LAWS, TO AUTHORIZE THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES TO ISSUE ADMINISTRATIVE ORDERS, AND TO ESTABLISH A PILOT PROGRAM THAT ALLOWS THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO DETERMINE AND RETAIN THE ACTUAL COSTS OF COLLECTING CIVIL PENALTIES, FINES, AND FORFEITURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-64(a)(1) reads as rewritten:

"(1) Any person who violates any of the provisions of this Article or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government, or who initiates or continues a land-disturbing activity for which an erosion and sedimentation control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty. ~~The maximum civil penalty for a violation is five thousand dollars ($5,000).~~ A civil penalty may be assessed ~~from the date~~ for the first day of the ~~violation. Each day of a continuing violation shall constitute a separate violation.~~violation and for each day thereafter on which the violation continues. The maximum civil penalty that may be assessed for a violation is five thousand dollars ($5,000) except that, in order to deter violations, a civil penalty of up to ten thousand dollars ($10,000) may be assessed for the first day of a violation."

SECTION 2. G.S. 113A-126(d) reads as rewritten:

"(d) (1) A civil penalty of not more than ~~two hundred fifty dollars ($250.00)~~ one thousand dollars ($1,000) for a minor development violation and

~~two thousand five hundred dollars ($2,500)~~ ten thousand dollars ($10,000) for a major development violation may be assessed by the Commission against any person who:

a. Is required but fails to apply for or to secure a permit required by G.S. 113A-118, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.

b. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by the Commission pursuant to this Article.

c. Refuses access to the Commission or its duly designated representative, who has sufficiently identified himself by displaying official credentials, to any premises, not including any occupied dwelling house or curtilage, for the purpose of conducting any investigations provided for in this Article.

d. Violates a rule of the Commission implementing this Article.

(2) For each willful action or failure to act for which a penalty may be assessed under this subsection, the Commission may consider each day the action or inaction continues after notice is given of the violation as a separate violation; a separate penalty may be assessed for each such separate violation.

(3) ~~The Commission may assess the penalties provided for in this subsection.~~ The Commission shall notify a person who is assessed a penalty or investigative costs by registered or certified mail. The notice shall state the reasons for the penalty. A person may contest the assessment of a penalty or investigative costs by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice of assessment. If a person fails to pay ~~a penalty,~~ any civil penalty or investigative cost assessed under this subsection, the Commission shall refer the matter to the Attorney General for collection. An action to collect a penalty must be filed within three years after the date the final agency decision was served on the violator.

(4) In determining the amount of the ~~penalty~~ civil penalty, the Commission shall consider ~~the degree and extent of harm caused by the violation and the cost of rectifying the damage.~~ all the following factors:

a. The degree and extent of harm, including, but not limited to, harm to the natural resources of the State, to the public health, or to private property resulting from the violation.

b. The duration and gravity of the violation.

c. The effect on water quality, coastal resources, or public trust uses.

d. The cost of rectifying the damage.

e. The amount of money saved by noncompliance.

f. Whether the violation was committed willfully or intentionally.
g. The prior record of the violator in complying or failing to comply with programs over which the Commission has regulatory authority.
h. The cost to the State of the enforcement procedures.

(4a) The Commission may also assess a person who is assessed a civil penalty under this subsection the reasonable costs of any investigation, inspection, or monitoring that results in the assessment of the civil penalty. For a minor development violation, the amount of an assessment of investigative costs shall not exceed one-half of the amount of the civil penalty assessed or one thousand dollars ($1,000), whichever is less. For a major development violation, the amount of an assessment of investigative costs shall not exceed one-half of the amount of the civil penalty assessed or two thousand five hundred dollars ($2,500), whichever is less.

(5) The clear proceeds of penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 3. G.S. 130A-18(a) reads as rewritten:

"(a) If a person ~~shall violate~~ violates any provision of this ~~Chapter or the rules~~ Chapter, any rule adopted by the ~~Commission or rules~~ Commission, any rule adopted by a local board of ~~health~~ health, any order issued pursuant to this Chapter, or any order issued pursuant to rules adopted by the Commission, the Secretary or a local health director may institute an action for injunctive relief, irrespective of all other remedies at law, in the superior court of the county where the violation occurred or where a defendant resides."

SECTION 4. G.S. 130A-22(a) reads as rewritten:

"(a) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed ~~five~~ ten thousand dollars ~~($5,000)~~($10,000) per day in the case of a violation involving nonhazardous waste. The penalty shall not exceed ~~twenty-five thousand dollars ($25,000)~~ thirty-two thousand five hundred dollars ($32,500) per day in the case of a ~~first~~ violation involving hazardous ~~waste~~ waste, as defined in G.S. ~~130A-290 or~~ 130A-290, or for a failure to make a determination whether a solid waste is a hazardous waste. The penalty shall not exceed twenty-five thousand dollars ($25,000) per day for a first violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State; and shall not exceed fifty thousand dollars ($50,000) per day for a second or further violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State. The penalty shall not exceed twenty-five thousand dollars ($25,000) per day for a violation involving a voluntary remedial action implemented pursuant to

G.S. 130A-310.9(c) or a violation of the rules adopted pursuant to G.S. 130A-310.12(b). If a person fails to pay a civil penalty within 60 days after the final agency decision or court order has been served on the violator, the Secretary of Environment and Natural Resources shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator."

SECTION 5. G.S. 130A-22(c) reads as rewritten:

"(c) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who willfully violates Article 11 of this Chapter, rules adopted by the Commission pursuant to Article 11 or any condition imposed upon a permit issued under Article 11. An administrative penalty may not be imposed upon a person who establishes that neither the site nor the system may be improved or a new system installed so as to comply with Article 11 of this Chapter. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) per day per violation in the case of a wastewater collection, treatment and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling. The penalty shall not exceed ~~three hundred dollars ($300.00)~~ five thousand dollars ($5,000) per day per violation in the case of a wastewater collection, treatment and disposal system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling."

SECTION 6. G.S. 130A-22 is amended by adding a new subsection to read:

"(j) The Secretary of Environment and Natural Resources may assess a person who is assessed a civil penalty under this section the reasonable costs of any investigation, inspection, or monitoring that results in the assessment of the civil penalty."

SECTION 7. G.S. 130A-26.2 reads as rewritten:

"**§ 130A-26.2. Penalty for false reporting under ~~Article 9.~~Articles 9 and 10 of this Chapter.**

Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under Article 9 or Article 10 of this Chapter or rules adopted under Article 9 or Article 10 of this Chapter; or who knowingly makes a false statement of a material fact in a rule-making proceeding or contested case under Article 9 or Article 10 of this Chapter; or who falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under Article 9 or Article 10 of this Chapter or rules adopted under Article 9 or Article 10 of this Chapter is guilty of a Class 2 misdemeanor. The maximum fine that may be imposed for an offense under this section is ten thousand dollars ($10,000)."

SECTION 8. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.6F. Enforcement procedures: administrative orders.**

(a) The Secretary may issue an administrative order directing any person who has committed a violation described in G.S. 143-215.6A to do any of the following:

(1) Attend an environmental education course.

(2) Publish notice of the violation.

(3) Perform community service related to protection or restoration of the environment and natural resources.

(b) The Secretary may issue an administrative order pursuant to this section in addition to any other action or proceeding under this Part.

(c) The Secretary shall serve a copy of the administrative order and the specific reasons for issuing the administrative order by registered or certified mail or by any means authorized by G.S. 1A-1, Rule 4. A contested case petition shall be filed within 30 days of receipt of the order.

(d) A person may comply with an administrative order issued pursuant to this section by attending an environmental education or community service program offered by the Department or a program certified by the Department. The Secretary may establish minimum standards for certification of environmental education or community service programs.

(e) The Department may charge a fee, not to exceed one hundred dollars ($100.00), to compensate for the reasonable cost of attending any environmental education course or community service program offered by the Department.

(f) The Secretary may assess a civil penalty for failure to comply with an order issued pursuant to this section as provided in G.S. 143-215.6A."

SECTION 9. The Department of Environment and Natural Resources, in consultation with the North Carolina School Boards Association, shall develop and implement a pilot program to begin no later than 1 October 2005 and to expire 1 April 2008 to determine the amount and retain the actual costs of collecting civil penalties, fines, and forfeitures assessed by the Department and by commissions organized under the Department to improve the assessment and collection of civil penalties, fines, and forfeitures. The clear proceeds of all civil penalties, fines, and forfeitures that are collected by the Department and payable to the counties for the support of public schools pursuant to Article IX, Section 7 of the Constitution of North Carolina shall be remitted to the Office of State Budget and Management by the officer having custody of the funds within 10 days after the close of the calendar month in which the funds were received or collected. During this pilot program, the clear proceeds of all civil penalties, fines, and forfeitures collected by the Department shall be diminished only by the actual costs of collecting the civil penalties, fines, and forfeitures. Actual costs may include time spent on collection-related matters by personnel of the Department, legal services related to collection provided by the Department of Justice, collection agency fees, and court costs. The Department shall not enter into a contract that would require the Department to pay more than twenty percent (20%) of the civil penalty, fine, or forfeiture amount to a collection agency as a fee for collection of civil penalties, fines, and forfeitures. Additional items may be included in costs by agreement of the Department and the North Carolina School Boards Association. Costs shall be itemized in an accounting to be provided when the funds are remitted by the Department.

SECTION 10. The Department of Environment and Natural Resources shall submit an interim report on the civil penalty, fine, and forfeiture collection pilot program no later than 1 March 2007 and shall submit a final report no later than 1 April 2008 to the Environmental Review Commission, the Fiscal Research Division of the North Carolina General Assembly, and the North Carolina School Boards Association. The Department shall report the total amount of civil penalties, fines, and forfeitures collected, the amount paid to the counties in support of public schools, and the effect of the pilot program on collection of civil penalties, fines, and forfeitures by the Department.

SECTION 11. Sections 1 through 8 of this act become effective 1 December 2005 and apply to violations and offenses committed on or after that date. Sections 9 through 11 of this act are effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1283

Short Title:	Improve Environmental Enforcement.	(Public)
Sponsors:	Representatives Culpepper; Farmer-Butterfield, Fisher, Harrison, Luebke, Underhill, and Weiss.	
Referred to:	Finance.	

April 19, 2005

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE ENFORCEMENT OF VARIOUS ENVIRONMENTAL LAWS, TO AUTHORIZE THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES TO ISSUE ADMINISTRATIVE ORDERS, AND TO ESTABLISH A PILOT PROGRAM THAT ALLOWS THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO DETERMINE AND RETAIN THE ACTUAL COSTS OF COLLECTING CIVIL PENALTIES, FINES, AND FORFEITURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-64(a)(1) reads as rewritten:

"(1) Any person who violates any of the provisions of this Article or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government, or who initiates or continues a land-disturbing activity for which an erosion and sedimentation control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty. The maximum civil penalty for a violation is five thousand dollars ~~($5,000).~~ ($5,000), except that, in order to deter violations, the Secretary may assess a civil penalty of up to ten thousand dollars ($10,000) for the first day of a violation. A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation."

SECTION 2. G.S. 113A-126(d) reads as rewritten:

"(d) (1) A civil penalty of not more than ~~two hundred fifty dollars ($250.00)~~ one thousand dollars ($1,000) for a minor development violation and ~~two thousand five hundred dollars ($2,500)~~ ten thousand dollars ($10,000) for a major development violation may be assessed by the Commission against any person who:

a. Is required but fails to apply for or to secure a permit required by G.S. 113A-118, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.
b. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by the Commission pursuant to this Article.
c. Refuses access to the Commission or its duly designated representative, who has sufficiently identified himself by displaying official credentials, to any premises, not including any occupied dwelling house or curtilage, for the purpose of conducting any investigations provided for in this Article.
d. Violates a rule of the Commission implementing this Article.

(2) For each willful action or failure to act for which a penalty may be assessed under this subsection, the Commission may consider each day the action or inaction continues after notice is given of the violation as a separate violation; a separate penalty may be assessed for each such separate violation.

(3) ~~The Commission may assess the penalties provided for in this subsection.~~ The Commission shall notify a person who is assessed a penalty or investigative costs by registered or certified mail. The notice shall state the reasons for the penalty. A person may contest the assessment of a penalty or investigative costs by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice of assessment. If a person fails to pay ~~a penalty,~~ any civil penalty or investigative cost assessed under this subsection, the Commission shall refer the matter to the Attorney General for collection. An action to collect a penalty must be filed within three years after the date the final agency decision was served on the violator.

(4) In determining the amount of the ~~penalty~~ civil penalty, the Commission shall consider ~~the degree and extent of harm caused by the violation and the cost of rectifying the damage.~~the following factors:

a. The degree and extent of harm, including, but not limited to, harm to the natural resources of the State, to the public health, or to private property resulting from the violation;
b. The duration and gravity of the violation;
c. The effect on water quality, coastal resources, or public trust uses;
d. The cost of rectifying the damage;
e. The amount of money saved by noncompliance;
f. Whether the violation was committed willfully or intentionally;

g. The prior record of the violator in complying or failing to comply with programs over which the Commission has regulatory authority; and

h. The cost to the State of the enforcement procedures.

(4a) The Commission may also assess a person who is assessed a civil penalty under this subsection the reasonable costs of any investigation, inspection, or monitoring that results in the assessment of the civil penalty. For a minor development violation, the amount of an assessment of investigative costs shall not exceed one-half of the amount of the civil penalty assessed or one thousand dollars ($1,000), whichever is less. For a major development violation, the amount of an assessment of investigative costs shall not exceed one-half of the amount of the civil penalty assessed or two thousand five hundred dollars ($2,500), whichever is less.

(5) The clear proceeds of penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 3. G.S. 130A-18(a) reads as rewritten:

"(a) If a person ~~shall violate~~ violates any provision of this ~~Chapter or the rules~~ Chapter, any rule adopted by the ~~Commission or rules~~ Commission, any rule adopted by a local board of ~~health~~ health, any order issued pursuant to this Chapter, or any order issued pursuant to rules adopted by the Commission, the Secretary or a local health director may institute an action for injunctive relief, irrespective of all other remedies at law, in the superior court of the county where the violation occurred or where a defendant resides."

SECTION 4. G.S. 130A-22(a) reads as rewritten:

"(a) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed ~~five~~ ten thousand dollars ~~($5,000)~~($10,000) per day in the case of a violation involving nonhazardous waste. The penalty shall not exceed ~~twenty-five thousand dollars ($25,000)~~ twenty-seven thousand five hundred dollars ($27,500) per day in the case of a ~~first~~ violation involving hazardous ~~waste~~ waste, as defined in G.S. ~~130A-290 or~~ 130A-290, or for a failure to make a determination whether a solid waste is a hazardous waste. The penalty shall not exceed twenty-five thousand dollars ($25,000) per day for a first violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State; and shall not exceed fifty thousand dollars ($50,000) per day for a second or further violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State. The penalty shall not exceed twenty-five thousand dollars ($25,000) per day for a violation involving a voluntary remedial action implemented pursuant to G.S. 130A-310.9(c) or a violation of the rules adopted pursuant to

G.S. 130A-310.12(b). If a person fails to pay a civil penalty within 60 days after the final agency decision or court order has been served on the violator, the Secretary of Environment and Natural Resources shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator."

SECTION 5. G.S. 130A-22(c) reads as rewritten:

"(c) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who willfully violates Article 11 of this Chapter, rules adopted by the Commission pursuant to Article 11 or any condition imposed upon a permit issued under Article 11. An administrative penalty may not be imposed upon a person who establishes that neither the site nor the system may be improved or a new system installed so as to comply with Article 11 of this Chapter. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) per day per violation in the case of a wastewater collection, treatment and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling. The penalty shall not exceed ~~three hundred dollars ($300.00)~~ five thousand dollars ($5,000) per day per violation in the case of a wastewater collection, treatment and disposal system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling."

SECTION 6. G.S. 130A-26.2 reads as rewritten:

"**§ 130A-26.2. Penalty for false reporting under Article ~~9~~9 and Article 10.**

Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under Article 9 or Article 10 of this Chapter or rules adopted under Article 9 or Article 10 of this Chapter; or who knowingly makes a false statement of a material fact in a rule-making proceeding or contested case under Article 9 or Article 10 of this Chapter; or who falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under Article 9 or Article 10 of this Chapter or rules adopted under Article 9 or Article 10 of this Chapter is guilty of a Class 2 misdemeanor. The maximum fine that may be imposed for an offense under this section is ten thousand dollars ($10,000)."

SECTION 7. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.6F. Enforcement procedures: administrative orders.**

(a) The Secretary may issue an administrative order directing any person who has committed a violation described in G.S. 143-215.6A to do any of the following:

(1) Attend an environmental education course.

(2) Publish notice of the violation.

(3) Perform community service related to protection or restoration of the environment and natural resources.

(b) The Secretary may issue an administrative order pursuant to this section in addition to any other action or proceeding under this Part.

(c) The Secretary shall serve a copy of the administrative order and the specific reasons for issuing the administrative order by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4. A contested case petition shall be filed within 30 days of receipt of the order.

(d) A person may comply with an administrative order issued pursuant to this section by attending an environmental education or community service program offered by the Department or a program certified by the Department. The Secretary may establish minimum standards for certification of environmental education or community service programs.

(e) The Department may charge a fee, not to exceed one hundred dollars ($100.00), to compensate for the reasonable cost of attending any environmental education course or community service program offered by the Department.

(f) The Secretary may assess a civil penalty for failure to comply with an order issued pursuant to this section as provided in G.S. 143-215.6A."

SECTION 8. The Department of Environment and Natural Resources, in consultation with the North Carolina School Boards Association, shall develop and implement a pilot program to begin no later than October 1, 2005, and to expire April 1, 2008, to determine the amount and retain the actual costs of collecting civil penalties, fines, and forfeitures assessed by the Department and by commissions organized under the Department to improve the assessment and collection of civil penalties, fines, and forfeitures. The clear proceeds of all civil penalties, fines, and forfeitures that are collected by the Department and payable to the counties for the support of public schools pursuant to Article IX, Section 7 of the Constitution of North Carolina shall be remitted to the Office of State Budget and Management by the officer having custody of the funds within 10 days after the close of the calendar month in which the funds were received or collected. During this pilot program, the clear proceeds of all civil penalties, fines, and forfeitures collected by the Department shall be diminished only by the actual costs of collecting the civil penalties, fines, and forfeitures. Actual costs may include time spent on collection-related matters by personnel of the Department, legal services related to collection provided by the Department of Justice, collection agency fees, and court costs. The Department shall not enter into a contract that would require the Department to pay more than twenty percent (20%) of the civil penalty, fine, or forfeiture amount to a collection agency as a fee for collection of civil penalties, fines, and forfeitures. Additional items may be included in costs by agreement of the Department and the School Boards Association. Costs shall be itemized in an accounting to be provided when the funds are remitted by the Department.

SECTION 9. The Department of Environment and Natural Resources shall submit an interim report on the civil penalty, fine, and forfeiture collection pilot program no later than March 1, 2007, and shall submit a final report no later than April 1, 2008, to the Environmental Review Commission, the Fiscal Research Division of the North Carolina General Assembly, and the North Carolina School Boards Association. The Department shall report the total amount of civil penalties, fines, and forfeitures

collected, the amount paid to the counties in support of public schools, and the effect of the pilot program on collection of civil penalties, fines, and forfeitures by the Department.

SECTION 10. Sections 1 through 7 of this act become effective December 1, 2005, and apply to violations and offenses committed on or after that date. Sections 8 through 10 of this act are effective when it becomes law.

HOUSE BILL 1283:
Improve Environmental Enforcement

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 21, 2005
Introduced by:	Rep. Culpepper	**Summary by:**	Tim Dodge
Version:	PCS to First Edition H1283-CSRTf-43		Legislative Analyst

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 1283 would make the following changes to statutes and programs related to environmental enforcement:***

(1) Increase the amount of civil penalties that may be assessed for violations of the Sedimentation Pollution Control Act of 1973, minor and major development violations under the Coastal Area Management Act of 1974 (CAMA), and violations of other environmental statutes.

(2) Authorize the assessment of reasonable costs of any investigation, inspection, or monitoring that results in the imposition of a civil penalty for major and minor development violations under CAMA.

(3) Add a penalty for false reporting under the North Carolina Drinking Water Act.

(4) Increase the maximum amounts of certain administrative penalties that may be assessed for violations of Articles 9 (Solid Waste Management) and 11 (Wastewater Systems) of Chapter 130A of the General Statutes.

(5) Authorize the Secretary of Environment and Natural Resources (Secretary) to issue an administrative order directing any person who has committed certain violations to do any of the following: (i) attend an environmental education course, (ii) publish notice of the violation, or (iii) perform community service related to protection or restoration of the environment and natural resources.

The PCS would also direct the Department of Environment and Natural Resources (Department) to implement a pilot program to determine the actual cost of collecting civil penalties, civil forfeitures and civil fines assessed by the Department and payable to the County School Fund or authorized to be placed in a State fund pursuant to Article IX of the Constitution of North Carolina and G.S. 115C-457.2. During the pilot program, the clear proceeds of all civil penalties, civil forfeitures, and civil fines remitted by the Department to the Office of State Budget and Management would be diminished only by the actual costs of collection.

The PCS would become effective 1 December 2005 and apply to violations and offenses committed on or after that date.

BILL ANALYSIS:

Section 1 adds a civil penalty of up to $10,000 for the first day of a violation of the Sedimentation Pollution Control Act of 1973 or ordinance, rule, or order adopted pursuant to the Act.

Section 2 increases the civil penalty that may be assessed for a minor development violation under CAMA from $250 to $1,000, and increase the civil penalty that may be assessed for a major development violation under the Act from $2,500 to $10,000.

In addition, the section adds an authorization to assess reasonable costs of any investigation, inspection, or monitoring that results in the assessment of a civil penalty for minor and major development violations under CAMA. The amount of investigative costs assessed for a minor development violation shall not exceed one-half of the amount of civil penalty assessed for the violation or $1,000, whichever is less. The amount of investigative costs assessed for a major development violation shall not exceed one-half of the amount of civil penalty assessed for the violation or $2,500, whichever is less.

Section 3 provides that the Secretary or a local health director may institute an action for injunctive relief against a person who violates an order issued pursuant to Chapter 130A of the General Statutes, in addition to existing authority under the Statute to institute actions for injunctive relief for violations of the Chapter, or any rule adopted by the Commission for Health Services or a local board of health.

Section 4 increases the maximum amounts of certain administrative penalties that may be assessed for violations of Article 9 of Chapter 130A of the General Statutes (Solid Waste Management). The maximum penalty for a violation involving nonhazardous waste is increased from $5,000 to $10,000 per day. The PCS would increase the maximum penalty for a violation involving hazardous waste from $25,000 to $32,500 per day. The penalty is also made applicable to failure to make a determination whether a solid waste is a hazardous waste.

Section 5 increases maximum amounts of certain administrative penalties that may be assessed for violations of Article 11 of Chapter 130A of the General Statutes (Wastewater Systems). The maximum penalty for a violation involving a wastewater collection, treatment, and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling is increased from $50 to $100 per day per violation, and is increased from $300 to $5,000 per day per violation for systems with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling.

Section 6 authorizes the Secretary to assess reasonable costs of any investigation, inspection, or monitoring that results in the assessment of a civil penalty for violations of Article 11 of Chapter 130A of the General Statutes (Wastewater Systems).

Section 7 adds a penalty for false reporting under Article 10 of Chapter 130A of the General Statutes (North Carolina Drinking Water Act), in addition to existing authority under the statute to impose a penalty for false reporting under Article 9 of the Chapter. A person who violates this provision would be guilty of a Class 2 misdemeanor and may be assessed a fine not to $10,000. A Class 2 misdemeanor is punishable by a minimum of 1 day of community punishment up to a maximum of 60 days active punishment, depending on the misdemeanant's record for prior convictions.

Section 8 authorizes the Secretary to issue an administrative order directing any person who has committed certain violations to do any of the following:

- Attend an environmental education course.
- Publish notice of the violation.
- Perform community service related to protection or restoration of the environment and natural resources.

The Department may charge a fee, not to exceed $100, to compensate for the reasonable cost of attending any environmental education course or community service program offered by the Department.

Section 9 directs the Department to implement a pilot program to begin no later than 1 October 2005 and terminate on 1 April 2008 to determine the actual cost of collecting civil penalties, civil forfeitures, and civil fines assessed by the Department and payable to the County School Fund or authorized to be placed in a State fund pursuant to Article IX of the Constitution of North Carolina and G.S. 115C-457.2. The purpose of the pilot is to determine the extent to which the actual cost of collection should be retained by the Department in order to efficiently collect civil penalties, civil forfeitures, and civil fines. During the pilot program, the clear proceeds of all civil penalties, civil forfeitures, and civil fines remitted by the Department to the Office of State Budget and Management would be diminished only by the actual costs of collection. The actual cost of collection may include time spent on collection-related matters by Department personnel, legal services provided by the Department of Justice related to collection, collection agency fees, and any additional costs that may be included by agreement between the Department and the North Carolina School Boards Association.

Section 10 directs the Department to make an interim report on its findings and recommendations from the pilot on or before 1 March 2007 and make a final report on or before 1 April 2008 to the Environmental Review Commission, the Fiscal Research Division of the General Assembly, and the North Carolina School Boards Association.

Section 11 provides that, with the exception of the pilot program established in sections 9 and 10, the PCS would become effective 1 December 2005 and apply to violations and offenses committed on or after that date. The pilot program established in sections 9 and 10 would become effective when the PCS becomes law.

H1283e1-SMSY-CSRTf-43

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: July 25, 2005

TO: Rep. Culpepper

FROM: Jennifer Haygood
Fiscal Research Division

RE: PCS H1283-CSRTf-43

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
Civil Penalty and Forfeiture Fund		No estimate available			
General Fund		No estimate available			
EXPENDITURES:		No substantial impact expected			
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment and Natural Resources, Sedimentation Control Commission, Coastal Resources Commission

EFFECTIVE DATE: All provisions except pilot program are effective for violations and offenses committed on or after December 1, 2005.

BILL SUMMARY:

Makes changes regarding environmental penalties that may be assessed for violations of the Sedimentation Pollution Control Act, the Coastal Area Management Act, Solid Waste Management law, and Wastewater Systems law. Authorizes the Secretary of the Department of Environment and Natural Resources (DENR) to issue administrative orders directing

environmental violators to participate in certain remedial activities. Directs DENR to create a pilot program focused on determining and retaining actual costs of collecting civil penalties, fines, and forfeitures. DENR is required to report on the pilot program by March 1, 2007, and April 1, 2008.

ASSUMPTIONS AND METHODOLOGY:

This bill includes several changes to the civil penalties that may be assessed for environmental violations. The proceeds of all civil penalty proceeds are deposited into the Civil Penalty and Forfeiture Fund for use by North Carolina public schools.

Section 1 allows, for the purpose of deterrence, the Secretary to assess a penalty of up to $10,000 for the first day of a violation of the Sedimentation Pollution Control Act. Currently, the maximum fine is set at $5,000. In a typical year, there are 270 violations, and approximately 56 cases of those are assessed civil penalties. Since this power is discretionary, no estimate can be made at this time.

Section 2 amends the civil penalties for Coastal Area Management Act (CAMA) violations by increasing the minor development violation maximum from $250 to $1,000 and the major development violation maximum from $2,500 to $10,000. In a typical year, 171 CAMA violations occur, and the Coastal Resources Commission (CRC) assesses 135 of those cases penalties. In 2004 the Coastal Resources Commission collected $30,500 in civil penalty revenue. No estimate of additional penalty revenue is possible since Section 2 only increases the maximum penalty but does not require the Commission to assess the higher penalty.

Section 2 also authorizes the Coastal Resource Commission to assess the violator the costs of investigation, inspection, and monitoring. The amount of the assessments of investigative costs shall not exceed one-half of the amount of the civil penalty assessed or $1,000 for minor development violations or $2,500 for a major development violations, whichever is less. Any investigative costs collected would be deposited into the General Fund. Since this power is discretionary and investigative costs vary, no estimate can be made at this time.

Section 4 amends increases administrative penalties for violation of the Solid Waste Management law from a maximum of $5,000 to $10,000 a day for nonhazardous waste and a maximum of $25,000 to $32,500 for other violations (but not more than $25,000 for the first day). Table A summarizes the number of violations and civil penalties assessed in a typical year by violation type. In 2004 the Division of Waste Management deposited $457,132 in fines into the Civil Penalty and Forfeiture Fund. No estimate of additional penalty revenue is possible since Section 4 only increases the maximum penalty but does not require DENR to assess the higher penalty.

Table A: Typical Number of Waste Violations

Violation Type	# of Violations	# Assessed Civil Penalties
Hazardous Waste	99	20
Solid Waste	22	11
Underground Storage Tank	216	72

Section 5 increases administrative penalties for violation of the Wastewater Systems law from a maximum of $50 to $100 per day for smaller violations and a maximum of $400 to $5,000 per day for larger violations. In a typical year, the Division of Water Quality (DWQ) issues 923 Notices of

Violation and assesses 722 civil penalties. In 2004 DWQ deposited $5,376,143 into the Civil Penalty and Forfeiture Fund. No estimate of additional penalty revenue is possible since Section 5 only increases the maximum penalty but does not require DENR to assess the higher penalty.

Section 6 extends the penalty for false reporting under the Solid Waste law to include false reporting under the Drinking Water Act. The maximum fine that may be imposed for such an offense is $10,000. Currently, there is not sufficient data to estimate the number of false reports expected.

Under Section 7, the Secretary of DENR, in addition to other remedies, may require an environmental violator to attend environmental education courses and may charge a fee, not to exceed $100, to compensate for the reasonable cost of attending such courses. Such course fees would be deposited in the General Fund. Since this power is discretionary, there is no estimate currently available.

Section 8 directs DENR to create a pilot program during the period of October 1, 2005 through April 1, 2008, focused on determining and retaining the actual costs of collecting civil penalties, fines, and forfeitures as well as improving assessment and collection. DENR believes that it can implement this pilot program using existing staff. Currently DENR may retain up to 10% of civil penalty assessments to cover collection costs. This section would allow DENR to retain the actual cost of collection up to 20% of the total civil penalty. The net impact on the Fines and Forfeitures Fund is unclear. If actual collection costs are more than 10%, the Fund would receive a smaller percentage of civil penalty collections. If collection rates remain steady or decline, a net decrease to the Fund would result. However, if collection rates increase as a result of this provision, the net amount deposited in the Fund could actually increase.

SOURCES OF DATA: Department of Environment and Natural Resources

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1526

Committee Substitute Reported Without Prejudice 5/31/05
PROPOSED COMMITTEE SUBSTITUTE H1526-PCS50477-ST-81

Short Title: Avery County/Heritage Park Authority. (Local)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE HERITAGE PARK AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. There is created the "Heritage Park Authority" which, when duly established as provided for in this act, shall be both a body politic and corporate, having all of the following enumerated powers and jurisdiction as well as any other additional powers that may be conferred upon it by the general law and by act of the General Assembly.

SECTION 2. For purposes of this Act:

(1) "Authority" means the Heritage Park Authority or its governing board, as the case may be.

(2) "Board" means the Board of Commissioners of Avery County.

(3) "Heritage Park" means the 52 acres of land known as 'Heritage Park' and all facilities located on that land.

(4) "Member" means a member of the Authority.

SECTION 3. The Board may by ordinance create the Authority. The Board shall hold a public hearing on the ordinance to create the Authority. The location of the public hearing shall be determined by the Board and established by resolution. The Board shall cause notice of the hearing to be published once a week for two successive calendar weeks in a newspaper of general circulation in each county. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. Upon its creation the Authority shall enjoy the powers and have the duties and responsibilities conferred upon it by ordinance, subject to the provisions of this Article and the laws of the State of North Carolina. The provisions of any ordinance may be modified, amended, or rescinded by a subsequent ordinance.

SECTION 4.(a) Upon its creation, the Authority shall have a governing board of nine. Except as otherwise provided for the initial appointees, each

commissioner shall serve a four-year staggered term. Upon creation of the Authority, the members of the Authority shall be appointed by the Board as follows:

(1) One member shall be appointed upon the recommendation of the Avery County Agricultural and Horticultural Fair, Inc., a nonprofit corporation.

(2) One member shall be appointed from the Avery County Recreational Advisory Commission.

(3) The southern portion of Avery County shall recommend one member, with that nomination to be determined by the Frank and Green Valley Fire Departments.

(4) One member each recommended by the Board of Commissioners of Banner Elk, Beech Mountain, Crossnore, Elk Park, Newland, and Sugar Mountain.

SECTION 4.(b) All members must maintain a permanent residence within the County of Avery. No member of the Board may serve on the Authority. In the event that the Avery County Agricultural and Horticultural Fair, Inc., becomes nonexistent, then the Authority shall have only eight members.

SECTION 4.(c) Any member who has served two consecutive terms, including any initial term of less than four years, may not be reappointed to a third consecutive term. Such a member may, however, be appointed to serve again after the expiration of the term of the member's successor.

SECTION 4.(d) On the death of a commissioner, resignation, incapacity, or inability to serve, as determined by the board appointing that commissioner, or removal of the commissioner for cause, as determined by the board appointing that commissioner, the board affected may appoint another commissioner to fill the unexpired term.

SECTION 5. The members of the Authority shall receive no compensation or per diem, but shall be allowed and paid their actual traveling expenses incurred in transacting the official business of the Authority.

SECTION 6. Upon creation of the Authority, its governing board shall meet at a time and place set by the Board. The Authority shall elect from among its members a chair, a secretary, and a treasurer at its initial meeting and then annually thereafter. In order to conduct business, a quorum must be present. A majority of the Authority shall control its decisions. Each member of the Authority, including the chair, shall have one vote. The Authority shall meet at the places and times designated by the chair. The provisions of the Open Meetings Law, Article 33C of Chapter 143 of the General Statutes, shall apply.

SECTION 7.(a) Within the limits of the funds available to it, and subject to the provisions of this Article and the ordinance, the Authority may:

(1) Purchase, acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate Heritage Park facilities for the use of the general public within Avery County for the purpose to purchase, improve, own, hold, lease, or operate real or personal property.

(2) Sue and be sued in the name of the Authority, to make contracts and hold any personal property necessary for the exercise of the powers of the Authority, and to acquire by purchase, lease, or otherwise any existing lease or leasehold right.

(3) Charge and collect reasonable and adequate fees and rents for the use of Heritage Park or for services rendered in the operation of the facilities. Revenues from fees and rents shall be used only for upkeep and operation of Heritage Park.

(4) Make reasonable regulations it deems necessary for the proper maintenance, use, operation, and control of Heritage Park facilities and to provide and enforce penalties for the violation of these rules and regulations; provided, however, that the regulations and schedules of fees shall not be in conflict with the laws of the State of North Carolina.

(5) Sell, lease, or otherwise dispose of any property, real or personal, belonging to the Authority, according to the procedures described in Article 12 of Chapter 160A of the General Statutes, but no sale of real property shall be made without the express approval of the Board.

(6) Deposit or invest and reinvest any of its funds as provided in Chapter 159 of the General Statutes, as it may be amended from time to time.

(7) Purchase any of its own outstanding bonds or notes.

(8) Operate, own, lease, control, regulate, or grant to others, for a period not to exceed five years, with an option to renew the right to operate on Heritage Park any snack bars, vending machines, food and beverages dispensing outlets, advertising media, automobile parking facilities, and other types of facilities as may be directly related to the maintenance and furnishing of a complete parks and recreational facility to the public.

(9) Erect and construct buildings and other improvements and facilities not inconsistent with or in violation of the agreements applicable to and the grants under which real property of the Authority is held.

(10) Borrow money for use in the making and paying of these improvements and facilities, secured by and on the credit only of any lease agreements in respect to these improvements and facilities, and to pledge and assign leases and lease agreements as security for the authorized loans.

(11) Employ any agents or professionals whose services may be deemed by the Authority to be necessary and useful.

(12) Procure grants to allow for the installation of improvements upon real property.

(13) Have a corporate seal that may be altered at will.

(14) Contract with and accept grants from the State of North Carolina, the federal government, or any of the agencies or representatives of either said governmental bodies relating to the purchase of land and to the

grading, constructing, equipping, improving, maintaining, or operating of Heritage Park facilities.

SECTION 7.(b) The Avery County Board of Commissioners may appropriate funds as the Board of Commissioners deems necessary to carry out the provisions of this act in any proportion or upon any basis as may be determined by the Avery County Board of Commissioners. The Authority may make recommendations to the Avery County Board of Commissioners with respect to such appropriations.

SECTION 7.(c) The Authority shall possess the same exemptions in respect to payment of taxes and license fees and shall be eligible for sales and use tax refunds to the same extent as provided for municipal corporations by the laws of the State of North Carolina.

SECTION 7.(d) The Authority may acquire from the Board, and the Board may grant and convey, either by gift or for such consideration as the Board may deem appropriate, any real or personal property which it now owns or may hereafter acquire, which may be necessary for the construction, operation, and maintenance of Heritage Park facilities.

SECTION 7.(e) Any lands acquired, owned, controlled, or occupied by the Authority shall be, and are hereby declared to be acquired, owned, controlled, and occupied for a public purpose.

SECTION 8.(a) A copy of the ordinance creating the Authority and of any ordinance amending or repealing the joint resolution creating the Authority shall be filed with the following:

(1) The Secretary of State.
(2) The clerk to the Board.
(3) The clerk of superior court of Avery County.
(4) A newspaper of general circulation in Avery County.

SECTION 8.(b) Unless a ordinance specifies a later date, it shall take effect when the ordinance has been submitted to the Secretary of State for filing. Certifications by the clerk of superior court of the text of any ordinance filed with that clerk are admissible in evidence.

SECTION 9.(a) Except as limited by restrictions in any ordinance and by other supervening provisions of law, the Authority may make regulations applicable to Heritage Park concerning all matters relating to or affecting the use of Heritage Park. These regulations may not conflict with or supersede provisions of general or special acts or of regulations of State agencies promulgated under the authority of general law. No regulations adopted under the provisions of this section may be adopted by the Authority except after public hearing, with publication of notice of the hearing in a newspaper of general circulation in the county at least 10 days before the hearing.

SECTION 9.(b) Violation of any regulation of the Authority commanding or prohibiting an act shall be a Class 3 misdemeanor.

SECTION 9.(c) The regulations promulgated under this section take effect upon passage or upon such dates as may be stipulated in the regulations except that no regulation may be enforced unless adequate notice of the regulation has been posted in Heritage Park. Ordinances providing regulations for specific areas shall clearly establish

the boundaries of the affected area by including a map of the regulated area, with the boundaries clearly drawn, or by setting out the boundaries in a written description, or by a combination of these techniques. Adequate notice as to a regulation affecting only a particular location shall be given in the following manner. When a regulation applies generally as to Heritage Park, there must be a posting of notices, signs, or markers communicating the essential provisions in at least three different places throughout the area, and it shall be printed in a newspaper of general circulation in the county.

SECTION 9.(d) A copy of each regulation promulgated under this section must be filed by the Authority with the following persons:

(1) The Secretary of State;

(2) The clerks of superior court of Avery County.

(3) The clerk to the Board.

SECTION 9.(e) Any official designated in subsection (d) above may issue certified copies of regulations filed with the official under the seal of the official's office. Such certified copies may be received in evidence in any proceeding.

SECTION 9.(f) Publication and filing of regulations promulgated under this section as required above are for informational purposes and is not a prerequisite to their validity if they in fact have been duly promulgated, the public has been notified as to the substance of the regulations, a copy of the text of all regulations is in fact available to any person who may be affected, and no party to any proceeding has been prejudiced by any defect that may exist with respect to publication and filing. Rules and regulations promulgated by the Authority under the provisions of other sections of this Article relating to internal governance of the Authority need not be filed or published. Where posting of any sign, notice, or marker, or the making of other communication is essential to the validity of a regulation duly promulgated, it is presumed in any proceeding that prior notice was given and maintained and the burden lies upon the party asserting to the contrary to prove lack of adequate notice of any regulation.

SECTION 10.(a) Where an ordinance so provides, all law enforcement officers, or those officers as may be designated in the ordinance, with territorial jurisdiction as to any part of Heritage Park within the limitations of their subject matter jurisdiction, have the authority of peace officers in enforcing the laws over all of Heritage Park. A certificate of training issued by the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriffs' Education and Training Standards Commission will suffice for certification for the purposes of this Article.

SECTION 10.(b) Where a law enforcement officer with jurisdiction over any part of Heritage Park is performing duties relating to the enforcement of the laws, the officer shall have such extraterritorial jurisdiction as may be necessary to perform the officer's duties. These duties include investigations of crimes an officer reasonably believes have been, or are about to be, committed within the area in question. This includes traversing by reasonable routes from one portion of this area to another although across territory not within the boundaries of Heritage Park; conducting prisoners in custody to a court or to detention facilities as may be authorized by law, although this may involve going outside the area in question; execution of process

connected with any criminal offense alleged to have been committed within the boundaries in question, except that this process may not be executed by virtue of this provision beyond the boundaries of the two counties. This also includes continuing pursuit of and arresting any violator or suspected violator as to which grounds for arrest arose within the area in question.

SECTION 10.(c) Where law enforcement officers are given additional territorial jurisdiction under the provisions of this section, this shall be considered an extension of the duties of the office held and no officer shall take any additional oath or title of office.

SECTION 11. The Authority shall report annually to the Board regarding its operations and activities during the previous year and on any other matter requested by the Board.

SECTION 12. If one or more sections, clauses, sentences, or parts of this act shall be adjudged invalid, such judgment shall not affect, impair, or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision held invalid, and the inapplicability or invalidity of any section, clause, sentence, or part of this act in one or more instances or circumstances shall not be taken in affect or prejudice in any way its applicability or validity in any other instance.

SECTION 13. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1526

Committee Substitute Reported Without Prejudice 5/31/05

Short Title: Avery County/Heritage Park Authority. (Local)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO ENABLE THE COUNTY OF AVERY TO ESTABLISH THE HERITAGE PARK AUTHORITY FOR THE MAINTENANCE AND DEVELOPMENT OF THE HERITAGE PARK FACILITIES IN AVERY COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. There is hereby created the Heritage Park Authority ("Park Authority"). The Park Authority is a body politic and corporate having the powers and jurisdiction hereinafter enumerated and any other additional powers as shall be conferred upon it by general law and the future acts of the General Assembly.

SECTION 2. The Park Authority shall consist of nine members who shall be appointed to staggered terms of four years by the Avery County Board of Commissioners. All of the members shall be permanent residents of Avery County. Of the initial nine members, five shall be appointed to a term of four years and four shall be appointed to a term of two years. Thereafter, all terms shall be for four years, thus creating the staggered positions. Each member shall take and subscribe before the Clerk of the Superior Court of Avery County an oath of office and file the same with the Avery County Board of Commissioners. Upon the occurrence of any vacancy on the Park Authority, the vacancy shall be filled within 60 days after the vacancy occurs by the recommending entity upon approval of the Board of Commissioners. If the Authority fails to recommend a replacement to fill the vacancy within 60 days, the Board of Commissioners shall fill the vacancy at their next regular meeting.

SECTION 3.(a) The members of the Park Authority shall be appointed by the Avery County Board of Commissioners, as follows:

(1) One member shall be appointed upon the recommendation of the Avery County Agricultural and Horticultural Fair, Inc., a nonprofit corporation.

(2) One member shall be appointed from the Avery County Recreational Advisory Commission.

(3) The Towns of Banner Elk, Beech Mountain, Crossnore, Elk Park, Newland, and Sugar Mountain shall each nominate one member.

(4) The southern portion of Avery County shall recommend one member, with that nomination to be determined by the Frank and Green Valley Fire Departments.

No member of the Avery County Board of Commissioners may serve on the Park Authority Board. In the event that the Avery County Agricultural and Horticultural Fair, Inc., becomes nonexistent, then the Park Authority Board will have only eight members.

SECTION 3.(b) The Park Authority shall elect from among its members a Chair, a Secretary, and a Treasurer at its initial meeting and then annually thereafter. A majority of the Park Authority shall control its decisions. Each member of the Park Authority, including the Chair, shall have one vote. The Park Authority shall meet at the places and times designated by the Chair and shall be subject to the Open Meetings Law.

SECTION 3.(c) The Park Authority may adopt suitable bylaws for its management, subject to approval of the Avery County Board of Commissioners. The members of the Park Authority shall receive no compensation or per diem, but shall be allowed and paid their actual traveling expenses incurred in transacting the official business of the Park Authority.

SECTION 4. The Park Authority shall have the following powers and authority:

(1) To purchase, acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate Heritage Park facilities for the use of the general public within Avery County for the purpose to purchase, improve, own, hold, lease, or operate real or personal property.

(2) To sue and to be sued in the name of the Park Authority, to make contracts and hold any personal property necessary for the exercise of the powers of the Park Authority, and to acquire by purchase, lease, or otherwise any existing lease or leasehold right.

(3) To charge and collect reasonable and adequate fees and rents for the use of the Heritage Park facilities or for services rendered in the operation of the facilities. Revenues from fees and rents shall be used only for upkeep and operation of Heritage Park.

(4) To make all reasonable rules and regulations it deems necessary for the proper maintenance, use, operation, and control of Heritage Park facilities and to provide and enforce penalties for the violation of these rules and regulations; provided, however, that the rules and regulations and schedules of fees shall not be in conflict with the laws of the State of North Carolina.

(5) To sell, lease, or otherwise dispose of any property, real or personal, belonging to the Park Authority, according to the procedures described in Article 12 of Chapter 160A of the General Statutes, but no sale of

real property shall be made without the express approval of the Avery County Board of Commissioners.

(6) To deposit or invest and reinvest any of its funds as provided by the Local Government Finance Act, as it may be amended from time to time.

(7) To purchase any of its own outstanding bonds or notes.

(8) To operate, own, lease, control, regulate, or grant to others, for a period not to exceed five years, with an option to renew the right to operate on the Heritage Park facilities any snack bars, vending machines, food and beverages dispensing outlets, advertising media, automobile parking facilities, and other types of facilities as may be directly related to the maintenance and furnishing of a complete parks and recreational facility to the public.

(9) To erect and construct buildings and other improvements and facilities not inconsistent with or in violation of the agreements applicable to and the grants under which real property of the Park Authority is held.

(10) To lease their improvements and facilities for a term or terms not to exceed five years, with an option to renew at the termination of the lease.

(11) To borrow money for use in the making and paying of these improvements and facilities, secured by and on the credit only of any lease agreements in respect to these improvements and facilities, and to pledge and assign leases and lease agreements as security for the authorized loans.

(12) To procure grants to allow for the installation of improvements upon real property.

(13) To have a corporate seal which may be altered at will.

SECTION 5. The Park Authority shall possess the same exemptions in respect to payment of taxes and license fees and shall be eligible for sales and use tax refunds to the same extent as provided for municipal corporations by the laws of the State of North Carolina.

SECTION 6. The Park Authority may acquire from Avery County, by agreement with the County, and the County may grant and convey, either by gift or for such consideration as the County may deem appropriate, any real or personal property which it now owns or may hereafter acquire, which may be necessary for the construction, operation, and maintenance of Heritage Park facilities.

SECTION 7. Any lands acquired, owned, controlled, or occupied by the Park Authority shall be, and are hereby declared to be acquired, owned, controlled, and occupied for a public purpose.

SECTION 8. Subject to the limitations as set out in this act, all rights and powers given and granted to counties and municipalities by general law, which may now be in effect, or enacted in the future relating to the development, regulation, and control of Heritage Park facilities, are vested in the Park Authority. The Avery County Board of Commissioners may delegate its powers under these acts of the Park

Authority, and the Park Authority shall have concurrent rights with Avery County to control, regulate, and provide for the development of Heritage Park in Avery County.

SECTION 9. The Park Authority may contract with and accept grants from the State of North Carolina, the federal government, or any of the agencies or representatives of either said governmental bodies relating to the purchase of land and to the grading, constructing, equipping, improving, maintaining, or operating of Heritage Park.

SECTION 10. The Park Authority may employ any agents or professionals whose services may be deemed by the Park Authority to be necessary and useful in carrying out the provisions of this act.

SECTION 11. The Avery County Board of Commissioners may appropriate funds as the Board of Commissioners deems necessary to carry out the provisions of this act in any proportion or upon any basis as may be determined by the Avery County Board of Commissioners. The Park Authority may make recommendations to the Avery County Board of Commissioners with respect to such appropriations.

SECTION 12. The Park Authority may expend the funds that are appropriated by the County and may pledge the credit of the Park Authority only to the extent of the appropriate funds.

SECTION 13. The Park Authority shall not have the power to pledge the credit of Avery County, or any subdivision thereof, or to impose any obligation upon Avery County or any of its subdivisions except when the power is expressly granted by statute.

SECTION 14. The Park Authority shall make an annual report to the Avery County Board of Commissioners in July of each year setting forth in detail the operations and transactions conducted by it pursuant to this act.

SECTION 15. The powers granted to the Park Authority shall not be effective until the members of the Park Authority have been appointed by the Avery County Board of Commissioners, and nothing in this act shall require the Board of Commissioners to make the initial appointments. It is the intent of this act to enable, but not require, the formation of the Avery County Parks and Recreational Authority.

SECTION 16. If one or more sections, clauses, sentences, or parts of this act shall be adjudged invalid, such judgment shall not affect, impair, or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision held invalid, and the inapplicability or invalidity of any section, clause, sentence, or part of this act in one or more instances or circumstances shall not be taken in affect or prejudice in any way its applicability or validity in any other instance.

SECTION 17. This act is effective when it becomes law.

HOUSE BILL 1526:
Avery County/Heritage Park Authority

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 25, 2005
Introduced by:	Reps. Frye, Jones	**Summary by:**	Cindy Avrette
Version:	PCS to Second Edition H1526-CSST-81		Committee Counsel

SUMMARY: ***The proposed committee substitute for House Bill 1526 would allow the Avery County Board of Commissioners to create an authority that could acquire the property known as "Heritage Park" and operate and maintain the facilities on that property. The bill would become effective when it becomes law. The original bill, sponsored by Rep. Frye, would have eliminated the automobile insurance comprehensive deductible on motor vehicle windshield glass.***

BILL ANALYSIS: There is approximately 52 acres of property in Avery County known as "Heritage Park". The property has some facilities on it and is used by the county for certain purposes, including its Agricultural and Horticultural Fair. This bill would establish an authority that would have the ability to acquire the property and to improve, maintain, operate, and regulate the facilities on that property. The Authority would have the ability to charge and collect fees and rents for the use of the facilities as well as borrow money for use in improving the facilities. The Authority may make regulations concerning Heritage Park and law enforcement officers with jurisdiction of the Park may enforce those regulations. A violation of a regulation of the Authority would be a Class 3 misdemeanor. The Avery County Board of Commissioners may appropriate funds to the Authority and the Authority is entitled to the same exemptions in respect to payment of taxes as municipal incorporations.

The Authority may be created by ordinance of the Board of Commissioners of Avery County after notice and public hearing. Upon creation of the Authority, the Board must appoint a nine-member governing body for the Authority. To be eligible to serve on the governing body, a person must maintain a permanent residence in Avery County. A majority of the Authority shall control its decisions. The members of the governing body would serve four-year staggered terms. A member could not serve more than two consecutive terms. The members would not receive compensation or per diem, but they may be allowed their actual traveling expenses. The members of the governing body of the Authority must be appointed as follows:

- One member upon the recommendation of the Avery County Agricultural and Horticultural Fair, Inc. (If the Avery County Agricultural and Horticultural Fair, Inc. becomes nonexistent, then the governing body of the Authority shall have only eight members.)
- One member must be appointed from the Avery County Recreational Advisory Commission.
- One member from the southern portion of Avery County upon the recommendation of the Frank and Green Valley Fire Departments.
- Six members representing the municipalities in Avery County. The Board must appoint the members upon the recommendation of each of the following Board of Commissioners: Banner Elk, Beech Mountain, Crossnore, Elk Park, Newland, and Sugar Mountain.

EFFECTIVE DATE: The bill would become effective when it becomes law.

H1526e2-SMRB-CSST

Box 6 Contents
2005-06 Standing Committee Minutes

2005 House Finance (cont'd – July 27 to end)
2006 House Finance
2005 House Financial Institutions

North Carolina General Assembly

House Committee on Finance

Minutes

~

July 27, 2005

The House Committee on Finance met on Wednesday, July 27, 2005 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Howard, Luebke, McComas and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Bordsen, Capps, Carney, Dockham, England, Faison, Fisher, Folwell, Glazier, Goforth, Hackney, Harrell, Holliman, Insko, Jones, Lewis, McGee, Underhill, Vinson, Walend and Wiley. Ex-Officio member Representative Culpepper was present. Also present were Sergeant-at-Arms Bill Freeman, Fred Hines, Dusty Rhodes, and Walter Spell. Staff persons present included Cindy Avrette, Rodney Bizzell, Erika Churchill, Gerry Cohen, Brenna Erford, Ashley Huffstetler, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairwoman Alexander called the meeting to order at 8:35 am and recognized the seven (7) pages present: (1) Reeva Sawhney of Gastonia County, sponsored by Representative Rayfield; (2) David Hopkins of Rockingham County, sponsored by Representative Cole; (3) Amanda Williams of Wilkes County, sponsored by Representative Walker; (4) Elizabeth Alford of Wake County, sponsored by Representative Morgan; (5) Adam Moore of Gates County, sponsored by Representative Culpepper; (6) Nancy Warren of Person County, sponsored by Representative Wilkins; and (7) Tyler White of Catawba County, sponsored by Representative Kiser.

Chairman Alexander first recognized Representative Howard for continued discussion on SB 612 – AMEND LOBBYING LAWS (see **attachment 3**) from the Committee meeting on Tuesday, July 26. Representative Howard then withdrew her pending amendment (see **attachment 4**) and sent forth a new amendment (see **attachment 5**) and moved for its adoption. She explained that this amendment does not prevent members from introducing legislation based upon their past experiences, but would prohibit a legislator from sponsoring legislation for an entity and leaving the legislature to work for that particular entity. Chairwoman Alexander then recognized Representative Hackney who stated that he understands Representative Howard's goal, but the amendment is too broad and would prevent a legislator from working for an entity they sponsored legislation for an indefinite period. In response, Representative Howard was recognized and explained that the intent of the amendment was not to make it so a former legislator could never accept employment or work for an entity they sponsored legislation for. She then sent forth a perfecting amendment (see **attachment 5**) specifying a one-year restriction for legislators seeking employment at an entity that the legislator sponsored legislation for. Chairwoman Alexander then recognized Representative Dockham who stated that public perception is extremely important. He continued by stating that if the General Assembly is going to shut the door on dinner and gifts to the legislature, then a restriction should also be made on accepting employment based on previously sponsored legislation.

Representative Faison was then recognized and expressed that the problem addressed by Representative Howard's amendment was even more important than the "revolving door" provision.

Chairwoman Alexander then recognized Representative Wainwright who asked about the enforcement of the content of the amendment. In response, Representative Howard was recognized and said that this amendment is a matter of public perception and conscience. Erika Churchill of Research was then recognized and added that if a willful violation of the law occurs, then it would be a Class I misdemeanor enforced by the Secretary of State and the Attorney General. Chairwoman Alexander then recognized Representative Hackney who stated that the amendment does not do what Representative Howard intends. Representative Ross was then recognized and agreed with Representative Howard's intentions but believed the amendment was not worded correctly as further work was needed to properly address Representative Howard's concern. Representative Howard was then recognized and moved for the adoption of the amendment as perfected, requesting the ayes and nays, and called for the previous question. As the motion for the previous question is non-debatable, Chairwoman Alexander called the motion for the previous question to a vote and the motion carried. Chairwoman Alexander then immediately called the motion to adopt the Howard amendment to a vote and directed the Committee Clerk to call the roll (see **attachment 6**). By a vote of 12 ayes to 21 nays, the amendment failed.

Chairwoman Alexander then recognized Representative Hackney who sent forth a technical amendment (see **attachment 7**) and moved for its adoption. He explained that the amendment simply clarified some language in the bill as recommended by the legal staff. Seeing no further discussion, Chairwoman Alexander then called the motion to a vote, and it carried by consent. Representative Lewis was recognized next and asked if a legislator would be required to report their attendance at a legislative conference. In response, Representative Hackney was recognized and stated that reporting is required for the lobbyists if the event is held in North Carolina. If the event is held outside North Carolina, then the legislator would be required to report the event. Questions remained on this topic and Representative Hackney concluded the discussion saying, "If in doubt, report it." Representative Luebke was then recognized and claimed that this bill is the best lobbying reform bill he has seen thus far at the General Assembly. He then moved for a favorable report to the proposed committee substitute, incorporating the adopted amendments, and an unfavorable report as to the original bill. His motion also included a recommendation that the proposed committee substitute be re-referred to the Committee on Appropriations. As there was no further debate, Chairwoman Alexander called the motion to a vote, and it carried without objection.

The next bill under consideration by the Committee was **HB 237 – REVISE MORTGAGE LENDING ACT** (see **attachment 8**). Chairwoman Alexander then recognized Representative Saunders, the bill sponsor, who explained that the bill authorizes the licensure of limited loan officers that are employed by affiliated mortgage bankers and authorizes the Commissioner of Banks to allow certain loan officer applicants to act as a loan officer during the loan officer application process. The bill also provides that the Commissioner may discipline a licensee or applicant for falsely certifying attendance or completion of a continuing education course. Following the explanation, Representative Jones moved that House Bill 237 be given a favorable report by the Committee.

Chairwoman Alexander then recognized individuals from the public who spoke in support of the bill. Joseph Smith, from the NC Commission of Banks, was first recognized and stated that the bill is very limited and is intended to only apply to large firms and language in the bill requires them to be held accountable. Larry Hackner from the NC Financial Services Association was then recognized and said that his organization supports this bill as it attempts to bring uniformity to the

laws governing mortgage licensing. Also speaking in support of the bill was Dick Carlton also from the NC Financial Services Association who stated that this bill would send a good message that North Carolina is a good state for financial institutions.

Speaking in opposition to the bill, Stella Adams from NC Fair Housing Coalition was recognized and stated that the bill contains inconsistencies in the language that could possibly harm consumers. Chris Kubla from the Self-Help Organization was then recognized and claimed that under the bill, loan officers would not be required to have enough training in certain circumstances. Chairwoman Alexander then recognized Al Ripley from the NC Justice Center who stated that some of the companies benefiting from this legislation have had a bad track record with customer service. Steve Roberts, representing the Association for the Advancement of Retired Persons, was recognized and said that this bill is a step backward for North Carolina and would allow some companies to employ loan officers who have very little experience. He then stated that North Carolina consumers need loan officers that have more training. Representative Saunders was then recognized and said that he believes some of the people speaking in opposition to the bill had it confused with House Bill 621, which was also on the Committee's agenda but not discussed.

At that time, Chairwoman Alexander then recognized the attendance of former House Representative Bobby Ray Hall.

Chairwoman Alexander then recognized Representative Luebke who asked why the General Assembly would want to reduce training and testing requirements for loan officers. Mr. Hackner from the NC Financial Services Association was then recognized and said that nothing in the bill has language that provides for less than adequate training for loan officers. Ms. Adams from the NC Fair Housing Coalition stated that she believed that this bill would weaken the requirements for loan officers due to inconsistency of the language found in the bill. Representative Saunders was then recognized and emphasized that the bill is nothing more than a tweaking of the Mortgage Lending Act of 2001. Chairwoman Alexander then recognized Representative Wainwright who asked Mr. Smith from the Commission of Banks if this bill is in any way weakening the Mortgage Lending Act of 2001. Mr. Smith was recognized and answered in the negative.

Chairwoman Alexander then announced that discussion on the bill would be continued until the next meeting, to be held on Thursday, July 28, at 8:30 am. She then adjourned the meeting at 9:53 am.

Respectfully submitted,

Representative Martha Alexander
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. Senate Bill 621 (and related materials)
4. Pending Howard Amendment from 7/26 - **WITHDRAWN**

5. Howard Amendment, as perfected, on SB 612 – **FAILED**
6. Roll Call Vote on Howard Amendment, as perfected, on SB 612
7. Hackney Amendment on SB 612 – **ADOPTED**
8. House Bill 237 (and related materials)
9. House Bill 621 (and related materials) – (NOT DISCUSSED)
10. House Bill 1283 (and related materials) – (NOT DISCUSSED)
11. House Bill 1526 (and related materials) – (NOT DISCUSSED)

AGENDA

House Finance Committee

ATTACHMENT 1

July 27, 2005
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Alexander

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard

Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order

Introduction of Pages

Bills:

SB 612	**AMEND LOBBYING LAWS** *(Pending Amendment)*	*Rep. Hackney*
HB 237	**REVISE MORTGAGE LENDING ACT**	*Reps. Coates & Saunders*
HB 621	**SMALL INSTALLMENT CONSUMER LOANS**	*Rep. Wright*
HB 1283	**IMPROVE ENVIRONMENTAL ENFORCEMENT**	*Rep. Culpepper*
HB 1526	**AVERY COUNTY/HERITAGE PARK AUTHORITY**	*Reps. Frye & Jones*

Adjournment

ATTACHMENT 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 27, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Vinia Andracchio	Friendly Check
Charlie Wadkins	N.C.T.A/World Acceptance Corp
Roney W. Lamm, JR.	Citi Financial / Citi Group.
Bill Bost	Ragsdale Liggett
Victor Barr	Security Financial Services
Alice Garland	NCDA
Conn Carr	B & M Inc
David Barnes	Poyner + Spruill LLP
Nancy Thompson	MCIC
Preston Howard	MCIC
Gene Ainsworth	Ainsworth & Associates

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 27, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Leanne Winner	NCSBA
Stephanie Simpson	NCAR
Lisa Martin	NC HBA
Suzanne Bradley	Gov. Office
Tonia Winters	Triangle Family Services
Ashowanna Blount	Triangle Family Services
Russ Dubisky	CCPS
Mitch Alford	OSBM
Betty Turner	Bank of America
Julia Leggett	NC Coalition for Lobbying Reform
Josh Stein	NC AGO

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 27, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Betty Boop	Cartoon Network
Clerk Bobb	NCAE
J E Hobbs	HANC
Carole Lawler	EGHS
Ginger C Graves	PENC
Tom Wescott	Sprint
Molly Ryan	NCSBA
Jim Hamm	WCPSS
Lon Wilson	NCAATC7
Elizabeth Dalton	NCCBI
DON HUBART	NC DOC
Clark Kent	Supers one us

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 27, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Larry Heckner	HSBC - North America
Steve Wall	DENR
FRANCIS M. NEVILS JR	DENR - DLR
Paul Chessir	John Locke Foundation
DAVE Simpson	CAROLINAS AGC
Andy Romcnt	WCLM
Erin Kinney	NC Conservation Network
Kathy Hawkins	Progress Energy
George Everett	Duke Power
AJ Hudson	Rep. Cunningham
Ashleigh Taylor	Rep. Wainwright

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 27, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilms	NCHBA
Ed Renfrow	COASTAL FINANCE
Steve Roberts	AARP
Ann K. Harris	Sec of State
Charles Jones	Div of Coastal Mgmt.
Al Ripley	NL Justice Ctr
Chris Kukla	Self-Help
SUSAN LUPTON	CENTER FOR RESPONSIBLE LENDING
Ehren Harris	Center For Responsible Lending
Brad Lamb	NC Consumers Council
Joseph A. Smith, Jr.	NC Commissioner of Banks

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 27, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John McKay	GOVAFFIRS
Paul Stock	NCBA
Mac Boxley	NC Aggregates Assoc.
John Long	MARTIN MARIETTA Materials
[signature]	NCRA - NCWA
Hal Miller	NCACCT
Barbara Canales	BASF
Stella Adams	NC Fair Housing Ctr
Bill Brooks	EBAN

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 27, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ted Kaczinski	Bombs, L-I-D.
[signature]	[signature]
Lee-Ann Coe	CTA
John Bowdish	ADA
Rick Zechini	NC Assoc. of Realtors
Kevin Leonard	NCSR
[signature]	NCO
Roz Sawyer	NCCCC
Bob Hall	Democracy North Carolina
Elizabeth Sale	Sierra Club
S. Hood	Locke

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Wednesday, July 27, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 237 – REVISE MORTGAGE LENDING ACT – Reps. Coates & Saunders

HB 621 – SMALL INSTALLMENT CONSUMER LOANS – Rep. Wright

HB 1283 – IMPROVE ENVIRONMENTAL ENFORCEMENT – Rep. Culpepper

HB 1526 – AVERY COUNTY/HERITAGE PARK AUTHORITY – Reps. Frye & Jones

SB 612 – AMEND LOBBYING LAWS – Sen. Rand

Respectfully,
Representatives Alexander, Gibson, Howard, Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **2:05 p.m.** on **July 26, 2005**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 612*

Judiciary I Committee Substitute Adopted 3/31/05
Finance Committee Substitute Adopted 4/11/05
Fourth Edition Engrossed 4/14/05
House Committee Substitute Favorable 7/20/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S612-CSSTf-82 [v.6]

7/25/2005 8:45:32 PM

Short Title: Amend Lobbying Laws. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LOBBYING LAWS BY INCREASING THE INFORMATION REQUIRED TO BE REPORTED ON LOBBYING ACTIVITIES AND BY REQUIRING REGISTRATION AND REPORTING OF LOBBYING ACTIVITIES OF EXECUTIVE BRANCH OFFICERS, AND TO APPROPRIATE FUNDS TO IMPLEMENT THE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9A of Chapter 120 of the General Statutes reads as rewritten:

"Article 9A.

"Legislative Branch Lobbying.

"§ 120-47.1. Definitions.

~~For the purposes of this Article, the following terms shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:~~The following definitions shall apply in this Article:

(1) The term "covered person" means a legislator, the Governor, or the Lieutenant Governor.

~~(1)~~(1a) The ~~terms "contribution," "compensation" and~~ term "expenditure" ~~mean~~ means any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge or ~~anything~~ thing of value greater than ten dollars ($10.00), ~~and any~~or ~~contract~~a contract, agreement, promise or other obligation whether or not legally enforceable, ~~but those terms do not include prizes, awards, or compensation not exceeding one~~

~~hundred dollars ($100.00) in a calendar year.~~that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of a covered person, legislative employee, or that person's immediate family member.

(1b) The term "executive lobbyist" means a lobbyist registered pursuant to Article 4C of Chapter 147 of the General Statutes.

(2), (3) Repealed by Session Laws 1991, c. 740, s. 1.1.

(3a) The term "immediate family member" means spouse, descendant, or ascendant.

(4) The term "legislative action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter by the legislature or by a member or employee of the legislature acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.

(4a) The term "legislative employee" means employees and officers of the General Assembly.

(4b) The term "legislative liaison personnel" means any State ~~officer or employee~~officer whose principal ~~duties~~ duties, in practice or as set forth in that person's job ~~description~~ description, ~~involve~~ include lobbying the General Assembly.

(4c) The term "legislative lobbyist" means any lobbyist for or against legislative action.

(4d) The term "legislator" means a member of the General Assembly or a person elected or appointed a member of the General Assembly prior to taking office.

(5) The term "lobbying" ~~means:~~means any of the following:

a. Influencing or attempting to influence legislative action through direct ~~oral or written~~ communication or activities with a ~~member of the General Assembly; or~~covered person, legislative employee, or that person's immediate family member.

b. Solicitation of others by legislative lobbyists or lobbyists' principals to influence legislative action.

c. Developing goodwill through communications or activities with a covered person, legislative employee, or that person's immediate family with the intention of influencing current or future legislative action, but does not include communications or activities with a covered person, legislative employee, or that person's immediate family member in a business, civic,

religious, fraternal, or commercial relationship which is not connected to legislative action.

(6) The term "lobbyist" means an individual ~~who:~~who meets any of the following criteria:

a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of ~~lobbying; or~~lobbying.

b. Represents another person and receives compensation for the purpose of lobbying.

c. Is legislative liaison personnel.

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 120-47.8. For the purpose of determining whether an individual is a lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involve lobbying before the General Assembly.

(7) The terms "lobbyist's principal" and "principal" mean the ~~entity in~~person on whose behalf the legislative lobbyist ~~influences or attempts to influence legislative action.~~lobbies. In the case where a lobbyist is compensated by a law firm, consulting firm, or other entity retained by a person for legislative lobbying, the principal is the person whose interests the lobbyist represents in lobbying.

(8) The term "person" means any individual, firm, partnership, committee, association, corporation, business entity, or any other organization or group of ~~persons.~~persons which has an independent legal existence.

(9) The General Assembly is in "regular session" from the date set by law or resolution that the General Assembly convenes until the General Assembly either:

a. Adjourns sine die; or

b. Recesses or adjourns for more than 10 days.

"**§ 120-47.2. Registration procedure.**

(a) A legislative lobbyist shall file a registration statement with the Secretary of State before engaging in any ~~lobbying.~~lobbying, in a manner prescribed by the Secretary of State. It shall be unlawful for a person to lobby without registering unless exempted by this Article. A separate registration statement is required for each lobbyist's principal. The registration shall indicate whether it is registration as a legislative lobbyist, executive lobbyist, or both, and a separate registration fee shall be paid for each separate type of registration.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, ~~and~~ complete ~~address;~~address and telephone number; the registrant's place of business; the full ~~name and~~name, complete address and telephone number of each person by whom the registrant is employed or

retained; and a general description of the matters on which the registrant expects to act as a legislative lobbyist. The Secretary of State shall make available as soon as practicable the registrations of the lobbyists and lobbyists' principals in an electronic, searchable format.

(c) Each legislative lobbyist shall ~~register again~~file an amended registration form with the Secretary of State no later than 10 days after any change in the information supplied in ~~his~~ the legislative lobbyist's last registration under subsection (b). Each supplementary registration shall include a complete statement of the information that has changed.

(d) Within 20 days after the convening of each session of the General Assembly, the Secretary of State shall furnish each member of the General Assembly and the State Legislative Library a list of all persons who have registered as executive or legislative lobbyists and whom they represent. Within 20 days after the beginning of the term of a Governor, the Secretary of State shall furnish the Governor, each other member of the Council of State, the head of each principal department of the Executive Branch, and the State Legislative Library a list of all persons who have registered as executive or legislative lobbyists and whom they represent. A supplemental list of legislative lobbyists shall be furnished periodically each 20 days thereafter as the session progresses. A supplemental list of executive lobbyists shall be furnished periodically each 60 days thereafter. All lists required by this section may be furnished electronically.

(e) Each registration statement of a legislative lobbyist required under this Article shall be effective from the date of filing until January 1 of the following ~~odd-numbered~~ year. The legislative lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

"§ 120-47.3. Registration fee.

(a) Every lobbyist's principal shall pay to the Secretary of State a fee of ~~two hundred dollars ($200.00)~~ one hundred dollars ($100.00) that is due and payable by either the legislative lobbyist or the lobbyist's principal at the time of registration. If the legislative lobbyist is also registering as an executive lobbyist for that lobbyist's principal, the fee shall be seventy-five dollars ($75.00) to register as a legislative lobbyist.

(b) A separate registration, together with a separate registration ~~two hundred dollars ($200.00)~~ one hundred dollars ($100.00 is required for each lobbyist's principal for which a person acts as a legislative lobbyist. No lobbyist's principal shall be charged a registration fee for legislative lobbyist more than one time per year.

(c) ~~Fees so collected shall be deposited in the General Fund of the State.~~ All fees shall be paid to the Department of the Secretary of State and deposited into the Lobbyist Registration Fund to be used to pay the costs incurred in administering and enforcing this Article.

(d) The Secretary of State may allow fees required under this section to be paid electronically, but may not require those fees to be paid electronically.

"§ 120-47.4. Written authority from lobbyist's principal to be filed.

Each legislative lobbyist shall file with the Secretary of State within 10 days after ~~his~~ the legislative lobbyist's registration a written authorization to act as such, signed by the lobbyist's principal.

"**§ 120-47.5. Contingency lobbying fees and election influence prohibited.**

(a) No person shall act as a legislative lobbyist for compensation that is dependent upon the result or outcome of any legislative action. ~~which is dependent in any manner upon the passage or defeat of any proposed legislation or upon any other contingency connected with any action of the General Assembly, the House, the Senate or any committee thereof.~~

(b) No ~~person~~ legislative lobbyist or legislative lobbyist's principal shall attempt to influence the action of any ~~member of the General Assembly~~ covered person by the promise of financial support of the ~~member's~~covered person's candidacy, or by threat of financial ~~contribution~~ support in opposition to the ~~member's~~ covered person's candidacy in any future election.

"**§ 120-47.5A. Exemptions and inclusions for reporting purposes.**

(a) For purposes of G.S. 120-47.6 and G.S. 120-47.7, the following expenditures need not be reported:

(1) Gifts from an immediate family member or person who is the child, stepchild, parent, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild of the covered person or legislative employee.

(2) Lawful campaign contributions.

(b) For purposes of G.S. 120-47.6 and G.S. 120-47.7, all expenditures made for the purpose of lobbying shall be reported, including the following:

(1) Expenditures benefiting or made on behalf of a covered person, a legislative employee, or those persons' immediate family members, in the regular course of that person's nonlegislative employment.

(2) Contractual arrangements or direct business relationships between a legislative lobbyist or legislative lobbyist's principal and a covered person, legislative employee, or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Amounts reimbursed to a legislative lobbyist in the ordinary course of business by the lobbyist's principal or other employer.

"**§ 120-47.6. Statements of legislative lobbyist's lobbying ~~expenses~~ expenditures required.**

(a) Each legislative lobbyist shall file ~~an expense report with the Secretary of State with respect to each principal within 60 days after the last day of the regular session. This expense report shall include all expenditures made between January 1 and the last day of the regular session. The lobbyist shall file a supplemental report including all expenditures made after the last day of the regular session, but during the calendar year, by February 28 of the following year.~~ monthly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State including electronically, with respect to each lobbyist's principal, while the General

Assembly is in regular session, and quarterly thereafter. The expenditure report shall include all expenditures during the reporting period and shall be due 10 business days after the end of the reporting period. The legislative lobbyist shall file ~~both~~ expense reports whether or not expenditures are made.

(b) Each ~~expense~~ expenditure report shall set forth the ~~date of each expenditure, to whom paid, the name of any legislator who benefitted from each expenditure, and the amount of each expenditure made during the previous reporting period in connection with lobbying, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty-five dollars ($25.00) and (6) contributions made, paid, incurred or promised, directly or indirectly. It shall not be necessary to report expenditures of twenty-five dollars ($25.00) or less, nor shall it be necessary to report any expenditures made in connection with the attendance of a legislator at any fund-raising function or event sponsored by a nonprofit organization qualified under 26 U.S.C. § 501(c). When more than 10 members of the General Assembly benefitted or were invited to benefit from an expenditure, the lobbyist shall not be required to report the name of any legislator, but shall be required to report the number of legislators or, with particularity, the basis for their selection.~~amount, date, a description of the expenditure, name and address of the payee, and name of any covered person, legislative employee, or that person's immediate family member benefiting from the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Solicitation of others to lobby.
(6) Other expenditures.

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public ~~inspection.~~inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of legislative employees and immediate family members of covered persons and legislative employees who benefited from the expenditure shall be listed separately.

(d) When a legislative lobbyist fails to file ~~a lobbying expense~~an expenditure report as required ~~herein,~~in this section, the Secretary of State shall send a certified or registered letter advising the legislative lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the legislative lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an

additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an ~~expense~~ expenditure report in one of the manners prescribed ~~herein~~ in this section shall result in revocation of any and all registrations of a legislative lobbyist under this Article. No legislative lobbyist may register or reregister under this Article until ~~he~~ the legislative lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate complete and timely disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes.

"§ 120-47.7. Statements of legislative lobbyist's principal lobbying ~~expenses~~ expenditures required.

(a) Each legislative lobbyist's principal shall file ~~an expense report with the Secretary of State within 60 days after the last day of the regular session. This expense report shall include all expenditures made between January 1 and the last day of the regular session. The 'principal shall file a supplemental expense report, including all expenditures made after the last day of the regular session, but during the calendar year, by February 28 of the following year.~~ monthly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State including electronically, while the General Assembly is in regular session, and quarterly thereafter. The expenditure report shall include all expenditures during the reporting period, and shall be due 10 business days after the end of the reporting period. The lobbyist's principal shall file ~~both expense~~ the expenditure reports whether or not expenditures are made during a reporting period.

(b) Each ~~expense~~ expenditure report shall set forth the ~~name and address of each lobbyist employed, appointed, or retained by the lobbyist's principal, the date of each expenditure made, to whom paid, name of any legislator who benefitted from each expenditure, and amount of each expenditure made during the previous reporting period in connection with lobbying, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty-five dollars ($25.00), (6) contributions made, paid, incurred or promised, directly or indirectly, and (7) compensation to lobbyists in connection with their lobbying activities. It shall not be necessary to report expenditures of twenty-five dollars ($25.00) or less, nor shall it be necessary to report any expenditures made in connection with the attendance of a legislator at any fund-raising function or event sponsored by a nonprofit organization qualified under 26 U.S.C. § 501(c). When more than 10 members of the General Assembly benefitted or were invited to benefit from an expenditure, the principal shall not be required to report the name of any legislator, but shall be required to report the number of legislators or the basis for their selection. In~~

~~the category of compensation to lobbyists the principal shall estimate and report the compensation paid or promised directly or indirectly, to all lobbyists based on the estimated time, effort and expense in connection with lobbying activities on behalf of the principal. If a lobbyist is a full-time employee of the principal, or is compensated by means of an annual fee or retainer, the principal shall estimate and report the portion of all such lobbyists' salaries or retainers that compensate the lobbyists for lobbying.~~ amount, date, a description of the expenditure, name and address of the payee, and name of any covered person, legislative employee, or that person's immediate family member affected by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Solicitation of others to lobby.
(6) The compensation paid or agreed to be paid to all legislative lobbyists. If a legislative lobbyist is a full-time employee of the lobbyist's principal, or is compensated by means of an annual fee or retainer, the lobbyist's principal shall estimate and report the portion of the salary, fee, or retainer that compensates for lobbying. The lobbyist's principal's expenditure report shall include an itemized description of all expenditures reimbursed or paid to legislative lobbyists for lobbying that are not reported on the legislative lobbyists' reports. For purposes of this subsection, amounts reimbursed in the ordinary course of business shall be considered compensation if a significant part of the individual's duties involves legislative lobbying, whether reimbursed by the principal or another source.
(7) Other expenditures.

(c) All reports shall be in the form prescribed by the Secretary of State and open to public ~~inspection.~~inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of legislative employees and immediate family members of covered persons and legislative employees who benefited from the expenditure shall be listed separately.

(d) When a lobbyist's principal fails to file ~~a lobbying expense~~an expenditure report as required ~~herein,~~in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall

deliver or post by United States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section. Failure to file an expenditure report in one of the manners prescribed in this section shall result in revocation of any and all registrations of a lobbyist's principal under this Article. No lobbyist's principal may register or reregister under this Article until the lobbyist's principal has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate complete and timely disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes.

"**§ 120-47.7B. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis to assure complete and timely disclosure of expenditures.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.

"**§ 120-47.7C. Prohibitions.**

(a) No member or former member of the General Assembly may be employed as an executive or legislative lobbyist by a lobbyist's principal to lobby as defined in this Article or Article 4C of Chapter 147 of the General Statutes within one year after the expiration of the term for which the member was elected or appointed to serve.

(b) No person serving as Governor, as a member of the Council of State, or as a head of a principal State department listed in G.S. 143B-6 may be employed as an executive or legislative lobbyist by a lobbyist's principal to lobby as defined in this Article or Article 4C of Chapter 147 of the General Statutes within one year after separation from employment or leaving office, whichever is later.

(c) No individual registered as a legislative lobbyist shall serve as a campaign manager or a campaign treasurer under Chapter 163 of the General Statutes for a campaign for election as a member of the General Assembly.

(d) A legislative or executive lobbyist shall not be eligible for appointment to any body created under the laws of this State that has regulatory authority over the activities

of a person that the lobbyist represented within one year after the expiration of the lobbyist's registration representing that person.

(e) No legislative or executive lobbyist or another acting on the lobbyist's behalf shall permit a covered person, legislative employee, executive branch officer, or that person's immediate family member, to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure.

"§ 120-47.8. Persons exempted from provisions of Article.

~~The~~ Except as otherwise provided in this Article, the provisions of this Article shall not be construed to apply to any of the following:

(1) An ~~individual, not acting as a lobbyist,~~ individual solely engaged in expressing a personal opinion or stating facts or recommendations on legislative matters to ~~his own legislative delegation or other~~ members of the General ~~Assembly.~~Assembly and not acting as a legislative lobbyist.

(2) A person appearing before a legislative committee at the invitation or request of the committee or a member thereof and who engages in no further activities as a legislative ~~lobbyist in connection with that or any other legislative matter.~~lobbyist.

(3) a. A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to ~~his~~ the office and public duties.

b. Notwithstanding the persons exempted in this Article, the Governor, Council of State, and all appointed heads of State departments, agencies and institutions, shall designate all authorized official legislative liaison personnel and shall file and maintain current lists of designated legislative liaison personnel with the Secretary of ~~State and shall likewise file with the Secretary of State a full and accurate accounting of all money expended on lobbying, other than the salaries of regular full-time employees, at the same times lobbyists are required to file expense reports under G.S. 120-47.6.~~State.

(4) A person performing professional services in drafting bills or in advising and rendering opinions to clients, or to ~~legislators~~ covered persons on behalf of clients, as to the construction and effect of proposed or pending legislation where the professional services are not ~~otherwise, directly or indirectly,~~ otherwise connected with legislative action.

(5) A person who owns, publishes or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news ~~medium.~~medium as defined in G.S. 8-53.11.

(6) Repealed by Session Laws 1991, c. 740, s. 1.1.

(7) ~~Members of the General Assembly.~~Covered persons and legislative employees.

(8) A person responding to inquiries from a member of the General Assembly or a legislative employee, and who engages in no further activities as a legislative lobbyist in connection with that or any other legislative matter.

(9) ~~An individual giving facts or recommendations pertaining to legislative matters to his own legislative delegation only.~~An employee who represents the employer's interests in legislative action for no more than three hours in a quarter, provided that neither the employee nor the employer makes any expenditure as defined in G.S. 120-47.1.

"**§ 120-47.8A. Expenditures made by persons exempted or not covered by this Article.**

(a) If a covered person or a legislative employee accepts an expenditure made for the purpose of lobbying valued over two hundred dollars ($200.00) from a person exempted or not covered by this Article, the person making the expenditure shall report the date, a description of the expenditure, the name and address of the person making the expenditure, the name of the covered person or legislative employee accepting the expenditure, and the estimated fair market value of the expenditure.

(b) If the person making the expenditure in subsection (a) of this section is outside North Carolina, the covered person or legislative employee accepting the expenditure shall be responsible for filing the report.

(c) If a covered person or a legislative employee accepts a scholarship valued over two hundred dollars ($200.00) from a person exempted or not covered by this Article, the person granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person granting the scholarship, the name of the covered person or legislative employee accepting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the covered person or legislative employee accepting the scholarship shall be responsible for filing the report.

(e) This section shall not apply to any of the following:

(1) Lawful campaign contributions.

(2) Any gift from a family member to a covered person or legislative employee.

(3) Gifts associated primarily with the covered person's, legislative employee's, or that person's immediate family member's nonlegislative employment.

(4) Gifts, other than food, beverages, travel, and lodging, which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(f) Reports required by this section shall be filed by the end of the quarter following the expenditure with the Secretary of State in a manner prescribed by the Secretary of State, including electronically.

"**§ 120-47.9. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no legislative lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as a legislative or executive lobbyist for a period of two years following ~~his~~ conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for willful false or incomplete reporting up to five thousand dollars ($5,000) per violation.

"**§ 120-47.10. Enforcement of Article by Attorney General.**

The Secretary of State shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon ~~complaint made to him of violations of this Article,~~ complaint, make an appropriate investigation thereof, and ~~he~~ the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

"**§ 120-47.11. Rules and forms.**

The Secretary of State shall ~~make, amend, and rescind~~adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article.

"**§ 120-47.12. Limitations on agency legislative ~~liaisons.~~liaison personnel.**

(a) No ~~principal~~ State department may use State funds to contract with persons who are not employed by the State to lobby the General Assembly.

(b) No more than two persons in each ~~principal~~ State department and constituent institution of The University of North Carolina may be registered to lobby the General Assembly or designated as legislative ~~liaisons~~ liaison personnel pursuant to this Article.

(c) All persons designated as legislative liaison personnel pursuant to this Article and the State department or constituent institution of The University of North Carolina that employs the legislative liaison personnel shall report all expenditures made for lobbying purposes in the same manner as required for legislative lobbyists under G.S. 120-47.6 and lobbyists' principals under G.S. 120-47.7."

SECTION 2. Chapter 147 of the General Statutes is amended by adding a new Article to read:

"Article 4C.

"Executive Branch Lobbying.

"**§ 147-54.31. Definitions.**

The following definitions shall apply in this Article:

(1) The term "executive action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, adoption, tabling, postponement, defeat, or rejection of a rule, regulation, executive order, policy, resolution, contract, request for proposal, amendment, motion, report, nomination, or appointment by the executive branch or by a member or employee of the executive

branch acting or purporting to act in an official capacity. This term shall not include any action by an attorney representing a client with respect to the executive action.

(2) The term "executive branch officers" means the Governor, any member of the Council of State, and heads of those departments listed in G.S. 143-6, and the Board of Governors and the presidents of the universities of The University of North Carolina System.

(3) The term "executive lobbyist" means any lobbyist for or against executive action.

(4) The term "expenditure" means any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge, or thing of value greater than ten dollars ($10.00), or a contract, agreement, promise, or other obligation whether or not legally enforceable, that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of an executive branch officer or that person's immediate family member.

(5) The term "immediate family member" means spouse, descendant or ascendant.

(6) The term "lobbying" means any of the following:

a. Influencing or attempting to influence executive action through direct communication or activities with an executive branch officer.

b. Solicitation of others by an executive lobbyist or lobbyist's principal to influence executive action.

c. Developing executive goodwill through communications or activities with an executive branch officer or that person's immediate family with the intention of influencing current or future executive action, but does not include communications or activities with executive branch officers or that person's immediate family member in a business, civic, religious, fraternal, or commercial relationship which is not connected to executive action.

(7) The term "lobbyist" means an individual who meets any of the following criteria:

a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of lobbying.

b. Represents another person and receives compensation for the purpose of lobbying.

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 147-54.40. For the purpose of determining whether an individual is an executive lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these

expenses shall be considered compensation if a significant part of the individual's duties involves executive lobbying.

(8) The terms "lobbyist's principal" and "principal" mean the person on whose behalf the executive lobbyist lobbies. In the case where a lobbyist is compensated by a law firm, consulting firm, or other entity retained by a person for executive lobbying, the principal is the person whose interests the lobbyist represents in lobbying.

(9) The term "person" means any individual, firm, partnership, committee, association, corporation, business entity, or any other organization or group of persons which has an independent legal existence.

"**§ 147-54.32. Registration procedure.**

(a) An executive lobbyist shall file a registration statement with the Secretary of State before engaging in any lobbying in a manner prescribed by the Secretary of State. It shall be unlawful for a person to lobby without registering unless exempted by this Article. A separate registration statement is required for each lobbyist's principal. The registration shall indicate whether it is registration as a legislative lobbyist, executive lobbyist, or both, and a separate registration fee shall be paid for each separate type of registration.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, and complete address and telephone number; the registrant's place of business; the full name and complete address and telephone number of each person by whom the registrant is employed or retained; and a general description of the matters on which the registrant expects to act as an executive lobbyist. The Secretary of State shall make available as soon as practicable the registrations of the lobbyists and lobbyists' principals in an electronic, searchable format.

(c) Each executive lobbyist shall file an amended registration form with the Secretary of State no later than 10 days after any change in the information supplied in the executive lobbyist's last registration under subsection (b). Each supplementary registration shall include a complete statement of the information that has changed.

(d) Each registration statement of an executive lobbyist required under this Article shall be effective from the date of filing until January 1 of the following year. The executive lobbyist shall file a new registration statement after that date.

"**§ 147-54.33. Registration fee.**

(a) Every lobbyist's principal shall pay to the Secretary of State a fee of one hundred dollars ($100.00) that is due and payable by either the executive lobbyist or the lobbyist's principal at the time of registration. If the executive lobbyist is also registering as a legislative lobbyist for that lobbyist's principal, the fee shall be seventy-five dollars ($75.00) to register as an executive lobbyist.

(b) A separate registration, together with a separate registration one hundred dollars ($100.00 is required for each lobbyist's principal for which a person acts as a legislative lobbyist. No lobbyist's principal shall be charged a registration fee for legislative lobbyist more than one time per year.

(c) All fees shall be paid to the Department of the Secretary of State and deposited into the Lobbyist Registration Fund to be used to pay the costs incurred in administering and enforcing this Article.

(d) The Secretary of State may allow fees required under this section to be paid electronically, but may not require those fees to be paid electronically.

"**§ 147-54.34. Written authority from lobbyist's principal to be filed.**

Each executive lobbyist shall file with the Secretary of State within 10 days after the executive lobbyist's registration a written authorization to act as such, signed by the lobbyist's principal.

"**§ 147-54.35. Contingency lobbying fees and election influence prohibited.**

(a) No person shall act as an executive lobbyist for compensation that is dependent upon the result or outcome of any executive action.

(b) No executive lobbyist or executive lobbyist's principal shall attempt to influence the action of an executive branch officer by the promise of financial support of the executive branch officer's candidacy or appointment, or by threat of financial support in opposition to the executive branch officer's candidacy in any future election or future re-appointment.

"**§ 147-54.36. Exemptions and inclusions for reporting purposes.**

(a) For purposes of G.S. 147-54.37 and G.S. 147-54.38, the following expenditures need not be reported:

(1) Gifts from an immediate family member or person who is the child, stepchild, parent, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild of the executive branch officer.

(2) Lawful campaign contributions.

(b) For purposes of G.S. 147-54.37 and G.S. 147-54.38, all expenditures made for the purpose of lobbying need to be reported, including:

(1) Expenditures benefiting or made on behalf of an executive branch officer or that person's immediate family members, in the regular course of that person's nonexecutive employment.

(2) Contractual arrangements or direct business relationships between an executive lobbyist or executive lobbyist's principal and an executive branch officer or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Amounts reimbursed to an executive lobbyist in the ordinary course of business by the lobbyist's principal or other employer.

"**§ 147-54.37. Statements of executive lobbyist's lobbying expenditures required.**

(a) Each executive lobbyist shall file quarterly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State, including electronically, with respect to each lobbyist's principal within 10 days after the end of the reporting period. The expenditure report shall include all expenditures during the reporting period. The executive lobbyist shall file an expenditure report whether or not expenditures are made.

(b) Each expenditure report shall set forth the amount, date, a description of the expenditure, name and address of the payee, and name of any executive branch officer, or that person's immediate family member benefiting by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Solicitation of others to lobby.
(6) Other expenditures.

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public inspection upon filing. When more than 15 executive branch officers benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of executive branch officers benefiting and, with particularity, the basis for their selection. The approximate number of immediate family members who benefited from the expenditure shall be listed separately.

(d) When an executive lobbyist fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the executive lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the executive lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all registrations of an executive lobbyist under this Article. No executive lobbyist may register or reregister under this Article until the executive lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate complete and timely disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes.

"**§ 147-54.38. Statements of lobbyist's principal lobbying expenses required.**

(a) Each executive lobbyist's principal shall file quarterly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State including electronically, within 10 days after the end of the reporting period. The expenditure report shall include all expenditures during the reporting period. The lobbyist's principal shall file an expenditure report whether or not expenditures are made during a reporting period.

(b) Each expenditure report shall set forth the amount, date, a description of the expenditure, name and address of the payee, and name of any executive branch officers,

or that person's immediate family member affected by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Solicitation of others to lobby.
(6) Other expenditures.

(c) All reports shall be in the form prescribed by the Secretary of State and open to public inspection upon filing. When more than 15 executive branch officers benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of executive branch officers benefiting and, with particularity, the basis for their selection. The approximate number of immediate family members who benefited from the expenditure shall be listed separately.

(d) When a lobbyist's principal fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all registrations of an executive lobbyist under this Article. No executive lobbyist may register or reregister under this Article until the executive lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate complete and timely disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes.

"**§ 147-54.39. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under G.S. 147-54.37 and G.S. 147-54.38 on a regular basis to assure complete and timely disclosure of expenditures.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.

"**§ 147-54.40. Persons exempted from provisions of Article.**

Except as otherwise provided in this Article, the provisions of this Article shall not be construed to apply to any of the following:

(1) An individual solely engaged in expressing a personal opinion on an executive action and not acting as an executive lobbyist.

(2) A person appearing before a committee, commission, board, council, or other collective body at the invitation or request of the collective body or a member thereof and who engages in no further activities as an executive lobbyist in connection with that or any other executive action.

(3) A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district, or other governmental agency, when appearing solely in connection with matters pertaining to the office and its public duties.

(4) A person performing professional services in advising and rendering opinions to clients, or executive branch officers on behalf of clients, as to the construction and effect of proposed or pending executive action where the professional services are not otherwise connected with executive action.

(5) A person who owns, publishes, or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium as defined in G.S. 8-53.11.

(6) A person responding to inquiries from an executive branch officer and who engages in no further activities as an executive lobbyist in connection with that or any other executive action.

(7) A person appearing before an executive branch agency or department on behalf of another person, on an individual application for a license or permit, or a disciplinary action on a license or permit.

(8) An employee who represents the employer's interests in executive action for no more than six hours during a six-month reporting period, provided that neither the employee nor the employer make any expenditure as defined in G.S. 147-54.31.

"**§ 147-54.41. Expenditures made by persons exempted or not covered by this Article.**

(a) If an executive branch officer accepts an expenditure made for the purpose of lobbying valued over two hundred dollars ($200.00) from a person exempted or not covered by this Article, the person making the expenditure shall report the date, a description of the expenditure, the name and address of the person making the expenditure, the name of the executive branch officer accepting the expenditure, and the estimated fair market value of the expenditure.

(b) If the person making the expenditure in subsection (a) of this section is outside North Carolina, the executive branch officer accepting the expenditure shall be responsible for filing the report.

(c) If a covered person or a legislative employee accepts a scholarship valued over two hundred dollars ($200.00) from a person exempted or not covered by this Article, the person granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person granting the scholarship, the name of the executive branch officer accepting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the covered person or legislative employee accepting the scholarship shall be responsible for filing the report.

(e) This section shall not apply to any of the following:

(1) Lawful campaign contributions.

(2) Any gift from a family member to a covered person or legislative employee.

(3) Gifts associated primarily with the executive branch officer's or that person's immediate family member's nonexecutive employment.

(4) Gifts, other than food, beverages, travel, and lodging, received by an executive branch officer which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(f) Reports required by this section shall be filed by the end of the quarter following the expenditure with the Secretary of State in a manner prescribed by the Secretary of State, including electronically.

"**§ 147-54.42. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no executive lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as an executive or legislative lobbyist for a period of two years following conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for willful false or incomplete reporting up to five thousand dollars ($5,000) per violation.

"**§ 147-54.43. Enforcement of Article by Attorney General.**

The Secretary of State shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60, of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

"**§ 147-54.44. Rules and forms.**

The Secretary of State shall adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article."

SECTION 3. Article 4 of Chapter 147 of the General Statutes is amended by adding a new section to read:

"**§ 147-54.8. No gifts registry.**

(a) The Secretary of State shall establish a 'No Gifts' registry for persons subject to Article 9A of Chapter 120 of the General Statutes or Article 4C of this Chapter. The 'No Gifts' registry shall be published and updated with the list of lobbyists and lobbyists' principals required under G.S. 120-47.2.

(b) Executive lobbyists, legislative lobbyists, and lobbyists' principals shall not give gifts to persons placing their names on the registry.

(c) The Secretary shall have the authority to adopt rules to implement this section in compliance with the following criteria:

(1) The registration is valid from the time the person registers until January 1 of the following year, unless the person requests in writing the removal of that person's name.

(2) The registration shall be in writing.

(d) For purposes of this section, the term "gift" means any payment, entertainment, advance, services, forgiveness of an obligation or debt, or thing of value, unless consideration of equal or greater value has been given therefor."

SECTION 4. There is appropriated from the General Fund to the Office of the Secretary of State the sum of two hundred thousand dollars ($200,000) for the 2005-2006 fiscal year to provide for the enforcement personnel, administrative staff, and expenses necessary to implement this act.

SECTION 5. There is appropriated from the General Fund to the Office of the Secretary of State the sum of one hundred twelve thousand dollars ($112,000) for the 2005-2006 fiscal year to provide for the implementation of electronic filing of all lobbyists' and lobbyists' principals' reports required under Article 9A of Chapter 120 of the General Statutes and to provide public access via the Internet to all these filings. The Secretary of State shall implement electronic filing of all lobbyists' and lobbyists' principals' reports required under Article 9A of Chapter 120 of the General Statutes and provide public access via the Internet to all these filings as soon as practicable.

SECTION 6. Sections 4, 5, and 6 of this act become effective July 1, 2005. G.S. 120-47.7C(d), as enacted by Section 1 of this act, shall apply to appointments made on or after January 1, 2007. The remainder of this act becomes effective January 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 5

SENATE BILL 612*
Judiciary I Committee Substitute Adopted 3/31/05
Finance Committee Substitute Adopted 4/11/05
Fourth Edition Engrossed 4/14/05
House Committee Substitute Favorable 7/20/05

Short Title: Amend Lobbying Laws. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LOBBYING LAWS BY INCREASING THE INFORMATION REQUIRED TO BE REPORTED ON LOBBYING ACTIVITIES AND BY REQUIRING REPORTING OF LOBBYING ACTIVITIES OF EXECUTIVE BRANCH OFFICERS, AND TO APPROPRIATE FUNDS TO IMPLEMENT THE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9A of Chapter 120 of the General Statutes reads as rewritten:

"Article 9A.

"Legislative Branch Lobbying.

"**§ 120-47.1. Definitions.**

~~For the purposes of this Article, the following terms shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:~~The following definitions shall apply in this Article:

(1) The term "covered person" means a legislator, the Governor, or the Lieutenant Governor.

~~(1)~~(1a) The ~~terms "contribution," "compensation" and~~ term "expenditure" ~~mean~~ means any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge or ~~anything~~ thing of value greater than ten dollars ($10.00), ~~and any~~or ~~contract~~a contract, agreement, promise or other obligation whether or not legally enforceable, ~~but those terms do not include prizes, awards, or compensation not exceeding one hundred dollars ($100.00) in a calendar year.~~that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of a

covered person, legislative employee, or that person's immediate family member.

(1b) The term "executive lobbyist" means a lobbyist registered pursuant to Article 4C of Chapter 147 of the General Statutes.

(2), (3) Repealed by Session Laws 1991, c. 740, s. 1.1.

(3a) The term "immediate family member" means spouse, descendant, or ascendant.

(4) The term "legislative action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter by the legislature or by a member or employee of the legislature acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.

(4a) The term "legislative employee" means employees and officers of the General Assembly.

(4b) The term "legislative liaison personnel" means any State ~~officer or employee~~officer whose principal ~~duties~~ duties, in practice or as set forth in that person's job ~~description~~ description, ~~involve~~ include lobbying the General Assembly.

(4c) The term "legislative lobbyist" means any lobbyist for or against legislative action.

(4d) The term "legislator" means a member of the General Assembly or a person elected or appointed a member of the General Assembly prior to taking office.

(5) The term "lobbying" ~~means:~~means any of the following:

a. Influencing or attempting to influence legislative action through direct ~~oral or written~~ communication or activities with a ~~member of the General Assembly; or~~covered person, legislative employee, or that person's immediate family member.

b. Solicitation of others by legislative lobbyists or lobbyists' principals to influence legislative action.

c. Developing goodwill through communications or activities with a covered person, legislative employee, or that person's immediate family with the intention of influencing current or future legislative action, but does not include communications or activities with a covered person, legislative employee, or that person's immediate family member in a business, civic, religious, fraternal, or commercial relationship which is not connected to legislative action.

(6) The term "lobbyist" means an individual ~~who:~~who meets any of the following criteria:

a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of ~~lobbying; or~~lobbying.

b. Represents another person and receives compensation for the purpose of lobbying.

c. Is legislative liaison personnel.

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 120-47.8. For the purpose of determining whether an individual is a lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involve lobbying before the General Assembly.

(7) The terms "lobbyist's principal" and "principal" mean the ~~entity in~~person on whose behalf the legislative lobbyist ~~influences or attempts to influence legislative action.~~lobbies. In the case where a lobbyist is employed by a law firm, consulting firm, or other entity retained by a person for legislative lobbying, the principal is the person whose interests the lobbyist represents in lobbying.

(8) The term "person" means any individual, firm, partnership, committee, association, corporation, business entity, or any other organization or group of ~~persons.~~persons which has an independent legal existence.

(9) The General Assembly is in "regular session" from the date set by law or resolution that the General Assembly convenes until the General Assembly either:

a. Adjourns sine die; or

b. Recesses or adjourns for more than 10 days.

"**§ 120-47.2. Registration procedure.**

(a) A legislative lobbyist shall file a registration statement with the Secretary of State before engaging in any ~~lobbying.~~lobbying, in a manner prescribed by the Secretary of State. It shall be unlawful for a person to lobby without registering unless exempted by this Article. A separate registration statement is required for each lobbyist's principal. The registration shall indicate whether it is registration as a legislative lobbyist, executive lobbyist, or both, and a separate registration fee shall be paid for each separate type of registration.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, ~~and~~ complete ~~address;~~address and telephone number; the registrant's place of business; the full ~~name and~~name, complete address and telephone number of each person by whom the registrant is employed or retained; and a general description of the matters on which the registrant expects to act as a legislative lobbyist. The Secretary of State shall make available as soon as

practicable the registrations of the lobbyists and lobbyists' principals in an electronic, searchable format.

(c) Each legislative lobbyist shall ~~register again~~file an amended registration form with the Secretary of State no later than 10 days after any change in the information supplied in ~~his~~ the legislative lobbyist's last registration under subsection (b). Each supplementary registration shall include a complete statement of the information that has changed.

(d) Within 20 days after the convening of each session of the General Assembly, the Secretary of State shall furnish each member of the General Assembly and the State Legislative Library a list of all persons who have registered as executive or legislative lobbyists and whom they represent. Within 20 days after the beginning of the term of a Governor, the Secretary of State shall furnish the Governor, each other member of the Council of State, the head of each principal department of the Executive Branch, and the State Legislative Library a list of all persons who have registered as executive or legislative lobbyists and whom they represent. A supplemental list of legislative lobbyists shall be furnished periodically each 20 days thereafter as the session progresses. A supplemental list of executive lobbyists shall be furnished periodically each 60 days thereafter. All lists required by this section may be furnished electronically.

(e) Each registration statement of a legislative lobbyist required under this Article shall be effective from the date of filing until January 1 of the following ~~odd-numbered~~ year. The legislative lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

"**§ 120-47.3. Registration fee.**

(a) Every lobbyist's principal shall pay to the Secretary of State a fee of ~~two hundred dollars ($200.00)~~ one hundred dollars ($100.00) that is due and payable by either the legislative lobbyist or the lobbyist's principal at the time of registration. If the legislative lobbyist is also registering as an executive lobbyist for that lobbyist's principal, the fee shall be seventy-five dollars ($75.00) to register as a legislative lobbyist.

(b) A separate registration, together with a separate registration fee of ~~two hundred dollars ($200.00)~~ one hundred dollars ($100.00) is required for each lobbyist's principal for which a person acts as a legislative lobbyist. If the lobbyist's principal is also registering under Article 4C of Chapter 147 of the General Statutes, the fee shall be seventy-five dollars ($75.00).

(c) ~~Fees so collected shall be deposited in the General Fund of the State.~~ All fees shall be paid to the Department of the Secretary of State and deposited into the Lobbyist Registration Fund to be used to pay the costs incurred in administering and enforcing this Article.

(d) The Secretary of State may prescribe that fees required under this section may be paid electronically, but may not require that fees be paid electronically.

"**§ 120-47.4. Written authority from lobbyist's principal to be filed.**

Each legislative lobbyist shall file with the Secretary of State within 10 days after ~~his~~ the legislative lobbyist's registration a written authorization to act as such, signed by the lobbyist's principal.

"§ 120-47.5. Contingency lobbying fees and election influence prohibited.

(a) No person shall act as a legislative lobbyist for compensation that is dependent upon the result or outcome of any legislative action. ~~which is dependent in any manner upon the passage or defeat of any proposed legislation or upon any other contingency connected with any action of the General Assembly, the House, the Senate or any committee thereof.~~

(b) No ~~person~~ legislative lobbyist or legislative lobbyist's principal shall attempt to influence the action of any ~~member of the General Assembly~~ covered person by the promise of financial support of the ~~member's~~covered person's candidacy, or by threat of financial ~~contribution~~ support in opposition to the ~~member's~~ covered person's candidacy in any future election.

"§ 120-47.5A. Exemptions and inclusions for reporting purposes.

(a) For purposes of G.S. 120-47.6 and G.S. 120-47.7, the following expenditures need not be reported:

(1) Gifts from an immediate family member or person who is the child, stepchild, parent, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild of the covered person or legislative employee.

(2) Lawful campaign contributions.

(b) For purposes of G.S. 120-47.6 and G.S. 120-47.7, all expenditures made for the purpose of lobbying shall be reported, including the following:

(1) Expenditures benefiting or made on behalf of a covered person, a legislative employee, or those persons' immediate family members in the regular course of that person's nonlegislative employment.

(2) Contractual arrangements or direct business relationships between a legislative lobbyist or legislative lobbyist's principal and a covered person, legislative employee, or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Amounts reimbursed by a principal to a legislative lobbyist in the ordinary course of business by the lobbyist's principal or other employer.

"§ 120-47.6. Statements of legislative lobbyist's lobbying ~~expenses~~ expenditures required.

(a) Each legislative lobbyist shall file ~~an expense report with the Secretary of State with respect to each principal within 60 days after the last day of the regular session. This expense report shall include all expenditures made between January 1 and the last day of the regular session. The lobbyist shall file a supplemental report including all expenditures made after the last day of the regular session, but during the calendar year, by February 28 of the following year.~~ monthly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State

including electronically, with respect to each lobbyist's principal, while the General Assembly is in regular session, and quarterly thereafter. The expenditure report shall include all expenditures during the reporting period and shall be due 10 business days after the end of the reporting period. The legislative lobbyist shall file ~~both~~ expense reports whether or not expenditures are made.

(b) Each ~~expense~~ expenditure report shall set forth the ~~date of each expenditure, to whom paid, the name of any legislator who benefitted from each expenditure, and the amount of each expenditure made during the previous reporting period in connection with lobbying, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty-five dollars ($25.00) and (6) contributions made, paid, incurred or promised, directly or indirectly. It shall not be necessary to report expenditures of twenty-five dollars ($25.00) or less, nor shall it be necessary to report any expenditures made in connection with the attendance of a legislator at any fund-raising function or event sponsored by a nonprofit organization qualified under 26 U.S.C. § 501(c). When more than 10 members of the General Assembly benefitted or were invited to benefit from an expenditure, the lobbyist shall not be required to report the name of any legislator, but shall be required to report the number of legislators or, with particularity, the basis for their selection.~~amount, date, a description of the expenditure, name and address of the payee, and name of any covered person, legislative employee, or that person's immediate family member benefiting from the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Solicitation of others to lobby.
(6) Other expenditures.

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public ~~inspection.~~inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of legislative employees and immediate family members of covered persons and legislative employees who benefited from the expenditure shall be listed separately.

(d) When a legislative lobbyist fails to file ~~a lobbying expense~~an expenditure report as required ~~herein,~~in this section, the Secretary of State shall send a certified or registered letter advising the legislative lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the legislative lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an

additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an ~~expense~~ expenditure report in one of the manners prescribed ~~herein~~ in this section shall result in revocation of any and all registrations of a legislative lobbyist under this Article. No legislative lobbyist may register or reregister under this Article until ~~he~~ the legislative lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes.

"**§ 120-47.7. Statements of legislative lobbyist's principal lobbying ~~expenses~~ expenditures required.**

(a) Each legislative lobbyist's principal shall file ~~an expense report with the Secretary of State within 60 days after the last day of the regular session. This expense report shall include all expenditures made between January 1 and the last day of the regular session. The 'principal shall file a supplemental expense report, including all expenditures made after the last day of the regular session, but during the calendar year, by February 28 of the following year.~~ monthly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State including electronically, while the General Assembly is in regular session, and quarterly thereafter. The expenditure report shall include all expenditures during the reporting period, and shall be due 10 business days after the end of the reporting period. The lobbyist's principal shall file ~~both expense~~ the expenditure reports whether or not expenditures are made during a reporting period.

(b) Each ~~expense~~ expenditure report shall set forth the ~~name and address of each lobbyist employed, appointed, or retained by the lobbyist's principal, the date of each expenditure made, to whom paid, name of any legislator who benefitted from each expenditure, and amount of each expenditure made during the previous reporting period in connection with lobbying, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty-five dollars ($25.00), (6) contributions made, paid, incurred or promised, directly or indirectly, and (7) compensation to lobbyists in connection with their lobbying activities. It shall not be necessary to report expenditures of twenty-five dollars ($25.00) or less, nor shall it be necessary to report any expenditures made in connection with the attendance of a legislator at any fund-raising function or event sponsored by a nonprofit organization qualified under 26 U.S.C. § 501(c). When more than 10 members of the General Assembly benefitted or were invited to benefit from an expenditure, the principal shall not be required to report the name of any legislator, but shall be required to report the number of legislators or the basis for their selection. In~~

~~the category of compensation to lobbyists the principal shall estimate and report the compensation paid or promised directly or indirectly, to all lobbyists based on the estimated time, effort and expense in connection with lobbying activities on behalf of the principal. If a lobbyist is a full-time employee of the principal, or is compensated by means of an annual fee or retainer, the principal shall estimate and report the portion of all such lobbyists' salaries or retainers that compensate the lobbyists for lobbying.~~ amount, date, a description of the expenditure, name and address of the payee, and name of any covered person, legislative employee, or that person's immediate family member affected by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Solicitation of others to lobby.
(6) The compensation paid or agreed to be paid to all legislative lobbyists. If a legislative lobbyist is a full-time employee of the lobbyist's principal, or is compensated by means of an annual fee or retainer, the lobbyist's principal shall estimate and report the portion of the salary or retainer that compensates for direct and indirect lobbying. The lobbyist's principal's expenditure report shall include an itemized description of all expenditures reimbursed or paid to legislative lobbyists for lobbying that are not reported on the legislative lobbyists' reports. For purposes of this subsection, amounts reimbursed in the ordinary course of business shall be considered compensation if a significant part of the individual's duties involves legislative lobbying, whether reimbursed by the principal or another source.
(7) Other expenditures.

(c) All reports shall be in the form prescribed by the Secretary of State and open to public ~~inspection.~~inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of legislative employees and immediate family members of covered persons and legislative employees who benefited from the expenditure shall be listed separately.

(d) When a lobbyist's principal fails to file ~~a lobbying expense~~an expenditure report as required ~~herein,~~in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall

deliver or post by United States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section. Failure to file an expenditure report in one of the manners prescribed in this section shall result in revocation of any and all registrations of a lobbyist's principal under this Article. No lobbyist's principal may register or reregister under this Article until the lobbyist's principal has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes.

"**§ 120-47.7B. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic audits of reports required to be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.

"**§ 120-47.7C. Prohibitions.**

(a) No member or former member of the General Assembly may be employed as an executive or legislative lobbyist by a lobbyist's principal to lobby as defined in this Article or Article 4C of Chapter 147 of the General Statutes within one year after the expiration of the term for which the member was elected or appointed to serve.

(b) No person serving as Governor, as a member of the Council of State, or as a head of a principal State department listed in G.S. 143B-6 may be employed as an executive or legislative lobbyist by a lobbyist's principal to lobby as defined in this Article or Article 4C of Chapter 147 of the General Statutes within one year after separation from employment or leaving office, whichever is later.

(c) No individual registered as a legislative lobbyist shall serve as a campaign manager or a campaign treasurer under Chapter 163 of the General Statutes for a campaign for election as a member of the General Assembly.

(d) A legislative or executive lobbyist shall not be eligible for appointment to any board, authority, commission, or other body established by the laws of this State that regulates the activities of a person that the lobbyist represented within one year after the expiration of the lobbyist's registration.

(e) No legislative or executive lobbyist or another acting on the lobbyist's behalf shall permit a covered person, legislative employee, executive branch officer, or that person's immediate family member to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure.

"**§ 120-47.8. Persons exempted from provisions of Article.**

~~The~~ Except as otherwise provided in this Article, the provisions of this Article shall not be construed to apply to any of the following:

(1) An ~~individual, not acting as a lobbyist,~~ individual solely engaged in expressing a personal opinion or stating facts or recommendations on legislative matters to ~~his own legislative delegation or other~~ members of the General Assembly.

(2) A person appearing before a legislative committee at the invitation or request of the committee or a member thereof and who engages in no further activities as a legislative ~~lobbyist in connection with that or any other legislative matter.~~lobbyist.

(3) a. A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to ~~his~~ the office and public duties.

b. Notwithstanding the persons exempted in this Article, the Governor, Council of State, and all appointed heads of State departments, agencies and institutions, shall designate all authorized official legislative liaison personnel and shall file and maintain current lists of designated legislative liaison personnel with the Secretary of ~~State and shall likewise file with the Secretary of State a full and accurate accounting of all money expended on lobbying, other than the salaries of regular full-time employees, at the same times lobbyists are required to file expense reports under G.S. 120-47.6.~~State.

(4) A person performing professional services in drafting bills or in advising and rendering opinions to clients, or to ~~legislators~~ covered persons on behalf of clients, as to the construction and effect of proposed or pending legislation where the professional services are not ~~otherwise, directly or indirectly,~~ otherwise connected with legislative action.

(5) A person who owns, publishes or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.

(6) Repealed by Session Laws 1991, c. 740, s. 1.1.

(7) ~~Members of the General Assembly.~~Covered persons and legislative employees.

(8) A person responding to inquiries from a member of the General Assembly or a legislative employee, and who engages in no further

activities as a legislative lobbyist in connection with that or any other legislative matter.

(9) ~~An individual giving facts or recommendations pertaining to legislative matters to his own legislative delegation only.~~An employee who represents the employer's interests in legislative action for no more than three hours in a quarter, provided that neither the employee nor the employer makes any expenditure as defined in G.S. 120-47.1.

"**§ 120-47.8A. Expenditures made by persons exempted or not covered by this Article.**

(a) If a covered person or a legislative employee accepts an expenditure made for the purpose of lobbying valued over two hundred dollars ($200.00) from a person exempted or not covered by this Article, the person making the expenditure shall report the date, a description of the expenditure, the name and address of the person making the expenditure, and the estimated fair market value of the expenditure.

(b) If the person making the expenditure in subsection (a) of this section is outside North Carolina, the covered person or legislative employee accepting the expenditure shall be responsible for filing the report.

(c) If a covered person or a legislative employee accepts a scholarship valued over two hundred dollars ($200.00) from a person exempted or not covered by this Article, the person granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person granting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the covered person or legislative employee accepting the scholarship shall be responsible for filing the report.

(e) This section shall not apply to any of the following:

(1) Lawful campaign contributions.

(2) Any gift from a family member to a covered person or legislative employee.

(3) Gifts associated primarily with the covered person, legislative employee, or that person's immediate family member's nonlegislative employment.

(4) Gifts, other than food, beverages, travel, and lodging, which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(f) Reports required by this section shall be filed by the end of the quarter following the gift with the Secretary of State in a manner prescribed by the Secretary of State, including electronically.

"**§ 120-47.9. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no legislative lobbyist who is convicted of a violation

of the provisions of this Article shall in any way act as a legislative or executive lobbyist for a period of two years following ~~his~~ conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for willful false or incomplete reporting up to five thousand dollars ($5,000) per violation.

"**§ 120-47.10. Enforcement of Article by Attorney General.**

The Secretary of State shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon ~~complaint made to him of violations of this Article,~~ complaint, make an appropriate investigation thereof, and ~~he~~ the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

"**§ 120-47.11. Rules and forms.**

The Secretary of State shall ~~make, amend, and rescind~~adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article.

"**§ 120-47.12. Limitations on agency legislative ~~liaisons.~~liaison personnel.**

(a) No ~~principal~~ State department may use State funds to contract with persons who are not employed by the State to lobby the General Assembly.

(b) No more than two persons in each ~~principal~~ State department and constituent institution of The University of North Carolina may be registered to lobby the General Assembly or designated as legislative ~~liaisons~~ liaison personnel pursuant to this Article.

(c) All persons designated as legislative liaison personnel pursuant to this Article and the State department or constituent institution of The University of North Carolina who employs the legislative liaison personnel shall report all expenditures made for lobbying purposes in the same manner as required for legislative lobbyists under G.S. 120-47.6 and lobbyists' principals under G.S. 120-47.7."

SECTION 2. Chapter 147 of the General Statutes is amended by adding a new Article to read:

"Article 4C.

"Executive Branch Lobbying.

"**§ 147-54.31. Definitions.**

The following definitions shall apply in this Article:

(1) The term "executive action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, adoption, tabling, postponement, defeat, or rejection of a rule, regulation, executive order, policy, resolution, contract, request for proposal, amendment, motion, report, nomination, or appointment by the executive branch or by a member or employee of the executive branch acting or purporting to act in an official capacity. This term shall not include any action by an attorney representing a client with respect to the executive action.

(2) The term "executive branch officers" means the Governor, any member of the Council of State, and heads of those departments listed

in G.S. 143-6, and the Board of Governors and the presidents of the universities of The University of North Carolina System.

(3) The term "executive lobbyist" means any lobbyist for or against executive action.

(4) The term "expenditure" means any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge, or thing of value greater than ten dollars ($10.00), or a contract, agreement, promise, or other obligation whether or not legally enforceable, that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of an executive branch officer or that person's immediate family member.

(5) The term "immediate family member" means spouse, descendant or ascendant.

(6) The term "lobbying" means any of the following:

a. Influencing or attempting to influence executive action or through direct communication or activities with an executive branch officer.

b. Solicitation of others by an executive lobbyist or lobbyist's principal to influence executive action.

c. Developing executive goodwill through communications or activities with an executive branch officer or that person's immediate family with the intention of influencing current or future executive action, but does not include communications or activities with executive branch officers or that person's immediate family member in a business, civic, religious, fraternal, or commercial relationship which is not connected to executive action.

(7) The term "lobbyist" means an individual who meets any of the following criteria:

a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of lobbying.

b. Represents another person and receives compensation for the purpose of lobbying.

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 147-54.40. For the purpose of determining whether an individual is an executive lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involves executive lobbying.

(8) The terms "lobbyist's principal" and "principal" mean the person on whose behalf the executive lobbyist lobbies. In the case where a lobbyist is employed by a law firm, consulting firm, or other entity

retained by a person for executive lobbying, the principal is the person whose interests the lobbyist represents in lobbying.

(9) The term "person" means any individual, firm, partnership, committee, association, corporation, business entity, or any other organization or group of persons which has an independent legal existence.

"**§ 147-54.32. Registration procedure.**

(a) An executive lobbyist shall file a registration statement with the Secretary of State before engaging in any lobbying in a manner prescribed by the Secretary of State. It shall be unlawful for a person to lobby without registering unless exempted by this Article. A separate registration statement is required for each lobbyist's principal. The registration shall indicate whether it is registration as a legislative lobbyist, executive lobbyist, or both, and a separate registration fee shall be paid for each separate type of registration.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, and complete address and telephone number; the registrant's place of business; the full name and complete address and telephone number of each person by whom the registrant is employed or retained; and a general description of the matters on which the registrant expects to act as an executive lobbyist. The Secretary of State shall make available as soon as practicable the registrations of the lobbyists and lobbyists' principals in an electronic, searchable format.

(c) Each executive lobbyist shall register file an amended registration form with the Secretary of State no later than 10 days after any change in the information supplied in the executive lobbyist's last registration under subsection (b). Each supplementary registration shall include a complete statement of the information that has changed.

(d) Each registration statement of an executive lobbyist required under this Article shall be effective from the date of filing until January 1 of the following year. The executive lobbyist shall file a new registration statement after that date.

"**§ 147-54.34. Written authority from lobbyist's principal to be filed.**

Each executive lobbyist shall file with the Secretary of State within 10 days after the executive lobbyist's registration a written authorization to act as such, signed by the lobbyist's principal.

"**§ 147-54.35. Contingency lobbying fees and election influence prohibited.**

(a) No person shall act as an executive lobbyist for compensation that is dependent upon the result or outcome of any executive action.

(b) No executive lobbyist or executive lobbyist's principal shall attempt to influence the action of an executive branch officer by the promise of financial support of the executive branch officer's candidacy or appointment, or by threat of financial support in opposition to the executive branch officer's candidacy in any future election.

"**§ 147-54.36. Exemptions and inclusions for reporting purposes.**

(a) For purposes of G.S. 147-54.36 and G.S. 147-54.37, the following expenditures need not be reported:

(1) Gifts from an immediate family member or person who is the child, stepchild, parent, sibling, mother-in-law, father-in-law, son-in-law,

daughter-in-law, grandparent, or grandchild of the executive branch officer.

(2) Lawful campaign contributions.

(b) For purposes of G.S. 147-54.36 and G.S. 147-54.37, all expenditures made for the purpose of lobbying need to be reported, including:

(1) Expenditures benefiting or made on behalf of an executive branch officer or that person's immediate family members in the regular course of that person's nonexecutive employment.

(2) Contractual arrangements or direct business relationships between an executive lobbyist or executive lobbyist's principal and an executive branch officer or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Amounts reimbursed by a principal to an executive lobbyist in the ordinary course of business by the lobbyist's principal or other employer.

"**§ 147-54.37. Statements of executive lobbyist's lobbying expenditures required.**

(a) Each executive lobbyist shall file quarterly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State, including electronically, with respect to each lobbyist's principal within 10 days after the end of the reporting period. The expenditure report shall include all expenditures during the reporting period. The executive lobbyist shall file an expenditure report whether or not expenditures are made.

(b) Each expenditure report shall set forth the amount, date, a description of the expenditure, name and address of the payee, and name of any executive branch officer, or that person's immediate family member affected by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.

(2) Entertainment, food, and beverages.

(3) Meetings and events.

(4) Gifts.

(5) Solicitation of others to lobby.

(6) Other expenditures.

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public inspection upon filing. When more than 15 executive branch officers benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of executive branch officers benefiting and, with particularity, the basis for their selection. The approximate number of immediate family members who benefited from the expenditure shall be listed separately.

(d) When an executive lobbyist fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the executive lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the executive lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all registrations of an executive lobbyist under this Article. No executive lobbyist may register or reregister under this Article until the executive lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes.

"**§ 147-54.38. Statements of lobbyist's principal lobbying expenses required.**

(a) Each executive lobbyist's principal shall file quarterly expenditure reports under oath with the Secretary of State within 10 days after the end of the reporting period. The expenditure report shall include all expenditures during the reporting period. The lobbyist's principal shall file an expenditure report whether or not expenditures are made during a reporting period.

(b) Each expenditure report shall set forth the amount, date, a description of the expenditure, name and address of the payee, and name of any executive branch officers, or that person's immediate family member affected by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Solicitation of others to lobby.
(6) Other expenditures.

(c) All reports shall be in the form prescribed by the Secretary of State and open to public inspection upon filing. When more than 15 executive branch officers benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of executive branch officers benefiting and, with particularity, the basis for their selection. The approximate number of immediate family members who benefited from the expenditure shall be listed separately.

(d) When a lobbyist's principal fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all

registrations of an executive lobbyist under this Article. No executive lobbyist may register or reregister under this Article until the executive lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes.

"**§ 147-54.39. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic audits of reports required to be filed under G.S. 147-54.36 and G.S. 147-54.37 on a regular basis.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.

"**§ 147-54.40. Persons exempted from provisions of Article.**

The provisions of this Article shall not be construed to apply to any of the following:

(1) An individual solely engaged in expressing a personal opinion on an executive action.

(2) A person appearing before a committee, commission, board, council, or other collective body at the invitation or request of the collective body or a member thereof and who engages in no further activities as an executive lobbyist in connection with that or any other executive action.

(3) A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district, or other governmental agency, when appearing solely in connection with matters pertaining to the office and its public duties.

(4) A person performing professional services in advising and rendering opinions to clients, or executive branch officers on behalf of clients, as to the construction and effect of proposed or pending executive action where the professional services are not otherwise connected with executive action.

(5) A person who owns, publishes, or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.

(6) A person responding to inquiries from an executive branch officer and who engages in no further activities as an executive lobbyist in connection with that or any other executive action.

(7) A person appearing before an executive branch agency or department on behalf of another person, on an individual application for a license or permit, or a disciplinary action on a license or permit.

(8) An employee who represents the employer's interests in executive action for no more than six hours during a six-month reporting period, provided that neither the employee nor the employer make any expenditure as defined in G.S. 147-54.31.

"**§ 147-54.41. Expenditures made by persons exempted or not covered by this Article.**

(a) If an executive branch officer accepts an expenditure made for the purpose of lobbying valued over two hundred dollars ($200.00) from a person exempted or not covered by this Article, the person making the expenditure shall report the date, a description of the expenditure, the name and address of the person making the expenditure, and the estimated fair market value of the expenditure.

(b) If the person making the expenditure in subsection (a) of this section is outside North Carolina, the executive branch officer accepting the expenditure shall be responsible for filing the report.

(c) If a covered person or a legislative employee accepts a scholarship valued over two hundred dollars ($200.00) from a person exempted or not covered by this Article, the person granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person granting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the covered person or legislative employee accepting the scholarship shall be responsible for filing the report.

(e) This section shall not apply to any of the following:

(1) Lawful campaign contributions.

(2) Any gift from a family member to a covered person or legislative employee.

(3) Gifts associated primarily with the executive branch officer or that person's immediate family member's nonexecutive employment.

(4) Gifts, other than food, beverages, travel, and lodging, received by an executive branch officer which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(f) Reports required by this section shall be filed by the end of the quarter following the gift with the Secretary of State in a manner prescribed by the Secretary of State, including electronically.

"**§ 147-54.42. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no executive lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as an executive or legislative lobbyist for a period of two years following conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for willful false or incomplete reporting up to five thousand dollars ($5,000) per violation.

"**§ 147-54.43. Enforcement of Article by Attorney General.**

The Secretary of State shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60, of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

"**§ 147-54.44. Rules and forms.**

The Secretary of State shall adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article."

SECTION 3. Article 4 of Chapter 147 of the General Statutes is amended by adding a new section to read:

"**§ 147-54.8. No gifts registry.**

(a) The Secretary of State shall establish a 'No Gifts' registry for persons subject to Article 9A of Chapter 120 of the General Statutes or Article 4C of this Chapter. The 'No Gifts' registry shall be published and updated with the list of lobbyists and lobbyists' principals required under G.S. 120-47.2.

(b) Executive lobbyists, legislative lobbyists, and lobbyists' principals shall not give gifts to persons placing their names on the registry.

(c) The Secretary shall have the authority to adopt rules to implement this section in compliance with the following criteria:

(1) The registration is valid from the time the person registers until January 1 of the following year, unless the person requests in writing the removal of that person's name.

(2) The registration shall be in writing.

(d) For purposes of this section, the term "gift" means any payment, entertainment, advance, services, forgiveness of an obligation or debt, or thing of value, unless consideration of equal or greater value has been given therefor."

SECTION 4. There is appropriated from the General Fund to the Office of the Secretary of State the sum of two hundred thousand dollars ($200,000) for the 2005-2006 fiscal year to provide for the enforcement personnel, administrative staff, and expenses necessary to implement this act.

SECTION 5. There is appropriated from the General Fund to the Office of the Secretary of State the sum of one hundred twelve thousand dollars ($112,000) for the 2005-2006 fiscal year to provide for the implementation of electronic filing of all lobbyists' and lobbyists' principals' reports required under Article 9A of Chapter 120 of the General Statutes and to provide public access via the Internet to all these filings. The Secretary of State shall implement electronic filing of all lobbyists' and lobbyists'

principals' reports required under Article 9A of Chapter 120 of the General Statutes and provide public access via the Internet to all these filings as soon as practicable.

SECTION 6. Sections 4, 5, and 6 of this act become effective July 1, 2005. G.S. 120-47.7C(d), as enacted by Section 1 of this act, shall apply to appointments made on or after January 1, 2007. The remainder of this act becomes effective January 1, 2007.

SENATE BILL 612: Amend Lobbying Laws

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 25, 2005
Introduced by:	Sen. Rand	**Summary by:**	R. Erika Churchill
Version:	PCS to Fifth Edition S612-CSSTf-82 v6		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 612 would amend the lobbying laws by including goodwill lobbying, increasing the frequency and details of legislative lobbyists' and lobbyist's principals' reports, and prohibiting a legislator from lobbying during one year following a legislative session to which the legislator was elected or appointed. The bill also creates lobbying laws governing executive branch lobbying.***

CURRENT LAW:

Under current law, a person who is paid to try to influence legislative action (action on a specific bill, resolution, amendment, etc.) is required to register as a lobbyist with the Secretary of State and report at the end of each regular session, expenditures in excess of $25 spent on lobbying legislators. Expenditures spent for the general goodwill of legislators not tied to specific legislative action do not need to be reported, nor do expenditures spent on legislative staff or legislators' family members. There is no limitation on the types or amount of expenditures that at lobbyist can spend on a legislator for lobbying purposes. Every principal who hires the services of a lobbyist also has to file reports on expenditures they made for lobbying, including the amount of compensation paid to lobbyists. Exempt from the lobbying laws are persons who lobby on their own behalf, persons appearing before the General Assembly at the General Assembly's request, elected and appointed local government officials and employees lobbying on behalf of their local governments, State agency legislative liaison personnel, and members of the General Assembly. Violation of this law is punished as a Class 1 misdemeanor.

Currently executive branch lobbying is not regulated.

BILL ANALYSIS:

Section 1 amends the legislative lobbying law in the following ways:

- Includes lobbying the Governor in relation to the Governor's veto.
- Includes developing goodwill as part of the definition of lobbying.
- Permits gifts from lobbyists to their family members who are legislators or legislative employees. Also exempts lawful campaign contributions.
- Defines "expenditure" to include anything of value over $10.
- Expenditures by legislative liaison personnel and State agencies are subject to the same reporting requirements as expenditures by other lobbyists.
- The registration period for a lobbyist is one year, rather than the current two years.
- Increases the frequency of expenditure reports to monthly when the General Assembly is in session, quarterly thereafter.
- Increases the details of lobbying expenditure reports to include the amount, date, a description of the expenditure, name and address of the payee, name of any covered person benefiting from the expenditure (or legislative employee or those person's immediate family members) in each of the following categories:
    - Transportation and lodging
    - Entertainment, food, and beverages
    - Meetings and events
    - Gifts
    - Solicitation of others to lobby
    - Other expenditures

If more than 15 covered persons benefit from the expenditure, the lobbyist may elect to report the approximate number of covered persons benefiting and, with particularity, the basis for their selection. The approximate number of legislative employees and immediate family members shall be reported separately.

The Secretary of State is granted rulemaking authority to facilitate disclosure of expenditures, including the format of the report and additional categories. The rules are also to protect the address of payees under a Chapter 50B protective order or participating in the Address Confidentiality Program.

- The lobbyist's principal must also report, in addition to the expenditures reported by the lobbyist, the compensation paid or agreed to be paid to each lobbyist.
- Prohibits a legislator or former legislator from being employed as a legislative or executive branch lobbyist within 1 year after the expiration of the term for which the legislator was elected or appointed to serve.
- Prohibits the Governor or Council of State member or head of a cabinet department from being employed as a legislative or executive branch lobbyist within 1 year after separation from employment or leaving office, whichever is later.
- Prohibits a lobbyist from serving as a campaign manager or campaign treasurer for a legislative campaign.
- Prohibits a lobbyist from being appointed to body created under State law with regulatory authority over the activities of a person that the lobbyist represented within one year of end of that representation.
- Prohibits a lobbyist from allowing a covered person, legislative employee, or that person's immediate family member to use the lobbyist's cash or credit for the purpose of lobbying without the lobbyist being present at the time of the expenditure.
- An additional exception to the registration and reporting law is made for an employee who represents an employer's interest before the General Assembly for no more than 3 hours in a quarter, and who does not spend money on a legislator, legislative employee or an immediate family member that would otherwise be required to be reported by a registered lobbyist.
- Requires expenditures of $200 made for the purpose of lobbying from persons not required to register and report as lobbyists or lobbyist's principals or more to be reported. If the person giving the gift is in North Carolina, that person shall make the report. If the person giving the gift is outside North Carolina, the person accepting the gift shall make the report. Certain exceptions apply.
- Requires scholarships valued over $200 to be reported.
- Allows for a civil fine up to $5,000 per violation in addition to any criminal penalties.

Section 2 creates a new article to regulate executive branch lobbying much the same as legislative lobbying is regulated with the following differences:

- Lobbying is defined as the influencing of "executive action" which is defined as being the consideration of a rule, regulation, executive order, policy, resolution, contract, request for proposal, nomination or appointment by the Governor, member of the Council of State, heads of the cabinet, and the Board of Governors and university presidents.
- Executive branch lobbying does not include action by an attorney.
- Lobbyist and lobbyist's principals' reports are due every 6 months.
- Prohibits the Governor or a member of the Council of State from acting as a legislative or executive branch lobbyist during the time of the biennial legislative session in which the person served in office.

Section 3 requires the Secretary of State to create a "No Gifts" registry.

Section 4 appropriates $200,000 for the '05-'06 fiscal year to the Secretary of State for personnel and expenses to implement the act.

Section 5 appropriates $112,000 for the '05-'06 fiscal year to the Secretary of State for the implementation of electronic filing of reports required by the act.

EFFECTIVE DATE: The appropriations are effective July 1, 2005. The remainder of the act is effective January 1, 2007.

S0612e5-SMST-CSSTf-82 v6 *O. Walker Regan contributed to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: July 26, 2005

TO: Representative Hackney

FROM: Marilyn Chism
Fiscal Research Division

RE: PCS-S612-CSSTf-82[v.6]

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	**FY 2006-07**	**FY 2007-08**	**FY 2008-09**	**FY 2009-10**
REVENUES:					
General Fund	**$0**	**($466,000)**	**($96,000)**	**($466,000)**	**($96,000)**
Lobbyist Reg. Fund	**Between $192,800 and $289,200 annually, See Assumptions and Methodology**				
EXPENDITURES:					
General Fund					
Correction	**Exact amount cannot be determined, no substantial impact anticipated**				
Judicial	**Exact amount cannot be determined, no substantial impact anticipated**				
Secretary of State	**$150,045**	**$517,486**	**$404,660**	**$404,660**	**$404,660**
		Expenditures will be offset by Lobbyist Registration Fund Revenue			
POSITIONS (cumulative):		**9**	**9**	**9**	**9**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of the Secretary of State, Department of Correction, Judicial Branch

EFFECTIVE DATE: Sections 4, 5, & 6 become effective July 1, 2005. The remainder of the sections is effective January 1, 2007.

BILL SUMMARY: (in pertinent part):

This bill amends the lobbying laws that currently govern legislative lobbying to reduce the registration period from two years to one year and to reduce the fee from $200 per registration to $100 per registration. Under this bill, each lobbyist would be required to file a registration statement for each of its principals. However, the bill would eliminate the requirement that the principal file a separate registration statement for each of its lobbyists. The bill would add new Article 4C to Chapter 147 of the General Statutes to govern executive branch lobbying. The new Article would impose the same registration requirement and fee structure for executive lobbyists and principal registrations as would be provided for the legislative lobbying. The bill, however, would reduce the registration fee to $75 each if a lobbyist registers as a legislative lobbyist and executive lobbyist for the same principal. The bill would require all fees to go to a Lobbyist Registration Fund to be used to offset the cost of administering the Lobbyist Registration Laws.

The bill increases the frequency with which expenditure reports must be filed and it would require the Department of the Secretary of State to perform systematic reviews of the expenditure reports. The Department would also be required to implement a system that allows for electronic filings.

The bill also provides that any willful violation of Articles 9A or 4C of Chapters 120 and 147, respectively, would constitute a Class 1 misdemeanor. Among the activities prohibited in relation to executive or legislative lobbying would be failure to abide by expense and other reporting requirements.

ASSUMPTIONS AND METHODOLOGY:

Fees:

The bill would amend the registration period and registration fees for lobbyists who engage in legislative lobbying. It would also create lobbying laws that govern executive branch lobbying.

Under current law a lobbyist is required to file a separate registration statement with the Secretary of State for each lobbyist's principal before engaging in legislative lobbying. A fee of $200 per registration statement is due at the time of registration. The registration is effective from the date of filing until January 1 of the following ***odd numbered*** year. Thus, it essentially covers a legislative session, which is two years. This bill would make the registration effective from the date of filing until January 1 of the following year, thereby reducing the registration period for a legislative lobbyist from two years to one year. This bill would also require an executive lobbyist to file a registration statement with the Secretary of State for each lobbyist's principal before engaging in executive branch lobbying. The registration period for an executive lobbyist would also be for one year-effective from the date of filing until January 1 of the following year. Under this bill, a $100 fee per registration statement is due at the time of each legislative lobbyist registration, except that if the legislative lobbyist is also registering as an executive lobbyist for the same lobbyist's principal, the registration fee is $75. Similarly, a $100 fee per registration statement is due at the time of each executive lobbyist registration except that if the executive lobbyist is also registering as a legislative lobbyist for the same lobbyist's principal, the registration fee is $75.

Also, under current law, a separate registration, together with a separate registration fee of $200 is required for each lobbyist's principal for which a person acts as a legislative lobbyist. The bill would amend the existing law to require a lobbyist's principal to register only one time rather than once for each lobbyist that works for the principal. The registration fee for the lobbyist's principal is $100 annually.

The bill would also require all fees to be deposited into a Lobbyist Registration Fund to be used by the Secretary of State to pay the cost incurred in administering and enforcing Article 9A of Chapter 120 and Article 4C of Chapter 147. This requirement of the bill would redirect the fees from the General Fund where lobbyists' registration fees are currently deposited.

Based on information provided by the Secretary of State, for the 2004-05 fiscal year, there were approximately 1,255 lobbyist's registrations for the 2005 Session of the General Assembly. In addition to the lobbyist's registrations, there were approximately 673 individual lobbyist's principals. Combining the two groups, Fiscal Research estimates that there would be 1,928 registrations annually. Please note that under current law, a registration can cover both the odd year (Long Session) and the even year (Short Session) of a two-year Legislative Session. Changing the registration from two years to one year, as this bill would, may result in fewer registrations for the even years. However, we have no data upon which to determine the number, if any, of lobbyists and principals that may not register for the even years. Also, there is some data that indicates that there are lobbyists and principals that register for the second year only. Therefore, considering that, under this bill, some registrations will only be for one year of the two-year Legislative Session, our estimate will assume that the number of registrations will remain constant.

This bill would also require executive lobbyists and principals to register. Presently, there is no data upon which to estimate the number of executive lobbyists and principals that may be required to register with the Secretary of State. Fiscal Research, however, believes that it is reasonable to assume that the executive lobbyists and principals will be a subset of the lobbyists and principals that register as legislative lobbyists. Therefore, the 1,928 lobbyists and principals would pay a $100 fee to register as legislative lobbyists/principals ***or*** as executive lobbyists/principals or they would pay $75 to register as a legislative lobbyist/principal ***and*** another $75 to register an executive lobbyist/principal. Fiscal Research therefore estimates that the annual revenue would range from $192,800 (1,928 registrations * $100 -- assuming all 1,928 lobbyists and principals registered for legislative or executive lobbying) to $289,200 (1,928 registrations * $150 -- assuming all 1,928 lobbyists and principals registered for both legislative lobbying and executive lobbying).

Because the bill requires the fees to be deposited to the Lobbyist Registration Fund, there would be a loss of revenue to the General Fund. Currently, there are 2,33 registration relationships for the odd years and another 480 for the even years. Based on these numbers the projected revenue loss to the General Fund is $466,000 in the odd years and $96,000 in the even years.

Operating Expenses – Secretary of State

Under current law, each lobbyist and principal must file two expense reports each year during the Legislative Session for which they have registered. The first report is due within 60 days after the last day of the regular session. The second is a supplemental report that captures expenditures

made after the last day of the regular session but during the calendar year. This bill would require each lobbyist to file monthly expenditure reports with respect to each of its principals while the General Assembly was in regular session and quarterly thereafter. It would also require each principal to file monthly expenditure reports while the General Assembly was in regular session and quarterly thereafter. Executive lobbyists and principals and well as legislative liaisons would be subject to the same reporting requirement.

Under this bill, nine reports would be required in each odd year and six in each even year for each of the 1,928 legislative lobbyist and principal registrations. Four additional reports would be required annually for those who were also registered as executive lobbyists and/or principals. Currently there are approximately 89 legislative liaisons for 52 State entities. This bill would require the 89 liaisons and the 52 State entities that they represent to file nine reports in each odd year and six reports in the even years. Based on this data, Fiscal Research estimates that the Secretary of State will receive between 12,414 and 20,126 reports in each even year and between 18,621 and 26,333 reports in each odd year. Under the bill, the reports could be filed manually or electronically.

	Legislative Lobbying Only			***Legislative and Executive Lobbying***		
	Even Years			**Even Years**		
	# Registrations	# of Reports per Registrations	Total	# Registrations	# of Reports per Registrations	Total
Lobbyists/Principals	1,928	6	11,568	1,928	10	19,280
Liaisons/State Entities	141	6	846	141	6	846
Total			**12,414**			**20,126**
	Odd Years			**Odd Years**		
Lobbyists/Principals	1,928	9	17,352	1,928	13	25,064
Liaisons/State Entities	141	9	1,269	141	9	1,269
Total			**18,621**			**26,333**

The Department of the Secretary of State estimates that it would need 18 additional positions to fulfill the requirements of this bill. This estimates includes funding for the salaries, benefits and operating costs for a Lobbyist Director (grade 78), an Assistant Director/Auditor Supervisor (grade 73), 7 Investigator/Auditors (grade 71), an Assistant Registrar (grade 68), and 8 Administrative Assistant Is (grade 63). The Department believes that this staffing level would allow it to properly oversee and administer the Lobbyist Section, to register and index the legislative and executive registrations and expenditure reports, to respond to public inquiries, to post lobbyist records for public inspection, to publish the lobbyist directories, to perform systematic audits at a rate of 25% of the reports filed each year, and to perform investigatory audits as warranted by complaints and the results of the systematic audits.

The Department also provided an alternative estimate that would require 9 additional positions (instead of 18). The alternative estimate includes funding for the salaries, benefits, and operating costs for a Lobbyist Director (grade 78), an Assistant Director/Auditor Supervisor (grade 73), 1 Investigator/Auditors (grade 71) instead of 7 as included in the Departments preferred estimated,

an Assistant Registrar (grade 68), and 5 Administrative Assistant Is (grade 63) instead of 8 as included in the preferred estimate. With this staffing level, the Department estimates that it could only perform audits as driven by complaints and other indications of possible lobbying misconduct versus performing systematic audits.

The bill would require the Department to perform systematic reviews of the expenditure reports to ensure complete and timely disclosure of expenditures. The Fiscal Research Division believes that the requirements imposed upon the Secretary of State by this bill to review expenditures reports, and make them available for public inspection are very similar to the requirements imposed upon the Campaign Reporting Office of the State Board of Elections by the campaign finance laws prescribed in Articles 22A, 22B, 22C and 22D of Chapter 163 of the North Carolina General Statutes. The Campaign Reporting Office is responsible for the manual auditing of the campaign finance reports filed by over 2,000 political committees, providing public access to the reports, providing assistance to the committees and the county elections staff on the application of the campaign finance laws, maintaining a campaign finance disclosure system, and corresponding with the political committees and county elections staff to ensure timely and accurate compliance with the laws. The Campaign Reporting Office receives at least 2 reports from each political committee in an off-election year and at least 4 reports from each during an election years. In addition, it also receives reports of independent expenditures and 48-hour reports as required by statute. There is 100% auditing of these reports that include adjusting accounting discrepancies, cross-checking data, information validity assurance, and correspondence with the committees based on the audit results. The Office has a staff of 5 permanent full-time positions and 3.25 temporary positions. The 5 permanent staff include a Deputy Director for Campaign Reporting (grade 75), 3 grade 65 level Administrative Assistant IIs who are primarily responsible for the auditing and education responsibilities of the office, and a grade 57 level Office Assistant III position who provides support to the professional staff. The temporary staff employees assist with scanning reports for public inspection and data entry of reports that are filed manually.

Because of the similarities between the requirements imposed upon the Secretary of State by this bill and the existing requirements imposed upon the State Board of Elections' Campaign Reporting Office, Fiscal Research believes that the staffing level and structure that is in place for the Campaign Reporting Office is a reasonable one for the Secretary of State's Lobbyist Section. We therefore estimate that the Secretary of State would need 9 additional positions to fulfill the requirements of this bill. We believe, however, that the 9 positions should include 5 grade level 65 Administrative Assistant II, and 3 grade level 61 Processing Assistant IVs, and 1 grade level 75 Lobbyist Director. The estimated cost for the salaries, benefits, and operating cost for the 9 positions is estimated to be $504,701 for fiscal year 2006-07 and $391,875 for subsequent fiscal years. Se the summary that follows.

Summary of FRD's Estimate of Additional Staffing Needs

	FY 2006-07	FY 2007-08
SPA - Reg Salaries (9 positions)	$245,109	$245,109
Social Security Contributions	$18,751	$18,751
Retirement	$14,253	$14,253
Insurance	$30,888	$30,888
Transportation	$6,000	$6,000
Employee Education & Training	$7,200	$7,200
Telephone Service	$9,000	$1,674
Office Supplies	$9,000	$9,000
Postage	$2,500	$5,000
Rent/Lease-Building/Offices	$54,000	$54,000
Total Recurring	$396,701	$391,875
Office Furniture	$31,100	$0
Office Equipment	$56,200	$0
Personal Computers & Printers	$20,700	$0
Total Non-recurring	$108,000	

The bill also requires the Secretary of State to implement a system that would allow for the electronic filing of all lobbyists' and lobbyists' principals' reports and to provide public access via the Internet to all of the filings. The Secretary of State believes that a more advanced computer program than the one that currently is in place for electronic access to the filings and for the searchable database would be required. To meet the requirements of the bill, the Department would develop a Knowledge Base System for Lobbyist that parallels in-house systems that it has developed for its Uniform Commercial Code and Notary systems. The Departments estimates that the initial cost of developing the system would be $150,045. Recurring maintenance cost would be approximately $12,785 each year thereafter. Fiscal Research believes this approach to developing the system is reasonable.

Civil Penalties

As with existing law, the bill would allow the Secretary of State to impose a late filing fee for each day that a required report is late. The late filing fee is equivalent to the fee set forth in G.S. 163-278.34(a)(2), which is currently $50 per day up to a maximum of $500. Fiscal Research believe that the frequency of untimely filed reports will increase as a result of the increase in the frequency with which the reports must be filed. However, we have no data upon which to estimate the amount of late filing fees that may be imposed.

The bill would also allow the Secretary of State to levy civil penalties in addition to the criminal penalties discussed below for willful false or incomplete reporting up to $5,000. Again, Fiscal Research has no data upon which to estimate the extent to which civil penalties might be levied. We note, however, that any late filing fees or civil penalties would be deposited to the Civil Penalties Fund for the benefit of the public education system.

Criminal Penalties:

This bill would expand the scope of an existing Class 1 misdemeanor for violations related to legislative lobbying and create a new Class 1 misdemeanor for violations related to executive lobbying and would therefore be expected to result in additional charges and convictions. Due to the lack of an Administrative Office of the Courts (AOC) offense code for violations of Chapter 120, no historical data is available with respect to the numbers of charges and convictions for the existing offenses. However, the lack of an offense code is some indication that the existing offenses are infrequently charged and rarely result in convictions. As such, few additional charges and convictions would be expected due to this bill, and no substantial impact is anticipated to result from the criminal penalties in this legislation.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

- In FY 2003-04, 81 percent of Class 1 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Corrections (DCC) would incur costs of $1.87 per offender per day. Offenders sentenced to community service would cost $0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

- The remaining 19 percent of Class 1 misdemeanors resulted in active sentences and the average estimated time served was 31 days.

- Offenders with active sentences of less than ninety days are housed in county jails, and DOC reimburses counties for housing offenders sentenced to between thirty and ninety days at a rate of $18 per day per offender.

- Because most Class 1 misdemeanants serving active time as a result of this bill would be housed in county jails, this legislation is not expected to significantly impact prison population.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Due to the lack of an offense code for current violations of Chapter 120—an indication that there are presently few charges for violations related to legislative lobbying—AOC does not anticipate a

substantial number of new charges to result from this bill. Based on the costs of time in court, attorney preparation time, and indigent defense, the average estimated cost to process one Class 1 misdemeanor via trial is $3,224 per trial and $284 per guilty plea. The trial cost includes an estimated $2,627 in jury fees, costs of time in court, and attorney costs and an additional $2,373 in indigent defense. Based on prior-year data, the majority of any new Class 1 misdemeanor charges are likely to be settled by plea.

SOURCES OF DATA: Department of the Secretary of State, Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒ House Committee Substitute for

SB 612 A BILL TO BE ENTITLED AN ACT TO AMEND THE LOBBYING LAWS BY INCREASING THE INFORMATION REQUIRED TO BE REPORTED ON LOBBYING ACTIVITIES AND BY REQUIRING REPORTING OF LOBBYING ACTIVITIES OF EXECUTIVE BRANCH OFFICERS, AND TO APPROPRIATE FUNDS TO IMPLEMENT THE ACT.

☒ With a favorable report as to House committee substitute bill #2, which changes the title, unfavorable as to House committee substitute bill #1 and recommendation that House committee substitute bill #2 be re-referred to the Committee on APPROPRIATIONS.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 4

AMENDMENT No. _____

H. B. No. _____ DATE _____

S. B. No. 1012 ✓ Amendment No. _____

COMMITTEE SUBSTITUTE _____ (to be filled in by Principal Clerk)

Rep.) Howard
Sen.)

1 moves to amend the bill on page 9, line 32

2 ( ) WHICH CHANGES THE TITLE

3 by _____

4 inserting the following between "Statutes" and

5 "within":

6

7 "or employed full time by a person that the

8 member or former member was a primary

9 sponsor of legislation directly related to

10 that person's business or assisted in

11 securing funding for that person".

12

13

14

15

16

17

18

19

SIGNED _____ Howard

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

ATTACHMENT 5

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 612*

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

S612-AST-62 [v.4]

Date July 27 ,2005

Comm. Sub. [YES]
Amends Title [NO]
S612-CSST-82f v6

Representative Howard

moves to amend the bill on page 9, lines ~~34~~ 33 by inserting the following the end of that line:

"No member or former member of the General Assembly may accept employment or enter into independent contractor agreement with a person for whom the member or former member sponsored or advocated for, on the floor of the Senate or House, legislative action for the direct benefit of that person within the one year after the expiration of the term for which the member was elected or appointed to serve.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

ROLL CALL VOTE

ATTACHMENT 6

12 YES 21 NO = 33 (TOTAL) FAILS Date: 7/27/2005 HB# ____
SB# 612 (PCS)
Amendment # Howard

HOUSE STANDING COMMITTEE ON FINANCE

MEMBER (last name)	YES	NO
Allen		X
Blackwood	X	
Blust		
Bordsen		X
Capps	X	
Carney		X
Daughtridge		
Dockham	X	
England		X
Faison	X	
Fisher		X
Folwell	X	
Glazier		X
Goforth		X
Hackney		X
Harrell		X
Hill		X
Holliman		X
Insko		X
Jones		X
Lewis	X	
Lucas		
McGee	X	
Rayfield		
Ross		X
Underhill		X
Vinson	X	
Walend	X	
Weiss		X
Wiley	X	
Womble		X

MEMBER (last name)	YES	NO
Ex officio Members		
Culpepper		X
Cunningham		
Eddins		
Co-Chairs		
Alexander		X
Gibson		
Howard	X	
Luebke		X
McComas	X	
Wainwright		X

ATTACHMENT 7

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 612*

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

S612-AST-64 [v.1]

Date July 27 ,2005

Comm. Sub. [YES]
Amends Title [NO]
S612-CSSTf-82v6

Representative Hackney

moves to amend the bill on page 4, lines 33-36 by rewriting those lines to read:

"(b) A separate registration, together with a separate registration fee of ~~two hundred dollars ($200.00)~~ one hundred dollars ($100.00), is required for each lobbyist's principal for which a person acts as a legislative lobbyist. No lobbyist's principal may be charged a registration fee for legislative lobbyist more than one time per year.";

and on page 14, lines 40-43 by rewriting those lines to read:

"(b) A separate registration, together with a separate registration fee of one hundred dollars ($100.00), is required for each lobbyist's principal for which a person acts as an executive lobbyist. No lobbyist's principal may be charged a registration fee for executive lobbyist more than one time per year.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 237*
Committee Substitute Favorable 7/6/05

Short Title: Revise Mortgage Lending Act. (Public)

Sponsors:

Referred to:

February 16, 2005

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE MORTGAGE LENDING ACT BY ALLOWING REGISTRATION OF LIMITED LOAN OFFICERS OF DEFINED AFFILIATED MORTGAGE BANKERS AND TO ESTABLISH ADDITIONAL SUPERVISION AND ENFORCEMENT AUTHORITY FOR THE COMMISSIONER OF BANKS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-243.01 reads as rewritten:

"**§ 53-243.01. Definitions.**

The following definitions apply in this Article:

(1) Act as a mortgage broker. – To act, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, by accepting or offering to accept an application for a mortgage loan, soliciting or offering to solicit a mortgage loan, negotiating the terms or conditions of a mortgage loan, issuing mortgage loan commitments or interest rate guarantee agreements to borrowers, or engaging in tablefunding of mortgage loans, whether such acts are done through contact by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers.

(2) Act as a mortgage lender. – To engage in the business of making mortgage loans for compensation or gain.

(2a) Affiliate. – Any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841), et seq., as amended from time to time. For purposes of this subdivision, the term control means ownership of all of the voting stock or comparable voting interest of the controlled person.

(2b) Affiliated mortgage banker. – A licensed mortgage banker that meets the criteria of either sub-subdivisions a., b., and c. of this subdivision or sub-subdivisions d. and e. of this subdivision:

a. The licensee, by itself or with its affiliates, is licensed in five or more states to engage in the mortgage lending business and (i) is supervised by a state or federal regulatory agency whose regulatory scheme has been determined by the Commissioner to be substantially similar to that of North Carolina, (ii) is organized and supervised under the laws of a state that has adopted a model licensing law endorsed by the Commissioner; or (iii) is supervised by a state or federal agency that is a party to an interstate compact, or has otherwise entered into a cooperative reciprocal agreement by which the state or federal regulatory agency and the State of North Carolina, directly or by duly authorized act of the Commissioner, have mutually agreed to recognize state licensing laws which have specific enumerated criteria.

b. The licensee, including its affiliates and wholly owned subsidiaries, has more than 100 employees that are licensed pursuant to this Article.

c. The licensee has a consolidated net worth of one hundred million dollars ($100,000,000) or more, or if the licensee does not have the required net worth, its parent shall provide to the Commissioner (i) evidence satisfactory to the Commissioner that the parent has a net worth of one hundred million dollars ($100,000,000) or more, and (ii) an unconditional guarantee or comparable instrument of surety satisfactory to the Commissioner of the performance of the licensee of its obligations under this Article.

d. The licensee is a direct or indirect wholly owned subsidiary of a bank holding company or financial services holding company subject to regulation by the Federal Reserve Board or the Office of Thrift Supervision.

e. The licensee has a net worth of one hundred million dollars ($100,000,000) or, if the licensee does not have the required net worth, (i) its parent, if it is not a bank holding company or financial holding company, meets the requirements of sub-subdivision c. of this subdivision or (ii) its parent, if such parent is a bank holding company or financial holding company, has total assets in excess of ten billion dollars ($10,000,000,000) and provides the Commissioner with the unconditional guarantee or comparable instrument of surety required by sub-subdivision c. of this subdivision.

(3) Branch manager. – The individual whose principal office is physically located in, who is in charge of, and who is responsible for the business operations of a branch office of a mortgage broker or mortgage banker.

(4) Branch office. – An office of the licensee acting as a mortgage broker or mortgage banker that is separate and distinct from the licensee's principal office.

(5) Commissioner. – The North Carolina Commissioner of Banks and the Commissioner's designees. For purposes of compliance with this Article by credit unions, Commissioner means the Administrator of the Credit Union Division of the Department of Commerce.

(6) Control. – ~~The~~ Except as provided in subdivision (2a) of this section, "control" means the power to vote more than twenty percent (20%) of outstanding voting shares or other interests of a corporation, partnership, limited liability company, association, or trust.

(7) Employee. – An individual, who has an employment relationship, acknowledged by both the individual and the mortgage broker or mortgage banker and is treated as an employee for purposes of compliance with the federal income tax laws.

(7a) Exclusive mortgage broker. – An individual who acts as a mortgage broker exclusively for a single mortgage banker or single exempt person and who is licensed under the provisions of G.S. 53-243.05(c)(1a).

(8) Exempt person. – The term includes any of the following:

a. Any agency of the federal government or any state or municipal government granting mortgage loans under specific authority of the laws of any state or the United States.

b. Any employee of a licensee whose responsibilities are limited to clerical and administrative tasks for his or her employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer.

c. Any person authorized to engage in business as a bank or a wholly owned subsidiary of a bank, a farm credit system, savings institution, or a wholly owned subsidiary of a savings institution, or credit union or a wholly owned subsidiary of a credit union, under the laws of the United States, this State, or any other state. Except for G.S. 53-243.11 and G.S. 53-243.15, this Article does not apply to the exempt persons set forth in this sub-subdivision (8)c.

d. Any licensed real estate agent or broker who is performing those activities subject to the regulation of the North Carolina Real Estate Commission. Notwithstanding the above, an exempt person does not include a real estate agent or broker who receives compensation of any kind in connection with the referral, placement, or origination of a mortgage loan.

e. Any officer or employee of an exempt person described in sub-subdivision c. of this subdivision when acting in the scope of employment for the exempt person.

f. Any person who, as seller, receives in one calendar year no more than five mortgages, deeds of trust, or other security instruments on real estate as security for a purchase money obligation.

g. The North Carolina Housing Finance Agency as established by Article 122A of the General Statutes and the North Carolina Agricultural Finance Authority as established by Article 122D of the General Statutes.

h. Any nonprofit corporation qualifying under section 501(c)(3) of the Internal Revenue Code which makes mortgage loans to promote home ownership or home improvements for the disadvantaged, provided that such corporation is not primarily in the business of soliciting or brokering mortgage loans.

i. Any life insurance companies licensed to do business in North Carolina with regard to provisions concerning mortgage lenders.

(9) Licensee. – A loan officer, limited loan officer, mortgage broker, or mortgage banker who is licensed pursuant to this Article.

(10) Loan officer. – An individual who, in exchange for compensation as an employee of another person, accepts or offers to accept applications for mortgage loans. The definition of loan officer shall not include any exempt person described in sub-subdivision (8)b. of this section.

(10a) Limited loan officer. – An individual who, in exchange for compensation as an employee of an affiliated mortgage banker, directly solicits, negotiates, offers, or makes commitments for mortgage loans. The definition of limited loan officer shall not include any exempt person described in sub-subdivision (8)b. of this section.

(11) Make a mortgage loan. – To close a mortgage loan, to advance funds, to offer to advance funds, or to make a commitment to advance funds to a borrower under a mortgage loan.

(12) Managing principal. – A person who meets the requirements of G.S. 53-243.05(c) and who agrees to be primarily responsible for the operations of a licensed mortgage broker or mortgage banker.

(13) Mortgage banker. – A person who acts as a mortgage lender as that term is defined in subdivision (2) of this section. However, the definition does not include a person who acts as a mortgage lender only in tablefunding transactions.

(14) Mortgage broker. – A person who acts as a mortgage broker as that term is defined in subdivision (1) of this section. The term "mortgage broker" includes an exclusive mortgage broker, except when expressly provided otherwise.

(15) Mortgage loan. – A loan made to a natural person or persons primarily for personal, family, or household use, primarily secured by either a

mortgage or a deed of trust on residential real property located in North Carolina.

(15a) Parent. – The person that controls an affiliated mortgage banker, as control is defined in subdivision (2a) of this section.

(16) Person. – An individual, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities, however organized.

(17) Qualified lender. – A person who is engaged as a mortgage lender in North Carolina and is either a supervised or a nonsupervised institution, as these terms are defined in 24 C.F.R. § 202.2, approved by the United States Department of Housing and Urban Development.

(18) Qualified person. – A person who is employed as a loan officer by a qualified lender, or by a mortgage banker or broker registered with the Commissioner under former Article 19 of this Chapter, or who is a general partner, manager, or officer of a qualified lender, registered mortgage banker, or registered mortgage broker.

(19) Residential real property. – Real property located in the State of North Carolina upon which there is located or is to be located one or more single-family dwellings or dwelling units.

(20) Tablefunding. – A transaction where a licensee closes a loan in its own name with funds provided by others, and the loan is assigned simultaneously to the mortgage lender providing the funding within one business day of the funding of the loan."

SECTION 2. G.S. 53-243.02 reads as rewritten:

"**§ 53-243.02. License required; licensee records.**

(a) Other than an exempt person, it is unlawful for any person in this State to act as a mortgage broker or mortgage banker, or directly or indirectly to engage in the business of a mortgage broker or a mortgage banker, without first obtaining a license from the Commissioner under the provisions of this Article.

(b) It is unlawful for any natural person to engage in the solicitation and acceptance of applications for mortgage loans without first obtaining a license as a loan officer, limited loan officer, mortgage banker, or mortgage broker issued by the Commissioner under the provisions of this Article. It is unlawful for any person to employ, to compensate, or to appoint as its agent a loan officer unless the loan officer is licensed as a loan officer under this Article. Exempt persons shall not be subject to this subsection.

(c) The license of a loan officer or limited loan officer is not effective during any period when that person is not employed by a mortgage ~~broker~~ broker, affiliated mortgage banker, or mortgage banker licensed under this Article. The license of an exclusive mortgage broker is not effective during any period when that person is not authorized to act as a single licensee or exempt person pursuant to G.S. 53-243.05(c)(1a).

When a loan officer or a limited loan officer ceases to be employed by a mortgage ~~broker~~ broker, affiliated mortgage banker, or mortgage banker licensed under this

Article, the loan ~~officer~~ officer, limited loan officer, and the mortgage ~~broker~~ broker, affiliated mortgage banker, or mortgage banker licensed under this Article by whom that person is employed shall promptly notify the Commissioner in writing. When the authority of an exclusive mortgage broker to act on behalf of the principal licensee or exempt person identified in G.S. 53-243.05(c)(1a) has been terminated, the exclusive mortgage broker and the licensee or exempt person for whom the exclusive mortgage broker is an agent shall promptly notify the Commissioner in writing. The mortgage broker, affiliated mortgage banker, mortgage banker, or exempt person's notice shall include a statement of the specific reason or reasons for, as applicable, the termination of the loan officer's or limited loan officer's employment or exclusive mortgage broker's authority.

A loan officer or limited loan officer shall not be employed simultaneously by more than one mortgage broker or mortgage banker licensed under this Article.

(d) Each mortgage broker and mortgage banker licensed under this Article shall maintain on file with the Commissioner a list of all loan officers or limited loan officers who are employed with the mortgage broker or mortgage banker.

(e) No person, other than an exempt person, shall hold himself or herself out as a mortgage banker, a mortgage broker, limited loan officer, or loan officer unless such person is licensed in accordance with this Article.

(f) Any person who has completed and filed with the Commissioner the application and all documents required for licensure as a loan officer other than documents relating to the required examination and the mortgage lending fundamentals course may act as a loan officer during the period before action is taken on the application by the Commissioner, if:

(1) The Commissioner has not denied, revoked, or taken any adverse action with respect to an application filed by or license held by such person during the five-year period ending on the date of filing of the application;

(2) The loan officer is employed by a licensed mortgage broker or mortgage lender, and the managing principal of such mortgage broker or mortgage lender (i) certifies to the Commissioner in writing that the managing principal reasonably believes that the application of the person for licensure as a loan officer meets or exceeds all of the relevant requirements of this Article for licensure and (ii) undertakes in writing that the managing principal and the employer will be responsible for the acts of the applicant during the period that such application is pending; and

(3) The person is currently or has within the six-month period prior to the date of the application been employed as and acting as a loan officer for an exempt entity which entity is exempt by virtue of an exemption claimed under G.S. 53-243.01(8)c.

(g) The Commissioner may deny or suspend the rights of a mortgage broker or mortgage lender to employ a loan officer acting under subsection (f) of this section if the Commissioner finds that the mortgage broker or mortgage lender, or the managing

principal thereof, makes the certification or undertaking set forth in subdivision (2) of subsection (f) of this section not in good faith."

SECTION 3. G.S. 53-243.05(c)(1) reads as rewritten:

"(c) In addition to the requirements under subsection (a) of this section, each applicant for licensure as a mortgage broker or mortgage banker at the time of application and at all times thereafter shall comply with the following requirements:

(1) Except as provided for in subdivision (1a) of this subsection, if the applicant is a sole proprietor, the applicant shall have at least three years of experience in residential mortgage lending or other experience or competency requirements as the Commissioner may impose. Experience as an exclusive mortgage broker or as a limited loan officer shall not constitute mortgage-lending experience under this subdivision."

SECTION 4. G.S. 53-243.05(e) reads as rewritten:

"(e) Every applicant for initial licensure shall pay a filing fee of one thousand dollars ($1,000) for licensure as a mortgage broker or mortgage banker or fifty dollars ($50.00) for licensure as a loan ~~officer,~~ officer or limited loan officer, in addition to the actual cost of obtaining credit reports and State and national criminal history record checks."

SECTION 5. Article 19A of Chapter 53 of the General Statutes is amended by adding a new section to read:

"**§ 53-243.05A. Licensing for limited loan officers; qualifications, revoked, suspended, or barred.**

(a) An affiliated mortgage banker shall notify the Commissioner when it hires a limited loan officer on forms prescribed by the Commissioner. The form shall contain any information the Commissioner deems necessary including the name, social security number, address, and business location of the limited loan officer. Limited loan officers employed by an affiliated mortgage banker shall:

(1) Be at least 18 years of age.

(2) Work exclusively for an affiliated mortgage banker. The affiliated mortgage banker who hires the limited loan officer shall:

a. Supervise the limited loan officer as required by this Article.

b. Sign the notification form regarding the hiring of the applicant.

c. Certify the applicant is qualified as a limited loan officer subject to background checks, training, testing, and fundamental education requirements.

d. Be jointly and severally liable for any and all claims and damages of any type, including punitive damages pursuant to Chapter 1D of the General Statutes arising out of the limited loan officer's mortgage lending activities, as allowed by law.

(b) An applicant for a limited loan officer license may act provisionally as a limited loan officer during the pendency of the application before the Commissioner upon submission of the completed forms identified in subsection (a) of this section and

a written undertaking by the employing affiliated mortgage banker that it will be responsible for all the applicant's mortgage banking activities.

(c) Systems, programs, and procedures used by the affiliated mortgage banker for employment background checks, training, testing, and education by the affiliated mortgage banker shall be submitted to and reviewed by the Commissioner who may approve those which are comparable and functionally equivalent to those for loan officers under G.S. 53-243.05 and G.S. 53-243.07. The Commissioner must be notified of any material changes or modifications to such approved systems, programs, and procedures. The Commissioner may approve those systems, programs, and procedures used by the affiliated mortgage banker for these purposes that meet or exceed programs otherwise accredited by the Commissioner or that have been approved for the affiliated mortgage banker by at least five other states in which the affiliated mortgage banker is licensed and whose licensing requirements are substantially similar to those of North Carolina.

(d) Except as specified in this section, limited loan officers are subject to licensing standards and disciplinary authority in the same way as loan officers under this Article.

(e) A person whose license is revoked, suspended, or barred under this section is prohibited from participating in the mortgage lending business in this State."

SECTION 6. G.S. 53-243.08 reads as rewritten:

"**§ 53-243.08. Managing principals and branch managers.**

Each mortgage broker or mortgage banker licensed under this Article shall have a managing principal who operates the business under that person's full charge, control, and supervision. Mortgage bankers and mortgage brokers, other than exclusive mortgage brokers, may operate branch offices subject to the requirements of this Article. Each principal and branch office of a mortgage broker or mortgage banker licensed under this Article, ~~other than an exclusive mortgage broker qualifying under G.S. 53-243.05(e)(1a),~~ shall have a branch manager who meets the experience requirements under ~~G.S. 53-243.05(e)(1).~~ G.S. 53-243.05(c)(1); provided, that an affiliated mortgage banker may designate a branch manager who does not meet the experience requirements so long as at or before the designation, it certifies that the person is competent in terms of training and experience to perform the duties of a branch manager. The managing principal for a licensee's business may also serve as the branch manager of one of the licensee's branch offices. Each mortgage broker or mortgage banker licensed under this Article shall file a form as prescribed by the Commissioner indicating the business's designation of managing principal and branch manager for each branch and each individual's acceptance of the responsibility. Each mortgage broker or mortgage banker licensed under this Article shall notify the Commissioner of any change in its managing principal or branch manager designated for each branch. Any licensee who does not comply with this provision shall have the licensee's license suspended pursuant to G.S. 53-243.12 until the ~~licensee, other than an exclusive mortgage broker,~~ licensee complies with this section. Any individual licensee who operates as a sole proprietorship shall be considered a managing principal for the purposes of this Article."

SECTION 7. G.S. 53-243.12(a) reads as rewritten:

"(a) The Commissioner may, by order, deny, suspend, revoke, or refuse to issue or renew a license of a licensee or applicant under this Article or may restrict or limit the activities relating to mortgage loans of any licensee or any person who owns an interest in or participates in the business of a licensee, if the Commissioner finds both of the following:

(1) That the order is in the public interest.

(2) That any of the following circumstances apply to the applicant, licensee, or any partner, member, manager, officer, director, loan officer, limited loan officer, managing principal, or any person occupying a similar status or performing similar functions or any person directly or indirectly controlling the applicant or licensee. The person:

a. Has filed an application for license that, as of its effective date or as of any date after filing, contained any statement that, in light of the circumstances under which it was made, is false or misleading with respect to any material fact.

b. Has violated or failed to comply with any provision of this Article, rule adopted by the Commissioner, or order of the Commissioner.

c. Has been convicted of any felony, or, within the past 10 years, has been convicted of any misdemeanor involving mortgage lending or any aspect of the mortgage lending business, or any offense involving breach of trust, moral turpitude, or fraudulent or dishonest dealing.

d. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the mortgage lending business.

e. Is the subject of an order of the Commissioner denying, suspending, or revoking that person's license as a mortgage broker or mortgage banker.

f. Is the subject of an order entered within the past five years by the authority of any state with jurisdiction over that state's mortgage brokerage or mortgage banking industry denying or revoking that person's license as a mortgage broker or mortgage banking industry or denying or revoking that person's license as a mortgage broker or mortgage banker.

g. Does not meet the qualifications or the financial responsibility, character, or general fitness requirements under G.S. 53-243.05 or any bond or capital requirements under this Article.

h. Has been the executive officer or controlling shareholder or owned a controlling interest in any mortgage broker or

mortgage banker who has been subject to an order or injunction described in sub-subdivision d., e., or f. of this subdivision.

i. Has failed to pay the proper filing or renewal fee under this Article. However, the Commissioner may enter only a denial order under this sub-subdivision, and the Commissioner shall vacate the order when the deficiency has been corrected.

j. Has falsely certified attendance or completion of hours at an approved mortgage lending continuing education course."

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

HOUSE BILL 237:
Revise Mortgage Lending Act

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 25, 2005
Introduced by:	Reps. Coates, Saunders	**Summary by:**	Karen Cochrane-Brown
Version:	Second Edition		Staff Attorney

SUMMARY: House Bill 237 amends the Mortgage Lending Act to authorize the licensure of limited loan officers that are employed by affiliated mortgage bankers. The bill also authorizes the Commissioner of Banks to allow certain loan officer applicants to act as a loan officer during the pendency of their application and provides that exclusive mortgage brokers shall have branch managers to the same extent as other mortgage brokers or bankers. Finally, the bill provides that the Commissioner may discipline a licensee or applicant for falsely certifying attendance or completion of a continuing education course.

CURRENT LAW:

The Mortgage Lending Act, which was enacted in 2001, is a licensing and regulatory statute for the mortgage lending industry. It replaced a registration law, which did not provide for uniform standards, education or experience, and gave the Commissioner only limited authority to enforce the prohibitions.

Under the current law, mortgage bankers, mortgage brokers, and loan officers are required to be licensed by the Commissioner of Banks before engaging in the business of mortgage lending or mortgage brokering, unless exempt. The law exempts from licensing depository institutions (banks, wholly owned subsidiaries of banks, savings and loans, credit unions), life insurance companies, governmental lenders, nonprofits that make mortgage loans, persons that make no more than five loans a year, and real estate brokers who do not receive compensation for making loans.

A loan officer, under current law, is a compensated employee who accepts or offers to accept applications for mortgage loans. To be licensed, a loan officer must be 18 years of age and have completed within the previous three years an approved mortgage lending fundamentals course. The application and renewal fee for loan officers is $50.00.

The Commissioner of Banks has broad enforcement powers, including the power to revoke licenses and impose civil fines for violations of the law. Engaging in the mortgage banking or brokering business without a license is a Class I felony.

BILL ANALYSIS:

House Bill 237 makes several changes to the Mortgage Lending Act.

Section 1 creates several new definitions, including:

- Affiliate, means any company that controls or is controlled by another person. For purposes of the definition, the term control means ownership of all of the voting stock or comparable interest of the controlled person.
- Affiliated mortgage banker, means a licensed mortgage banker that meets one of two sets of criteria. The first set of criteria relate to (1) licensure or supervision by other jurisdictions or under a compact or agreement authorized by the Commissioner, (2) the number of licensed

employees, and (3) the licensee's net worth. The second set of criteria relate to (1) whether the licensee is a subsidiary of a company regulated by the Federal Reserve Board or the Office of Thrift Supervision, and (2) the licensee's net worth.

- Limited loan officer, means an employee of an affiliated mortgage banker that directly solicits, negotiates, offers or makes commitments for mortgage loans.
- Parent, means the person that controls an affiliated mortgage banker, as control is defined under the term affiliate.

Section 2 amends the law related to required licenses under the Mortgage Lending Act to include a requirement that limited loan officers be licensed.

This section also adds new language allowing certain loan officer applicants to act as a loan officer while their application for licensure is pending. In order to qualify for this treatment, the applicant must (1) have had no negative action taken on an application or license in the preceding five years, (2) be employed by a licensed mortgage broker or lender that certifies that the applicant is qualified and that undertakes to be responsible for the acts of the applicant, and (3) currently be or have been employed as a loan officer within the previous six months by an exempt depository institution. The Commissioner can deny or suspend this treatment if the Commissioner finds that the certification and undertaking have not been made in good faith.

Section 3 excludes experience as a limited loan officer from the kinds of experience required to qualify for licensure as a mortgage broker or mortgage banker.

Section 4 subjects limited loan officers to the same $50.00 fee requirement as currently applies to loan officers.

Section 5 establishes licensing requirements for limited loan officers and the affiliated mortgage bankers that employ them. A limited loan officer must be at least 18 and must work exclusively for an affiliated mortgage banker. An affiliated mortgage banker must notify the Commissioner when it hires a limited loan officer and provide any required information. It must also certify that the limited loan officer is qualified and agree to be liable for any claims and damages, including punitive damages arising from the limited loan officer's lending activities. The limited loan officer may act provisionally during the pendency of an application if the employer makes a written undertaking to be responsible for the applicant's activities. The Commissioner must approve the employer's systems, programs and procedures for checking, training and testing a limited loan officer. Except as provided in this section, a limited loan officer is subject to all of the other requirements applied to loan officers under the Act. Any person whose license is revoked, suspended or barred under this section is prohibited from participating in the mortgage lending business in this State.

Section 6 allows affiliated mortgage bankers to designate a branch manager who does not meet the experience requirement if it certifies that the person is competent to perform the duties of a branch manager.

Section 7 adds a new item to the list of actions that the Commissioner may use as the basis for disciplining a licensee or applicant. The Commissioner may take action against a licensee or applicant who has falsely certified attendance or completion of hours at a continuing education course.

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

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 621
PROPOSED COMMITTEE SUBSTITUTE H621-CSRUf-79 [v.3]

7/26/2005 3:09:51 PM

Short Title: Small Installment Consumer Loans. (Public)

Sponsors:

Referred to:

March 14, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW ALTERNATIVE INTEREST RATES AND MATURITIES FOR LOANS NOT EXCEEDING TWELVE HUNDRED DOLLARS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 53 of the General Statutes is amended by adding a new Article to read:

"Article 15A.

"Small Installment Consumer Loans.

"**§ 53-191.10. Title.**

This Article shall be known and cited as the "Small Installment Consumer Loan Act".

"**§ 53-191.11. Definitions.**

As used in this Article, the following terms mean:

(1) Actuarial method. – The Actuarial Method as defined by the federal Consumer Credit Protection Act (15 U.S.C. § 1601, et. seq., commonly referred to as the Truth-In-Lending Act or TILA), as amended from time to time, together with the regulations issued from time to time by the Board of Governors of the Federal Reserve System pursuant to that Act.

(2) Amount of the loan. – The aggregate of the cash advance and the charges authorized by G.S. 53-191.15.

(3) Borrower. – Any person who borrows money from any licensee or who pays or obligates himself or herself to pay any money or otherwise furnishes any valuable consideration to any licensee for any act of the licensee as a licensee.

(4) Cash advance. – The Amount Financed as defined by the federal Consumer Credit Protection Act (15 U.S.C. § 1601, et. seq., commonly referred to as the Truth-In-Lending Act or TILA), as

amended from time to time, together with the regulations issued from time to time by the Board of Governors of the Federal Reserve System pursuant to that Act.

(5) Commission. – The State Banking Commission.

(6) Commissioner. – The Commissioner of Banks.

(7) Deputy commissioner. – The deputy commissioner of banks.

(8) Lender. – A person who makes a loan under this Article.

(9) License. – The certificate issued by the Commissioner under the authority of this Article to conduct a consumer loan business.

(10) Licensee. – A person to whom one or more licenses have been issued.

(11) Loanable assets. – Cash, bank deposits, or installment loans made as a licensee pursuant to this Article as the Commissioner may approve.

(12) Person. – Any person, firm, partnership, association, or corporation.

"**§ 53-191.12. Scope of Article; evasions; penalties; loans in violation of Article void.**

(a) Scope. – Except as otherwise permitted under Article 15 of this Chapter, no person shall engage in the business of lending in amounts of one thousand two hundred dollars ($1,200) or less and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, or any other purpose whatsoever, which in the aggregate are greater than permitted by Chapter 24 of the General Statutes, except as provided in and authorized by this Article, and without first having obtained a license from the Commissioner. The word "lending" as used in this section includes endorsing or otherwise securing loans or contracts for the repayment of loans.

(b) Evasions. – The provisions of subsection (a) of this section shall apply to any person who seeks to avoid its application by any device, subterfuge, or pretense whatsoever.

(c) Penalties; Commissioner to Provide and Testify as to Facts in Commissioner's Possession. – Any person not exempt from this Article, or any officer, agent, employee, or representative thereof, who intentionally fails to comply with or who otherwise intentionally violates any of the provisions of this Article, or any rule adopted pursuant to this Article, shall be guilty of a Class 1 misdemeanor. Each violation shall be considered a separate offense. It shall be the duty of the Commissioner to provide the district attorney of the court having jurisdiction of any such offense with all facts and evidence in the Commissioner's actual or constructive possession and to testify as to those facts upon the trial of any person for any such offense.

(d) Additional Penalties. – Any contract of loan, the making or collecting of which violates any provision of this Article or any rules adopted pursuant to the authority granted in this Article, except as a result of accidental or bona fide error of computation, shall be void, and the licensee or any other party in violation shall have no right to collect, receive, or retain any principal or charges whatsoever with respect to such loan.

"**§ 53-191.13. Expense of supervision.**

Each licensee, for the purpose of defraying necessary expenses of the Commissioner and the Commissioner's agents in supervising them, shall pay to the Commissioner the fees prescribed in G.S. 53-122(a)(2) at the times therein specified.

"**§ 53-191.14. License required; showing financial responsibility; investigation of applicants; hearings; existing businesses; contents of license; transfer; posting.**

(a) Necessity for License; Prerequisites to Issuance. – No person shall engage in or offer to engage in the business regulated by this Article unless and until a license has been issued by the Commissioner, and the Commissioner shall not issue any such license unless and until the Commissioner finds all of the following:

(1) The financial responsibility, experience, character, and general fitness of the applicant are such as to command the confidence of the public and to warrant the belief that the business will be operated lawfully and fairly within the purposes of this Article.

(2) The applicant has available for the operation of the business at the specified location loanable assets of at least fifty thousand dollars ($50,000).

(b) Investigation of Applicants. – Upon the receipt of an application, the Commissioner shall investigate the facts. If the Commissioner determines from such preliminary investigation that the applicant does not satisfy the conditions set forth in subsection (a) of this section, the Commissioner shall so notify the applicant who shall then be entitled to an informal hearing thereon provided the applicant so requests in writing within 30 days after the Commissioner has caused the notice to be mailed to the applicant. In the event of a hearing, to be held in the offices of the Commissioner of Banks in Raleigh, the Commissioner shall reconsider the application and, after the hearing, issue a written order granting or denying the application. At the time of making the application, the applicant shall pay the Banking Department the sum of two hundred fifty dollars ($250.00) as a fee for investigating the application, which shall be retained irrespective of whether or not a license is granted the applicant.

(c) Required Assets Available. – Each licensee shall continue at all times to have available for the operation of the business at the specified location loanable assets of at least fifty thousand dollars ($50,000). The requirements and standards of this subsection and subdivision (a)(2) of this section shall be maintained throughout the period of the license and failure to maintain these requirements or standards shall be grounds for the revocation of a license under the provisions of this Article.

(d) License; Posting; Continuing. – Each license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a partnership or association, the names of the members thereof, and if a corporation, the date and place of its incorporation. Transfer or assignment of a license by one person to another by sale or otherwise is prohibited without the prior approval of the Commissioner. Each license shall be kept posted in the licensed place of business. Each license shall remain in full force and effect until surrendered, revoked, or suspended as provided in this Article.

"**§ 53-191.15. Alternative rates and maturities for loans not exceeding $1,200.**

(a) Notwithstanding any other provisions of law, a licensee may elect to make installment loans with cash advances not exceeding one thousand two hundred dollars ($1,200) under the following terms and conditions:

(1) No acquisition charge in excess of ten percent (10%) of the cash advance of the loan may be charged, provided, however, on the renewal of an existing loan, no acquisition charge in excess of five percent (5%) of the total cash advance of the loan may be charged.

(2) On any loan with a cash advance of not more than three hundred dollars ($300.00), no installment account handling charge in excess of four and one-half percent (4.5%) of the cash advance per month may be charged.

(3) On any loan with a cash advance in excess of three hundred dollars ($300.00) but not more than five hundred dollars ($500.00), no installment account handling charge in excess of four percent (4%) of the cash advance per month may be charged.

(4) On any loan with a cash advance in excess of five hundred dollars ($500.00) but not more than seven hundred dollars ($700.00), no installment account handling charge in excess of three percent (3%) of the cash advance per month may be charged.

(5) On any loan with a cash advance in excess of seven hundred dollars ($700.00) but not more than one thousand dollars ($1,000), no installment account handling charge in excess of two and one-half percent (2.5%) of the cash advance per month may be charged.

(6) On any loan with a cash advance in excess of one thousand dollars ($1,000) but not more than one thousand two hundred dollars ($1,200), no installment account handling charge in excess of two percent (2%) of the cash advance per month may be charged.

(7) The minimum term for any loan made under this section shall be three months and the maximum term shall be 18 months.

(b) If a loan made under this section is prepaid in full, including payment in cash or by a new loan or the renewal of the loan, or if the licensee demands payment in full of the unpaid balance, the licensee shall refund or credit to the borrower that portion of the installment account handling charge contracted for on the loan, the acquisition charge being fully earned as of the date of the loan, determined by the actuarial method computed as of the next scheduled installment due date next following the date of prepayment.

(c) On any loan established under this section, no insurance charge or any other charge of any nature whatsoever is permitted except as provided in this section, and except for the following:

(1) A delinquent payment charge of ten dollars ($10.00) on any installment not paid within 10 days after its due date.

(2) The return check charge permitted under G.S. 25-3-506.

(3) Fees actually paid to any public official or agency of a county or the State to file, record, or perfect, pursuant to Article 9 of Chapter 25 of

the General Statutes, or G.S. 20-58, the lender's security interest in any collateral securing the loan.

(4) Interest after maturity on the outstanding balance at a rate equal to eight percent (8%) per annum.

(d) The loan charges allowed under this section may not be imposed on a loan to a borrower who has one or more loans outstanding under this Article with the same lender or an affiliated lender except that a licensee may make a loan having the charges allowed under this section to pay off the balance due under any other loan or loans made by the lender or its affiliates provided that the aggregate payoff balance of the loan or loans being paid off does not exceed one thousand two hundred dollars ($1,200). The acquisition by a lender or an affiliate of a lender in a bulk transaction of loans made under this Article to a borrower who, at the time of the acquisition, has a loan under this section from the acquiring licensee or an affiliate of the licensee shall not be a violation of this section.

(e) Any loan made under this section must provide for repayment in substantially equal monthly installments. No loan made under this section may be prepaid by a loan from the same licensee or an affiliate of the same licensee who made the initial loan until at least one-third of the initial loan term has expired, but in no event less than 91 days after the initial loan date. In addition, no loan made under this section may be prepaid by a loan from the same licensee or an affiliate of the same licensee who made the initial loan unless the borrower receives cash proceeds from the new loan in an amount equal to not less than ten percent (10%) of the net payoff amount of the prior loan.

"**§ 53-191.16. Businesses exempted.**

Nothing in this Article shall be construed to apply to any person, firm, or corporation doing business under the authority of any law of this State or of the United States relating to banks, trust companies, savings and loan associations, cooperative credit unions, agricultural credit corporations or associations organized under the laws of North Carolina, production credit associations organized under the act of Congress known as the Farm Credit Act of 1933, pawnbrokers lending or advancing money on specific articles of personal property, industrial banks, the business of negotiating loans on real estate as defined in G.S. 105-41, nor to installment paper dealers as defined in G.S. 105-83 other than persons, firms, and corporations engaged in the business of accepting fees for endorsing or otherwise securing loans or contracts for repayment of loans.

"**§ 53-191.17. Applicable provisions.**

The provisions of the following sections shall apply to loans, borrowers, and lenders governed by this Article as if these transactions were transactions under Article 15 of this Chapter: G.S. 53-169 through G.S. 53-172 and G.S. 53-181 through G.S. 53-188."

SECTION 2. G.S. 53-169 reads as rewritten:

"**§ 53-169. Application for license.**

The application for license shall be made on a form prepared and furnished by the Commissioner of Banks and shall state:

(1) The fact that the applicant desires to engage in business under this ~~Article;~~ Article or under Article 15A of this ~~and~~Chapter; and
(2) Whether the applicant is an individual, partnership, association or corporation; and
(3) The name and address of the person who will manage and be in immediate control of the business; and
(4) The name and address of the owners and their percentage of equity in the company, except when the Commissioner does not deem it feasible to furnish such information because of the number of stockholders involved; and
(5) When the applicant proposes to commence doing business; and
(6) Such other information as the Commissioner of Banks deems necessary.

The statements made in such application shall be sworn to by the applicant or persons making application on the applicant's behalf."

SECTION 3. G.S. 53-172(a) reads as rewritten:

"(a) No licensee shall conduct the business of making loans under ~~this Article~~ Article 15 or Article 15A of this Chapter within any office, suite, room, or place of business in which any other business is solicited or transacted.

~~Installment~~ The business of installment paper dealers as defined in G.S. 105-83, small installment consumer lenders under Articles 15 and 15A of this Chapter, check-cashing under G.S. 53-276, and the collection by a licensee of loans legally made in North Carolina, or another state by another government regulated lender or lending agency, shall not be considered as being ~~any~~ other business within the meaning of this section."

SECTION 4. G.S. 53-173 is amended by adding a new subsection to read:

"(b1) Delinquent Payment Charge. – In addition to the interest and fees permitted under this section, a licensee may collect a delinquent payment charge of the greater of ten dollars ($10.00) or five percent (5%) of the amount of the payment due not paid within 10 days after its due date."

SECTION 5. G.S. 53-176(c) reads as rewritten:

"(c) The provisions of G.S. 53-173(b), (b1), (c) and (d) and G.S. 53-180(b), (c), (d), (e), (f), (g), (h) and (i) shall apply to loans made pursuant to this section."

SECTION 6. This act becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 621

Short Title:	Small Installment Consumer Loans.	(Public)
Sponsors:	Representative Wright.	
Referred to:	Financial Institutions, if favorable, Finance.	

March 14, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW ALTERNATIVE INTEREST RATES AND MATURITIES FOR LOANS NOT EXCEEDING TWELVE HUNDRED DOLLARS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 53 of the General Statutes is amended by adding a new Article to read:

"Article 15A.

"Small Installment Consumer Loans.

"**§ 53-191.10. Title.**

This Article shall be known and cited as the "Small Installment Consumer Loan Act".

"**§ 53-191.11. Definitions.**

As used in this Article, the following terms mean:

(1) Actuarial method. – The Actuarial Method as defined by the federal Consumer Credit Protection Act (15 U.S.C. § 1601, et. seq., commonly referred to as the Truth-In-Lending Act or TILA), as amended from time to time, together with the regulations issued from time to time by the Board of Governors of the Federal Reserve System pursuant to that Act.

(2) Amount of the loan. – The aggregate of the cash advance and the charges authorized by G.S. 53-191.15.

(3) Borrower. – Any person who borrows money from any licensee or who pays or obligates himself or herself to pay any money or otherwise furnishes any valuable consideration to any licensee for any act of the licensee as a licensee.

(4) Cash advance. – The Amount Financed as defined by the federal Consumer Credit Protection Act (15 U.S.C. § 1601, et. seq., commonly referred to as the Truth-In-Lending Act or TILA), as amended from time to time, together with the regulations issued from

time to time by the Board of Governors of the Federal Reserve System pursuant to that Act.

(5) Commission. – The State Banking Commission.

(6) Commissioner. – The Commissioner of Banks.

(7) Deputy commissioner. – The deputy commissioner of banks.

(8) Lender. – A person who makes a loan under this Article.

(9) License. – The certificate issued by the Commissioner under the authority of this Article to conduct a consumer loan business.

(10) Licensee. – A person to whom one or more licenses have been issued.

(11) Loanable assets. – Cash, bank deposits, or installment loans made as a licensee pursuant to this Article as the Commissioner may approve.

(12) Person. – Any person, firm, partnership, association, or corporation.

"**§ 53-191.12. Scope of Article; evasions; penalties; loans in violation of Article void.**

(a) Scope. – Except as otherwise permitted under Article 15 of this Chapter, no person shall engage in the business of lending in amounts of one thousand two hundred dollars ($1,200) or less and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, or any other purpose whatsoever, which in the aggregate are greater than permitted by Chapter 24 of the General Statutes, except as provided in and authorized by this Article, and without first having obtained a license from the Commissioner. The word "lending" as used in this section includes endorsing or otherwise securing loans or contracts for the repayment of loans.

(b) Evasions. – The provisions of subsection (a) of this section shall apply to any person who seeks to avoid its application by any device, subterfuge, or pretense whatsoever.

(c) Penalties; Commissioner to Provide and Testify as to Facts in Commissioner's Possession. – Any person not exempt from this Article, or any officer, agent, employee, or representative thereof, who intentionally fails to comply with or who otherwise intentionally violates any of the provisions of this Article, or any rule adopted pursuant to this Article, shall be guilty of a Class 1 misdemeanor. Each violation shall be considered a separate offense. It shall be the duty of the Commissioner to provide the district attorney of the court having jurisdiction of any such offense with all facts and evidence in the Commissioner's actual or constructive possession and to testify as to those facts upon the trial of any person for any such offense.

(d) Additional Penalties. – Any contract of loan, the making or collecting of which violates any provision of this Article or any rules adopted pursuant to the authority granted in this Article, except as a result of accidental or bona fide error of computation, shall be void, and the licensee or any other party in violation shall have no right to collect, receive, or retain any principal or charges whatsoever with respect to such loan.

"**§ 53-191.13. Expense of supervision.**

Each licensee, for the purpose of defraying necessary expenses of the Commissioner and the Commissioner's agents in supervising them, shall pay to the Commissioner the fees prescribed in G.S. 53-122 at the times therein specified.

"**§ 53-191.14. License required; showing financial responsibility; investigation of applicants; hearings; existing businesses; contents of license; transfer; posting.**

(a) Necessity for License; Prerequisites to Issuance. – No person shall engage in or offer to engage in the business regulated by this Article unless and until a license has been issued by the Commissioner, and the Commissioner shall not issue any such license unless and until the Commissioner finds all of the following:

(1) The financial responsibility, experience, character, and general fitness of the applicant are such as to command the confidence of the public and to warrant the belief that the business will be operated lawfully and fairly within the purposes of this Article.

(2) The applicant has available for the operation of the business at the specified location loanable assets of at least fifty thousand dollars ($50,000).

(b) Investigation of Applicants. – Upon the receipt of an application, the Commissioner shall investigate the facts. If the Commissioner determines from such preliminary investigation that the applicant does not satisfy the conditions set forth in subsection (a) of this section, the Commissioner shall so notify the applicant who shall then be entitled to an informal hearing thereon provided the applicant so requests in writing within 30 days after the Commissioner has caused the notice to be mailed to the applicant. In the event of a hearing, to be held in the offices of the Commissioner of Banks in Raleigh, the Commissioner shall reconsider the application and, after the hearing, issue a written order granting or denying the application. At the time of making the application, the applicant shall pay the Banking Department the sum of two hundred fifty dollars ($250.00) as a fee for investigating the application, which shall be retained irrespective of whether or not a license is granted the applicant.

(c) Required Assets Available. – Each licensee shall continue at all times to have available for the operation of the business at the specified location loanable assets of at least fifty thousand dollars ($50,000). The requirements and standards of this subsection and subdivision (a)(2) of this section shall be maintained throughout the period of the license and failure to maintain these requirements or standards shall be grounds for the revocation of a license under the provisions of this Article.

(d) License; Posting; Continuing. – Each license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a partnership or association, the names of the members thereof, and if a corporation, the date and place of its incorporation. Transfer or assignment of a license by one person to another by sale or otherwise is prohibited without the prior approval of the Commissioner. Each license shall be kept posted in the licensed place of business. Each license shall remain in full force and effect until surrendered, revoked, or suspended as provided in this Article.

"**§ 53-191.15. Alternative rates and maturities for loans not exceeding $1,200.**

(a) Notwithstanding any other provisions of law, a licensee may elect to make installment loans with cash advances not exceeding one thousand two hundred dollars ($1,200) under the following terms and conditions:

(1) No acquisition charge in excess of ten percent (10%) of the cash advance of the loan may be charged.

(2) On any loan with a cash advance of not more than three hundred dollars ($300.00), no installment account handling charge in excess of four and one-half percent (4.5%) of the cash advance per month may be charged.

(3) On any loan with a cash advance in excess of three hundred dollars ($300.00) but not more than five hundred dollars ($500.00), no installment account handling charge in excess of four percent (4%) of the cash advance per month may be charged.

(4) On any loan with a cash advance in excess of five hundred dollars ($500.00) but not more than seven hundred dollars ($700.00), no installment account handling charge in excess of three percent (3%) of the cash advance per month may be charged.

(5) On any loan with a cash advance in excess of seven hundred dollars ($700.00) but not more than one thousand dollars ($1,000), no installment account handling charge in excess of two and one-half percent (2.5%) of the cash advance per month may be charged.

(6) On any loan with a cash advance in excess of one thousand dollars ($1,000) but not more than one thousand two hundred dollars ($1,200), no installment account handling charge in excess of two percent (2%) of the cash advance per month may be charged.

(7) The minimum term for any loan made under this section shall be three months and the maximum term shall be 18 months.

(b) If a loan made under this section is prepaid in full, including payment in cash or by a new loan or the renewal of the loan, or if the licensee demands payment in full of the unpaid balance, the licensee shall refund or credit to the borrower that portion of the installment account handling charge contracted for on the loan, the acquisition charge being fully earned as of the date of the loan, determined by the actuarial method computed as of the next scheduled installment due date next following the date of prepayment.

(c) On any loan established under this section, no insurance charge or any other charge of any nature whatsoever is permitted except as provided in this section, and except for the following:

(1) A delinquent payment charge of ten dollars ($10.00) on any installment not paid within 10 days after its due date.

(2) The return check charge permitted under G.S. 25-3-506.

(3) Fees actually paid to any public official or agency of a county or the State to file, record, or perfect, pursuant to Article 9 of Chapter 25 of the General Statutes, or G.S. 20-58, the lender's security interest in any collateral securing the loan.

(4) Interest after maturity on the outstanding balance at a rate equal to eight percent (8%) per annum.

(d) The loan charges allowed under this section may not be imposed on a loan to a borrower who has one or more loans outstanding under this Article with the same lender or an affiliated lender except that a licensee may make a loan having the charges allowed under this section to pay off the balance due under any other loan or loans made by the lender or its affiliates provided that the aggregate payoff balance of the loan or loans being paid off does not exceed one thousand two hundred dollars ($1,200). The acquisition by a lender or an affiliate of a lender in a bulk transaction of loans made under this Article to a borrower who, at the time of the acquisition, has a loan under this section from the acquiring licensee or an affiliate of the licensee shall not be a violation of this section.

(e) Any loan made under this section must provide for repayment in substantially equal monthly installments. No loan made under this section may be prepaid by a loan from the same licensee or an affiliate of the same licensee who made the initial loan until at least 61 days after the initial loan date nor may a licensee or an affiliate of the same licensee under this section make a new loan to the same borrower until at least 61 days after the initial loan date.

"**§ 53-191.16. Businesses exempted.**

Nothing in this Article shall be construed to apply to any person, firm, or corporation doing business under the authority of any law of this State or of the United States relating to banks, trust companies, savings and loan associations, cooperative credit unions, agricultural credit corporations or associations organized under the laws of North Carolina, production credit associations organized under the act of Congress known as the Farm Credit Act of 1933, pawnbrokers lending or advancing money on specific articles of personal property, industrial banks, the business of negotiating loans on real estate as defined in G.S. 105-41, nor to installment paper dealers as defined in G.S. 105-83 other than persons, firms, and corporations engaged in the business of accepting fees for endorsing or otherwise securing loans or contracts for repayment of loans.

"**§ 53-191.17. Applicable provisions.**

The provisions of the following sections shall apply to loans, borrowers, and lenders governed by this Article as if these transactions were transactions under Article 15 of this Chapter: G.S. 53-169 through G.S. 53-172 and G.S. 53-181 through G.S. 53-188."

SECTION 2. G.S. 53-169 reads as rewritten:

"**§ 53-169. Application for license.**

The application for license shall be made on a form prepared and furnished by the Commissioner of Banks and shall state:

(1) The fact that the applicant desires to engage in business under this ~~Article;~~ Article or under Article 15A of this ~~and~~Chapter; and

(2) Whether the applicant is an individual, partnership, association or corporation; and

(3) The name and address of the person who will manage and be in immediate control of the business; and

(4) The name and address of the owners and their percentage of equity in the company, except when the Commissioner does not deem it feasible to furnish such information because of the number of stockholders involved; and

(5) When the applicant proposes to commence doing business; and

(6) Such other information as the Commissioner of Banks deems necessary.

The statements made in such application shall be sworn to by the applicant or persons making application on the applicant's behalf."

SECTION 3. G.S. 53-172(a) reads as rewritten:

"(a) No licensee shall conduct the business of making loans under ~~this Article~~ Article 15 or Article 15A of this Chapter within any office, suite, room, or place of business in which any other business is solicited or transacted.

~~Installment~~ The business of installment paper dealers as defined in G.S. 105-83, small installment consumer lenders under Articles 15 and 15A of this Chapter, check-cashing under G.S. 53-276, and the collection by a licensee of loans legally made in North Carolina, or another state by another government regulated lender or lending agency, shall not be considered as being ~~any~~ other business within the meaning of this section."

SECTION 4. G.S. 53-173 is amended by adding a new subsection to read:

"(b1) Delinquent Payment Charge. – In addition to the interest and fees permitted under this section, a licensee may collect a delinquent payment charge of the greater of ten dollars ($10.00) or five percent (5%) of the amount of the payment due not paid within 10 days after its due date."

SECTION 5. G.S. 53-176(c) reads as rewritten:

"(c) The provisions of G.S. 53-173(b), (b1), (c) and (d) and G.S. 53-180(b), (c), (d), (e), (f), (g), (h) and (i) shall apply to loans made pursuant to this section."

SECTION 6. This act becomes effective October 1, 2005.

HOUSE BILL 621:
Small Installment Consumer Loans

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 26, 2005
Introduced by:	Rep. Wright	**Summary by:**	Karen Cochrane-Brown
Version:	PCS to First Edition H621-CSRUf-79[v.3]		Staff Attorney

SUMMARY: House Bill 621 adds a new Article to Chapter 53 (the Banking Law) that authorizes a new loan business. The Commissioner of Banks, who will issue licenses to qualified applicant lenders, will regulate the businesses. The lenders will be able to make loans of up to $1200.00 at graduated rates. The terms of the loans will be between three and eighteen months.

The bill also authorizes Consumer Finance lenders to collect delinquent payment charges of the greater of $10.00 or 5% of the amount due ten days after the due date for the payment.

[The Proposed Committee Substitute reduces the acquisition fee that may be charged on a renewed loan from 10% to 5%. It also increases the period after which a loan can be renewed from 61 days to at least one-third of the initial loan term has expired, but not less than 91 days.]

CURRENT LAW:

Currently, the North Carolina Consumer Finance Act (Article 15, Chap. 53) is the only State law that specifically authorizes nonbank lenders to make small unsecured loans. This Act authorizes the Commissioner of Banks to license and to supervise loan companies, which make direct consumer loans of $10,000 or less. A licensee must meet several statutory requirements including, maintaining loanable assets of not less than $50,000. Lenders that do not charge interest rates higher than those permitted by Chapter 24 are exempt for this Act. Also exempted are banks, trust companies, savings and loan associations, cooperative credit unions, agricultural credit corporations, production credit associations, pawnbrokers, and installment paper dealers.

The statute creates two tiers of lenders. G.S. 53-173 allows interest charges of 36% per year on that part of the unpaid principal balance, which does not exceed $600.00, and 15% per year on that portion which is more than $600 but not more than $3,000.

G.S. 53-176 authorizes optional rates for those lenders who elect to make loans of $10,000 or less and who so notify the Commissioner. These lenders may charge interest at the rate of 30% per year on that part of the unpaid principal balance, which does not exceed $1,000, and 18% per year on the remainder, which does not exceed $7,500. If the principal balance is more than $7,500, the maximum rate is 18% per year on the entire loan. Optional rate lenders may also charge a reasonable credit investigation fee, which cannot exceed the actual cost of the credit investigation.

Both categories of lenders use a blended interest rate for most loans made under this Article.

BILL ANALYSIS:

This bill would authorize a new category of small loans. The bill requires prospective lenders to be licensed by the Commissioner of Banks under similar terms as Consumer Finance lenders. Applicants would be required to pay a nonrefundable application investigation fee to the Commissioner of Banks in

the amount of $250.00. This bill would apply to loans of up to $1200.00. Lenders could charge an acquisition fee of 10% of the amount of the loan. However, on a renewed loan, the lender could only charge an acquisition fee of 5%. The rate of the "installment account handling charge" would be determined by the amount of the cash advance.

- On loans of $300.00 or less the rate would be 4.5% per month.
- On loans between $300.00 and $500.00 the rate would be 4% per month.
- On loans between $500.00 and $700.00 the rate would be 3% per month.
- On loans between $700.00 and $1000.00 the rate would be 2.5% per month.
- On loans between $1000.00 and $1200.00 the rate would be 2% per month.

The minimum term for any loan would be three months and the maximum term would be 18 months.

Lenders could not charge for insurance but could charge $10.00 for payments not made within ten days of the due date.

A borrower could not have more than one outstanding loan with the same lender; however, a lender could make a loan to payoff the balance of an outstanding loan to the borrower so long as the aggregate amount of the loans does not exceed $1200.00. The lender may charge a new acquisition fee to a borrower who has a loan from a lender that is acquired in a bulk transaction of loans.

Loans made under this section must provide for payments in substantially equal installments. Loans may not be prepaid by another loan from the same lender until at least 91 days after the initial loan, nor may the lender make a new loan to the same borrower unless the borrower receives at least 10% of the net payoff amount of the prior loan.

This Article does not apply to banks, trust companies, savings and loan associations cooperative credit unions, and other financial institutions organized under North Carolina or federal law.

The provisions of the Consumer Finance Act relating to application for license, locations and change of ownership, revocation, suspension or surrender of license, and conduct of other business in the same office are made applicable to persons or entities covered by this Act. In addition, the provisions of the Consumer Finance Act relating to certain consumer notices and protections and the Commissioners powers are also made applicable to this Act.

Finally, the bill also amends the Consumer Finance Act to authorize the collection of delinquent payment charges of the greater of $10.00 or 5% of the amount due if the payment is not made within 10 days of the due date.

This act would become effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1283

Short Title:	Improve Environmental Enforcement.	(Public)
Sponsors:	Representatives Culpepper; Farmer-Butterfield, Fisher, Harrison, Luebke, Underhill, and Weiss.	
Referred to:	Finance.	

April 19, 2005

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE ENFORCEMENT OF VARIOUS ENVIRONMENTAL LAWS, TO AUTHORIZE THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES TO ISSUE ADMINISTRATIVE ORDERS, AND TO ESTABLISH A PILOT PROGRAM THAT ALLOWS THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO DETERMINE AND RETAIN THE ACTUAL COSTS OF COLLECTING CIVIL PENALTIES, FINES, AND FORFEITURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-64(a)(1) reads as rewritten:

"(1) Any person who violates any of the provisions of this Article or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government, or who initiates or continues a land-disturbing activity for which an erosion and sedimentation control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty. The maximum civil penalty for a violation is five thousand dollars ~~($5,000).~~ ($5,000), except that, in order to deter violations, the Secretary may assess a civil penalty of up to ten thousand dollars ($10,000) for the first day of a violation. A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation."

SECTION 2. G.S. 113A-126(d) reads as rewritten:

"(d) (1) A civil penalty of not more than ~~two hundred fifty dollars ($250.00)~~ one thousand dollars ($1,000) for a minor development violation and ~~two thousand five hundred dollars ($2,500)~~ ten thousand dollars ($10,000) for a major development violation may be assessed by the Commission against any person who:

a. Is required but fails to apply for or to secure a permit required by G.S. 113A-118, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.
b. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by the Commission pursuant to this Article.
c. Refuses access to the Commission or its duly designated representative, who has sufficiently identified himself by displaying official credentials, to any premises, not including any occupied dwelling house or curtilage, for the purpose of conducting any investigations provided for in this Article.
d. Violates a rule of the Commission implementing this Article.

(2) For each willful action or failure to act for which a penalty may be assessed under this subsection, the Commission may consider each day the action or inaction continues after notice is given of the violation as a separate violation; a separate penalty may be assessed for each such separate violation.

(3) ~~The Commission may assess the penalties provided for in this subsection.~~ The Commission shall notify a person who is assessed a penalty or investigative costs by registered or certified mail. The notice shall state the reasons for the penalty. A person may contest the assessment of a penalty or investigative costs by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice of assessment. If a person fails to pay ~~a penalty,~~ any civil penalty or investigative cost assessed under this subsection, the Commission shall refer the matter to the Attorney General for collection. An action to collect a penalty must be filed within three years after the date the final agency decision was served on the violator.

(4) In determining the amount of the ~~penalty~~ civil penalty, the Commission shall consider ~~the degree and extent of harm caused by the violation and the cost of rectifying the damage.~~ the following factors:
a. The degree and extent of harm, including, but not limited to, harm to the natural resources of the State, to the public health, or to private property resulting from the violation;
b. The duration and gravity of the violation;
c. The effect on water quality, coastal resources, or public trust uses;
d. The cost of rectifying the damage;
e. The amount of money saved by noncompliance;
f. Whether the violation was committed willfully or intentionally;

g. The prior record of the violator in complying or failing to comply with programs over which the Commission has regulatory authority; and

h. The cost to the State of the enforcement procedures.

(4a) The Commission may also assess a person who is assessed a civil penalty under this subsection the reasonable costs of any investigation, inspection, or monitoring that results in the assessment of the civil penalty. For a minor development violation, the amount of an assessment of investigative costs shall not exceed one-half of the amount of the civil penalty assessed or one thousand dollars ($1,000), whichever is less. For a major development violation, the amount of an assessment of investigative costs shall not exceed one-half of the amount of the civil penalty assessed or two thousand five hundred dollars ($2,500), whichever is less.

(5) The clear proceeds of penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 3. G.S. 130A-18(a) reads as rewritten:

"(a) If a person ~~shall violate~~ violates any provision of this ~~Chapter or the rules~~ Chapter, any rule adopted by the ~~Commission or rules~~ Commission, any rule adopted by a local board of ~~health~~ health, any order issued pursuant to this Chapter, or any order issued pursuant to rules adopted by the Commission, the Secretary or a local health director may institute an action for injunctive relief, irrespective of all other remedies at law, in the superior court of the county where the violation occurred or where a defendant resides."

SECTION 4. G.S. 130A-22(a) reads as rewritten:

"(a) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed ~~five~~ ten thousand dollars ~~($5,000)~~($10,000) per day in the case of a violation involving nonhazardous waste. The penalty shall not exceed ~~twenty-five thousand dollars ($25,000)~~ twenty-seven thousand five hundred dollars ($27,500) per day in the case of a ~~first~~ violation involving hazardous ~~waste~~ waste, as defined in G.S. ~~130A-290 or~~ 130A-290, or for a failure to make a determination whether a solid waste is a hazardous waste. The penalty shall not exceed twenty-five thousand dollars ($25,000) per day for a first violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State; and shall not exceed fifty thousand dollars ($50,000) per day for a second or further violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State. The penalty shall not exceed twenty-five thousand dollars ($25,000) per day for a violation involving a voluntary remedial action implemented pursuant to G.S. 130A-310.9(c) or a violation of the rules adopted pursuant to

G.S. 130A-310.12(b). If a person fails to pay a civil penalty within 60 days after the final agency decision or court order has been served on the violator, the Secretary of Environment and Natural Resources shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator."

SECTION 5. G.S. 130A-22(c) reads as rewritten:

"(c) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who willfully violates Article 11 of this Chapter, rules adopted by the Commission pursuant to Article 11 or any condition imposed upon a permit issued under Article 11. An administrative penalty may not be imposed upon a person who establishes that neither the site nor the system may be improved or a new system installed so as to comply with Article 11 of this Chapter. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) per day per violation in the case of a wastewater collection, treatment and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling. The penalty shall not exceed ~~three hundred dollars ($300.00)~~ five thousand dollars ($5,000) per day per violation in the case of a wastewater collection, treatment and disposal system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling."

SECTION 6. G.S. 130A-26.2 reads as rewritten:

"**§ 130A-26.2. Penalty for false reporting under Article ~~9~~9 and Article 10.**

Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under Article 9 or Article 10 of this Chapter or rules adopted under Article 9 or Article 10 of this Chapter; or who knowingly makes a false statement of a material fact in a rule-making proceeding or contested case under Article 9 or Article 10 of this Chapter; or who falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under Article 9 or Article 10 of this Chapter or rules adopted under Article 9 or Article 10 of this Chapter is guilty of a Class 2 misdemeanor. The maximum fine that may be imposed for an offense under this section is ten thousand dollars ($10,000)."

SECTION 7. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.6F. Enforcement procedures: administrative orders.**

(a) The Secretary may issue an administrative order directing any person who has committed a violation described in G.S. 143-215.6A to do any of the following:

(1) Attend an environmental education course.

(2) Publish notice of the violation.

(3) Perform community service related to protection or restoration of the environment and natural resources.

(b) The Secretary may issue an administrative order pursuant to this section in addition to any other action or proceeding under this Part.

(c) The Secretary shall serve a copy of the administrative order and the specific reasons for issuing the administrative order by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4. A contested case petition shall be filed within 30 days of receipt of the order.

(d) A person may comply with an administrative order issued pursuant to this section by attending an environmental education or community service program offered by the Department or a program certified by the Department. The Secretary may establish minimum standards for certification of environmental education or community service programs.

(e) The Department may charge a fee, not to exceed one hundred dollars ($100.00), to compensate for the reasonable cost of attending any environmental education course or community service program offered by the Department.

(f) The Secretary may assess a civil penalty for failure to comply with an order issued pursuant to this section as provided in G.S. 143-215.6A."

SECTION 8. The Department of Environment and Natural Resources, in consultation with the North Carolina School Boards Association, shall develop and implement a pilot program to begin no later than October 1, 2005, and to expire April 1, 2008, to determine the amount and retain the actual costs of collecting civil penalties, fines, and forfeitures assessed by the Department and by commissions organized under the Department to improve the assessment and collection of civil penalties, fines, and forfeitures. The clear proceeds of all civil penalties, fines, and forfeitures that are collected by the Department and payable to the counties for the support of public schools pursuant to Article IX, Section 7 of the Constitution of North Carolina shall be remitted to the Office of State Budget and Management by the officer having custody of the funds within 10 days after the close of the calendar month in which the funds were received or collected. During this pilot program, the clear proceeds of all civil penalties, fines, and forfeitures collected by the Department shall be diminished only by the actual costs of collecting the civil penalties, fines, and forfeitures. Actual costs may include time spent on collection-related matters by personnel of the Department, legal services related to collection provided by the Department of Justice, collection agency fees, and court costs. The Department shall not enter into a contract that would require the Department to pay more than twenty percent (20%) of the civil penalty, fine, or forfeiture amount to a collection agency as a fee for collection of civil penalties, fines, and forfeitures. Additional items may be included in costs by agreement of the Department and the School Boards Association. Costs shall be itemized in an accounting to be provided when the funds are remitted by the Department.

SECTION 9. The Department of Environment and Natural Resources shall submit an interim report on the civil penalty, fine, and forfeiture collection pilot program no later than March 1, 2007, and shall submit a final report no later than April 1, 2008, to the Environmental Review Commission, the Fiscal Research Division of the North Carolina General Assembly, and the North Carolina School Boards Association. The Department shall report the total amount of civil penalties, fines, and forfeitures

collected, the amount paid to the counties in support of public schools, and the effect of the pilot program on collection of civil penalties, fines, and forfeitures by the Department.

SECTION 10. Sections 1 through 7 of this act become effective December 1, 2005, and apply to violations and offenses committed on or after that date. Sections 8 through 10 of this act are effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: July 25, 2005

TO: Rep. Culpepper

FROM: Jennifer Haygood
Fiscal Research Division

RE: PCS H1283-CSRTf-43

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES: Civil Penalty and Forfeiture Fund		No estimate available			
General Fund		No estimate available			
EXPENDITURES:		No substantial impact expected			
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment and Natural Resources, Sedimentation Control Commission, Coastal Resources Commission

EFFECTIVE DATE: All provisions except pilot program are effective for violations and offenses committed on or after December 1, 2005.

BILL SUMMARY:

Makes changes regarding environmental penalties that may be assessed for violations of the Sedimentation Pollution Control Act, the Coastal Area Management Act, Solid Waste Management law, and Wastewater Systems law. Authorizes the Secretary of the Department of Environment and Natural Resources (DENR) to issue administrative orders directing

environmental violators to participate in certain remedial activities. Directs DENR to create a pilot program focused on determining and retaining actual costs of collecting civil penalties, fines, and forfeitures. DENR is required to report on the pilot program by March 1, 2007, and April 1, 2008.

ASSUMPTIONS AND METHODOLOGY:

This bill includes several changes to the civil penalties that may be assessed for environmental violations. The proceeds of all civil penalty proceeds are deposited into the Civil Penalty and Forfeiture Fund for use by North Carolina public schools.

Section 1 allows, for the purpose of deterrence, the Secretary to assess a penalty of up to $10,000 for the first day of a violation of the Sedimentation Pollution Control Act. Currently, the maximum fine is set at $5,000. In a typical year, there are 270 violations, and approximately 56 cases of those are assessed civil penalties. Since this power is discretionary, no estimate can be made at this time.

Section 2 amends the civil penalties for Coastal Area Management Act (CAMA) violations by increasing the minor development violation maximum from $250 to $1,000 and the major development violation maximum from $2,500 to $10,000. In a typical year, 171 CAMA violations occur, and the Coastal Resources Commission (CRC) assesses 135 of those cases penalties. In 2004 the Coastal Resources Commission collected $30,500 in civil penalty revenue. No estimate of additional penalty revenue is possible since Section 2 only increases the maximum penalty but does not require the Commission to assess the higher penalty.

Section 2 also authorizes the Coastal Resource Commission to assess the violator the costs of investigation, inspection, and monitoring. The amount of the assessments of investigative costs shall not exceed one-half of the amount of the civil penalty assessed or $1,000 for minor development violations or $2,500 for a major development violations, whichever is less. Any investigative costs collected would be deposited into the General Fund. Since this power is discretionary and investigative costs vary, no estimate can be made at this time.

Section 4 amends increases administrative penalties for violation of the Solid Waste Management law from a maximum of $5,000 to $10,000 a day for nonhazardous waste and a maximum of $25,000 to $32,500 for other violations (but not more than $25,000 for the first day). Table A summarizes the number of violations and civil penalties assessed in a typical year by violation type. In 2004 the Division of Waste Management deposited $457,132 in fines into the Civil Penalty and Forfeiture Fund. No estimate of additional penalty revenue is possible since Section 4 only increases the maximum penalty but does not require DENR to assess the higher penalty.

Table A: Typical Number of Waste Violations

Violation Type	# of Violations	# Assessed Civil Penalties
Hazardous Waste	99	20
Solid Waste	22	11
Underground Storage Tank	216	72

Section 5 increases administrative penalties for violation of the Wastewater Systems law from a maximum of $50 to $100 per day for smaller violations and a maximum of $400 to $5,000 per day for larger violations. In a typical year, the Division of Water Quality (DWQ) issues 923 Notices of

Violation and assesses 722 civil penalties. In 2004 DWQ deposited $5,376,143 into the Civil Penalty and Forfeiture Fund. No estimate of additional penalty revenue is possible since Section 5 only increases the maximum penalty but does not require DENR to assess the higher penalty.

Section 6 extends the penalty for false reporting under the Solid Waste law to include false reporting under the Drinking Water Act. The maximum fine that may be imposed for such an offense is $10,000. Currently, there is not sufficient data to estimate the number of false reports expected.

Under Section 7, the Secretary of DENR, in addition to other remedies, may require an environmental violator to attend environmental education courses and may charge a fee, not to exceed $100, to compensate for the reasonable cost of attending such courses. Such course fees would be deposited in the General Fund. Since this power is discretionary, there is no estimate currently available.

Section 8 directs DENR to create a pilot program during the period of October 1, 2005 through April 1, 2008, focused on determining and retaining the actual costs of collecting civil penalties, fines, and forfeitures as well as improving assessment and collection. DENR believes that it can implement this pilot program using existing staff. Currently DENR may retain up to 10% of civil penalty assessments to cover collection costs. This section would allow DENR to retain the actual cost of collection up to 20% of the total civil penalty. The net impact on the Fines and Forfeitures Fund is unclear. If actual collection costs are more than 10%, the Fund would receive a smaller percentage of civil penalty collections. If collection rates remain steady or decline, a net decrease to the Fund would result. However, if collection rates increase as a result of this provision, the net amount deposited in the Fund could actually increase.

SOURCES OF DATA: Department of Environment and Natural Resources

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H D

HOUSE BILL 1526
Committee Substitute Reported Without Prejudice 5/31/05
PROPOSED COMMITTEE SUBSTITUTE H1526-PCS50477-ST-81

Short Title: Avery County/Heritage Park Authority. (Local)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE HERITAGE PARK AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. There is created the "Heritage Park Authority" which, when duly established as provided for in this act, shall be both a body politic and corporate, having all of the following enumerated powers and jurisdiction as well as any other additional powers that may be conferred upon it by the general law and by act of the General Assembly.

SECTION 2. For purposes of this Act:

(1) "Authority" means the Heritage Park Authority or its governing board, as the case may be.

(2) "Board" means the Board of Commissioners of Avery County.

(3) "Heritage Park" means the 52 acres of land known as 'Heritage Park' and all facilities located on that land.

(4) "Member" means a member of the Authority.

SECTION 3. The Board may by ordinance create the Authority. The Board shall hold a public hearing on the ordinance to create the Authority. The location of the public hearing shall be determined by the Board and established by resolution. The Board shall cause notice of the hearing to be published once a week for two successive calendar weeks in a newspaper of general circulation in each county. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. Upon its creation the Authority shall enjoy the powers and have the duties and responsibilities conferred upon it by ordinance, subject to the provisions of this Article and the laws of the State of North Carolina. The provisions of any ordinance may be modified, amended, or rescinded by a subsequent ordinance.

SECTION 4.(a) Upon its creation, the Authority shall have a governing board of nine. Except as otherwise provided for the initial appointees, each

commissioner shall serve a four-year staggered term. Upon creation of the Authority, the members of the Authority shall be appointed by the Board as follows:

(1) One member shall be appointed upon the recommendation of the Avery County Agricultural and Horticultural Fair, Inc., a nonprofit corporation.

(2) One member shall be appointed from the Avery County Recreational Advisory Commission.

(3) The southern portion of Avery County shall recommend one member, with that nomination to be determined by the Frank and Green Valley Fire Departments.

(4) One member each recommended by the Board of Commissioners of Banner Elk, Beech Mountain, Crossnore, Elk Park, Newland, and Sugar Mountain.

SECTION 4.(b) All members must maintain a permanent residence within the County of Avery. No member of the Board may serve on the Authority. In the event that the Avery County Agricultural and Horticultural Fair, Inc., becomes nonexistent, then the Authority shall have only eight members.

SECTION 4.(c) Any member who has served two consecutive terms, including any initial term of less than four years, may not be reappointed to a third consecutive term. Such a member may, however, be appointed to serve again after the expiration of the term of the member's successor.

SECTION 4.(d) On the death of a commissioner, resignation, incapacity, or inability to serve, as determined by the board appointing that commissioner, or removal of the commissioner for cause, as determined by the board appointing that commissioner, the board affected may appoint another commissioner to fill the unexpired term.

SECTION 5. The members of the Authority shall receive no compensation or per diem, but shall be allowed and paid their actual traveling expenses incurred in transacting the official business of the Authority.

SECTION 6. Upon creation of the Authority, its governing board shall meet at a time and place set by the Board. The Authority shall elect from among its members a chair, a secretary, and a treasurer at its initial meeting and then annually thereafter. In order to conduct business, a quorum must be present. A majority of the Authority shall control its decisions. Each member of the Authority, including the chair, shall have one vote. The Authority shall meet at the places and times designated by the chair. The provisions of the Open Meetings Law, Article 33C of Chapter 143 of the General Statutes, shall apply.

SECTION 7.(a) Within the limits of the funds available to it, and subject to the provisions of this Article and the ordinance, the Authority may:

(1) Purchase, acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate Heritage Park facilities for the use of the general public within Avery County for the purpose to purchase, improve, own, hold, lease, or operate real or personal property.

(2) Sue and be sued in the name of the Authority, to make contracts and hold any personal property necessary for the exercise of the powers of the Authority, and to acquire by purchase, lease, or otherwise any existing lease or leasehold right.

(3) Charge and collect reasonable and adequate fees and rents for the use of Heritage Park or for services rendered in the operation of the facilities. Revenues from fees and rents shall be used only for upkeep and operation of Heritage Park.

(4) Make reasonable regulations it deems necessary for the proper maintenance, use, operation, and control of Heritage Park facilities and to provide and enforce penalties for the violation of these rules and regulations; provided, however, that the regulations and schedules of fees shall not be in conflict with the laws of the State of North Carolina.

(5) Sell, lease, or otherwise dispose of any property, real or personal, belonging to the Authority, according to the procedures described in Article 12 of Chapter 160A of the General Statutes, but no sale of real property shall be made without the express approval of the Board.

(6) Deposit or invest and reinvest any of its funds as provided in Chapter 159 of the General Statutes, as it may be amended from time to time.

(7) Purchase any of its own outstanding bonds or notes.

(8) Operate, own, lease, control, regulate, or grant to others, for a period not to exceed five years, with an option to renew the right to operate on Heritage Park any snack bars, vending machines, food and beverages dispensing outlets, advertising media, automobile parking facilities, and other types of facilities as may be directly related to the maintenance and furnishing of a complete parks and recreational facility to the public.

(9) Erect and construct buildings and other improvements and facilities not inconsistent with or in violation of the agreements applicable to and the grants under which real property of the Authority is held.

(10) Borrow money for use in the making and paying of these improvements and facilities, secured by and on the credit only of any lease agreements in respect to these improvements and facilities, and to pledge and assign leases and lease agreements as security for the authorized loans.

(11) Employ any agents or professionals whose services may be deemed by the Authority to be necessary and useful.

(12) Procure grants to allow for the installation of improvements upon real property.

(13) Have a corporate seal that may be altered at will.

(14) Contract with and accept grants from the State of North Carolina, the federal government, or any of the agencies or representatives of either said governmental bodies relating to the purchase of land and to the

grading, constructing, equipping, improving, maintaining, or operating of Heritage Park facilities.

SECTION 7.(b) The Avery County Board of Commissioners may appropriate funds as the Board of Commissioners deems necessary to carry out the provisions of this act in any proportion or upon any basis as may be determined by the Avery County Board of Commissioners. The Authority may make recommendations to the Avery County Board of Commissioners with respect to such appropriations.

SECTION 7.(c) The Authority shall possess the same exemptions in respect to payment of taxes and license fees and shall be eligible for sales and use tax refunds to the same extent as provided for municipal corporations by the laws of the State of North Carolina.

SECTION 7.(d) The Authority may acquire from the Board, and the Board may grant and convey, either by gift or for such consideration as the Board may deem appropriate, any real or personal property which it now owns or may hereafter acquire, which may be necessary for the construction, operation, and maintenance of Heritage Park facilities.

SECTION 7.(e) Any lands acquired, owned, controlled, or occupied by the Authority shall be, and are hereby declared to be acquired, owned, controlled, and occupied for a public purpose.

SECTION 8.(a) A copy of the ordinance creating the Authority and of any ordinance amending or repealing the joint resolution creating the Authority shall be filed with the following:

(1) The Secretary of State.
(2) The clerk to the Board.
(3) The clerk of superior court of Avery County.
(4) A newspaper of general circulation in Avery County.

SECTION 8.(b) Unless a ordinance specifies a later date, it shall take effect when the ordinance has been submitted to the Secretary of State for filing. Certifications by the clerk of superior court of the text of any ordinance filed with that clerk are admissible in evidence.

SECTION 9.(a) Except as limited by restrictions in any ordinance and by other supervening provisions of law, the Authority may make regulations applicable to Heritage Park concerning all matters relating to or affecting the use of Heritage Park. These regulations may not conflict with or supersede provisions of general or special acts or of regulations of State agencies promulgated under the authority of general law. No regulations adopted under the provisions of this section may be adopted by the Authority except after public hearing, with publication of notice of the hearing in a newspaper of general circulation in the county at least 10 days before the hearing.

SECTION 9.(b) Violation of any regulation of the Authority commanding or prohibiting an act shall be a Class 3 misdemeanor.

SECTION 9.(c) The regulations promulgated under this section take effect upon passage or upon such dates as may be stipulated in the regulations except that no regulation may be enforced unless adequate notice of the regulation has been posted in Heritage Park. Ordinances providing regulations for specific areas shall clearly establish

the boundaries of the affected area by including a map of the regulated area, with the boundaries clearly drawn, or by setting out the boundaries in a written description, or by a combination of these techniques. Adequate notice as to a regulation affecting only a particular location shall be given in the following manner. When a regulation applies generally as to Heritage Park, there must be a posting of notices, signs, or markers communicating the essential provisions in at least three different places throughout the area, and it shall be printed in a newspaper of general circulation in the county.

SECTION 9.(d) A copy of each regulation promulgated under this section must be filed by the Authority with the following persons:

(1) The Secretary of State;

(2) The clerks of superior court of Avery County.

(3) The clerk to the Board.

SECTION 9.(e) Any official designated in subsection (d) above may issue certified copies of regulations filed with the official under the seal of the official's office. Such certified copies may be received in evidence in any proceeding.

SECTION 9.(f) Publication and filing of regulations promulgated under this section as required above are for informational purposes and is not a prerequisite to their validity if they in fact have been duly promulgated, the public has been notified as to the substance of the regulations, a copy of the text of all regulations is in fact available to any person who may be affected, and no party to any proceeding has been prejudiced by any defect that may exist with respect to publication and filing. Rules and regulations promulgated by the Authority under the provisions of other sections of this Article relating to internal governance of the Authority need not be filed or published. Where posting of any sign, notice, or marker, or the making of other communication is essential to the validity of a regulation duly promulgated, it is presumed in any proceeding that prior notice was given and maintained and the burden lies upon the party asserting to the contrary to prove lack of adequate notice of any regulation.

SECTION 10.(a) Where an ordinance so provides, all law enforcement officers, or those officers as may be designated in the ordinance, with territorial jurisdiction as to any part of Heritage Park within the limitations of their subject matter jurisdiction, have the authority of peace officers in enforcing the laws over all of Heritage Park. A certificate of training issued by the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriffs' Education and Training Standards Commission will suffice for certification for the purposes of this Article.

SECTION 10.(b) Where a law enforcement officer with jurisdiction over any part of Heritage Park is performing duties relating to the enforcement of the laws, the officer shall have such extraterritorial jurisdiction as may be necessary to perform the officer's duties. These duties include investigations of crimes an officer reasonably believes have been, or are about to be, committed within the area in question. This includes traversing by reasonable routes from one portion of this area to another although across territory not within the boundaries of Heritage Park; conducting prisoners in custody to a court or to detention facilities as may be authorized by law, although this may involve going outside the area in question; execution of process

connected with any criminal offense alleged to have been committed within the boundaries in question, except that this process may not be executed by virtue of this provision beyond the boundaries of the two counties. This also includes continuing pursuit of and arresting any violator or suspected violator as to which grounds for arrest arose within the area in question.

SECTION 10.(c) Where law enforcement officers are given additional territorial jurisdiction under the provisions of this section, this shall be considered an extension of the duties of the office held and no officer shall take any additional oath or title of office.

SECTION 11. The Authority shall report annually to the Board regarding its operations and activities during the previous year and on any other matter requested by the Board.

SECTION 12. If one or more sections, clauses, sentences, or parts of this act shall be adjudged invalid, such judgment shall not affect, impair, or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision held invalid, and the inapplicability or invalidity of any section, clause, sentence, or part of this act in one or more instances or circumstances shall not be taken in affect or prejudice in any way its applicability or validity in any other instance.

SECTION 13. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1526

Committee Substitute Reported Without Prejudice 5/31/05

Short Title: Avery County/Heritage Park Authority. (Local)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO ENABLE THE COUNTY OF AVERY TO ESTABLISH THE HERITAGE PARK AUTHORITY FOR THE MAINTENANCE AND DEVELOPMENT OF THE HERITAGE PARK FACILITIES IN AVERY COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. There is hereby created the Heritage Park Authority ("Park Authority"). The Park Authority is a body politic and corporate having the powers and jurisdiction hereinafter enumerated and any other additional powers as shall be conferred upon it by general law and the future acts of the General Assembly.

SECTION 2. The Park Authority shall consist of nine members who shall be appointed to staggered terms of four years by the Avery County Board of Commissioners. All of the members shall be permanent residents of Avery County. Of the initial nine members, five shall be appointed to a term of four years and four shall be appointed to a term of two years. Thereafter, all terms shall be for four years, thus creating the staggered positions. Each member shall take and subscribe before the Clerk of the Superior Court of Avery County an oath of office and file the same with the Avery County Board of Commissioners. Upon the occurrence of any vacancy on the Park Authority, the vacancy shall be filled within 60 days after the vacancy occurs by the recommending entity upon approval of the Board of Commissioners. If the Authority fails to recommend a replacement to fill the vacancy within 60 days, the Board of Commissioners shall fill the vacancy at their next regular meeting.

SECTION 3.(a) The members of the Park Authority shall be appointed by the Avery County Board of Commissioners, as follows:

(1) One member shall be appointed upon the recommendation of the Avery County Agricultural and Horticultural Fair, Inc., a nonprofit corporation.

(2) One member shall be appointed from the Avery County Recreational Advisory Commission.

(3) The Towns of Banner Elk, Beech Mountain, Crossnore, Elk Park, Newland, and Sugar Mountain shall each nominate one member.

(4) The southern portion of Avery County shall recommend one member, with that nomination to be determined by the Frank and Green Valley Fire Departments.

No member of the Avery County Board of Commissioners may serve on the Park Authority Board. In the event that the Avery County Agricultural and Horticultural Fair, Inc., becomes nonexistent, then the Park Authority Board will have only eight members.

SECTION 3.(b) The Park Authority shall elect from among its members a Chair, a Secretary, and a Treasurer at its initial meeting and then annually thereafter. A majority of the Park Authority shall control its decisions. Each member of the Park Authority, including the Chair, shall have one vote. The Park Authority shall meet at the places and times designated by the Chair and shall be subject to the Open Meetings Law.

SECTION 3.(c) The Park Authority may adopt suitable bylaws for its management, subject to approval of the Avery County Board of Commissioners. The members of the Park Authority shall receive no compensation or per diem, but shall be allowed and paid their actual traveling expenses incurred in transacting the official business of the Park Authority.

SECTION 4. The Park Authority shall have the following powers and authority:

(1) To purchase, acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate Heritage Park facilities for the use of the general public within Avery County for the purpose to purchase, improve, own, hold, lease, or operate real or personal property.

(2) To sue and to be sued in the name of the Park Authority, to make contracts and hold any personal property necessary for the exercise of the powers of the Park Authority, and to acquire by purchase, lease, or otherwise any existing lease or leasehold right.

(3) To charge and collect reasonable and adequate fees and rents for the use of the Heritage Park facilities or for services rendered in the operation of the facilities. Revenues from fees and rents shall be used only for upkeep and operation of Heritage Park.

(4) To make all reasonable rules and regulations it deems necessary for the proper maintenance, use, operation, and control of Heritage Park facilities and to provide and enforce penalties for the violation of these rules and regulations; provided, however, that the rules and regulations and schedules of fees shall not be in conflict with the laws of the State of North Carolina.

(5) To sell, lease, or otherwise dispose of any property, real or personal, belonging to the Park Authority, according to the procedures described in Article 12 of Chapter 160A of the General Statutes, but no sale of

real property shall be made without the express approval of the Avery County Board of Commissioners.

(6) To deposit or invest and reinvest any of its funds as provided by the Local Government Finance Act, as it may be amended from time to time.

(7) To purchase any of its own outstanding bonds or notes.

(8) To operate, own, lease, control, regulate, or grant to others, for a period not to exceed five years, with an option to renew the right to operate on the Heritage Park facilities any snack bars, vending machines, food and beverages dispensing outlets, advertising media, automobile parking facilities, and other types of facilities as may be directly related to the maintenance and furnishing of a complete parks and recreational facility to the public.

(9) To erect and construct buildings and other improvements and facilities not inconsistent with or in violation of the agreements applicable to and the grants under which real property of the Park Authority is held.

(10) To lease their improvements and facilities for a term or terms not to exceed five years, with an option to renew at the termination of the lease.

(11) To borrow money for use in the making and paying of these improvements and facilities, secured by and on the credit only of any lease agreements in respect to these improvements and facilities, and to pledge and assign leases and lease agreements as security for the authorized loans.

(12) To procure grants to allow for the installation of improvements upon real property.

(13) To have a corporate seal which may be altered at will.

SECTION 5. The Park Authority shall possess the same exemptions in respect to payment of taxes and license fees and shall be eligible for sales and use tax refunds to the same extent as provided for municipal corporations by the laws of the State of North Carolina.

SECTION 6. The Park Authority may acquire from Avery County, by agreement with the County, and the County may grant and convey, either by gift or for such consideration as the County may deem appropriate, any real or personal property which it now owns or may hereafter acquire, which may be necessary for the construction, operation, and maintenance of Heritage Park facilities.

SECTION 7. Any lands acquired, owned, controlled, or occupied by the Park Authority shall be, and are hereby declared to be acquired, owned, controlled, and occupied for a public purpose.

SECTION 8. Subject to the limitations as set out in this act, all rights and powers given and granted to counties and municipalities by general law, which may now be in effect, or enacted in the future relating to the development, regulation, and control of Heritage Park facilities, are vested in the Park Authority. The Avery County Board of Commissioners may delegate its powers under these acts of the Park

Authority, and the Park Authority shall have concurrent rights with Avery County to control, regulate, and provide for the development of Heritage Park in Avery County.

SECTION 9. The Park Authority may contract with and accept grants from the State of North Carolina, the federal government, or any of the agencies or representatives of either said governmental bodies relating to the purchase of land and to the grading, constructing, equipping, improving, maintaining, or operating of Heritage Park.

SECTION 10. The Park Authority may employ any agents or professionals whose services may be deemed by the Park Authority to be necessary and useful in carrying out the provisions of this act.

SECTION 11. The Avery County Board of Commissioners may appropriate funds as the Board of Commissioners deems necessary to carry out the provisions of this act in any proportion or upon any basis as may be determined by the Avery County Board of Commissioners. The Park Authority may make recommendations to the Avery County Board of Commissioners with respect to such appropriations.

SECTION 12. The Park Authority may expend the funds that are appropriated by the County and may pledge the credit of the Park Authority only to the extent of the appropriate funds.

SECTION 13. The Park Authority shall not have the power to pledge the credit of Avery County, or any subdivision thereof, or to impose any obligation upon Avery County or any of its subdivisions except when the power is expressly granted by statute.

SECTION 14. The Park Authority shall make an annual report to the Avery County Board of Commissioners in July of each year setting forth in detail the operations and transactions conducted by it pursuant to this act.

SECTION 15. The powers granted to the Park Authority shall not be effective until the members of the Park Authority have been appointed by the Avery County Board of Commissioners, and nothing in this act shall require the Board of Commissioners to make the initial appointments. It is the intent of this act to enable, but not require, the formation of the Avery County Parks and Recreational Authority.

SECTION 16. If one or more sections, clauses, sentences, or parts of this act shall be adjudged invalid, such judgment shall not affect, impair, or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision held invalid, and the inapplicability or invalidity of any section, clause, sentence, or part of this act in one or more instances or circumstances shall not be taken in affect or prejudice in any way its applicability or validity in any other instance.

SECTION 17. This act is effective when it becomes law.

HOUSE BILL 1526:
Avery County/Heritage Park Authority

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 25, 2005
Introduced by:	Reps. Frye, Jones	**Summary by:**	Cindy Avrette
Version:	PCS to Second Edition H1526-CSST-81		Committee Counsel

SUMMARY: ***The proposed committee substitute for House Bill 1526 would allow the Avery County Board of Commissioners to create an authority that could acquire the property known as "Heritage Park" and operate and maintain the facilities on that property. The bill would become effective when it becomes law. The original bill, sponsored by Rep. Frye, would have eliminated the automobile insurance comprehensive deductible on motor vehicle windshield glass.***

BILL ANALYSIS: There is approximately 52 acres of property in Avery County known as "Heritage Park". The property has some facilities on it and is used by the county for certain purposes, including its Agricultural and Horticultural Fair. This bill would establish an authority that would have the ability to acquire the property and to improve, maintain, operate, and regulate the facilities on that property. The Authority would have the ability to charge and collect fees and rents for the use of the facilities as well as borrow money for use in improving the facilities. The Authority may make regulations concerning Heritage Park and law enforcement officers with jurisdiction of the Park may enforce those regulations. A violation of a regulation of the Authority would be a Class 3 misdemeanor. The Avery County Board of Commissioners may appropriate funds to the Authority and the Authority is entitled to the same exemptions in respect to payment of taxes as municipal incorporations.

The Authority may be created by ordinance of the Board of Commissioners of Avery County after notice and public hearing. Upon creation of the Authority, the Board must appoint a nine-member governing body for the Authority. To be eligible to serve on the governing body, a person must maintain a permanent residence in Avery County. A majority of the Authority shall control its decisions. The members of the governing body would serve four-year staggered terms. A member could not serve more than two consecutive terms. The members would not receive compensation or per diem, but they may be allowed their actual traveling expenses. The members of the governing body of the Authority must be appointed as follows:

- One member upon the recommendation of the Avery County Agricultural and Horticultural Fair, Inc. (If the Avery County Agricultural and Horticultural Fair, Inc. becomes nonexistent, then the governing body of the Authority shall have only eight members.)
- One member must be appointed from the Avery County Recreational Advisory Commission.
- One member from the southern portion of Avery County upon the recommendation of the Frank and Green Valley Fire Departments.
- Six members representing the municipalities in Avery County. The Board must appoint the members upon the recommendation of each of the following Board of Commissioners: Banner Elk, Beech Mountain, Crossnore, Elk Park, Newland, and Sugar Mountain.

EFFECTIVE DATE: The bill would become effective when it becomes law.

H1526e2-SMRB-CSST

North Carolina General Assembly

House Committee on Finance

Minutes

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July 28, 2005

The House Committee on Finance met on Thursday, July 28, 2005 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, Luebke, McComas and Wainwright; Vice-Chairs Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Blust, Bordsen, Capps, Carney, Dockham, England, Faison, Fisher, Folwell, Glazier, Goforth, Harrell, Holliman, Insko, Jones, Lewis, Lucas, McGee, Underhill, Vinson, Walend and Wiley. Ex-Officio member Representative Culpepper was present. Also present were Sergeant-at-Arms Bill Freeman, Fred Hines, Dusty Rhodes, and Walter Spell. Staff persons present included Cindy Avrette, Rodney Bizzell, Brenna Erford, Ashley Huffstetler, Canaan Huie, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Gibson called the meeting to order at 8:33 am and recognized the nine (9) pages present: (1) Chris Archer of Wake County, sponsored by Representative Lucy Allen; (2) Lejeana Black of Mecklenburg County, sponsored by Representative Carney; (3) Holt Broadhurst of Wake County, sponsored by Representative McComas; (4) Marketa Floyd of Mecklenburg County, sponsored by Representative Carney; (5) Emily Harper of Vance County, sponsored by Representative Wray; (6) David Hopkins of Rockingham County, sponsored by Representative Cole; (7) Reeva Sawhney of Gaston County, sponsored by Representative Rayfield; (8) Robert Story of Guilford County, sponsored by Representative Jeffus; and (9) Nancy Warren of Person County, sponsored by Representative Wilkins.

Chairman Gibson first recognized Representative Saunders for continued discussion on **HB 237 – REVISE MORTGAGE LENDING ACT** (see **attachment 3**) from the Committee meeting on Wednesday, July 27. Representative Hill moved for the adoption of the proposed committee substitute for HB 237 for the purposes of discussion. The motion carried. Karen Cochrane-Brown with Research staff was then recognized to explain the changes made to the bill in the proposed committee substitute. Details of her statements can be found in the attached bill summary. Following this explanation, Representative Hill was recognized and moved that the proposed committee substitute for HB 237 be given a favorable report with an unfavorable report as to the original bill. Chairman Gibson then recognized Representative Saunders who further stated that all of the concerns expressed by the stakeholders at the Committee's July 27, 2005 meeting had been addressed in the proposed committee substitute before the Committee. Seeing no further discussion, Chairman Gibson then called Representative Hill's motion to a vote, and the motion carried with no known opposition.

The next bill under consideration by the Committee was **SB 339 - TOWN OF AHOSKIE OCCUPANCY TAX** (see **attachment 4**). Chairman Gibson recognized Representative Culpepper who moved that the proposed committee substitute be before the committee for consideration. The motion carried. Rep. Warren was then recognized to explain the bill. She, with the assistance of staff person Ashley Huffstetler, stated that the PCS served as an omnibus bill for several localities requesting either changes to or issuance of an occupancy tax. (Further detail is provided in the bill summary.) Representative Womble, Chairman of the Occupancy Tax Subcommittee, was recognized next and informed the committee that the Subcommittee had considered the bill and recommended its approval to the full Committee. Representative Womble then moved that the PCS for SB 339 be given a favorable report with an unfavorable report as to the original bill. Seeing no further discussion, Chairman Gibson then called the motion to a vote, and it carried by consent.

HB 1283 – IMPROVE ENVIRONMENTAL ENFORCEMENT (see **attachment 5**) was the next bill considered by the Committee. Representative Alexander moved for the adoption of the PCS for the purposes of discussion, and the motion carried. Representative Culpepper, the bill sponsor, was then recognized to explain the proposed committee substitute. He began by stating that most of the provisions of the bill were included in a similar bill passed by the House in 2003. However, that bill was not considered in the Senate prior to the adjournment of the 2003 session, which necessitated the current bill before the Committee. Representative Culpepper then provided a detailed description of the bill (see bill summary).

Following this explanation, Chairman Gibson proceeded to recognize a number of individuals who spoke in opposition to the bill. Paul Wilms with the North Carolina Home Builders Association noted his concerns with the doubling of the penalties for violation to the Sedimentation Act contained in the bill. However, he also noted that many of these concerns had been addressed in the PCS of the bill before the Committee and expressed his thanks to the bill sponsor for his consideration of those concerns. Mac Boxley, General Counsel for the North Carolina Aggregates Association, was recognized next and informed the Committee that his organization, as a stakeholder to the bill, had never been contacted for input. He further stated that no consensus on the bill had been made and that more time for stakeholder discussion should be allowed. John Long, spokesman for Martin Marrieta Materials was then recognized and spoke of the long working relationship between Martin Marietta Materials and the Department of Environment and Natural Resources. He further stated his discontent that his organization had not been contacted for input and also expressed his opposition to the large fine increases contained in the bill. The last speaker recognized to speak in opposition was Leanne Winner, representing the North Carolina School Board Association. She stated her opposition to Sections 10 and 11 of the bill pertaining to the fines and forfeiture provisions. She informed the Committee members that these provisions could place in jeopardy the monies from fines and forfeitures that the school boards have traditionally enjoyed under the provisions of the state constitution. She then requested that the Committee members amend the bill by deleting Sections 10 and 11.

Chairman Gibson next recognized Robin Smith, Assistant Secretary of the Department of Environment and Natural Resources, who spoke in support of the bill. Speaking specifically to concerns on Sections 10 and 11 of the bill, she stated that the intent of the pilot program in those sections was actually to increase the amount of funds available to the school boards.

The Chair then opened the floor to questions and comments from the Committee members. Representative Goforth was recognized and asked how many violations of the Sedimentation Act

contained in the bill had occurred within the last year. To respond, Chairman Gibson recognized Jim Simons, Director of the Division of Land Resources in DENR. Mr. Simons estimated that approximately 20 violations had occurred in the past year. Representative Goforth then stated that the drastic increases in fines in the bill were unnecessary given the few violations that had occurred. He further stated that the bill seemed to be a method to bankrupt small businesses affected by the legislation. Representative Blackwood was then recognized and stated his concern that none of the stakeholders were involved with the formulation of the bill. He also noted his concern of the high fine increases. Representative Culpepper was recognized to respond and stated that concessions on the bill to address stakeholders concerns had been made, referring to the changes made to the bill at the request of the Home Builders Association. Representative Capps was recognized next and stated that the bill was entirely too radical of a change. He stated that the bill giving judicial authority to the Secretary of DENR was inappropriate and that the Chairman was not allowing sufficient time for proper discussion of the bill.

Chair Gibson then recognized Representative Dockham who asked if "major" and "minor" violations to the Sedimentation Act were clearly defined in the statutes. Robins Smith with DENR responded in the affirmative. Representative Underhill spoke next and thanked the bill sponsor for bringing the bill before the Committee. Representative Weiss was then recognized for her comments and a motion. She stated that the provisions contained in the bill were not new and that the bill had been available to all parties, including those most affected, for an ample amount of time. She further stated that violations of the state's Sedimentation Act were the number one cause of water pollution in North Carolina. She also asserted that the bill gives the Department the flexibility that is needed to properly address each violation. She then moved that the PCS for HB 1283 be given a favorable report with an unfavorable report as to the original bill. Seeing no further discussion, Chairman Gibson then called the motion to a vote, and the motion carried by a majority.

The final bill considered by the Committee was **HB 621 – SMALL INSTALLMENT CONSUMER LOANS** (see **attachment 6**). Representative Hill moved the adoption of the PCS, and the motion carried. Chairman Gibson then recognized Representative Wright, the bill sponsor, to explain the bill to the Committee (see attached bill summary).

The following individuals were recognized to speak in opposition of the bill. Each noted their concerns of the high interest rates allowed under the bill (from 65% to 150%) and the fact that the population most utilizing these type loans would not understand the associated financial impacts:

- Chris Kukla, Self-Help
- Al Ripley, NC Justice Center
- Steve Roberts, AARP
- Elizabeth Ouzts, NC Public Interest Research Group
- Octavia Rainey, Concerned Advocate
- Josh Stein, Director of Consumer Protection Division, NC Attorney General's Office
- Antowanna Blount, Triangle Family Services

The Chair then recognized those individuals who wished to speak in support of the bill. Each of these individuals stated that these loans were a needed service to those persons who cannot otherwise secure a loan at a traditional bank due to poor credit:

- Ed Renfrow, Chief Financial Officer, Coastal Financial Association & Former State Senator and State Auditor
- Charles Walters, Chairman, World Acceptance Corporation
- Dick Carlton, North Carolina Independent Finance Association

- Roger Bone, Advocate for Resident Lenders

Following these speakers, the Chair then recognized Representative Wright who, addressing the concerns expressed about the high fees associated with these types of loans, stated that there were also exorbitant fees associated with the writing of a bad check. Representative Allen was recognized next and stated that this piece of legislation was simply a "bad bill" and needed "a lot of work" before he could support it. Representative Capps concurred stating that the bill was nothing more than the State endorsing a "scam". Representative McGee stated that while a lot of work had been done in the PCS to address some of his concerns, he still could not support the bill. Representative Hill was recognized and stated that while he was aware of the strong opposition to the bill, as a retailer, he was supportive of it and felt that it was a needed service in many communities. He then moved that the PCS for HB 621 be given a favorable report, with an unfavorable report as to the original bill.

Chairman Gibson then recognized Representative Faison who stated he had heard from the Caswell County Chapter of the NAACP on the bill and, therefore, could not support it. Representative Wright responded by asking the members to focus on the need for the bill and not on emotion. He stated that every member of the Committee had constituents who would benefit from the creation of these loans, especially in times of emergency when extra money was needed. Representative Jones then made a final comment stating that while many oppose this bill, no one presents an alternative to those who need such services to be available to them. Then, seeing no further discussion or debate, Chairman Gibson then called the Hill motion to a vote. Division being called, the votes were tallied. By a vote of 9 ayes to 17 nays, the motion failed.

As the Committee's time had then expired, Chairman Gibson then adjourned the meeting at 9:59 am.

Respectfully submitted,

Representative Pryor Gibson
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. House Bill 237 (and related materials)
4. Senate Bill 339 (and related materials)
5. House Bill 1283 (and related materials)
6. House Bill 621 (and related materials)
7. House Bill 20 (and related materials) – (NOT DISCUSSED)

ATTACHMENT 1

AGENDA

House Finance Committee

July 28, 2005
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Gibson

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard
Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order

Introduction of Pages

Bills:

HB 20	**SMALL BUSINESS HEALTH INSURANCE CREDIT**	*Reps. Holliman, Bordsen, Goforth, & Ross*
HB 237	**REVISE MORTGAGE LENDING ACT**	*Reps. Coates & Saunders*
HB 621	**SMALL INSTALLMENT CONSUMER LOANS**	*Rep. Wright*
HB 1283	**IMPROVE ENVIRONMENTAL ENFORCEMENT**	*Rep. Culpepper*
SB 339	**TOWN OF AHOSKIE OCCUPANCY TAX**	*Sen. Holloman*

Adjournment

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Thursday, July 28, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 20 – SMALL BUSINESS HEALTH INSURANCE CREDIT – Reps. Holliman, Bordsen, Goforth, & Ross

HB 237 – REVISE MORTGAGE LENDING ACT – Reps. Coates & Saunders

HB 621 – SMALL INSTALLMENT CONSUMER LOANS – Rep. Wright

HB 1283 – IMPROVE ENVIRONMENTAL ENFORCEMENT – Rep. Culpepper

SB 339 – TOWN OF AHOSKIE OCCUPANCY TAX – Sen. Holloman

Respectfully,
Representatives Alexander, Gibson, Howard,
Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **2:00 p.m.** on **July 27, 2005**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

ATTACHMENT 2

VISITOR REGISTRATION SHEET

~~Commerce~~ FINANCE — July 28 2005

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Thomas McNeill Jr	DENR - DLR
James Simons	DENR - DLR
Ehren Hartz	Center for Responsible Lending
Eddie Finch	NCDOR
Sam McEwen	NCDOR
Brad Lamb	NC Consumers Council
Antowanna Blount	Triangle Family Services
Dick Gorlton	Ntg.
Larry Heckner	HSBC - North America
Ashleigh Taylor	Rep Wainwright
Milton Alford	OSBM
Octavia Sg	NFHC

VISITOR REGISTRATION SHEET

~~Committee~~ FINANCE — July 28, 2005

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Gleason	Capitol Group
Lee Idler	Raleigh Mayor
Joseph A. Smith	NC Commissioner of Banks
Stella J Adams	NC Fair Housing Ctr
SUSAN LUPTON	SELF-HELP/CRL
Steve Roberts	AARP
Chris Kolda	Self-Help
Al Ripley	NC Justice Ctr.
Erin Kinsey	NC Conservation Network
Elizabeth Ouzts	NCPIRG
Deborah Lee	Gov

VISITOR REGISTRATION SHEET

~~Commerce~~ FINANCE — July 28, 2005

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Harris	NCGA
Katie Roetzer	Sierra Club
Paul Stock	NCBA
Rich Webb	NCGA
Andy Romanet	NCLM
Josh Stein	NC AGO
	/

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 28, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Harry Dale	NCAHP
John Holden	JJ Thornburg
[illegible]	NCSA
J. Parsons	Atty at Law
Mary Thomas	RCBIC
Robin Smith	DENR

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 28, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stephanie Dorko	Charlotte Chamber
Russ Dubisky	CCPS
FRAN PRESTON	IXCRMA
Alice Garland	NCDOC
Molly Ryan	NCSBA
Joanne Winner	NCSBA
DAVID BARNES	Poyner + Spruill
Naadia Bhatti	Poyner + Spruill
Brian Bartholomay	Poyner + Spruill
Gregg Thompson	NCPCB
Lon Wilson	NCALTCF

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 28, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nancy Thompson	MCIC
Gene Ainsworth	Ainsworth & Assoc
Roger Bone	Bone and Associates
Fred Bone	Bone + Assoc.
Victor Barr	Security Financial Services
Vince Andracchio	Friendly Check
Ed Rankin	Coastal Financial Co.
Charlie Walden	N.C. Independent Fin. Assoc.
John Long	Martin Marietta
Glenn Hall	NC Ind Fin Assoc
Andy Ellen	NCLM
	XCRA
Bill Brooks	EBM

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H D

HOUSE BILL 237*
Committee Substitute Favorable 7/6/05
PROPOSED COMMITTEE SUBSTITUTE H237-CSRO-43 [v.1]

7/27/2005 6:46:59 PM

Short Title: Revise Mortgage Lending Act. (Public)

Sponsors:

Referred to:

February 16, 2005

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE MORTGAGE LENDING ACT BY ALLOWING REGISTRATION OF LIMITED LOAN OFFICERS OF DEFINED AFFILIATED MORTGAGE BANKERS AND TO ESTABLISH ADDITIONAL SUPERVISION AND ENFORCEMENT AUTHORITY FOR THE COMMISSIONER OF BANKS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-243.01 reads as rewritten:

"**§ 53-243.01. Definitions.**

The following definitions apply in this Article:

(1) Act as a mortgage broker. – To act, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, by accepting or offering to accept an application for a mortgage loan, soliciting or offering to solicit a mortgage loan, negotiating the terms or conditions of a mortgage loan, issuing mortgage loan commitments or interest rate guarantee agreements to borrowers, or engaging in tablefunding of mortgage loans, whether such acts are done through contact by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers.

(2) Act as a mortgage lender. – To engage in the business of making mortgage loans for compensation or gain.

(2a) Affiliate. – Any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841), et seq., as amended from time to time. For purposes of this subdivision, the term control means ownership of all of the voting stock or comparable voting interest of the controlled person.

(2b) Affiliated mortgage banker. – A licensed mortgage banker that meets the criteria of either sub-subdivisions a., b., and c. of this subdivision or sub-subdivisions d. and e. of this subdivision:

a. The licensee, by itself or with its affiliates, is licensed in five or more states to engage in the mortgage lending business and (i) is supervised by a state or federal regulatory agency whose regulatory scheme has been determined by the Commissioner to be substantially similar to that of North Carolina, (ii) is organized and supervised under the laws of a state that has adopted a model licensing law endorsed by the Commissioner; or (iii) is supervised by a state or federal agency that is a party to an interstate compact, or has otherwise entered into a cooperative reciprocal agreement by which the state or federal regulatory agency and the State of North Carolina, directly or by duly authorized act of the Commissioner, have mutually agreed to recognize state licensing laws which have specific enumerated criteria.

b. The licensee, including its affiliates and wholly owned subsidiaries, has more than 100 employees that are licensed pursuant to this Article.

c. The licensee has a consolidated net worth of one hundred million dollars ($100,000,000) or more, or if the licensee does not have the required net worth, its parent shall provide to the Commissioner (i) evidence satisfactory to the Commissioner that the parent has a net worth of one hundred million dollars ($100,000,000) or more, and (ii) an unconditional guarantee or comparable instrument of surety satisfactory to the Commissioner of the performance of the licensee of its obligations under this Article.

d. The licensee is a direct or indirect wholly owned subsidiary of a bank holding company or financial services holding company subject to regulation by the Federal Reserve Board or the Office of Thrift Supervision.

e. The licensee has a net worth of one hundred million dollars ($100,000,000) or, if the licensee does not have the required net worth, (i) its parent, if it is not a bank holding company or financial holding company, meets the requirements of sub-subdivision c. of this subdivision or (ii) its parent, if such parent is a bank holding company or financial holding company, has total assets in excess of ten billion dollars ($10,000,000,000) and provides the Commissioner with the unconditional guarantee or comparable instrument of surety required by sub-subdivision c. of this subdivision.

(3) Branch manager. – The individual whose principal office is physically located in, who is in charge of, and who is responsible for the business operations of a branch office of a mortgage broker or mortgage banker.

(4) Branch office. – An office of the licensee acting as a mortgage broker or mortgage banker that is separate and distinct from the licensee's principal office.

(5) Commissioner. – The North Carolina Commissioner of Banks and the Commissioner's designees. For purposes of compliance with this Article by credit unions, Commissioner means the Administrator of the Credit Union Division of the Department of Commerce.

(6) Control. – ~~The~~ Except as provided in subdivision (2a) of this section, "control" means the power to vote more than twenty percent (20%) of outstanding voting shares or other interests of a corporation, partnership, limited liability company, association, or trust.

(7) Employee. – An individual, who has an employment relationship, acknowledged by both the individual and the mortgage broker or mortgage banker and is treated as an employee for purposes of compliance with the federal income tax laws.

(7a) Exclusive mortgage broker. – An individual who acts as a mortgage broker exclusively for a single mortgage banker or single exempt person and who is licensed under the provisions of G.S. 53-243.05(c)(1a).

(8) Exempt person. – The term includes any of the following:

a. Any agency of the federal government or any state or municipal government granting mortgage loans under specific authority of the laws of any state or the United States.

b. Any employee of a licensee whose responsibilities are limited to clerical and administrative tasks for his or her employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer.

c. Any person authorized to engage in business as a bank or a wholly owned subsidiary of a bank, a farm credit system, savings institution, or a wholly owned subsidiary of a savings institution, or credit union or a wholly owned subsidiary of a credit union, under the laws of the United States, this State, or any other state. Except for G.S. 53-243.11 and G.S. 53-243.15, this Article does not apply to the exempt persons set forth in this sub-subdivision (8)c.

d. Any licensed real estate agent or broker who is performing those activities subject to the regulation of the North Carolina Real Estate Commission. Notwithstanding the above, an exempt person does not include a real estate agent or broker who receives compensation of any kind in connection with the referral, placement, or origination of a mortgage loan.

e. Any officer or employee of an exempt person described in sub-subdivision c. of this subdivision when acting in the scope of employment for the exempt person.

f. Any person who, as seller, receives in one calendar year no more than five mortgages, deeds of trust, or other security instruments on real estate as security for a purchase money obligation.

g. The North Carolina Housing Finance Agency as established by Article 122A of the General Statutes and the North Carolina Agricultural Finance Authority as established by Article 122D of the General Statutes.

h. Any nonprofit corporation qualifying under section 501(c)(3) of the Internal Revenue Code which makes mortgage loans to promote home ownership or home improvements for the disadvantaged, provided that such corporation is not primarily in the business of soliciting or brokering mortgage loans.

i. Any life insurance companies licensed to do business in North Carolina with regard to provisions concerning mortgage lenders.

(9) Licensee. – A loan officer, limited loan officer, mortgage broker, or mortgage banker who is licensed pursuant to this Article.

(10) Loan officer. – An individual who, in exchange for compensation as an employee of another person, accepts or offers to accept applications for mortgage loans. The definition of loan officer shall not include any exempt person described in sub-subdivision (8)b. of this section.

(10a) Limited loan officer. – An individual who, in exchange for compensation as an employee of an affiliated mortgage banker, directly solicits, negotiates, offers, or makes commitments for mortgage loans. The definition of limited loan officer shall not include any exempt person described in sub-subdivision (8)b. of this section.

(11) Make a mortgage loan. – To close a mortgage loan, to advance funds, to offer to advance funds, or to make a commitment to advance funds to a borrower under a mortgage loan.

(12) Managing principal. – A person who meets the requirements of G.S. 53-243.05(c) and who agrees to be primarily responsible for the operations of a licensed mortgage broker or mortgage banker.

(13) Mortgage banker. – A person who acts as a mortgage lender as that term is defined in subdivision (2) of this section. However, the definition does not include a person who acts as a mortgage lender only in tablefunding transactions.

(14) Mortgage broker. – A person who acts as a mortgage broker as that term is defined in subdivision (1) of this section. The term "mortgage broker" includes an exclusive mortgage broker, except when expressly provided otherwise.

(15) Mortgage loan. – A loan made to a natural person or persons primarily for personal, family, or household use, primarily secured by either a mortgage or a deed of trust on residential real property located in North Carolina.

(15a) Parent. – The person that controls an affiliated mortgage banker, as control is defined in subdivision (2a) of this section.

(16) Person. – An individual, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities, however organized.

(17) Qualified lender. – A person who is engaged as a mortgage lender in North Carolina and is either a supervised or a nonsupervised institution, as these terms are defined in 24 C.F.R. § 202.2, approved by the United States Department of Housing and Urban Development.

(18) Qualified person. – A person who is employed as a loan officer by a qualified lender, or by a mortgage banker or broker registered with the Commissioner under former Article 19 of this Chapter, or who is a general partner, manager, or officer of a qualified lender, registered mortgage banker, or registered mortgage broker.

(19) Residential real property. – Real property located in the State of North Carolina upon which there is located or is to be located one or more single-family dwellings or dwelling units.

(20) Tablefunding. – A transaction where a licensee closes a loan in its own name with funds provided by others, and the loan is assigned simultaneously to the mortgage lender providing the funding within one business day of the funding of the loan."

SECTION 2. G.S. 53-243.02 reads as rewritten:

"**§ 53-243.02. License required; licensee records.**

(a) Other than an exempt person, it is unlawful for any person in this State to act as a mortgage broker or mortgage banker, or directly or indirectly to engage in the business of a mortgage broker or a mortgage banker, without first obtaining a license from the Commissioner under the provisions of this Article.

(b) It is unlawful for any natural person to engage in the solicitation and acceptance of applications for mortgage loans without first obtaining a license as a loan officer, limited loan officer, mortgage banker, or mortgage broker issued by the Commissioner under the provisions of this Article. It is unlawful for any person to employ, to compensate, or to appoint as its agent a loan officer unless the loan officer is licensed as a loan officer under this Article. Exempt persons shall not be subject to this subsection.

(c) The license of a loan officer or limited loan officer is not effective during any period when that person is not employed by a mortgage ~~broker~~ broker, affiliated mortgage banker, or mortgage banker licensed under this Article. The license of an exclusive mortgage broker is not effective during any period when that person is not authorized to act as a single licensee or exempt person pursuant to G.S. 53-243.05(c)(1a).

When a loan officer or a limited loan officer ceases to be employed by a mortgage ~~broker~~ broker, affiliated mortgage banker, or mortgage banker licensed under this Article, the loan ~~officer~~ officer, limited loan officer, and the mortgage ~~broker~~ broker, affiliated mortgage banker, or mortgage banker licensed under this Article by whom that person is employed shall promptly notify the Commissioner in writing. When the authority of an exclusive mortgage broker to act on behalf of the principal licensee or exempt person identified in G.S. 53-243.05(c)(1a) has been terminated, the exclusive mortgage broker and the licensee or exempt person for whom the exclusive mortgage broker is an agent shall promptly notify the Commissioner in writing. The mortgage broker, affiliated mortgage banker, mortgage banker, or exempt person's notice shall include a statement of the specific reason or reasons for, as applicable, the termination of the loan officer's or limited loan officer's employment or exclusive mortgage broker's authority.

A loan officer or limited loan officer shall not be employed simultaneously by more than one affiliated mortgage banker, mortgage broker or mortgage banker licensed under this Article.

(d) Each affiliated mortgage banker, mortgage broker and mortgage banker licensed under this Article shall maintain on file with the Commissioner a list of all loan officers or limited loan officers who are employed with the affiliated mortgage banker, mortgage broker or mortgage banker.

(e) No person, other than an exempt person, shall hold himself or herself out as a mortgage banker, an affiliated mortgage banker, a mortgage broker, limited loan officer, or loan officer unless such person is licensed in accordance with this Article.

(f) Any person who has completed and filed with the Commissioner the application and all documents required for licensure as a loan officer other than documents relating to the required examination and the mortgage lending fundamentals course may act as a loan officer during the period before action is taken on the application by the Commissioner, if:

(1) The Commissioner has not denied, revoked, or taken any adverse action with respect to an application filed by or license held by such person during the five-year period ending on the date of filing of the application;

(2) The loan officer is employed by a licensed mortgage broker or mortgage banker, and the managing principal of such mortgage broker or mortgage banker (i) certifies to the Commissioner in writing that the managing principal reasonably believes that the application of the person for licensure as a loan officer meets or exceeds all of the relevant requirements of this Article for licensure and (ii) undertakes in writing that the managing principal and the employer will be responsible for the acts of the applicant during the period that such application is pending; and

(3) The person is currently or has within the six-month period prior to the date of the application been employed as and acting as a loan officer

for an exempt entity which entity is exempt by virtue of an exemption claimed under G.S. 53-243.01(8)c.

(g) The Commissioner may deny or suspend the rights of a mortgage broker or mortgage banker to employ a loan officer acting under subsection (f) of this section if the Commissioner finds that the mortgage broker or mortgage banker, or the managing principal thereof, makes the certification or undertaking set forth in subdivision (2) of subsection (f) of this section not in good faith."

SECTION 3. G.S. 53-243.05(c)(1) reads as rewritten:

"(c) In addition to the requirements under subsection (a) of this section, each applicant for licensure as a mortgage broker or mortgage banker at the time of application and at all times thereafter shall comply with the following requirements:

(1) Except as provided for in subdivision (1a) of this subsection, if the applicant is a sole proprietor, the applicant shall have at least three years of experience in residential mortgage lending or other experience or competency requirements as the Commissioner may impose. Experience as an exclusive mortgage broker or as a limited loan officer shall not constitute mortgage-lending experience under this subdivision."

SECTION 4. G.S. 53-243.05(e) reads as rewritten:

"(e) Every applicant for initial licensure shall pay a filing fee of one thousand dollars ($1,000) for licensure as a mortgage broker or mortgage banker or fifty dollars ($50.00) for licensure as a loan ~~officer,~~ officer or limited loan officer, in addition to the actual cost of obtaining credit reports and State and national criminal history record checks."

SECTION 5. Article 19A of Chapter 53 of the General Statutes is amended by adding a new section to read:

"**§ 53-243.05A. Licensing for limited loan officers; qualifications, revoked, suspended, or barred.**

(a) An affiliated mortgage banker shall notify the Commissioner when it hires a limited loan officer on forms prescribed by the Commissioner. The form shall contain any information the Commissioner deems necessary including the name, social security number, address, and business location of the limited loan officer. Limited loan officers employed by an affiliated mortgage banker shall:

(1) Be at least 18 years of age.

(2) Work exclusively for an affiliated mortgage banker. The affiliated mortgage banker who hires the limited loan officer shall:

a. Supervise the limited loan officer as required by this Article.

b. Sign the notification form regarding the hiring of the applicant.

c. Certify the applicant is qualified as a limited loan officer subject to background checks, training, testing, and fundamental education requirements.

d. Be jointly and severally liable for any and all claims and damages of any type, including punitive damages pursuant to

Chapter 1D of the General Statutes arising out of the limited loan officer's mortgage lending activities, as allowed by law.

(b) An applicant for a limited loan officer license may act provisionally as a limited loan officer during the pendency of the application before the Commissioner for up to sixty days after submission of the completed forms identified in subsection (a) of this section and a written undertaking by the employing affiliated mortgage banker that it will be responsible for all the applicant's mortgage banking activities.

(c) Systems, programs, and procedures used by the affiliated mortgage banker for employment background checks, training, testing, and education by the affiliated mortgage banker shall be submitted to and reviewed by the Commissioner who may approve those which are comparable and functionally equivalent to those for loan officers under G.S. 53-243.05 and G.S. 53-243.07. The Commissioner must be notified of any material changes or modifications to such approved systems, programs, and procedures. The Commissioner may approve those systems, programs, and procedures used by the affiliated mortgage banker for these purposes that meet or exceed programs otherwise accredited by the Commissioner or that have been approved for the affiliated mortgage banker by at least five other states in which the affiliated mortgage banker is licensed and whose licensing requirements are substantially similar to those of North Carolina.

(d) Except as specified in this section, limited loan officers are subject to licensing standards and disciplinary authority in the same way as loan officers under this Article.

(e) A person whose license is revoked, suspended, or barred under this section is prohibited from participating in the mortgage lending business in this State."

SECTION 6. G.S. 53-243.08 reads as rewritten:

"**§ 53-243.08. Managing principals and branch managers.**

Each mortgage broker or mortgage banker licensed under this Article shall have a managing principal who operates the business under that person's full charge, control, and supervision. Mortgage bankers and mortgage brokers, other than exclusive mortgage brokers, may operate branch offices subject to the requirements of this Article. Each principal and branch office of a mortgage broker or mortgage banker licensed under this Article, ~~other than an exclusive mortgage broker qualifying under G.S. 53-243.05(e)(1a),~~ shall have a branch manager who meets the experience requirements under ~~G.S. 53-243.05(e)(1).~~ G.S. 53-243.05(c)(1); provided, that an affiliated mortgage banker may designate a branch manager who does not meet the experience requirements so long as at or before the designation, it certifies that the person has been employed by the affiliated mortgage banker for at least one year as a loan officer, limited loan officer or in a comparable position in another state. The managing principal for a licensee's business may also serve as the branch manager of one of the licensee's branch offices. Each mortgage broker or mortgage banker licensed under this Article shall file a form as prescribed by the Commissioner indicating the business's designation of managing principal and branch manager for each branch and each individual's acceptance of the responsibility. Each mortgage broker or mortgage banker licensed under this Article shall notify the Commissioner of any change in its

managing principal or branch manager designated for each branch. Any licensee who does not comply with this provision shall have the licensee's license suspended pursuant to G.S. 53-243.12 until the ~~licensee, other than an exclusive mortgage broker,~~ licensee complies with this section. Any individual licensee who operates as a sole proprietorship shall be considered a managing principal for the purposes of this Article."

SECTION 7. G.S. 53-243.12(a) reads as rewritten:

"(a) The Commissioner may, by order, deny, suspend, revoke, or refuse to issue or renew a license of a licensee or applicant under this Article or may restrict or limit the activities relating to mortgage loans of any licensee or any person who owns an interest in or participates in the business of a licensee, if the Commissioner finds both of the following:

(1) That the order is in the public interest.

(2) That any of the following circumstances apply to the applicant, licensee, or any partner, member, manager, officer, director, loan officer, limited loan officer, managing principal, or any person occupying a similar status or performing similar functions or any person directly or indirectly controlling the applicant or licensee. The person:

a. Has filed an application for license that, as of its effective date or as of any date after filing, contained any statement that, in light of the circumstances under which it was made, is false or misleading with respect to any material fact.

b. Has violated or failed to comply with any provision of this Article, rule adopted by the Commissioner, or order of the Commissioner.

c. Has been convicted of any felony, or, within the past 10 years, has been convicted of any misdemeanor involving mortgage lending or any aspect of the mortgage lending business, or any offense involving breach of trust, moral turpitude, or fraudulent or dishonest dealing.

d. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the mortgage lending business.

e. Is the subject of an order of the Commissioner denying, suspending, or revoking that person's license as a mortgage broker or mortgage banker.

f. Is the subject of an order entered within the past five years by the authority of any state with jurisdiction over that state's mortgage brokerage or mortgage banking industry denying or revoking that person's license as a mortgage broker or mortgage banking industry or denying or revoking that person's license as a mortgage broker or mortgage banker.

g. Does not meet the qualifications or the financial responsibility, character, or general fitness requirements under G.S. 53-243.05 or any bond or capital requirements under this Article.

h. Has been the executive officer or controlling shareholder or owned a controlling interest in any mortgage broker or mortgage banker who has been subject to an order or injunction described in sub-subdivision d., e., or f. of this subdivision.

i. Has failed to pay the proper filing or renewal fee under this Article. However, the Commissioner may enter only a denial order under this sub-subdivision, and the Commissioner shall vacate the order when the deficiency has been corrected.

j. Has falsely certified attendance or completion of hours at an approved mortgage lending continuing education course."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 237*
Committee Substitute Favorable 7/6/05

Short Title: Revise Mortgage Lending Act. (Public)

Sponsors:

Referred to:

February 16, 2005

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE MORTGAGE LENDING ACT BY ALLOWING REGISTRATION OF LIMITED LOAN OFFICERS OF DEFINED AFFILIATED MORTGAGE BANKERS AND TO ESTABLISH ADDITIONAL SUPERVISION AND ENFORCEMENT AUTHORITY FOR THE COMMISSIONER OF BANKS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-243.01 reads as rewritten:

"**§ 53-243.01. Definitions.**

The following definitions apply in this Article:

(1) Act as a mortgage broker. – To act, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, by accepting or offering to accept an application for a mortgage loan, soliciting or offering to solicit a mortgage loan, negotiating the terms or conditions of a mortgage loan, issuing mortgage loan commitments or interest rate guarantee agreements to borrowers, or engaging in tablefunding of mortgage loans, whether such acts are done through contact by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers.

(2) Act as a mortgage lender. – To engage in the business of making mortgage loans for compensation or gain.

(2a) Affiliate. – Any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841), et seq., as amended from time to time. For purposes of this subdivision, the term control means ownership of all of the voting stock or comparable voting interest of the controlled person.

(2b) Affiliated mortgage banker. – A licensed mortgage banker that meets the criteria of either sub-subdivisions a., b., and c. of this subdivision or sub-subdivisions d. and e. of this subdivision:

a. The licensee, by itself or with its affiliates, is licensed in five or more states to engage in the mortgage lending business and (i) is supervised by a state or federal regulatory agency whose regulatory scheme has been determined by the Commissioner to be substantially similar to that of North Carolina, (ii) is organized and supervised under the laws of a state that has adopted a model licensing law endorsed by the Commissioner; or (iii) is supervised by a state or federal agency that is a party to an interstate compact, or has otherwise entered into a cooperative reciprocal agreement by which the state or federal regulatory agency and the State of North Carolina, directly or by duly authorized act of the Commissioner, have mutually agreed to recognize state licensing laws which have specific enumerated criteria.

b. The licensee, including its affiliates and wholly owned subsidiaries, has more than 100 employees that are licensed pursuant to this Article.

c. The licensee has a consolidated net worth of one hundred million dollars ($100,000,000) or more, or if the licensee does not have the required net worth, its parent shall provide to the Commissioner (i) evidence satisfactory to the Commissioner that the parent has a net worth of one hundred million dollars ($100,000,000) or more, and (ii) an unconditional guarantee or comparable instrument of surety satisfactory to the Commissioner of the performance of the licensee of its obligations under this Article.

d. The licensee is a direct or indirect wholly owned subsidiary of a bank holding company or financial services holding company subject to regulation by the Federal Reserve Board or the Office of Thrift Supervision.

e. The licensee has a net worth of one hundred million dollars ($100,000,000) or, if the licensee does not have the required net worth, (i) its parent, if it is not a bank holding company or financial holding company, meets the requirements of sub-subdivision c. of this subdivision or (ii) its parent, if such parent is a bank holding company or financial holding company, has total assets in excess of ten billion dollars ($10,000,000,000) and provides the Commissioner with the unconditional guarantee or comparable instrument of surety required by sub-subdivision c. of this subdivision.

(3) Branch manager. – The individual whose principal office is physically located in, who is in charge of, and who is responsible for the business operations of a branch office of a mortgage broker or mortgage banker.

(4) Branch office. – An office of the licensee acting as a mortgage broker or mortgage banker that is separate and distinct from the licensee's principal office.

(5) Commissioner. – The North Carolina Commissioner of Banks and the Commissioner's designees. For purposes of compliance with this Article by credit unions, Commissioner means the Administrator of the Credit Union Division of the Department of Commerce.

(6) Control. – ~~The~~ Except as provided in subdivision (2a) of this section, "control" means the power to vote more than twenty percent (20%) of outstanding voting shares or other interests of a corporation, partnership, limited liability company, association, or trust.

(7) Employee. – An individual, who has an employment relationship, acknowledged by both the individual and the mortgage broker or mortgage banker and is treated as an employee for purposes of compliance with the federal income tax laws.

(7a) Exclusive mortgage broker. – An individual who acts as a mortgage broker exclusively for a single mortgage banker or single exempt person and who is licensed under the provisions of G.S. 53-243.05(c)(1a).

(8) Exempt person. – The term includes any of the following:

a. Any agency of the federal government or any state or municipal government granting mortgage loans under specific authority of the laws of any state or the United States.

b. Any employee of a licensee whose responsibilities are limited to clerical and administrative tasks for his or her employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer.

c. Any person authorized to engage in business as a bank or a wholly owned subsidiary of a bank, a farm credit system, savings institution, or a wholly owned subsidiary of a savings institution, or credit union or a wholly owned subsidiary of a credit union, under the laws of the United States, this State, or any other state. Except for G.S. 53-243.11 and G.S. 53-243.15, this Article does not apply to the exempt persons set forth in this sub-subdivision (8)c.

d. Any licensed real estate agent or broker who is performing those activities subject to the regulation of the North Carolina Real Estate Commission. Notwithstanding the above, an exempt person does not include a real estate agent or broker who receives compensation of any kind in connection with the referral, placement, or origination of a mortgage loan.

e. Any officer or employee of an exempt person described in sub-subdivision c. of this subdivision when acting in the scope of employment for the exempt person.

f. Any person who, as seller, receives in one calendar year no more than five mortgages, deeds of trust, or other security instruments on real estate as security for a purchase money obligation.

g. The North Carolina Housing Finance Agency as established by Article 122A of the General Statutes and the North Carolina Agricultural Finance Authority as established by Article 122D of the General Statutes.

h. Any nonprofit corporation qualifying under section 501(c)(3) of the Internal Revenue Code which makes mortgage loans to promote home ownership or home improvements for the disadvantaged, provided that such corporation is not primarily in the business of soliciting or brokering mortgage loans.

i. Any life insurance companies licensed to do business in North Carolina with regard to provisions concerning mortgage lenders.

(9) Licensee. – A loan officer, limited loan officer, mortgage broker, or mortgage banker who is licensed pursuant to this Article.

(10) Loan officer. – An individual who, in exchange for compensation as an employee of another person, accepts or offers to accept applications for mortgage loans. The definition of loan officer shall not include any exempt person described in sub-subdivision (8)b. of this section.

(10a) Limited loan officer. – An individual who, in exchange for compensation as an employee of an affiliated mortgage banker, directly solicits, negotiates, offers, or makes commitments for mortgage loans. The definition of limited loan officer shall not include any exempt person described in sub-subdivision (8)b. of this section.

(11) Make a mortgage loan. – To close a mortgage loan, to advance funds, to offer to advance funds, or to make a commitment to advance funds to a borrower under a mortgage loan.

(12) Managing principal. – A person who meets the requirements of G.S. 53-243.05(c) and who agrees to be primarily responsible for the operations of a licensed mortgage broker or mortgage banker.

(13) Mortgage banker. – A person who acts as a mortgage lender as that term is defined in subdivision (2) of this section. However, the definition does not include a person who acts as a mortgage lender only in tablefunding transactions.

(14) Mortgage broker. – A person who acts as a mortgage broker as that term is defined in subdivision (1) of this section. The term "mortgage broker" includes an exclusive mortgage broker, except when expressly provided otherwise.

(15) Mortgage loan. – A loan made to a natural person or persons primarily for personal, family, or household use, primarily secured by either a

mortgage or a deed of trust on residential real property located in North Carolina.

(15a) Parent. – The person that controls an affiliated mortgage banker, as control is defined in subdivision (2a) of this section.

(16) Person. – An individual, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities, however organized.

(17) Qualified lender. – A person who is engaged as a mortgage lender in North Carolina and is either a supervised or a nonsupervised institution, as these terms are defined in 24 C.F.R. § 202.2, approved by the United States Department of Housing and Urban Development.

(18) Qualified person. – A person who is employed as a loan officer by a qualified lender, or by a mortgage banker or broker registered with the Commissioner under former Article 19 of this Chapter, or who is a general partner, manager, or officer of a qualified lender, registered mortgage banker, or registered mortgage broker.

(19) Residential real property. – Real property located in the State of North Carolina upon which there is located or is to be located one or more single-family dwellings or dwelling units.

(20) Tablefunding. – A transaction where a licensee closes a loan in its own name with funds provided by others, and the loan is assigned simultaneously to the mortgage lender providing the funding within one business day of the funding of the loan."

SECTION 2. G.S. 53-243.02 reads as rewritten:

"**§ 53-243.02. License required; licensee records.**

(a) Other than an exempt person, it is unlawful for any person in this State to act as a mortgage broker or mortgage banker, or directly or indirectly to engage in the business of a mortgage broker or a mortgage banker, without first obtaining a license from the Commissioner under the provisions of this Article.

(b) It is unlawful for any natural person to engage in the solicitation and acceptance of applications for mortgage loans without first obtaining a license as a loan officer, limited loan officer, mortgage banker, or mortgage broker issued by the Commissioner under the provisions of this Article. It is unlawful for any person to employ, to compensate, or to appoint as its agent a loan officer unless the loan officer is licensed as a loan officer under this Article. Exempt persons shall not be subject to this subsection.

(c) The license of a loan officer or limited loan officer is not effective during any period when that person is not employed by a mortgage ~~broker~~ broker, affiliated mortgage banker, or mortgage banker licensed under this Article. The license of an exclusive mortgage broker is not effective during any period when that person is not authorized to act as a single licensee or exempt person pursuant to G.S. 53-243.05(c)(1a).

When a loan officer or a limited loan officer ceases to be employed by a mortgage ~~broker~~ broker, affiliated mortgage banker, or mortgage banker licensed under this

Article, the loan ~~officer~~ officer, limited loan officer, and the mortgage ~~broker~~ broker, affiliated mortgage banker, or mortgage banker licensed under this Article by whom that person is employed shall promptly notify the Commissioner in writing. When the authority of an exclusive mortgage broker to act on behalf of the principal licensee or exempt person identified in G.S. 53-243.05(c)(1a) has been terminated, the exclusive mortgage broker and the licensee or exempt person for whom the exclusive mortgage broker is an agent shall promptly notify the Commissioner in writing. The mortgage broker, affiliated mortgage banker, mortgage banker, or exempt person's notice shall include a statement of the specific reason or reasons for, as applicable, the termination of the loan officer's or limited loan officer's employment or exclusive mortgage broker's authority.

A loan officer or limited loan officer shall not be employed simultaneously by more than one mortgage broker or mortgage banker licensed under this Article.

(d) Each mortgage broker and mortgage banker licensed under this Article shall maintain on file with the Commissioner a list of all loan officers or limited loan officers who are employed with the mortgage broker or mortgage banker.

(e) No person, other than an exempt person, shall hold himself or herself out as a mortgage banker, a mortgage broker, limited loan officer, or loan officer unless such person is licensed in accordance with this Article.

(f) Any person who has completed and filed with the Commissioner the application and all documents required for licensure as a loan officer other than documents relating to the required examination and the mortgage lending fundamentals course may act as a loan officer during the period before action is taken on the application by the Commissioner, if:

(1) The Commissioner has not denied, revoked, or taken any adverse action with respect to an application filed by or license held by such person during the five-year period ending on the date of filing of the application;

(2) The loan officer is employed by a licensed mortgage broker or mortgage lender, and the managing principal of such mortgage broker or mortgage lender (i) certifies to the Commissioner in writing that the managing principal reasonably believes that the application of the person for licensure as a loan officer meets or exceeds all of the relevant requirements of this Article for licensure and (ii) undertakes in writing that the managing principal and the employer will be responsible for the acts of the applicant during the period that such application is pending; and

(3) The person is currently or has within the six-month period prior to the date of the application been employed as and acting as a loan officer for an exempt entity which entity is exempt by virtue of an exemption claimed under G.S. 53-243.01(8)c.

(g) The Commissioner may deny or suspend the rights of a mortgage broker or mortgage lender to employ a loan officer acting under subsection (f) of this section if the Commissioner finds that the mortgage broker or mortgage lender, or the managing

principal thereof, makes the certification or undertaking set forth in subdivision (2) of subsection (f) of this section not in good faith."

SECTION 3. G.S. 53-243.05(c)(1) reads as rewritten:

"(c) In addition to the requirements under subsection (a) of this section, each applicant for licensure as a mortgage broker or mortgage banker at the time of application and at all times thereafter shall comply with the following requirements:

(1) Except as provided for in subdivision (1a) of this subsection, if the applicant is a sole proprietor, the applicant shall have at least three years of experience in residential mortgage lending or other experience or competency requirements as the Commissioner may impose. Experience as an exclusive mortgage broker or as a limited loan officer shall not constitute mortgage-lending experience under this subdivision."

SECTION 4. G.S. 53-243.05(e) reads as rewritten:

"(e) Every applicant for initial licensure shall pay a filing fee of one thousand dollars ($1,000) for licensure as a mortgage broker or mortgage banker or fifty dollars ($50.00) for licensure as a loan ~~officer,~~ officer or limited loan officer, in addition to the actual cost of obtaining credit reports and State and national criminal history record checks."

SECTION 5. Article 19A of Chapter 53 of the General Statutes is amended by adding a new section to read:

"**§ 53-243.05A. Licensing for limited loan officers; qualifications, revoked, suspended, or barred.**

(a) An affiliated mortgage banker shall notify the Commissioner when it hires a limited loan officer on forms prescribed by the Commissioner. The form shall contain any information the Commissioner deems necessary including the name, social security number, address, and business location of the limited loan officer. Limited loan officers employed by an affiliated mortgage banker shall:

(1) Be at least 18 years of age.

(2) Work exclusively for an affiliated mortgage banker. The affiliated mortgage banker who hires the limited loan officer shall:

a. Supervise the limited loan officer as required by this Article.

b. Sign the notification form regarding the hiring of the applicant.

c. Certify the applicant is qualified as a limited loan officer subject to background checks, training, testing, and fundamental education requirements.

d. Be jointly and severally liable for any and all claims and damages of any type, including punitive damages pursuant to Chapter 1D of the General Statutes arising out of the limited loan officer's mortgage lending activities, as allowed by law.

(b) An applicant for a limited loan officer license may act provisionally as a limited loan officer during the pendency of the application before the Commissioner upon submission of the completed forms identified in subsection (a) of this section and

a written undertaking by the employing affiliated mortgage banker that it will be responsible for all the applicant's mortgage banking activities.

(c) Systems, programs, and procedures used by the affiliated mortgage banker for employment background checks, training, testing, and education by the affiliated mortgage banker shall be submitted to and reviewed by the Commissioner who may approve those which are comparable and functionally equivalent to those for loan officers under G.S. 53-243.05 and G.S. 53-243.07. The Commissioner must be notified of any material changes or modifications to such approved systems, programs, and procedures. The Commissioner may approve those systems, programs, and procedures used by the affiliated mortgage banker for these purposes that meet or exceed programs otherwise accredited by the Commissioner or that have been approved for the affiliated mortgage banker by at least five other states in which the affiliated mortgage banker is licensed and whose licensing requirements are substantially similar to those of North Carolina.

(d) Except as specified in this section, limited loan officers are subject to licensing standards and disciplinary authority in the same way as loan officers under this Article.

(e) A person whose license is revoked, suspended, or barred under this section is prohibited from participating in the mortgage lending business in this State."

SECTION 6. G.S. 53-243.08 reads as rewritten:

"**§ 53-243.08. Managing principals and branch managers.**

Each mortgage broker or mortgage banker licensed under this Article shall have a managing principal who operates the business under that person's full charge, control, and supervision. Mortgage bankers and mortgage brokers, other than exclusive mortgage brokers, may operate branch offices subject to the requirements of this Article. Each principal and branch office of a mortgage broker or mortgage banker licensed under this Article, ~~other than an exclusive mortgage broker qualifying under G.S. 53-243.05(e)(1a),~~ shall have a branch manager who meets the experience requirements under ~~G.S. 53-243.05(e)(1).~~ G.S. 53-243.05(c)(1); provided, that an affiliated mortgage banker may designate a branch manager who does not meet the experience requirements so long as at or before the designation, it certifies that the person is competent in terms of training and experience to perform the duties of a branch manager. The managing principal for a licensee's business may also serve as the branch manager of one of the licensee's branch offices. Each mortgage broker or mortgage banker licensed under this Article shall file a form as prescribed by the Commissioner indicating the business's designation of managing principal and branch manager for each branch and each individual's acceptance of the responsibility. Each mortgage broker or mortgage banker licensed under this Article shall notify the Commissioner of any change in its managing principal or branch manager designated for each branch. Any licensee who does not comply with this provision shall have the licensee's license suspended pursuant to G.S. 53-243.12 until the ~~licensee, other than an exclusive mortgage broker,~~ licensee complies with this section. Any individual licensee who operates as a sole proprietorship shall be considered a managing principal for the purposes of this Article."

SECTION 7. G.S. 53-243.12(a) reads as rewritten:

"(a) The Commissioner may, by order, deny, suspend, revoke, or refuse to issue or renew a license of a licensee or applicant under this Article or may restrict or limit the activities relating to mortgage loans of any licensee or any person who owns an interest in or participates in the business of a licensee, if the Commissioner finds both of the following:

(1) That the order is in the public interest.

(2) That any of the following circumstances apply to the applicant, licensee, or any partner, member, manager, officer, director, loan officer, limited loan officer, managing principal, or any person occupying a similar status or performing similar functions or any person directly or indirectly controlling the applicant or licensee. The person:

a. Has filed an application for license that, as of its effective date or as of any date after filing, contained any statement that, in light of the circumstances under which it was made, is false or misleading with respect to any material fact.

b. Has violated or failed to comply with any provision of this Article, rule adopted by the Commissioner, or order of the Commissioner.

c. Has been convicted of any felony, or, within the past 10 years, has been convicted of any misdemeanor involving mortgage lending or any aspect of the mortgage lending business, or any offense involving breach of trust, moral turpitude, or fraudulent or dishonest dealing.

d. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the mortgage lending business.

e. Is the subject of an order of the Commissioner denying, suspending, or revoking that person's license as a mortgage broker or mortgage banker.

f. Is the subject of an order entered within the past five years by the authority of any state with jurisdiction over that state's mortgage brokerage or mortgage banking industry denying or revoking that person's license as a mortgage broker or mortgage banking industry or denying or revoking that person's license as a mortgage broker or mortgage banker.

g. Does not meet the qualifications or the financial responsibility, character, or general fitness requirements under G.S. 53-243.05 or any bond or capital requirements under this Article.

h. Has been the executive officer or controlling shareholder or owned a controlling interest in any mortgage broker or

mortgage banker who has been subject to an order or injunction described in sub-subdivision d., e., or f. of this subdivision.

i. Has failed to pay the proper filing or renewal fee under this Article. However, the Commissioner may enter only a denial order under this sub-subdivision, and the Commissioner shall vacate the order when the deficiency has been corrected.

j. Has falsely certified attendance or completion of hours at an approved mortgage lending continuing education course."

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

HOUSE BILL 237:
Revise Mortgage Lending Act

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 27, 2005
Introduced by:	Reps. Coates, Saunders	**Summary by:**	Karen Cochrane-Brown
Version:	PCS to Second Edition H237-CSRO-43 [v.1]		Staff Attorney

SUMMARY: ***House Bill 237 amends the Mortgage Lending Act to authorize the licensure of limited loan officers that are employed by affiliated mortgage bankers. The bill also authorizes the Commissioner of Banks to allow certain loan officer applicants to act as a loan officer during the pendency of their application and provides that affiliated mortgage bankers shall have branch managers to the same extent as other mortgage brokers or bankers. Finally, the bill provides that the Commissioner may discipline a licensee or applicant for falsely certifying attendance or completion of a continuing education course.***

The Proposed Committee Substitute makes several technical changes to include the term "affiliated mortgage banker" and to substitute the term "mortgage banker" for "mortgage lender" in section 2 of the bill. The PCS also adds language to limit the period during which a limited loan officer can act provisionally to no more than 60 days, pending approval of his or her license application in section 5 of the bill. Finally, the PCS adds a requirement that a branch manager for an affiliated mortgage banker must have been employed by the affiliated mortgage banker for at least a year as a loan officer, limited loan officer, or in a similar capacity in another state.

CURRENT LAW:

The Mortgage Lending Act, which was enacted in 2001, is a licensing and regulatory statute for the mortgage lending industry. It replaced a registration law, which did not provide for uniform standards, education or experience, and gave the Commissioner only limited authority to enforce the prohibitions.

Under the current law, mortgage bankers, mortgage brokers, and loan officers are required to be licensed by the Commissioner of Banks before engaging in the business of mortgage lending or mortgage brokering, unless exempt. The law exempts from licensing depository institutions (banks, wholly owned subsidiaries of banks, savings and loans, credit unions), life insurance companies, governmental lenders, nonprofits that make mortgage loans, persons that make no more than five loans a year, and real estate brokers who do not receive compensation for making loans.

A loan officer, under current law, is a compensated employee who accepts or offers to accept applications for mortgage loans. To be licensed, a loan officer must be 18 years of age and have completed within the previous three years an approved mortgage lending fundamentals course. The application and renewal fee for loan officers is $50.00.

The Commissioner of Banks has broad enforcement powers, including the power to revoke licenses and impose civil fines for violations of the law. Engaging in the mortgage banking or brokering business without a license is a Class I felony.

BILL ANALYSIS:

House Bill 237 makes several changes to the Mortgage Lending Act.

Section 1 creates several new definitions, including:

- Affiliate, means any company that controls or is controlled by another person. For purposes of the definition, the term control means ownership of all of the voting stock or comparable interest of the controlled person.
- Affiliated mortgage banker, means a licensed mortgage banker that meets one of two sets of criteria. The first set of criteria relate to (1) licensure or supervision by other jurisdictions or under a compact or agreement authorized by the Commissioner, (2) the number of licensed employees, and (3) the licensee's net worth. The second set of criteria relate to (1) whether the licensee is a subsidiary of a company regulated by the Federal Reserve Board or the Office of Thrift Supervision, and (2) the licensee's net worth.
- Limited loan officer, means an employee of an affiliated mortgage banker that directly solicits, negotiates, offers or makes commitments for mortgage loans.
- Parent, means the person that controls an affiliated mortgage banker, as control is defined under the term affiliate.

Section 2 amends the law related to required licenses under the Mortgage Lending Act to include a requirement that limited loan officers be licensed.

This section also adds new language allowing certain loan officer applicants to act as a loan officer while their application for licensure is pending. In order to qualify for this treatment, the applicant must (1) have had no negative action taken on an application or license in the preceding five years, (2) be employed by a licensed mortgage broker or lender that certifies that the applicant is qualified and that undertakes to be responsible for the acts of the applicant, and (3) currently be or have been employed as a loan officer within the previous six months by an exempt depository institution. The Commissioner can deny or suspend this treatment if the Commissioner finds that the certification and undertaking have not been made in good faith.

Section 3 excludes experience as a limited loan officer from the kinds of experience required to qualify for licensure as a mortgage broker or mortgage banker.

Section 4 subjects limited loan officers to the same $50.00 fee requirement as currently applies to loan officers.

Section 5 establishes licensing requirements for limited loan officers and the affiliated mortgage bankers that employ them. A limited loan officer must be at least 18 and must work exclusively for an affiliated mortgage banker. An affiliated mortgage banker must notify the Commissioner when it hires a limited loan officer and provide any required information. It must also certify that the limited loan officer is qualified and agree to be liable for any claims and damages, including punitive damages arising from the limited loan officer's lending activities. The limited loan officer may act provisionally for up to 60 days during the pendency of an application if the employer makes a written undertaking to be responsible for the applicant's activities. The Commissioner must approve the employer's systems, programs and procedures for background checking, training and testing a limited loan officer. Except as provided in this section, a limited loan officer is subject to all of the other requirements applied to loan officers under the Act. Any person whose license is revoked, suspended or barred under this section is prohibited from participating in the mortgage lending business in this State.

Section 6 allows affiliated mortgage bankers to designate a branch manager who does not meet the experience requirement if it certifies that the person has been employed by the affiliated mortgage banker for at least one year as a loan officer, limited loan officer, or in a similar capacity in another state.

Section 7 adds a new item to the list of actions that the Commissioner may use as the basis for disciplining a licensee or applicant. The Commissioner may take action against a licensee or applicant who has falsely certified attendance or completion of hours at a continuing education course.

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

H0237e2-SMRO-CSRO-43[v.1]

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

HB 237 A BILL TO BE ENTITLED AN ACT TO UPDATE THE MORTGAGE LENDING ACT BY ALLOWING REGISTRATION OF LIMITED LOAN OFFICERS OF DEFINED AFFILIATED MORTGAGE BANKERS AND TO ESTABLISH ADDITIONAL SUPERVISION AND ENFORCEMENT AUTHORITY FOR THE COMMISSIONER OF BANKS.

☒ With a favorable report as to committee substitute bill 2, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 339
Finance Committee Substitute Adopted 5/12/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S339-CSMBx-35 [v.2]

Short Title: Omnibus Occupancy Taxes-III. (Local)

Sponsors:

Referred to:

March 3, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE TOWNS OF AHOSKIE AND ELKIN TO LEVY ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAXES, CREATING A TAXING DISTRICT IN OCRACOKE TOWNSHIP FOR THE PURPOSES OF AUTHORIZING THE LEVY OF A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX, AMENDING THE ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAXES FOR THE COUNTIES OF CHOWAN AND MARTIN, AND REENACTING THE OCCUPANCY TAX AMENDMENTS IN CARTERET COUNTY.

The General Assembly of North Carolina enacts:

PART I. TOWN OF AHOSKIE OCCUPANCY TAX.

SECTION 1.1. Occupancy Tax. – (a) Authorization and Scope. – The Ahoskie Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.1.(b) Administration. – A tax levied under this Part shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.1.(c) Distribution and Use of Tax Revenue. – The Town of Ahoskie shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Town of Ahoskie Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the town and shall use the remainder for tourism-related expenditures.

The following definitions apply in this Part:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 1.2. Town of Ahoskie Tourism Development Authority. – (a) Appointment and Membership. – When the Ahoskie Town Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the Town of Ahoskie shall be the ex officio finance officer of the Authority.

SECTION 1.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this Part for the purposes provided in this Part. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 1.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Ahoskie Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the town council may require.

PART II. ELKIN OCCUPANCY TAX.

SECTION 2.1. Occupancy Tax. – (a) Authorization and Scope. – The Elkin Town Council may levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State

or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 2.1.(b) Administration. – A tax levied under this Part shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 2.1.(c) Distribution and Use of Tax Revenue. – The Town of Elkin shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Elkin Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Elkin and shall use the remainder for tourism-related expenditures.

The following definitions apply in this Part:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 2.2. Elkin Tourism Development Authority. – (a) Appointment and Membership. – When the Elkin Town Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Elkin shall be the ex officio finance officer of the Authority.

SECTION 2.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this Part for the purposes provided in this Part. The Authority shall

promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Elkin Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the town council may require.

PART III. OCRACOKE OCCUPANCY TAX.

SECTION 3.1. Occupancy Tax. – The Ocracoke Township Taxing District is created. It is coterminous with Ocracoke Township in Hyde County. The Ocracoke Township Taxing District is a body politic and corporate and has the power to carry out the provisions of this Part. The Hyde County Board of Commissioners shall serve ex officio as the governing body of the district, and the officers of the county shall serve as the officers of the governing body of the district. A simple majority of the governing body constitutes a quorum, and approval by a majority of those present is sufficient to determine any matter before the governing body, if a quorum is present.

SECTION 3.2.(a) Authorization and Scope. – The governing body of Ocracoke Township Taxing District may levy a room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the district that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales or room occupancy tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

SECTION 3.2.(b) Administration. – A tax levied under this Part shall be levied, administered, collected, and repealed as provided in G.S. 153A-155, as if it were a county. The penalties provided in G.S. 153A-155 apply to a tax levied under this act.

SECTION 3.2.(c) Distribution and Use of Tax Revenue. – Ocracoke Township Taxing District shall, on a quarterly basis, distribute the net proceeds of the occupancy tax to the Ocracoke Township Tourism Development Authority created pursuant to Section 3.3 of this act. The Authority shall use at least two-thirds of the proceeds distributed to it to promote travel and tourism in the district and shall use the remainder for tourism-related expenditures in the district. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of Ocracoke Township. None of the proceeds may be used to promote travel or tourism in areas within Hyde County that are outside of the district or for tourism-related expenditures in the county that are outside of the district.

The following definitions apply in this Part:

(1) Net proceeds. – Gross proceeds less the cost to the district of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct

market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a district or to attract tourists or business travelers to the district. The term includes tourism-related capital expenditures.

SECTION 3.3.(a) Ocracoke Township Tourism Development Authority. – Appointment and Membership. – The Board of Commissioners of Hyde County shall adopt a resolution creating the Ocracoke Township Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Tourism Development Authority shall have five members in addition to the Finance Officer. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the district, and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the district. The Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Hyde County shall be the ex officio finance officer of the Authority.

SECTION 3.3.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this Part for the purposes provided in Section 3.2 of this Part. The Authority shall promote travel and tourism in the district and make tourism-related expenditures in the district.

SECTION 3.3.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Hyde County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

PART IV. CHOWAN OCCUPANCY TAX.

SECTION 4. S.L. 1989-174 reads as rewritten:

"**Section 1.** Occupancy ~~tax.~~Tax. – (a) Authorization and ~~scope.~~Scope. – The Chowan County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under ~~G.S. 105-164.4(3).~~G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious ~~organizations.~~organizations when furnished in furtherance of their nonprofit purpose.

(a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Chowan County Board of Commissioners may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. Chowan County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

~~(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the county a discount of three percent (3%) of the amount collected.~~

(c) Administration. ~~The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~ A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied in this section.

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.~~

(e) Distribution and ~~use of tax revenue.~~Use of Tax Revenue. – Chowan County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Chowan Tourism Development Authority. ~~The Authority may spend funds remitted to it under this subsection only to promote travel and tourism in Chowan County, to sponsor tourist-oriented events and activities in Chowan County, and to finance tourist-related capital projects in Chowan County. As used in this subsection, "net proceeds" means gross~~ The Authority shall use at least two-thirds of the funds remitted to it under this section to promote travel and tourism in Chowan County and the remainder for tourism-related expenditures.

The following definitions apply in this Part:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance ~~officer.~~officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in these activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a county by attracting tourists or business travelers to the county. The term includes tourism-related capital expenditures.

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Chowan County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

"Sec. 2. Tourism Development Authority. – (a) Appointment and ~~membership.~~Membership. – When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. ~~The resolution shall provide for the membership of the Authority including the members' qualifications and terms of office, and for the filling of vacancies on the Authority.~~At least one-third of the members must

be individuals affiliated with businesses that collect the tax in the county and at least one-half must be individuals currently active in the promotion of travel and tourism in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The county shall serve as the fiscal agent of the Authority. The Finance Officer for Chowan County shall be the ex officio finance officer of the Authority.

(b) Duties. – The Authority shall ~~promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.~~expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourism-related events and activities in the county, and finance tourism-related capital projects in the county.

(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

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

PART V. MARTIN OCCUPANCY TAX.

SECTION 5. S.L. 1991-80 reads as rewritten:

"Section 1. Occupancy Tax. – (a) Authorization and ~~scope.~~Scope. – The Martin County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations, when furnished in furtherance of their nonprofit purpose, by summer camps, or by businesses that offer to rent no more than five units.

(a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Martin County Board of Commissioners may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. Martin County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

~~(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by~~

~~the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

(c) Administration. ~~The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~ – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall be subject to and pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.~~

(e) Distribution and ~~use~~Use of ~~tax revenue.~~Tax Revenue. – Martin County shall, on a ~~monthly~~quarterly basis, remit the net proceeds of the occupancy tax to the Martin County Travel and Tourism Authority. ~~The Authority may spend funds remitted to it under this subsection only to further the development of travel and tourism and cultural, recreational, and historic activities in Martin County through advertising and promotion, to sponsor tourist-oriented events and activities in Martin County, and to finance tourist-related capital activities and projects in Martin County. As used in this subsection, "net proceeds"means gross~~ The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Martin County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this Part:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the ~~tax, which may~~tax, as determined by

the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross ~~proceeds.~~proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Martin County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

"Sec. 2. Martin County ~~Travel and~~ Tourism Development Authority. – (a) Appointment and ~~membership.~~Membership. – When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Martin County ~~Travel and~~ Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide that the Authority shall be composed of the following 12 members:

(1) A Martin County Commissioner appointed by the Martin County Board of Commissioners.

(2) Two owners or operators of restaurants, motels, hotels, or other taxable accommodations in Martin County that have at least five units, nominated by representatives of this industry, both to be appointed by the Martin County Board of Commissioners.

(3) One member selected by the Martin County Chamber of Commerce to be appointed by the Martin County Board of Commissioners.

(4) One member appointed by the Martin County Board of Commissioners selected from the Martin County Economic Development Commission.

(5) Five members, one appointed by each member of the Martin County Board of Commissioners.

(6) One member appointed by the Martin County Board of Commissioners selected from the Martin County Historical Society.

(7) One member appointed by the Martin County Board of Commissioners selected from the Robersonville Downtown Merchants Association.

The appointees shall be made from throughout the County by the Martin County Board of Commissioners. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the county and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the county. All members of the Authority shall serve without compensation. Vacancies shall be filled in the same manner as original appointments. Members appointed to fill vacancies shall serve for the remainder of the unexpired term. The Authority shall elect each year from its membership a Chair. No member may serve as Chair more than two one-year terms in succession. The Authority shall meet at the call of the Chair or of any three members and shall adopt rules of procedure to govern its meetings. The Finance Officer for Martin County shall be the ex officio finance officer of the Authority.

(b) Terms of office. – Members of the Authority shall serve three-year terms except that the Martin County Commissioner appointed pursuant to subdivision (a)(1) shall be appointed yearly by the chairman of the board of commissioners and initial appointees shall serve the following terms:

(1) The Martin County Commissioner appointed pursuant to subdivision (a)(1): one year.

(2) One representative of the motel and restaurant industry appointed pursuant to subdivision (a)(2): one year.

(3) One representative of the motel and restaurant industry appointed pursuant to subdivision (a)(2): three years.

(4) The representative of the Martin County Chamber of Commerce appointed pursuant to subdivision (a)(3): three years.

(5) The representative of the Martin County Economic Development Commission appointed pursuant to subdivision (a)(4): two years.

(6) Three members appointed by Martin County Commissioners pursuant to subdivision (a)(5): one year.

(7) Two representatives appointed by Martin County Commissioners pursuant to subdivision (a)(5): three years.

(8) The representative of the Martin County Historical Society appointed pursuant to subdivision (a)(6): two years.

(9) The representative of the Robersonville Downtown Merchants Association appointed pursuant to subdivision (a)(7): three years.

(c) Limitation on terms. – No member of the Authority shall serve more than two consecutive three-year terms.

(d) ~~Powers and duties. The Authority may contract with any person, firm, or agency to assist it in carrying out the purposes for which the tax proceeds levied by this~~

~~act may be expended.~~Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county. The board of county commissioners may from time to time determine an appropriate percentage not to exceed five percent (5%) of net proceeds that may be expended for administrative services.

(e) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

~~(f) Notwithstanding the provisions of this act, the board of commissioners may abolish the Martin County Travel and Tourism Authority and itself function and carry out the duties of the Authority provided in this act.~~

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

PART VI. UNIFORM PROVISIONS.

SECTION 6.1. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Chowan, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Granville, Halifax, Madison, Martin, Montgomery, Nash, New Hanover, Pasquotank, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, to Watauga County District U, and to the Township of Averasboro in Harnett ~~County.~~County and the Ocracoke Township Taxing District."

SECTION 6.2. G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Elizabeth City, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Roanoke Rapids, Shelby, Statesville, Washington, and Wilmington, to the Towns of Ahoskie, Beech Mountain, Blowing Rock, Carolina Beach, Carrboro, Elkin, Franklin, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, West Jefferson, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

PART VII. CARTERET OCCUPANCY TAX.

SECTION 7. S.L. 2005-120 is reenacted.

PART VIII. EFFECTIVE DATES.

SECTION 8. This act is effective when it becomes law. Chowan and Martin counties must ensure that the membership of the Tourism Development Authorities are in compliance with the requirements of this act on or before January 1, 2006

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 339
Finance Committee Substitute Adopted 5/12/05

Short Title: Town of Ahoskie Occupancy Tax. (Local)

Sponsors:

Referred to:

March 3, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE TOWN OF AHOSKIE TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Occupancy tax. – (a) Authorization and Scope. – The Ahoskie Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.(c) Distribution and Use of Tax Revenue. – The Town of Ahoskie shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Town of Ahoskie Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the town and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract

tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 2. The Town of Ahoskie Tourism Development Authority. – (a) Appointment and Membership. – When the Ahoskie Town Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town, and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the Town of Ahoskie shall be the ex officio finance officer of the Authority.

SECTION 2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the city, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Ahoskie Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the town council may require.

SECTION 3. G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, Washington, and Wilmington, to the Towns of Ahoskie, Beech Mountain, Blowing Rock, Carolina Beach, Carrboro, Franklin, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

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

Senate Bill 339:
Omnibus Occupancy Taxes-III.

BILL ANALYSIS

Committee: House Finance
Date: July 28, 2005
Version: PCS S339-CSMBx-35

Sponsor: Senator Holloman
Analysis by: Ashley Huffstetler

SUMMARY: The PCS to Senate Bill 339 authorizes the towns of Ahoskie and Elkin to levy room occupancy taxes, creates a special taxing district in Ocracoke Township for the purposes of levying an occupancy tax, amends the occupancy taxes in Chowan and Martin counties, and reenacts the Carteret occupancy tax amendments that passed earlier this session. All taxes fully conform to the House Finance committee's occupancy tax guidelines.

BILL ANALYSIS: The PCS for Senate Bill 339 does the following:

- Authorizes the Town of Ahoskie to levy a room occupancy tax at a rate of 3%. Ahoskie is located in Hertford County, which has authority to levy a 3% occupancy tax in the county. The total rate of tax levied in the Town of Ahoskie will be 6%.
- Authorizes the Town of Elkin to levy a room occupancy tax at a rate of 6%. Elkin is located in Surrey County, which does not have authority to levy an occupancy tax.
- Creates a special taxing district in the existing Ocracoke Township and authorizes the district to levy a room occupancy tax at a rate of 2%. Ocracoke Township is an unincorporated area located in Hyde County, which has authority to levy a 3% tax. The total rate of tax levied in Ocracoke will be 5%, and the Hyde County Board of Commissioners will act as the governing body of the district and levy and administer the tax.
- Authorizes Chowan County to levy an additional room occupancy tax at a rate of 2% and amends the existing Chowan County legislation to bring it into conformity with the House occupancy tax guidelines. Currently, Chowan has authority to levy a 3% tax, and no city in the county levies an occupancy tax. The total rate of tax in Chowan will be 5%.
- Authorizes Martin County to levy an additional room occupancy tax at a rate of 3% and amends the existing Martin County legislation to bring it into conformity with the House occupancy tax guidelines. Currently, Martin has authority to levy a 3% tax, and no city in the county levies an occupancy tax. The total rate of tax in Martin will be 6%.
- Reenacts Session Law 2005-120, which was not properly roll-called when it passed in the House of Representatives earlier this session. The original legislation, House Bill 1056, sponsored by Representative Preston, amended the Carteret Occupancy Tax to extend the sunset of a 1% tax to allow the county more time to develop a convention center plan.

Each new tax or amended legislation contains the following uniform provisions:

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6%, and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism, and the remainder must

be used for tourism-related expenditures.
Definitions – The terms "net proceeds," "promote travel and tourism," and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority (TDA), which determines how the tax proceeds will be used and is created by a local ordinance. At least ½ of the members must be currently active in the promotion of travel and tourism in the city or county, and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

PCS CHANGES: The original Senate Bill 339 was a blank bill. The second edition included the Ahoskie Occupancy Tax. The PCS to the 2nd edition adds all the additional occupancy taxes.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: July 26, 2005

TO: Senator Holloman

FROM: Rodney Bizzell
Fiscal Research Division

RE: PCS S339-CSMBx-35v.1

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
Town of Ahoskie	$15,522	$19,054	$19,474	$19,863	$20,260
Town of Elkin	$15,387	$22,668	$23,166	$23,630	$24,102
Ocracoke Special District	$166,666	$204,600	$209,101	$213,283	$217,549
Chowan County	$49,182	$64,330	$70,119	$76,430	$83,309
Martin County	$113,288	$145,462	$155,644	$166,539	$178,197
Carteret County	* No Fiscal Impact *				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Town of Ahoskie, Town of Elkin, Ocracoke Special District, Chowan County, Martin County and Carteret County

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:
The PCS to Senate Bill 339 authorizes the towns of Ahoskie and Elkin to levy room occupancy taxes, creates a special taxing district in Ocracoke Township for the purposes of levying an occupancy tax, amends the occupancy taxes in Chowan and Martin counties, and reenacts the

Carteret occupancy tax amendments that passed earlier this session. All taxes fully conform to the House Finance committee's occupancy tax guidelines.

ASSUMPTIONS AND METHODOLOGY:

Town of Ahoskie

According to the Ahoskie Chamber of Commerce, there are 3 motels in Ahoskie and 1 bed and breakfast. Assuming an average of 20 rooms each for the motels and 3 rooms for the bed and breakfast, an average room rate of $45 per night and a 60% rate of room occupancy, FRD estimates the 3% occupancy tax would generate $18,626 per year. Because no historic data is available, the General Consumer Price Index estimated rate of increase is used to estimate future growth in occupancy tax receipts. No development of additional motels or other accommodations is assumed in the estimates of subsequent year revenues.

Fiscal Year	Proposed 3% Tax	Each 1%
2006	$15,522*	$5,174
2007	$19,054	$6,351
2008	$19,474	$6,491
2009	$19,863	$6,621
2010	$20,260	$6,753

* First-year revenue assumes September 1, 2006 effective date.

Town of Elkin

According to the Town of Elkin, there is currently 1 bed and breakfast with 3 rooms, and 1 motel with 25-30 rooms in the town limits of Elkin. Assuming an average room rate of $50 per night and a room occupancy rate of 60%, the 6% tax would generate approximately $22,158. Because no historic data is available, the General Consumer Price Index estimated rate of increase is used to estimate future growth in occupancy tax receipts. No development of additional motels or other accommodations is assumed in the estimates of subsequent year revenues.

Fiscal Year	Proposed 6% Tax	Each 1%
2006	$15,387*	$2,564
2007	$22,668	$3,778
2008	$23,166	$3,861
2009	$23,630	$3,938
2010	$24,102	$4,017

* First-year revenue assumes September 1, 2006 effective date.

Ocracoke Township

The 3% occupancy tax currently levied in Hyde County generated $316,080 in 2004. Of this amount, the county manager estimates that approximately $300,000 was generated within the boundaries of the proposed Ocracoke special district. Based on this estimate and the General Consumer Price Index rate of increase, the following revenue stream is projected for the proposed 2% occupancy tax:

Fiscal Year	Proposed 2% Tax	Each 1%
2006	$166,666*	$83,333
2007	$204,600	$102,300
2008	$209,201	$104,551
2009	$213,283	$106,642
2010	$217,549	$108,774

* First-year revenue assumes September 1, 2006 effective date.

Chowan County

Chowan County currently levies a 3% occupancy tax, and no city in the county levies an occupancy tax. The table below provides collections data for the current tax for the last three years.

Fiscal Year	Chowan County 3% (Existing)	Each 1%
2002	$63,757	$21,252
2003	$62,581	$20,860
2004	$74,512	$24,837

Extending this trend for the proposed 2% tax suggests the following revenue stream:

Fiscal Year	Proposed 2% Tax	Each 1%
2006	$49,182*	$24,591
2007	$64,330	$32,165
2008	$70,119	$35,059
2009	$76,430	$38,215
2010	$83,309	$41,654

* First-year revenue assumes September 1, 2006 effective date.

Martin County

Martin County currently levies a 3% occupancy tax, and no city in the county levies an occupancy tax. The table below provides collections data for the current tax for the last five years.

Fiscal Year	Martin County 3% (Existing)	Each 1%
2000	$93,095	$31,032
2001	$88,631	$29,544
2002	$88,222	$29,407
2003	$90,575	$30,192
2004	$118,740	$39,580

Extending this trend for the proposed 3% tax suggests the following revenue stream:

Fiscal Year	Proposed 3% Tax	Each 1%
2006	$113,288*	$37,762
2007	$145,462	$48,487
2008	$155,644	$51,881
2009	$166,539	$55,513
2010	$178,197	$59,399

* First-year revenue assumes September 1, 2006 effective date.

Carteret County
The portion of the PCS related to Carteret County amends the Carteret County occupancy tax to extend the sunset of a 1% tax to allow the county more time to develop a convention center plan. There is no fiscal impact related to this portion of the PCS.

SOURCES OF DATA: Town of Ahoskie, Town of Elkin, Hyde County and NC Dept. of State Treasurer

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

SB 339 A BILL TO BE ENTITLED AN ACT AUTHORIZING THE TOWN OF AHOSKIE TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1283
PROPOSED COMMITTEE SUBSTITUTE H1283-PCS30351-RTf-47

Short Title: Improve Environmental Enforcement. (Public)

Sponsors:

Referred to:

April 19, 2005

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE ENFORCEMENT OF VARIOUS ENVIRONMENTAL LAWS, TO AUTHORIZE THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES TO ISSUE ADMINISTRATIVE ORDERS, AND TO ESTABLISH A PILOT PROGRAM THAT ALLOWS THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO DETERMINE AND RETAIN THE ACTUAL COSTS OF COLLECTING CIVIL PENALTIES, FINES, AND FORFEITURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-64(a)(1) reads as rewritten:

"(1) Any person who violates any of the provisions of this Article or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government, or who initiates or continues a land-disturbing activity for which an erosion and sedimentation control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty. ~~The maximum civil penalty for a violation is five thousand dollars ($5,000).~~ A civil penalty may be assessed ~~from the date~~ for the first day of the ~~violation. Each day of a continuing violation shall constitute a separate violation.~~violation and for each day thereafter on which the violation continues. The maximum civil penalty that may be assessed for a violation is five thousand dollars ($5,000) except that, in order to deter violations, a civil penalty of up to ten thousand dollars ($10,000) may be assessed for the first day of a violation upon finding one or more of the following factors:

a. The violation was knowing and willful.

b. Off-site sedimentation has eliminated or severely degraded a use in a lake or natural watercourse.

c. Off-site sedimentation has caused severe damage to adjacent land.

d. The land-disturbing activity is being conducted without an approved plan."

SECTION 2. G.S. 113A-64 is amended by adding a new subsection to read:

"(c) A violation that is subject to an enforcement action under both this Article and under Article 21 of Chapter 143 of the General Statutes may be enforced under the provisions of either Article. An enforcement action may not be taken under both this Article and Article 21 of Chapter 143 of the General Statutes for the same violation, but separate violations at the same site may be enforced as provided by either applicable Article."

SECTION 3. G.S. 113A-126(d) reads as rewritten:

"(d) (1) A civil penalty of not more than ~~two hundred fifty dollars ($250.00)~~ one thousand dollars ($1,000) for a minor development violation and ~~two thousand five hundred dollars ($2,500)~~ ten thousand dollars ($10,000) for a major development violation may be assessed by the Commission against any person who:

a. Is required but fails to apply for or to secure a permit required by G.S. 113A-118, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.

b. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by the Commission pursuant to this Article.

c. Refuses access to the Commission or its duly designated representative, who has sufficiently identified himself by displaying official credentials, to any premises, not including any occupied dwelling house or curtilage, for the purpose of conducting any investigations provided for in this Article.

d. Violates a rule of the Commission implementing this Article.

(2) For each willful action or failure to act for which a penalty may be assessed under this subsection, the Commission may consider each day the action or inaction continues after notice is given of the violation as a separate violation; a separate penalty may be assessed for each such separate violation.

(3) ~~The Commission may assess the penalties provided for in this subsection.~~ The Commission shall notify a person who is assessed a penalty or investigative costs by registered or certified mail. The notice shall state the reasons for the penalty. A person may contest the assessment of a penalty or investigative costs by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice of assessment. If a person fails to pay ~~a penalty,~~ any civil penalty or investigative cost assessed under this subsection, the Commission shall refer the matter to the Attorney General for collection. An action to collect a penalty must be filed within three

years after the date the final agency decision was served on the violator.

(4) In determining the amount of the ~~penalty~~ civil penalty, the Commission shall consider ~~the degree and extent of harm caused by the violation and the cost of rectifying the damage.~~all the following factors:

a. The degree and extent of harm, including, but not limited to, harm to the natural resources of the State, to the public health, or to private property resulting from the violation.

b. The duration and gravity of the violation.

c. The effect on water quality, coastal resources, or public trust uses.

d. The cost of rectifying the damage.

e. The amount of money saved by noncompliance.

f. Whether the violation was committed willfully or intentionally.

g. The prior record of the violator in complying or failing to comply with programs over which the Commission has regulatory authority.

h. The cost to the State of the enforcement procedures.

(4a) The Commission may also assess a person who is assessed a civil penalty under this subsection the reasonable costs of any investigation, inspection, or monitoring that results in the assessment of the civil penalty. For a minor development violation, the amount of an assessment of investigative costs shall not exceed one-half of the amount of the civil penalty assessed or one thousand dollars ($1,000), whichever is less. For a major development violation, the amount of an assessment of investigative costs shall not exceed one-half of the amount of the civil penalty assessed or two thousand five hundred dollars ($2,500), whichever is less.

(5) The clear proceeds of penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 4. G.S. 130A-18(a) reads as rewritten:

"(a) If a person ~~shall violate~~ violates any provision of this ~~Chapter or the rules~~ Chapter, any rule adopted by the ~~Commission or rules~~ Commission, any rule adopted by a local board of ~~health~~ health, any order issued pursuant to this Chapter, or any order issued pursuant to rules adopted by the Commission, the Secretary or a local health director may institute an action for injunctive relief, irrespective of all other remedies at law, in the superior court of the county where the violation occurred or where a defendant resides."

SECTION 5. G.S. 130A-22(a) reads as rewritten:

"(a) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any order issued under Article 9. Each day

of a continuing violation shall constitute a separate violation. The penalty shall not exceed ~~five~~ ten thousand dollars ~~($5,000)~~($10,000) per day in the case of a violation involving nonhazardous waste. The penalty shall not exceed ~~twenty-five thousand dollars ($25,000)~~ thirty-two thousand five hundred dollars ($32,500) per day in the case of a ~~first~~ violation involving hazardous ~~waste~~ waste, as defined in G.S. ~~130A-290 or~~ 130A-290, or for a failure to make a determination whether a solid waste is a hazardous waste. The penalty shall not exceed twenty-five thousand dollars ($25,000) per day for a first violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State; and shall not exceed fifty thousand dollars ($50,000) per day for a second or further violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State. The penalty shall not exceed twenty-five thousand dollars ($25,000) per day for a violation involving a voluntary remedial action implemented pursuant to G.S. 130A-310.9(c) or a violation of the rules adopted pursuant to G.S. 130A-310.12(b). If a person fails to pay a civil penalty within 60 days after the final agency decision or court order has been served on the violator, the Secretary of Environment and Natural Resources shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator."

SECTION 6. G.S. 130A-22(c) reads as rewritten:

"(c) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who willfully violates Article 11 of this Chapter, rules adopted by the Commission pursuant to Article 11 or any condition imposed upon a permit issued under Article 11. An administrative penalty may not be imposed upon a person who establishes that neither the site nor the system may be improved or a new system installed so as to comply with Article 11 of this Chapter. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) per day per violation in the case of a wastewater collection, treatment and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling. The penalty shall not exceed ~~three hundred dollars ($300.00)~~ five thousand dollars ($5,000) per day per violation in the case of a wastewater collection, treatment and disposal system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling."

SECTION 7. G.S. 130A-22 is amended by adding a new subsection to read:

"(j) The Secretary of Environment and Natural Resources may assess a person who is assessed a civil penalty under this section the reasonable costs of any investigation, inspection, or monitoring that results in the assessment of the civil penalty."

SECTION 8. G.S. 130A-26.2 reads as rewritten:

"§ 130A-26.2. Penalty for false reporting under ~~Article 9.~~Articles 9 and 10 of this Chapter.

Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under Article 9 or Article 10 of this Chapter or rules adopted under Article 9 or Article 10 of this Chapter; or who knowingly makes a false statement of a material fact in a rule-making proceeding or contested case under Article 9 or Article 10 of this Chapter; or who falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under Article 9 or Article 10 of this Chapter or rules adopted under Article 9 or Article 10 of this Chapter is guilty of a Class 2 misdemeanor. The maximum fine that may be imposed for an offense under this section is ten thousand dollars ($10,000)."

SECTION 9. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-215.6F. Enforcement procedures: administrative orders.

(a) The Secretary may issue an administrative order directing any person who has committed a violation described in G.S. 143-215.6A to do any of the following:

(1) Attend an environmental education course of up to four hours duration.

(2) Publish notice of the violation one time in a newspaper having general circulation in the county where the violation occurred.

(3) Perform up to four hours of community service related to protection or restoration of the environment and natural resources.

(b) The Secretary may issue an administrative order pursuant to this section either in lieu of or in addition to any other action or proceeding under this Part.

(c) The Secretary shall serve a copy of the administrative order and the specific reasons for issuing the administrative order by registered or certified mail or by any means authorized by G.S. 1A-1, Rule 4. A contested case petition shall be filed within 30 days of receipt of the order.

(d) A person may comply with an administrative order issued pursuant to this section by attending an environmental education or community service program offered by the Department or a program certified by the Department. The Secretary may establish minimum standards for certification of environmental education or community service programs.

(e) The Department may charge a fee, not to exceed one hundred dollars ($100.00), to compensate for the reasonable cost of attending any environmental education course or community service program offered by the Department.

(f) The Secretary may assess a civil penalty for failure to comply with an order issued pursuant to this section as provided in G.S. 143-215.6A.

(g) The Secretary may delegate the Secretary's powers and duties under this section only to a Deputy Secretary, an Assistant Secretary, a Division Director, or a Deputy Division Director."

SECTION 10. The Department of Environment and Natural Resources, in consultation with the North Carolina School Boards Association, shall develop and implement a pilot program to begin no later than 1 October 2005 and to expire 1 April

2008 to determine the amount and retain the actual costs of collecting civil penalties, fines, and forfeitures assessed by the Department and by commissions organized under the Department to improve the assessment and collection of civil penalties, fines, and forfeitures. The clear proceeds of all civil penalties, fines, and forfeitures that are collected by the Department and payable to the counties for the support of public schools pursuant to Article IX, Section 7 of the Constitution of North Carolina shall be remitted to the Office of State Budget and Management by the officer having custody of the funds within 10 days after the close of the calendar month in which the funds were received or collected. During this pilot program, the clear proceeds of all civil penalties, fines, and forfeitures collected by the Department shall be diminished only by the actual costs of collecting the civil penalties, fines, and forfeitures. Actual costs may include time spent on collection-related matters by personnel of the Department, legal services related to collection provided by the Department of Justice, collection agency fees, and court costs. The Department shall not enter into a contract that would require the Department to pay more than twenty percent (20%) of the civil penalty, fine, or forfeiture amount to a collection agency as a fee for collection of civil penalties, fines, and forfeitures. Additional items may be included in costs by agreement of the Department and the North Carolina School Boards Association. Costs shall be itemized in an accounting to be provided when the funds are remitted by the Department.

SECTION 11. The Department of Environment and Natural Resources shall submit an interim report on the civil penalty, fine, and forfeiture collection pilot program no later than 1 March 2007 and shall submit a final report no later than 1 April 2008 to the Environmental Review Commission, the Fiscal Research Division of the North Carolina General Assembly, and the North Carolina School Boards Association. The Department shall report the total amount of civil penalties, fines, and forfeitures collected, the amount paid to the counties in support of public schools, and the effect of the pilot program on collection of civil penalties, fines, and forfeitures by the Department.

SECTION 12. Sections 1 through 9 of this act become effective 1 December 2005 and apply to violations and offenses committed on or after that date. Sections 10 through 12 of this act are effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1283

Short Title:	Improve Environmental Enforcement.	(Public)
Sponsors:	Representatives Culpepper; Farmer-Butterfield, Fisher, Harrison, Luebke, Underhill, and Weiss.	
Referred to:	Finance.	

April 19, 2005

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE ENFORCEMENT OF VARIOUS ENVIRONMENTAL LAWS, TO AUTHORIZE THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES TO ISSUE ADMINISTRATIVE ORDERS, AND TO ESTABLISH A PILOT PROGRAM THAT ALLOWS THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO DETERMINE AND RETAIN THE ACTUAL COSTS OF COLLECTING CIVIL PENALTIES, FINES, AND FORFEITURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-64(a)(1) reads as rewritten:

"(1) Any person who violates any of the provisions of this Article or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government, or who initiates or continues a land-disturbing activity for which an erosion and sedimentation control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty. The maximum civil penalty for a violation is five thousand dollars ~~($5,000).~~ ($5,000), except that, in order to deter violations, the Secretary may assess a civil penalty of up to ten thousand dollars ($10,000) for the first day of a violation. A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation."

SECTION 2. G.S. 113A-126(d) reads as rewritten:

"(d) (1) A civil penalty of not more than ~~two hundred fifty dollars ($250.00)~~ one thousand dollars ($1,000) for a minor development violation and ~~two thousand five hundred dollars ($2,500)~~ ten thousand dollars ($10,000) for a major development violation may be assessed by the Commission against any person who:

a. Is required but fails to apply for or to secure a permit required by G.S. 113A-118, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.
b. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by the Commission pursuant to this Article.
c. Refuses access to the Commission or its duly designated representative, who has sufficiently identified himself by displaying official credentials, to any premises, not including any occupied dwelling house or curtilage, for the purpose of conducting any investigations provided for in this Article.
d. Violates a rule of the Commission implementing this Article.

(2) For each willful action or failure to act for which a penalty may be assessed under this subsection, the Commission may consider each day the action or inaction continues after notice is given of the violation as a separate violation; a separate penalty may be assessed for each such separate violation.

(3) ~~The Commission may assess the penalties provided for in this subsection.~~ The Commission shall notify a person who is assessed a penalty or investigative costs by registered or certified mail. The notice shall state the reasons for the penalty. A person may contest the assessment of a penalty or investigative costs by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice of assessment. If a person fails to pay ~~a penalty,~~ any civil penalty or investigative cost assessed under this subsection, the Commission shall refer the matter to the Attorney General for collection. An action to collect a penalty must be filed within three years after the date the final agency decision was served on the violator.

(4) In determining the amount of the ~~penalty~~ civil penalty, the Commission shall consider ~~the degree and extent of harm caused by the violation and the cost of rectifying the damage.~~the following factors:

a. The degree and extent of harm, including, but not limited to, harm to the natural resources of the State, to the public health, or to private property resulting from the violation;
b. The duration and gravity of the violation;
c. The effect on water quality, coastal resources, or public trust uses;
d. The cost of rectifying the damage;
e. The amount of money saved by noncompliance;
f. Whether the violation was committed willfully or intentionally;

g. The prior record of the violator in complying or failing to comply with programs over which the Commission has regulatory authority; and

h. The cost to the State of the enforcement procedures.

(4a) The Commission may also assess a person who is assessed a civil penalty under this subsection the reasonable costs of any investigation, inspection, or monitoring that results in the assessment of the civil penalty. For a minor development violation, the amount of an assessment of investigative costs shall not exceed one-half of the amount of the civil penalty assessed or one thousand dollars ($1,000), whichever is less. For a major development violation, the amount of an assessment of investigative costs shall not exceed one-half of the amount of the civil penalty assessed or two thousand five hundred dollars ($2,500), whichever is less.

(5) The clear proceeds of penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 3. G.S. 130A-18(a) reads as rewritten:

"(a) If a person ~~shall violate~~ violates any provision of this ~~Chapter or the rules~~ Chapter, any rule adopted by the ~~Commission or rules~~ Commission, any rule adopted by a local board of ~~health~~ health, any order issued pursuant to this Chapter, or any order issued pursuant to rules adopted by the Commission, the Secretary or a local health director may institute an action for injunctive relief, irrespective of all other remedies at law, in the superior court of the county where the violation occurred or where a defendant resides."

SECTION 4. G.S. 130A-22(a) reads as rewritten:

"(a) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed ~~five~~ ten thousand dollars ~~($5,000)~~($10,000) per day in the case of a violation involving nonhazardous waste. The penalty shall not exceed ~~twenty-five thousand dollars ($25,000)~~ twenty-seven thousand five hundred dollars ($27,500) per day in the case of a ~~first~~ violation involving hazardous ~~waste~~ waste, as defined in G.S. ~~130A-290 or~~ 130A-290, or for a failure to make a determination whether a solid waste is a hazardous waste. The penalty shall not exceed twenty-five thousand dollars ($25,000) per day for a first violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State; and shall not exceed fifty thousand dollars ($50,000) per day for a second or further violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State. The penalty shall not exceed twenty-five thousand dollars ($25,000) per day for a violation involving a voluntary remedial action implemented pursuant to G.S. 130A-310.9(c) or a violation of the rules adopted pursuant to

G.S. 130A-310.12(b). If a person fails to pay a civil penalty within 60 days after the final agency decision or court order has been served on the violator, the Secretary of Environment and Natural Resources shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator."

SECTION 5. G.S. 130A-22(c) reads as rewritten:

"(c) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who willfully violates Article 11 of this Chapter, rules adopted by the Commission pursuant to Article 11 or any condition imposed upon a permit issued under Article 11. An administrative penalty may not be imposed upon a person who establishes that neither the site nor the system may be improved or a new system installed so as to comply with Article 11 of this Chapter. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) per day per violation in the case of a wastewater collection, treatment and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling. The penalty shall not exceed ~~three hundred dollars ($300.00)~~ five thousand dollars ($5,000) per day per violation in the case of a wastewater collection, treatment and disposal system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling."

SECTION 6. G.S. 130A-26.2 reads as rewritten:

"**§ 130A-26.2. Penalty for false reporting under Article ~~9.~~9 and Article 10.**

Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under Article 9 or Article 10 of this Chapter or rules adopted under Article 9 or Article 10 of this Chapter; or who knowingly makes a false statement of a material fact in a rule-making proceeding or contested case under Article 9 or Article 10 of this Chapter; or who falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under Article 9 or Article 10 of this Chapter or rules adopted under Article 9 or Article 10 of this Chapter is guilty of a Class 2 misdemeanor. The maximum fine that may be imposed for an offense under this section is ten thousand dollars ($10,000)."

SECTION 7. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.6F. Enforcement procedures: administrative orders.**

(a) The Secretary may issue an administrative order directing any person who has committed a violation described in G.S. 143-215.6A to do any of the following:

(1) Attend an environmental education course.

(2) Publish notice of the violation.

(3) Perform community service related to protection or restoration of the environment and natural resources.

(b) The Secretary may issue an administrative order pursuant to this section in addition to any other action or proceeding under this Part.

(c) The Secretary shall serve a copy of the administrative order and the specific reasons for issuing the administrative order by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4. A contested case petition shall be filed within 30 days of receipt of the order.

(d) A person may comply with an administrative order issued pursuant to this section by attending an environmental education or community service program offered by the Department or a program certified by the Department. The Secretary may establish minimum standards for certification of environmental education or community service programs.

(e) The Department may charge a fee, not to exceed one hundred dollars ($100.00), to compensate for the reasonable cost of attending any environmental education course or community service program offered by the Department.

(f) The Secretary may assess a civil penalty for failure to comply with an order issued pursuant to this section as provided in G.S. 143-215.6A."

SECTION 8. The Department of Environment and Natural Resources, in consultation with the North Carolina School Boards Association, shall develop and implement a pilot program to begin no later than October 1, 2005, and to expire April 1, 2008, to determine the amount and retain the actual costs of collecting civil penalties, fines, and forfeitures assessed by the Department and by commissions organized under the Department to improve the assessment and collection of civil penalties, fines, and forfeitures. The clear proceeds of all civil penalties, fines, and forfeitures that are collected by the Department and payable to the counties for the support of public schools pursuant to Article IX, Section 7 of the Constitution of North Carolina shall be remitted to the Office of State Budget and Management by the officer having custody of the funds within 10 days after the close of the calendar month in which the funds were received or collected. During this pilot program, the clear proceeds of all civil penalties, fines, and forfeitures collected by the Department shall be diminished only by the actual costs of collecting the civil penalties, fines, and forfeitures. Actual costs may include time spent on collection-related matters by personnel of the Department, legal services related to collection provided by the Department of Justice, collection agency fees, and court costs. The Department shall not enter into a contract that would require the Department to pay more than twenty percent (20%) of the civil penalty, fine, or forfeiture amount to a collection agency as a fee for collection of civil penalties, fines, and forfeitures. Additional items may be included in costs by agreement of the Department and the School Boards Association. Costs shall be itemized in an accounting to be provided when the funds are remitted by the Department.

SECTION 9. The Department of Environment and Natural Resources shall submit an interim report on the civil penalty, fine, and forfeiture collection pilot program no later than March 1, 2007, and shall submit a final report no later than April 1, 2008, to the Environmental Review Commission, the Fiscal Research Division of the North Carolina General Assembly, and the North Carolina School Boards Association. The Department shall report the total amount of civil penalties, fines, and forfeitures

collected, the amount paid to the counties in support of public schools, and the effect of the pilot program on collection of civil penalties, fines, and forfeitures by the Department.

SECTION 10. Sections 1 through 7 of this act become effective December 1, 2005, and apply to violations and offenses committed on or after that date. Sections 8 through 10 of this act are effective when it becomes law.

HOUSE BILL 1283:
Improve Environmental Enforcement

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 28, 2005
Introduced by:	Rep. Culpepper	**Summary by:**	Tim Dodge
Version:	PCS to First Edition		Legislative Analyst
	H1283-PCS30351-RTf-47		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 1283 would make the following changes to statutes and programs related to environmental enforcement:***

(1) Increase the amount of civil penalties that may be assessed for violations of the Sedimentation Pollution Control Act of 1973, minor and major development violations under the Coastal Area Management Act of 1974 (CAMA), and violations of other environmental statutes.

(2) Authorize the assessment of reasonable costs of any investigation, inspection, or monitoring that results in the imposition of a civil penalty for major and minor development violations under CAMA.

(3) Add a penalty for false reporting under the North Carolina Drinking Water Act.

(4) Increase the maximum amounts of certain administrative penalties that may be assessed for violations of Articles 9 (Solid Waste Management) and 11 (Wastewater Systems) of Chapter 130A of the General Statutes.

(5) Authorize the Secretary of Environment and Natural Resources (Secretary) to issue an administrative order directing any person who has committed certain violations to do any of the following: (i) attend an environmental education course, (ii) publish notice of the violation, or (iii) perform community service related to protection or restoration of the environment and natural resources.

The PCS would also direct the Department of Environment and Natural Resources (Department) to implement a pilot program to determine the actual cost of collecting civil penalties, civil forfeitures and civil fines assessed by the Department and payable to the County School Fund or authorized to be placed in a State fund pursuant to Article IX of the Constitution of North Carolina and G.S. 115C-457.2. During the pilot program, the clear proceeds of all civil penalties, civil forfeitures, and civil fines remitted by the Department to the Office of State Budget and Management would be diminished only by the actual costs of collection.

The PCS would become effective 1 December 2005 and apply to violations and offenses committed on or after that date.

BILL ANALYSIS:

Section 1 adds a civil penalty of up to $10,000 for the first day of a violation of the Sedimentation Pollution Control Act of 1973 or ordinance, rule, or order adopted pursuant to the Act, upon a finding of one or more of the following factors:

- The violation was knowing and willful.

- Off-site sedimentation has eliminated or severely degraded a use in a lake or natural watercourse or that such degradation is imminent.
- Off-site sedimentation has caused severe damage to adjacent land or such damage is imminent.
- The land-disturbing activity is being conducted without an approved plan.

Section 2 provides that an action that results in a violation of both the Article 4 of Chapter 113A of the General Statutes (Sedimentation Control) and the provisions of Article 21 of Chapter 143 of the General Statutes (Water and Air Resources) may be enforced under the provisions of either Article. An enforcement action may not be taken under both articles for the same violation, but separate violations at the same site may be enforced as provided by either applicable Article.

Section 3 increases the civil penalty that may be assessed for a minor development violation under CAMA from $250 to $1,000, and increase the civil penalty that may be assessed for a major development violation under the Act from $2,500 to $10,000.

In addition, the section adds an authorization to assess reasonable costs of any investigation, inspection, or monitoring that results in the assessment of a civil penalty for minor and major development violations under CAMA. The amount of investigative costs assessed for a minor development violation shall not exceed one-half of the amount of civil penalty assessed for the violation or $1,000, whichever is less. The amount of investigative costs assessed for a major development violation shall not exceed one-half of the amount of civil penalty assessed for the violation or $2,500, whichever is less.

Section 4 provides that the Secretary or a local health director may institute an action for injunctive relief against a person who violates an order issued pursuant to Chapter 130A of the General Statutes, in addition to existing authority under the Statute to institute actions for injunctive relief for violations of the Chapter, or any rule adopted by the Commission for Health Services or a local board of health.

Section 5 increases the maximum amounts of certain administrative penalties that may be assessed for violations of Article 9 of Chapter 130A of the General Statutes (Solid Waste Management). The maximum penalty for a violation involving nonhazardous waste is increased from $5,000 to $10,000 per day. The PCS would increase the maximum penalty for a violation involving hazardous waste from $25,000 to $32,500 per day. The penalty is also made applicable to failure to make a determination whether a solid waste is a hazardous waste.

Section 6 increases maximum amounts of certain administrative penalties that may be assessed for violations of Article 11 of Chapter 130A of the General Statutes (Wastewater Systems). The maximum penalty for a violation involving a wastewater collection, treatment, and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling is increased from $50 to $100 per day per violation, and is increased from $300 to $5,000 per day per violation for systems with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling.

Section 7 authorizes the Secretary to assess reasonable costs of any investigation, inspection, or monitoring that results in the assessment of a civil penalty for violations of Article 11 of Chapter 130A of the General Statutes (Wastewater Systems).

Section 8 adds a penalty for false reporting under Article 10 of Chapter 130A of the General Statutes (North Carolina Drinking Water Act), in addition to existing authority under the statute to impose a penalty for false reporting under Article 9 of the Chapter. A person who violates this provision would be guilty of a Class 2 misdemeanor and may be assessed a fine not to $10,000. A Class 2 misdemeanor is punishable by a minimum of 1 day of community punishment up to a maximum of 60 days active punishment, depending on the misdemeanant's record for prior convictions.

Section 9 authorizes the Secretary to issue an administrative order directing any person who has committed certain violations to do any of the following:

- Attend an environmental education course.
- Publish notice of the violation.
- Perform community service related to protection or restoration of the environment and natural resources.

The Department may charge a fee, not to exceed $100, to compensate for the reasonable cost of attending any environmental education course or community service program offered by the Department.

Section 10 directs the Department to implement a pilot program to begin no later than 1 October 2005 and terminate on 1 April 2008 to determine the actual cost of collecting civil penalties, civil forfeitures, and civil fines assessed by the Department and payable to the County School Fund or authorized to be placed in a State fund pursuant to Article IX of the Constitution of North Carolina and G.S. 115C-457.2. The purpose of the pilot is to determine the extent to which the actual cost of collection should be retained by the Department in order to efficiently collect civil penalties, civil forfeitures, and civil fines. During the pilot program, the clear proceeds of all civil penalties, civil forfeitures, and civil fines remitted by the Department to the Office of State Budget and Management would be diminished only by the actual costs of collection. The actual cost of collection may include time spent on collection-related matters by Department personnel, legal services provided by the Department of Justice related to collection, collection agency fees, and any additional costs that may be included by agreement between the Department and the North Carolina School Boards Association.

Section 11 directs the Department to make an interim report on its findings and recommendations from the pilot on or before 1 March 2007 and make a final report on or before 1 April 2008 to the Environmental Review Commission, the Fiscal Research Division of the General Assembly, and the North Carolina School Boards Association.

Section 12 provides that, with the exception of the pilot program established in sections 10 and 11, the PCS would become effective 1 December 2005 and apply to violations and offenses committed on or after that date. The pilot program established in sections 10 and 11 would become effective when the PCS becomes law.

H1283e1-SMSY-CSRTf-43

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: July 25, 2005

TO: Rep. Culpepper

FROM: Jennifer Haygood
Fiscal Research Division

RE: PCS H1283-CSRTf-43

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES: Civil Penalty and Forfeiture Fund			No estimate available		
General Fund			No estimate available		
EXPENDITURES:			No substantial impact expected		
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment and Natural Resources, Sedimentation Control Commission, Coastal Resources Commission

EFFECTIVE DATE: All provisions except pilot program are effective for violations and offenses committed on or after December 1, 2005.

BILL SUMMARY:

Makes changes regarding environmental penalties that may be assessed for violations of the Sedimentation Pollution Control Act, the Coastal Area Management Act, Solid Waste Management law, and Wastewater Systems law. Authorizes the Secretary of the Department of Environment and Natural Resources (DENR) to issue administrative orders directing

environmental violators to participate in certain remedial activities. Directs DENR to create a pilot program focused on determining and retaining actual costs of collecting civil penalties, fines, and forfeitures. DENR is required to report on the pilot program by March 1, 2007, and April 1, 2008.

ASSUMPTIONS AND METHODOLOGY:
This bill includes several changes to the civil penalties that may be assessed for environmental violations. The proceeds of all civil penalty proceeds are deposited into the Civil Penalty and Forfeiture Fund for use by North Carolina public schools.

Section 1 allows, for the purpose of deterrence, the Secretary to assess a penalty of up to $10,000 for the first day of a violation of the Sedimentation Pollution Control Act. Currently, the maximum fine is set at $5,000. In a typical year, there are 270 violations, and approximately 56 cases of those are assessed civil penalties. Since this power is discretionary, no estimate can be made at this time.

Section 2 amends the civil penalties for Coastal Area Management Act (CAMA) violations by increasing the minor development violation maximum from $250 to $1,000 and the major development violation maximum from $2,500 to $10,000. In a typical year, 171 CAMA violations occur, and the Coastal Resources Commission (CRC) assesses 135 of those cases penalties. In 2004 the Coastal Resources Commission collected $30,500 in civil penalty revenue. No estimate of additional penalty revenue is possible since Section 2 only increases the maximum penalty but does not require the Commission to assess the higher penalty.

Section 2 also authorizes the Coastal Resource Commission to assess the violator the costs of investigation, inspection, and monitoring. The amount of the assessments of investigative costs shall not exceed one-half of the amount of the civil penalty assessed or $1,000 for minor development violations or $2,500 for a major development violations, whichever is less. Any investigative costs collected would be deposited into the General Fund. Since this power is discretionary and investigative costs vary, no estimate can be made at this time.

Section 4 amends increases administrative penalties for violation of the Solid Waste Management law from a maximum of $5,000 to $10,000 a day for nonhazardous waste and a maximum of $25,000 to $32,500 for other violations (but not more than $25,000 for the first day). Table A summarizes the number of violations and civil penalties assessed in a typical year by violation type. In 2004 the Division of Waste Management deposited $457,132 in fines into the Civil Penalty and Forfeiture Fund. No estimate of additional penalty revenue is possible since Section 4 only increases the maximum penalty but does not require DENR to assess the higher penalty.

Table A: Typical Number of Waste Violations

Violation Type	# of Violations	# Assessed Civil Penalties
Hazardous Waste	99	20
Solid Waste	22	11
Underground Storage Tank	216	72

Section 5 increases administrative penalties for violation of the Wastewater Systems law from a maximum of $50 to $100 per day for smaller violations and a maximum of $400 to $5,000 per day for larger violations. In a typical year, the Division of Water Quality (DWQ) issues 923 Notices of

Violation and assesses 722 civil penalties. In 2004 DWQ deposited $5,376,143 into the Civil Penalty and Forfeiture Fund. No estimate of additional penalty revenue is possible since Section 5 only increases the maximum penalty but does not require DENR to assess the higher penalty.

Section 6 extends the penalty for false reporting under the Solid Waste law to include false reporting under the Drinking Water Act. The maximum fine that may be imposed for such an offense is $10,000. Currently, there is not sufficient data to estimate the number of false reports expected.

Under Section 7, the Secretary of DENR, in addition to other remedies, may require an environmental violator to attend environmental education courses and may charge a fee, not to exceed $100, to compensate for the reasonable cost of attending such courses. Such course fees would be deposited in the General Fund. Since this power is discretionary, there is no estimate currently available.

Section 8 directs DENR to create a pilot program during the period of October 1, 2005 through April 1, 2008, focused on determining and retaining the actual costs of collecting civil penalties, fines, and forfeitures as well as improving assessment and collection. DENR believes that it can implement this pilot program using existing staff. Currently DENR may retain up to 10% of civil penalty assessments to cover collection costs. This section would allow DENR to retain the actual cost of collection up to 20% of the total civil penalty. The net impact on the Fines and Forfeitures Fund is unclear. If actual collection costs are more than 10%, the Fund would receive a smaller percentage of civil penalty collections. If collection rates remain steady or decline, a net decrease to the Fund would result. However, if collection rates increase as a result of this provision, the net amount deposited in the Fund could actually increase.

SOURCES OF DATA: Department of Environment and Natural Resources

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 1283 A BILL TO BE ENTITLED AN ACT TO IMPROVE THE ENFORCEMENT OF VARIOUS ENVIRONMENTAL LAWS, TO AUTHORIZE THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES TO ISSUE ADMINISTRATIVE ORDERS, AND TO ESTABLISH A PILOT PROGRAM THAT ALLOWS THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO DETERMINE AND RETAIN THE ACTUAL COSTS OF COLLECTING CIVIL PENALTIES, FINES, AND FORFEITURES.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 621
PROPOSED COMMITTEE SUBSTITUTE H621-CSRUf-79 [v.3]

7/26/2005 3:09:51 PM

Short Title: Small Installment Consumer Loans. (Public)

Sponsors:

Referred to:

March 14, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW ALTERNATIVE INTEREST RATES AND MATURITIES FOR LOANS NOT EXCEEDING TWELVE HUNDRED DOLLARS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 53 of the General Statutes is amended by adding a new Article to read:

"Article 15A.

"Small Installment Consumer Loans.

"**§ 53-191.10. Title.**

This Article shall be known and cited as the "Small Installment Consumer Loan Act".

"**§ 53-191.11. Definitions.**

As used in this Article, the following terms mean:

(1) Actuarial method. – The Actuarial Method as defined by the federal Consumer Credit Protection Act (15 U.S.C. § 1601, et. seq., commonly referred to as the Truth-In-Lending Act or TILA), as amended from time to time, together with the regulations issued from time to time by the Board of Governors of the Federal Reserve System pursuant to that Act.

(2) Amount of the loan. – The aggregate of the cash advance and the charges authorized by G.S. 53-191.15.

(3) Borrower. – Any person who borrows money from any licensee or who pays or obligates himself or herself to pay any money or otherwise furnishes any valuable consideration to any licensee for any act of the licensee as a licensee.

(4) Cash advance. – The Amount Financed as defined by the federal Consumer Credit Protection Act (15 U.S.C. § 1601, et. seq., commonly referred to as the Truth-In-Lending Act or TILA), as

amended from time to time, together with the regulations issued from time to time by the Board of Governors of the Federal Reserve System pursuant to that Act.

(5) Commission. – The State Banking Commission.

(6) Commissioner. – The Commissioner of Banks.

(7) Deputy commissioner. – The deputy commissioner of banks.

(8) Lender. – A person who makes a loan under this Article.

(9) License. – The certificate issued by the Commissioner under the authority of this Article to conduct a consumer loan business.

(10) Licensee. – A person to whom one or more licenses have been issued.

(11) Loanable assets. – Cash, bank deposits, or installment loans made as a licensee pursuant to this Article as the Commissioner may approve.

(12) Person. – Any person, firm, partnership, association, or corporation.

"**§ 53-191.12. Scope of Article; evasions; penalties; loans in violation of Article void.**

(a) Scope. – Except as otherwise permitted under Article 15 of this Chapter, no person shall engage in the business of lending in amounts of one thousand two hundred dollars ($1,200) or less and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, or any other purpose whatsoever, which in the aggregate are greater than permitted by Chapter 24 of the General Statutes, except as provided in and authorized by this Article, and without first having obtained a license from the Commissioner. The word "lending" as used in this section includes endorsing or otherwise securing loans or contracts for the repayment of loans.

(b) Evasions. – The provisions of subsection (a) of this section shall apply to any person who seeks to avoid its application by any device, subterfuge, or pretense whatsoever.

(c) Penalties; Commissioner to Provide and Testify as to Facts in Commissioner's Possession. – Any person not exempt from this Article, or any officer, agent, employee, or representative thereof, who intentionally fails to comply with or who otherwise intentionally violates any of the provisions of this Article, or any rule adopted pursuant to this Article, shall be guilty of a Class 1 misdemeanor. Each violation shall be considered a separate offense. It shall be the duty of the Commissioner to provide the district attorney of the court having jurisdiction of any such offense with all facts and evidence in the Commissioner's actual or constructive possession and to testify as to those facts upon the trial of any person for any such offense.

(d) Additional Penalties. – Any contract of loan, the making or collecting of which violates any provision of this Article or any rules adopted pursuant to the authority granted in this Article, except as a result of accidental or bona fide error of computation, shall be void, and the licensee or any other party in violation shall have no right to collect, receive, or retain any principal or charges whatsoever with respect to such loan.

"**§ 53-191.13. Expense of supervision.**

Each licensee, for the purpose of defraying necessary expenses of the Commissioner and the Commissioner's agents in supervising them, shall pay to the Commissioner the fees prescribed in G.S. 53-122(a)(2) at the times therein specified.

"**§ 53-191.14. License required; showing financial responsibility; investigation of applicants; hearings; existing businesses; contents of license; transfer; posting.**

(a) Necessity for License; Prerequisites to Issuance. – No person shall engage in or offer to engage in the business regulated by this Article unless and until a license has been issued by the Commissioner, and the Commissioner shall not issue any such license unless and until the Commissioner finds all of the following:

(1) The financial responsibility, experience, character, and general fitness of the applicant are such as to command the confidence of the public and to warrant the belief that the business will be operated lawfully and fairly within the purposes of this Article.

(2) The applicant has available for the operation of the business at the specified location loanable assets of at least fifty thousand dollars ($50,000).

(b) Investigation of Applicants. – Upon the receipt of an application, the Commissioner shall investigate the facts. If the Commissioner determines from such preliminary investigation that the applicant does not satisfy the conditions set forth in subsection (a) of this section, the Commissioner shall so notify the applicant who shall then be entitled to an informal hearing thereon provided the applicant so requests in writing within 30 days after the Commissioner has caused the notice to be mailed to the applicant. In the event of a hearing, to be held in the offices of the Commissioner of Banks in Raleigh, the Commissioner shall reconsider the application and, after the hearing, issue a written order granting or denying the application. At the time of making the application, the applicant shall pay the Banking Department the sum of two hundred fifty dollars ($250.00) as a fee for investigating the application, which shall be retained irrespective of whether or not a license is granted the applicant.

(c) Required Assets Available. – Each licensee shall continue at all times to have available for the operation of the business at the specified location loanable assets of at least fifty thousand dollars ($50,000). The requirements and standards of this subsection and subdivision (a)(2) of this section shall be maintained throughout the period of the license and failure to maintain these requirements or standards shall be grounds for the revocation of a license under the provisions of this Article.

(d) License; Posting; Continuing. – Each license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a partnership or association, the names of the members thereof, and if a corporation, the date and place of its incorporation. Transfer or assignment of a license by one person to another by sale or otherwise is prohibited without the prior approval of the Commissioner. Each license shall be kept posted in the licensed place of business. Each license shall remain in full force and effect until surrendered, revoked, or suspended as provided in this Article.

"**§ 53-191.15. Alternative rates and maturities for loans not exceeding $1,200.**

(a) Notwithstanding any other provisions of law, a licensee may elect to make installment loans with cash advances not exceeding one thousand two hundred dollars ($1,200) under the following terms and conditions:

(1) No acquisition charge in excess of ten percent (10%) of the cash advance of the loan may be charged, provided, however, on the renewal of an existing loan, no acquisition charge in excess of five percent (5%) of the total cash advance of the loan may be charged.

(2) On any loan with a cash advance of not more than three hundred dollars ($300.00), no installment account handling charge in excess of four and one-half percent (4.5%) of the cash advance per month may be charged.

(3) On any loan with a cash advance in excess of three hundred dollars ($300.00) but not more than five hundred dollars ($500.00), no installment account handling charge in excess of four percent (4%) of the cash advance per month may be charged.

(4) On any loan with a cash advance in excess of five hundred dollars ($500.00) but not more than seven hundred dollars ($700.00), no installment account handling charge in excess of three percent (3%) of the cash advance per month may be charged.

(5) On any loan with a cash advance in excess of seven hundred dollars ($700.00) but not more than one thousand dollars ($1,000), no installment account handling charge in excess of two and one-half percent (2.5%) of the cash advance per month may be charged.

(6) On any loan with a cash advance in excess of one thousand dollars ($1,000) but not more than one thousand two hundred dollars ($1,200), no installment account handling charge in excess of two percent (2%) of the cash advance per month may be charged.

(7) The minimum term for any loan made under this section shall be three months and the maximum term shall be 18 months.

(b) If a loan made under this section is prepaid in full, including payment in cash or by a new loan or the renewal of the loan, or if the licensee demands payment in full of the unpaid balance, the licensee shall refund or credit to the borrower that portion of the installment account handling charge contracted for on the loan, the acquisition charge being fully earned as of the date of the loan, determined by the actuarial method computed as of the next scheduled installment due date next following the date of prepayment.

(c) On any loan established under this section, no insurance charge or any other charge of any nature whatsoever is permitted except as provided in this section, and except for the following:

(1) A delinquent payment charge of ten dollars ($10.00) on any installment not paid within 10 days after its due date.

(2) The return check charge permitted under G.S. 25-3-506.

(3) Fees actually paid to any public official or agency of a county or the State to file, record, or perfect, pursuant to Article 9 of Chapter 25 of

the General Statutes, or G.S. 20-58, the lender's security interest in any collateral securing the loan.

(4) Interest after maturity on the outstanding balance at a rate equal to eight percent (8%) per annum.

(d) The loan charges allowed under this section may not be imposed on a loan to a borrower who has one or more loans outstanding under this Article with the same lender or an affiliated lender except that a licensee may make a loan having the charges allowed under this section to pay off the balance due under any other loan or loans made by the lender or its affiliates provided that the aggregate payoff balance of the loan or loans being paid off does not exceed one thousand two hundred dollars ($1,200). The acquisition by a lender or an affiliate of a lender in a bulk transaction of loans made under this Article to a borrower who, at the time of the acquisition, has a loan under this section from the acquiring licensee or an affiliate of the licensee shall not be a violation of this section.

(e) Any loan made under this section must provide for repayment in substantially equal monthly installments. No loan made under this section may be prepaid by a loan from the same licensee or an affiliate of the same licensee who made the initial loan until at least one-third of the initial loan term has expired, but in no event less than 91 days after the initial loan date. In addition, no loan made under this section may be prepaid by a loan from the same licensee or an affiliate of the same licensee who made the initial loan unless the borrower receives cash proceeds from the new loan in an amount equal to not less than ten percent (10%) of the net payoff amount of the prior loan.

"**§ 53-191.16. Businesses exempted.**

Nothing in this Article shall be construed to apply to any person, firm, or corporation doing business under the authority of any law of this State or of the United States relating to banks, trust companies, savings and loan associations, cooperative credit unions, agricultural credit corporations or associations organized under the laws of North Carolina, production credit associations organized under the act of Congress known as the Farm Credit Act of 1933, pawnbrokers lending or advancing money on specific articles of personal property, industrial banks, the business of negotiating loans on real estate as defined in G.S. 105-41, nor to installment paper dealers as defined in G.S. 105-83 other than persons, firms, and corporations engaged in the business of accepting fees for endorsing or otherwise securing loans or contracts for repayment of loans.

"**§ 53-191.17. Applicable provisions.**

The provisions of the following sections shall apply to loans, borrowers, and lenders governed by this Article as if these transactions were transactions under Article 15 of this Chapter: G.S. 53-169 through G.S. 53-172 and G.S. 53-181 through G.S. 53-188."

SECTION 2. G.S. 53-169 reads as rewritten:

"**§ 53-169. Application for license.**

The application for license shall be made on a form prepared and furnished by the Commissioner of Banks and shall state:

(1) The fact that the applicant desires to engage in business under this ~~Article;~~ Article or under Article 15A of this ~~and~~Chapter; and
(2) Whether the applicant is an individual, partnership, association or corporation; and
(3) The name and address of the person who will manage and be in immediate control of the business; and
(4) The name and address of the owners and their percentage of equity in the company, except when the Commissioner does not deem it feasible to furnish such information because of the number of stockholders involved; and
(5) When the applicant proposes to commence doing business; and
(6) Such other information as the Commissioner of Banks deems necessary.

The statements made in such application shall be sworn to by the applicant or persons making application on the applicant's behalf."

SECTION 3. G.S. 53-172(a) reads as rewritten:

"(a) No licensee shall conduct the business of making loans under ~~this Article~~ Article 15 or Article 15A of this Chapter within any office, suite, room, or place of business in which any other business is solicited or transacted.

~~Installment~~ The business of installment paper dealers as defined in G.S. 105-83, small installment consumer lenders under Articles 15 and 15A of this Chapter, check-cashing under G.S. 53-276, and the collection by a licensee of loans legally made in North Carolina, or another state by another government regulated lender or lending agency, shall not be considered as being ~~any~~ other business within the meaning of this section."

SECTION 4. G.S. 53-173 is amended by adding a new subsection to read:

"(b1) Delinquent Payment Charge. – In addition to the interest and fees permitted under this section, a licensee may collect a delinquent payment charge of the greater of ten dollars ($10.00) or five percent (5%) of the amount of the payment due not paid within 10 days after its due date."

SECTION 5. G.S. 53-176(c) reads as rewritten:

"(c) The provisions of G.S. 53-173(b), (b1), (c) and (d) and G.S. 53-180(b), (c), (d), (e), (f), (g), (h) and (i) shall apply to loans made pursuant to this section."

SECTION 6. This act becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 621

Short Title:	Small Installment Consumer Loans.	(Public)
Sponsors:	Representative Wright.	
Referred to:	Financial Institutions, if favorable, Finance.	

March 14, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW ALTERNATIVE INTEREST RATES AND MATURITIES FOR LOANS NOT EXCEEDING TWELVE HUNDRED DOLLARS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 53 of the General Statutes is amended by adding a new Article to read:

"Article 15A.

"Small Installment Consumer Loans.

"**§ 53-191.10. Title.**

This Article shall be known and cited as the "Small Installment Consumer Loan Act".

"**§ 53-191.11. Definitions.**

As used in this Article, the following terms mean:

(1) Actuarial method. – The Actuarial Method as defined by the federal Consumer Credit Protection Act (15 U.S.C. § 1601, et. seq., commonly referred to as the Truth-In-Lending Act or TILA), as amended from time to time, together with the regulations issued from time to time by the Board of Governors of the Federal Reserve System pursuant to that Act.

(2) Amount of the loan. – The aggregate of the cash advance and the charges authorized by G.S. 53-191.15.

(3) Borrower. – Any person who borrows money from any licensee or who pays or obligates himself or herself to pay any money or otherwise furnishes any valuable consideration to any licensee for any act of the licensee as a licensee.

(4) Cash advance. – The Amount Financed as defined by the federal Consumer Credit Protection Act (15 U.S.C. § 1601, et. seq., commonly referred to as the Truth-In-Lending Act or TILA), as amended from time to time, together with the regulations issued from

time to time by the Board of Governors of the Federal Reserve System pursuant to that Act.

(5) Commission. – The State Banking Commission.

(6) Commissioner. – The Commissioner of Banks.

(7) Deputy commissioner. – The deputy commissioner of banks.

(8) Lender. – A person who makes a loan under this Article.

(9) License. – The certificate issued by the Commissioner under the authority of this Article to conduct a consumer loan business.

(10) Licensee. – A person to whom one or more licenses have been issued.

(11) Loanable assets. – Cash, bank deposits, or installment loans made as a licensee pursuant to this Article as the Commissioner may approve.

(12) Person. – Any person, firm, partnership, association, or corporation.

"**§ 53-191.12. Scope of Article; evasions; penalties; loans in violation of Article void.**

(a) Scope. – Except as otherwise permitted under Article 15 of this Chapter, no person shall engage in the business of lending in amounts of one thousand two hundred dollars ($1,200) or less and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, or any other purpose whatsoever, which in the aggregate are greater than permitted by Chapter 24 of the General Statutes, except as provided in and authorized by this Article, and without first having obtained a license from the Commissioner. The word "lending" as used in this section includes endorsing or otherwise securing loans or contracts for the repayment of loans.

(b) Evasions. – The provisions of subsection (a) of this section shall apply to any person who seeks to avoid its application by any device, subterfuge, or pretense whatsoever.

(c) Penalties; Commissioner to Provide and Testify as to Facts in Commissioner's Possession. – Any person not exempt from this Article, or any officer, agent, employee, or representative thereof, who intentionally fails to comply with or who otherwise intentionally violates any of the provisions of this Article, or any rule adopted pursuant to this Article, shall be guilty of a Class 1 misdemeanor. Each violation shall be considered a separate offense. It shall be the duty of the Commissioner to provide the district attorney of the court having jurisdiction of any such offense with all facts and evidence in the Commissioner's actual or constructive possession and to testify as to those facts upon the trial of any person for any such offense.

(d) Additional Penalties. – Any contract of loan, the making or collecting of which violates any provision of this Article or any rules adopted pursuant to the authority granted in this Article, except as a result of accidental or bona fide error of computation, shall be void, and the licensee or any other party in violation shall have no right to collect, receive, or retain any principal or charges whatsoever with respect to such loan.

"**§ 53-191.13. Expense of supervision.**

Each licensee, for the purpose of defraying necessary expenses of the Commissioner and the Commissioner's agents in supervising them, shall pay to the Commissioner the fees prescribed in G.S. 53-122 at the times therein specified.

"**§ 53-191.14. License required; showing financial responsibility; investigation of applicants; hearings; existing businesses; contents of license; transfer; posting.**

(a) Necessity for License; Prerequisites to Issuance. – No person shall engage in or offer to engage in the business regulated by this Article unless and until a license has been issued by the Commissioner, and the Commissioner shall not issue any such license unless and until the Commissioner finds all of the following:

(1) The financial responsibility, experience, character, and general fitness of the applicant are such as to command the confidence of the public and to warrant the belief that the business will be operated lawfully and fairly within the purposes of this Article.

(2) The applicant has available for the operation of the business at the specified location loanable assets of at least fifty thousand dollars ($50,000).

(b) Investigation of Applicants. – Upon the receipt of an application, the Commissioner shall investigate the facts. If the Commissioner determines from such preliminary investigation that the applicant does not satisfy the conditions set forth in subsection (a) of this section, the Commissioner shall so notify the applicant who shall then be entitled to an informal hearing thereon provided the applicant so requests in writing within 30 days after the Commissioner has caused the notice to be mailed to the applicant. In the event of a hearing, to be held in the offices of the Commissioner of Banks in Raleigh, the Commissioner shall reconsider the application and, after the hearing, issue a written order granting or denying the application. At the time of making the application, the applicant shall pay the Banking Department the sum of two hundred fifty dollars ($250.00) as a fee for investigating the application, which shall be retained irrespective of whether or not a license is granted the applicant.

(c) Required Assets Available. – Each licensee shall continue at all times to have available for the operation of the business at the specified location loanable assets of at least fifty thousand dollars ($50,000). The requirements and standards of this subsection and subdivision (a)(2) of this section shall be maintained throughout the period of the license and failure to maintain these requirements or standards shall be grounds for the revocation of a license under the provisions of this Article.

(d) License; Posting; Continuing. – Each license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a partnership or association, the names of the members thereof, and if a corporation, the date and place of its incorporation. Transfer or assignment of a license by one person to another by sale or otherwise is prohibited without the prior approval of the Commissioner. Each license shall be kept posted in the licensed place of business. Each license shall remain in full force and effect until surrendered, revoked, or suspended as provided in this Article.

"**§ 53-191.15. Alternative rates and maturities for loans not exceeding $1,200.**

(a) Notwithstanding any other provisions of law, a licensee may elect to make installment loans with cash advances not exceeding one thousand two hundred dollars ($1,200) under the following terms and conditions:

(1) No acquisition charge in excess of ten percent (10%) of the cash advance of the loan may be charged.

(2) On any loan with a cash advance of not more than three hundred dollars ($300.00), no installment account handling charge in excess of four and one-half percent (4.5%) of the cash advance per month may be charged.

(3) On any loan with a cash advance in excess of three hundred dollars ($300.00) but not more than five hundred dollars ($500.00), no installment account handling charge in excess of four percent (4%) of the cash advance per month may be charged.

(4) On any loan with a cash advance in excess of five hundred dollars ($500.00) but not more than seven hundred dollars ($700.00), no installment account handling charge in excess of three percent (3%) of the cash advance per month may be charged.

(5) On any loan with a cash advance in excess of seven hundred dollars ($700.00) but not more than one thousand dollars ($1,000), no installment account handling charge in excess of two and one-half percent (2.5%) of the cash advance per month may be charged.

(6) On any loan with a cash advance in excess of one thousand dollars ($1,000) but not more than one thousand two hundred dollars ($1,200), no installment account handling charge in excess of two percent (2%) of the cash advance per month may be charged.

(7) The minimum term for any loan made under this section shall be three months and the maximum term shall be 18 months.

(b) If a loan made under this section is prepaid in full, including payment in cash or by a new loan or the renewal of the loan, or if the licensee demands payment in full of the unpaid balance, the licensee shall refund or credit to the borrower that portion of the installment account handling charge contracted for on the loan, the acquisition charge being fully earned as of the date of the loan, determined by the actuarial method computed as of the next scheduled installment due date next following the date of prepayment.

(c) On any loan established under this section, no insurance charge or any other charge of any nature whatsoever is permitted except as provided in this section, and except for the following:

(1) A delinquent payment charge of ten dollars ($10.00) on any installment not paid within 10 days after its due date.

(2) The return check charge permitted under G.S. 25-3-506.

(3) Fees actually paid to any public official or agency of a county or the State to file, record, or perfect, pursuant to Article 9 of Chapter 25 of the General Statutes, or G.S. 20-58, the lender's security interest in any collateral securing the loan.

(4) Interest after maturity on the outstanding balance at a rate equal to eight percent (8%) per annum.

(d) The loan charges allowed under this section may not be imposed on a loan to a borrower who has one or more loans outstanding under this Article with the same lender or an affiliated lender except that a licensee may make a loan having the charges allowed under this section to pay off the balance due under any other loan or loans made by the lender or its affiliates provided that the aggregate payoff balance of the loan or loans being paid off does not exceed one thousand two hundred dollars ($1,200). The acquisition by a lender or an affiliate of a lender in a bulk transaction of loans made under this Article to a borrower who, at the time of the acquisition, has a loan under this section from the acquiring licensee or an affiliate of the licensee shall not be a violation of this section.

(e) Any loan made under this section must provide for repayment in substantially equal monthly installments. No loan made under this section may be prepaid by a loan from the same licensee or an affiliate of the same licensee who made the initial loan until at least 61 days after the initial loan date nor may a licensee or an affiliate of the same licensee under this section make a new loan to the same borrower until at least 61 days after the initial loan date.

"**§ 53-191.16. Businesses exempted.**

Nothing in this Article shall be construed to apply to any person, firm, or corporation doing business under the authority of any law of this State or of the United States relating to banks, trust companies, savings and loan associations, cooperative credit unions, agricultural credit corporations or associations organized under the laws of North Carolina, production credit associations organized under the act of Congress known as the Farm Credit Act of 1933, pawnbrokers lending or advancing money on specific articles of personal property, industrial banks, the business of negotiating loans on real estate as defined in G.S. 105-41, nor to installment paper dealers as defined in G.S. 105-83 other than persons, firms, and corporations engaged in the business of accepting fees for endorsing or otherwise securing loans or contracts for repayment of loans.

"**§ 53-191.17. Applicable provisions.**

The provisions of the following sections shall apply to loans, borrowers, and lenders governed by this Article as if these transactions were transactions under Article 15 of this Chapter: G.S. 53-169 through G.S. 53-172 and G.S. 53-181 through G.S. 53-188."

SECTION 2. G.S. 53-169 reads as rewritten:

"**§ 53-169. Application for license.**

The application for license shall be made on a form prepared and furnished by the Commissioner of Banks and shall state:

(1) The fact that the applicant desires to engage in business under this ~~Article;~~ Article or under Article 15A of this ~~and~~Chapter; and

(2) Whether the applicant is an individual, partnership, association or corporation; and

(3) The name and address of the person who will manage and be in immediate control of the business; and

(4) The name and address of the owners and their percentage of equity in the company, except when the Commissioner does not deem it feasible to furnish such information because of the number of stockholders involved; and

(5) When the applicant proposes to commence doing business; and

(6) Such other information as the Commissioner of Banks deems necessary.

The statements made in such application shall be sworn to by the applicant or persons making application on the applicant's behalf."

SECTION 3. G.S. 53-172(a) reads as rewritten:

"(a) No licensee shall conduct the business of making loans under ~~this Article~~ Article 15 or Article 15A of this Chapter within any office, suite, room, or place of business in which any other business is solicited or transacted.

~~Installment~~ The business of installment paper dealers as defined in G.S. 105-83, small installment consumer lenders under Articles 15 and 15A of this Chapter, check-cashing under G.S. 53-276, and the collection by a licensee of loans legally made in North Carolina, or another state by another government regulated lender or lending agency, shall not be considered as being ~~any~~ other business within the meaning of this section."

SECTION 4. G.S. 53-173 is amended by adding a new subsection to read:

"(b1) Delinquent Payment Charge. – In addition to the interest and fees permitted under this section, a licensee may collect a delinquent payment charge of the greater of ten dollars ($10.00) or five percent (5%) of the amount of the payment due not paid within 10 days after its due date."

SECTION 5. G.S. 53-176(c) reads as rewritten:

"(c) The provisions of G.S. 53-173(b), (b1), (c) and (d) and G.S. 53-180(b), (c), (d), (e), (f), (g), (h) and (i) shall apply to loans made pursuant to this section."

SECTION 6. This act becomes effective October 1, 2005.

HOUSE BILL 621:
Small Installment Consumer Loans

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 26, 2005
Introduced by:	Rep. Wright	**Summary by:**	Karen Cochrane-Brown
Version:	PCS to First Edition H621-CSRUf-79[v.3]		Staff Attorney

SUMMARY: ***House Bill 621 adds a new Article to Chapter 53 (the Banking Law) that authorizes a new loan business. The Commissioner of Banks, who will issue licenses to qualified applicant lenders, will regulate the businesses. The lenders will be able to make loans of up to $1200.00 at graduated rates. The terms of the loans will be between three and eighteen months.***

The bill also authorizes Consumer Finance lenders to collect delinquent payment charges of the greater of $10.00 or 5% of the amount due ten days after the due date for the payment.

[The Proposed Committee Substitute reduces the acquisition fee that may be charged on a renewed loan from 10% to 5%. It also increases the period after which a loan can be renewed from 61 days to at least one-third of the initial loan term has expired, but not less than 91 days.]

CURRENT LAW:

Currently, the North Carolina Consumer Finance Act (Article 15, Chap. 53) is the only State law that specifically authorizes nonbank lenders to make small unsecured loans. This Act authorizes the Commissioner of Banks to license and to supervise loan companies, which make direct consumer loans of $10,000 or less. A licensee must meet several statutory requirements including, maintaining loanable assets of not less than $50,000. Lenders that do not charge interest rates higher than those permitted by Chapter 24 are exempt for this Act. Also exempted are banks, trust companies, savings and loan associations, cooperative credit unions, agricultural credit corporations, production credit associations, pawnbrokers, and installment paper dealers.

The statute creates two tiers of lenders. G.S. 53-173 allows interest charges of 36% per year on that part of the unpaid principal balance, which does not exceed $600.00, and 15% per year on that portion which is more than $600 but not more than $3,000.

G.S. 53-176 authorizes optional rates for those lenders who elect to make loans of $10,000 or less and who so notify the Commissioner. These lenders may charge interest at the rate of 30% per year on that part of the unpaid principal balance, which does not exceed $1,000, and 18% per year on the remainder, which does not exceed $7,500. If the principal balance is more than $7,500, the maximum rate is 18% per year on the entire loan. Optional rate lenders may also charge a reasonable credit investigation fee, which cannot exceed the actual cost of the credit investigation.

Both categories of lenders use a blended interest rate for most loans made under this Article.

BILL ANALYSIS:

This bill would authorize a new category of small loans. The bill requires prospective lenders to be licensed by the Commissioner of Banks under similar terms as Consumer Finance lenders. Applicants would be required to pay a nonrefundable application investigation fee to the Commissioner of Banks in

the amount of $250.00. This bill would apply to loans of up to $1200.00. Lenders could charge an acquisition fee of 10% of the amount of the loan. However, on a renewed loan, the lender could only charge an acquisition fee of 5%. The rate of the "installment account handling charge" would be determined by the amount of the cash advance.

- On loans of $300.00 or less the rate would be 4.5% per month.
- On loans between $300.00 and $500.00 the rate would be 4% per month.
- On loans between $500.00 and $700.00 the rate would be 3% per month.
- On loans between $700.00 and $1000.00 the rate would be 2.5% per month.
- On loans between $1000.00 and $1200.00 the rate would be 2% per month.

The minimum term for any loan would be three months and the maximum term would be 18 months.

Lenders could not charge for insurance but could charge $10.00 for payments not made within ten days of the due date.

A borrower could not have more than one outstanding loan with the same lender; however, a lender could make a loan to payoff the balance of an outstanding loan to the borrower so long as the aggregate amount of the loans does not exceed $1200.00. The lender may charge a new acquisition fee to a borrower who has a loan from a lender that is acquired in a bulk transaction of loans.

Loans made under this section must provide for payments in substantially equal installments. Loans may not be prepaid by another loan from the same lender until at least 91 days after the initial loan, nor may the lender make a new loan to the same borrower unless the borrower receives at least 10% of the net payoff amount of the prior loan.

This Article does not apply to banks, trust companies, savings and loan associations cooperative credit unions, and other financial institutions organized under North Carolina or federal law.

The provisions of the Consumer Finance Act relating to application for license, locations and change of ownership, revocation, suspension or surrender of license, and conduct of other business in the same office are made applicable to persons or entities covered by this Act. In addition, the provisions of the Consumer Finance Act relating to certain consumer notices and protections and the Commissioners powers are also made applicable to this Act.

Finally, the bill also amends the Consumer Finance Act to authorize the collection of delinquent payment charges of the greater of $10.00 or 5% of the amount due if the payment is not made within 10 days of the due date.

This act would become effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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HOUSE BILL 20
PROPOSED COMMITTEE SUBSTITUTE H20-CSLY-32 [v.4]

7/27/2005 5:43:33 PM

Short Title: Health Insurance Credit/Minimum Wage. (Public)

Sponsors:

Referred to:

January 31, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A TAX CREDIT FOR SMALL BUSINESSES THAT PROVIDE EMPLOYEE HEALTH INSURANCE AND TO AMEND THE WAGE AND HOUR ACT TO RAISE THE STATE MINIMUM WAGE TO A LIVABLE WAGE.

The General Assembly of North Carolina enacts:

PART I. SMALL BUSINESS HEALTH INSURANCE TAX CREDIT

SECTION 1.1 Article 3B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.16E. Credit for small business employee health benefits.**

(a) Credit. – A small business that provides health benefits for all of its eligible employees during the taxable year is allowed a credit to offset its costs in providing health benefits for its eligible employees. For the purposes of this subsection, a taxpayer provides health benefits if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125 or if its employees have qualifying existing coverage.

The credit is equal to a dollar amount per eligible employee, not to exceed the taxpayer's costs of providing health benefits for its eligible employees during the taxable year. For each eligible employee for whom the taxpayer pays premiums for health care coverage, the amount is four hundred dollars ($400.00).

(b) Allocation. – If the taxpayer is an individual who is a nonresident or a part-year resident, the taxpayer must reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. If the taxpayer is not an individual and is required to apportion its multistate business income to this State, the taxpayer must reduce the amount of the credit by multiplying it by the apportionment fraction used to apportion its business income to this State.

(c) Definitions. – The following definitions apply in this section:
(1) Eligible employee. – Defined in G.S. 58-50-110.
(2) Qualifying existing coverage. – Defined in G.S. 58-50-130(a)(4a).
(3) Small business. – A taxpayer that employs no more than 25 eligible employees throughout the taxable year.

(d) No Double Benefit. – A taxpayer may not claim a credit under this section for costs for which it claimed a deduction under the Code. A taxpayer that claims a credit provided under this section must adjust taxable income as provided in G.S. 105-130.5(a)(16) or G.S. 105-134.6(c)(9), as applicable.

(e) Sunset. – This section expires for taxable years beginning on or after January 1, 2010."

SECTION 1.2. G.S. 105-129.15A is repealed.

SECTION 1.3. G.S. 105-129.16 is repealed.

SECTION 1.4. G.S. 105-129.16A is amended by adding a new subsection to read:

"(e) Sunset. – This section is repealed for renewable energy property placed in service on or after January 1, 2006."

SECTION 1.5. G.S. 105-129.16C is amended by adding a new subsection to read:

"(d) Sunset. – This section is repealed for taxable years beginning on or after January 1, 2006."

SECTION 1.6. G.S. 105-130.5(a) is amended by adding a new subdivision to read:

"(a) The following additions to federal taxable income shall be made in determining State net income:

...

(16) To the extent not included in federal taxable income, the costs of providing employee health benefits for which the taxpayer claims a credit under G.S. 105-129.16E."

SECTION 1.7. G.S. 105-134.6(c) is amended by adding a new subdivision to read:

"(c) Additions. – The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

...

(9) The costs of providing employee health benefits for which the taxpayer claims a credit under G.S. 105-129.16E."

PART II. INCREASE MINIMUM WAGE

SECTION 2. G.S. 95-25.3(a) reads as rewritten:

"**§ 95-25.3. Minimum wage.**

(a) Every employer shall pay to each employee who in any workweek performs any work, wages of at least ~~the minimum wage set forth in paragraph 1 of section 6(a)~~

~~of the Fair Labor Standards Act, 29 U.S.C. 206(a)(1), as that wage may change from time to time,~~ six dollars ($6.00) per hour, except as otherwise provided in this section."

PART III. EFFECTIVE DATES

SECTION 3. Sections 1.1, 1.6, and 1.7 of this act are effective for taxable years beginning on or after January 1, 2006. Section 2 of this act becomes effective January 1, 2006. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 20

Short Title:	Small Business Health Insurance Credit.	(Public)
Sponsors:	Representatives Holliman, Bordsen, Goforth, Ross (Primary Sponsors); Alexander, L. Allen, Allred, Bell, Brown, Carney, Coates, Daughtridge, Dickson, England, Faison, Frye, Gibson, Glazier, Goodwin, Hackney, Haire, Harrell, Harrison, Insko, Johnson, Jones, LaRoque, Luebke, Martin, McGee, McLawhorn, Pate, Rapp, Saunders, Sherrill, Stiller, Underhill, Warren, Weiss, Wilkins, Williams, Womble, and Wray.	
Referred to:	Finance.	

January 31, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A TAX CREDIT FOR SMALL BUSINESSES THAT PROVIDE EMPLOYEE HEALTH INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.16D. Credit for small business employee health benefits.**

(a) Credit. – A small business that provides health benefits for all of its eligible employees during the taxable year is allowed a credit to offset its costs in providing health benefits for its eligible employees. For the purposes of this subsection, a taxpayer provides health benefits if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

The credit is equal to a dollar amount per eligible employee, not to exceed the taxpayer's costs of providing health benefits for its eligible employees during the taxable year. For each eligible employee for whom the taxpayer provides health benefits, the amount is four hundred dollars ($400.00).

(b) Allocation. – If the taxpayer is an individual who is a nonresident or a part-year resident, the taxpayer must reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. If the taxpayer is not an individual and is required to apportion its multistate business income to this State, the taxpayer must reduce the amount of the credit by multiplying it by the apportionment fraction used to apportion its business income to this State.

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

(1) Eligible employee. – Defined in G.S. 58-50-110.

(2) Small business. – A taxpayer that employs no more than 25 employees throughout the taxable year."

SECTION 2. This act becomes effective for taxable years beginning on or after January 1, 2006.

HOUSE BILL 20:
Health Insurance Credit/Minimum Wage

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 27, 2005
Introduced by:	Reps. Holliman, Bordsen, Goforth, Ross	**Summary by:**	Cindy Avrette
Version:	PCS to First Edition H20-CSLY-32		Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 20 does two things:

- ***It would provide a tax credit to a small business that provides health benefits to all of its full-time employees, effective for taxable years beginning on or after January 1, 2006, and expiring for taxable years beginning on or after January 1, 2010.***
- ***It would increase the State's minimum wage from $5.15 an hour to $6.00 an hour, effective January 1, 2006.***

BILL ANALYSIS: Small Business Health Insurance Tax Credit. – Part I creates a new tax credit for a small business that provides health benefits to its eligible employees.

- A *small business* is a taxpayer that employs no more than 25 full-time employees.
- An *eligible employee* is one that works a normal workweek of 30 or more hours.
- *Providing health benefits* means one or more of the following:
    - The taxpayer pays at least 50% of the premiums for health insurance coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee.
    - The employee has existing coverage under one or more of the following: Medicare; Medicaid; a government funded program; a health insurance or benefit arrangement that provides benefits similar to or in excess of benefits provided under the basic health care plan.

The credit amount is equal to $400 per employee for whom the taxpayer pays the health insurance premium, not to exceed the taxpayer's cost of providing the health insurance benefit. The taxpayer may use the credit against either its income tax or its franchise tax liability. The credit may not exceed 50% of the taxpayer's tax liability. Any unused portions of the credit may be carried forward for five years. The credit would be in lieu of any expense deduction the small business claimed on its federal income tax return for the health insurance costs. The credit is effective for taxable years beginning on or after January 1, 2006, and it expires for taxable years beginning on or after January 1, 2010.

This part of the bill is similar to the small business health insurance tax credit the House included in its House Committee Substitute for Senate Bill 622, the 2005 Appropriations Act. This credit differs from the credit in Senate Bill 622 by expanding the meaning of 'providing health benefits' to include employees that are covered under a plan other than the one offered by the small business.

Raise the State Minimum Wage. – Part II would increase the State minimum wage from $5.15 an hour to $6.00 an hour, effective January 1, 2006. Currently the State minimum wage is set at the same rate as the federal minimum wage. Section 2 would amend the State minimum wage by deleting the provision that sets the State minimum wage at the same level as the federal minimum wage and substitute a minimum wage of $6.00. The General Assembly linked the State minimum wage to the federal minimum wage in 1997. The federal minimum wage amount has not changed since 1997.

BACKGROUND: The General Assembly has enacted legislation over the past several years to encourage small businesses to provide health insurance benefits to their employees. In 1991, the General Assembly enacted the 'Small Employer Group Health Insurance Reform Act' to promote the availability of accident and health insurance coverage, to prevent abusive rating practices, and to develop standard and basic health care plan coverage. The General Assembly also made the provision of health insurance a requirement of eligibility for both the Bill Lee Act credits and grants awarded under the Job Development Investment Grant Program. In 2003, the General Assembly established the North Carolina Health Insurance Innovations Commission to address the availability and affordability of adequate health insurance coverage for small business owners and employees.

Under the Internal Revenue Code, an employer may deduct premiums paid for health insurance cost of its employees as a business expense. According to data from the 2001 Medical Expenditure Panel Survey from the Agency for Healthcare Research and Quality, U.S. Department of Health and Human Services, 31% of employees employed by firms with 25 or fewer employees are covered by employer-sponsored plans. For 2001, the average employer's costs of providing this coverage ranged from $3,024 to $4,971 per year, depending on the number of family members covered. Data for 1998-2002 from the Department of Insurance indicates that the average annual cost is rising at double-digit rates.

H0020e1-SMRB-CSLY-32

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 20

Short Title:	Small Business Health Insurance Credit.	(Public)
Sponsors:	Representatives Holliman, Bordsen, Goforth, Ross (Primary Sponsors); Alexander, L. Allen, Allred, Bell, Brown, Carney, Coates, Daughtridge, Dickson, England, Faison, Frye, Gibson, Glazier, Goodwin, Hackney, Haire, Harrell, Harrison, Insko, Johnson, Jones, LaRoque, Luebke, Martin, McGee, McLawhorn, Pate, Rapp, Saunders, Sherrill, Stiller, Underhill, Warren, Weiss, Wilkins, Williams, Womble, and Wray.	
Referred to:	Finance.	

January 31, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A TAX CREDIT FOR SMALL BUSINESSES THAT PROVIDE EMPLOYEE HEALTH INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.16D. Credit for small business employee health benefits.**

(a) Credit. – A small business that provides health benefits for all of its eligible employees during the taxable year is allowed a credit to offset its costs in providing health benefits for its eligible employees. For the purposes of this subsection, a taxpayer provides health benefits if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

The credit is equal to a dollar amount per eligible employee, not to exceed the taxpayer's costs of providing health benefits for its eligible employees during the taxable year. For each eligible employee for whom the taxpayer provides health benefits, the amount is four hundred dollars ($400.00).

(b) Allocation. – If the taxpayer is an individual who is a nonresident or a part-year resident, the taxpayer must reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. If the taxpayer is not an individual and is required to apportion its multistate business income to this State, the taxpayer must reduce the amount of the credit by multiplying it by the apportionment fraction used to apportion its business income to this State.

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

(1) Eligible employee. – Defined in G.S. 58-50-110.

(2) Small business. – A taxpayer that employs no more than 25 employees throughout the taxable year."

SECTION 2. This act becomes effective for taxable years beginning on or after January 1, 2006.

HOUSE BILL 20:
Health Insurance Credit/Minimum Wage

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 27, 2005
Introduced by:	Reps. Holliman, Bordsen, Goforth, Ross	**Summary by:**	Cindy Avrette
Version:	PCS to First Edition H20-CSLY-32		Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 20 does two things:

- ***It would provide a tax credit to a small business that provides health benefits to all of its full-time employees, effective for taxable years beginning on or after January 1, 2006, and expiring for taxable years beginning on or after January 1, 2010.***
- ***It would increase the State's minimum wage from $5.15 an hour to $6.00 an hour, effective January 1, 2006.***

BILL ANALYSIS: **Small Business Health Insurance Tax Credit.** – Part I creates a new tax credit for a small business that provides health benefits to its eligible employees.

- A *small business* is a taxpayer that employs no more than 25 full-time employees.
- An *eligible employee* is one that works a normal workweek of 30 or more hours.
- *Providing health benefits* means one or more of the following:
    - The taxpayer pays at least 50% of the premiums for health insurance coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee.
    - The employee has existing coverage under one or more of the following: Medicare; Medicaid; a government funded program; a health insurance or benefit arrangement that provides benefits similar to or in excess of benefits provided under the basic health care plan.

The credit amount is equal to $400 per employee for whom the taxpayer pays the health insurance premium, not to exceed the taxpayer's cost of providing the health insurance benefit. The taxpayer may use the credit against either its income tax or its franchise tax liability. The credit may not exceed 50% of the taxpayer's tax liability. Any unused portions of the credit may be carried forward for five years. The credit would be in lieu of any expense deduction the small business claimed on its federal income tax return for the health insurance costs. The credit is effective for taxable years beginning on or after January 1, 2006, and it expires for taxable years beginning on or after January 1, 2010.

This part of the bill is similar to the small business health insurance tax credit the House included in its House Committee Substitute for Senate Bill 622, the 2005 Appropriations Act. This credit differs from the credit in Senate Bill 622 by expanding the meaning of 'providing health benefits' to include employees that are covered under a plan other than the one offered by the small business.

Raise the State Minimum Wage. – Part II would increase the State minimum wage from $5.15 an hour to $6.00 an hour, effective January 1, 2006. Currently the State minimum wage is set at the same rate as the federal minimum wage. Section 2 would amend the State minimum wage by deleting the provision that sets the State minimum wage at the same level as the federal minimum wage and substitute a minimum wage of $6.00. The General Assembly linked the State minimum wage to the federal minimum wage in 1997. The federal minimum wage amount has not changed since 1997.

BACKGROUND: The General Assembly has enacted legislation over the past several years to encourage small businesses to provide health insurance benefits to their employees. In 1991, the General Assembly enacted the 'Small Employer Group Health Insurance Reform Act' to promote the availability of accident and health insurance coverage, to prevent abusive rating practices, and to develop standard and basic health care plan coverage. The General Assembly also made the provision of health insurance a requirement of eligibility for both the Bill Lee Act credits and grants awarded under the Job Development Investment Grant Program. In 2003, the General Assembly established the North Carolina Health Insurance Innovations Commission to address the availability and affordability of adequate health insurance coverage for small business owners and employees.

Under the Internal Revenue Code, an employer may deduct premiums paid for health insurance cost of its employees as a business expense. According to data from the 2001 Medical Expenditure Panel Survey from the Agency for Healthcare Research and Quality, U.S. Department of Health and Human Services, 31% of employees employed by firms with 25 or fewer employees are covered by employer-sponsored plans. For 2001, the average employer's costs of providing this coverage ranged from $3,024 to $4,971 per year, depending on the number of family members covered. Data for 1998-2002 from the Department of Insurance indicates that the average annual cost is rising at double-digit rates.

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GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: July 28, 2005

TO: House Finance Committee

FROM: David Crotts, Linda Millsaps
Fiscal Research Division

RE: PCS for House Bill 20: Health Insurance Credit/Minimum Wage

FISCAL IMPACT
($MIL.)

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
State General Fund	**-17.7**	**-39.8**	**-40.2**	**-40.8**	**-41.7**
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Income taxes are administered by the Department of Revenue. The enactment of the bill is not expected to affect the budget requirements of the Department.

EFFECTIVE DATE: See "Bill Summary".

COVER)

BILL SUMMARY: Small Business Health Insurance Tax Credit. Allows an employer who provides health benefits for all employees to take a state tax credit for the employer's costs in providing the benefits. The credit can be taken against the income or franchise tax. To be eligible, the employer must pay at least 50% of the premiums for health coverage that meets or exceeds the minimum provisions of a basic health care plan of coverage recommended by the Small Employer Carrier Committee. In addition, the employer must have no more than 25 employees.

The credit is equal to 100% of the employer's cost of providing the benefits, up to a maximum of $400 for each employee covered. The credit is limited to 50% of tax liability, with a five-year carry forward. Finally, a taxpayer who takes the credit may not take the normal business expense deduction for the same health insurance costs.

The credit is effective for tax years beginning on or after January 1, 2006.

State Minimum Wage. Section 2 of the bill increases the state minimum wage from $5.15 per hour to $6.00 per hour.

ASSUMPTIONS AND METHODOLOGY: Small Business Health Insurance Tax Credit
The first step in the analysis was to review the detailed employer health insurance data from the 2001 Medical Expenditure Panel Survey from the Agency for Healthcare Research and Quality, U.S. Department of Health and Human Services. The data included a tabulation of the number of firms in North Carolina who offered health coverage for employees, by size of firm. One of the breakpoints in the distribution data was for firms of 25 or less employees. The data indicated that 31% of employees are presently covered by employer-sponsored plans in this category.

The survey data included a tabulation of the cost of various types of coverage. For 2001 the average employer's costs ranged from $3,024-$4,971 per year, depending on the number of family members covered. Data for 1998-2002 from the Department of Insurance indicates that the average annual cost is rising at double-digit rates. Since the credit limit will be far less than 100% of a typical employer's cost, the actual amount of the average costs do not affect the calculation.

There is no way to make a reliable prediction of the proportion of uncovered employees who would receive coverage as a result of the $400 tax credit. For the purpose of this analysis, it was assumed that 10% of the uncovered employees would begin to be covered.

The credit is limited to 50% of the taxpayer's income tax liability for the tax year. In this analysis, we are assuming that the limitation leads to a credit utilization rate of 66 2/3% in the year of credit eligibility.

The credit cost was calculated using the 2001 survey data. The number was used also for 2005 under the assumption that the sharp rise in the employer's cost for health insurance coverage has reduced the proportion of employers who choose to provide coverage. Thus, the number of covered workers would not rise even though the number of small business establishments would go up.

For years following 2005, annual growth based on projected nonagricultural employment in North Carolina was used. This estimate was made by the nationally recognized forecasting firm of Economy.com (July 2005).

Under the bill taxpayers claiming the credit may not also claim the normal business expense deduction for the same costs. To determine the net impact of the tax portion of the bill, the credit cost was offset by a reduction in the estimated business expense deduction. This adjustment was determined by multiplying the credit cost by the 6.9% marginal corporate income tax rate.

The tax year costs were then split into fiscal years using the assumption that 45% of the cost of a credit would occur during the January-June period and the remainder during the second half of the tax year. The 45% assumption reflects April and June estimated tax payments and the fact that taxpayers can avoid an underpayment penalty for estimated taxes by sending in at least 90% of the annual liability during the tax year.

A review of similar incentives in a handful of other states did not provide any useful information due to the differences in types of incentives.

State Minimum Wage. Currently no permanent state employee is paid at or below the minimum wage. The State's temporary employment agency – Temporary Solutions – reports that their lowest hourly wage is for an intern, who earns approximately $8.00 per hour. For all others, the hourly wage is $8.63 or more. As such, this change will have no direct impact on the state budget. No data is available on the wages paid by local governments, but the effect on these units is expected to be small.

The Employment Security Commission reports that approximately 2.6% of North Carolina hourly workers make at our below the minimum wage (some food service workers can be paid below minimum wages if they can earn tips). This suggests that approximately 1.4% of all state workers, hourly and salaried, make at or below the minimum wage.

SOURCES OF DATA:
TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

North Carolina General Assembly

House Committee on Finance

Minutes

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August 4, 2005

The House Committee on Finance met on Thursday, August 4, 2005 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, McComas and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Bordsen, Capps, Carney, Dockham, England, Faison, Fisher, Folwell, Glazier, Goforth, Hackney, Harrell, Holliman, Insko, Jones, Lucas, McGee, Underhill, Vinson, and Wiley. Ex-Officio member Representative Culpepper was present. Also present were Sergeant-at-Arms Bill Freeman, Fred Hines, Dusty Rhodes, and Walter Spell. Staff persons present included Cindy Avrette, Rodney Bizzell, Erika Churchill, David Crotts, Brenna Erford, Ashley Huffstetler, Canaan Huie, Brad Krehely, and Linda Millsaps. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Wainwright called the meeting to order at 8:31 am and recognized the thirteen (13) pages present:

(1) Kelley Brackett of Rutherford County, sponsored by Representative England;
(2) Candice Clark of Hoke County, sponsored by Representative Pierce;
(3) Kevin Eure of Gates County, sponsored by Representative Culpepper;
(4) Grant Fitzgerald of Wake County, sponsored by Speaker Black;
(5) Kimmy Halsey of Halifax County, sponsored by Representative Ed Jones;
(6) Deion Hurst of Wake County, sponsored by Representative Stam;
(7) David Parham of Catawba County, sponsored by Representative Hilton;
(8) Mary Miles Rogers of Guilford County, sponsored by Representative Jeffus;
(9) Emily Smith of Hoke County, sponsored by Representative Pierce;
(10) Etta Stewart of Wake County, sponsored by Representative Ross;
(11) April Vang of Montgomery County, sponsored by Representative Goodwin;
(12) Amanda Wujcik of Wake County, sponsored by Representative Harrell; and
(13) Ivy Ziccarelli of Montgomery County, sponsored by Representative Goodwin.

The first bill considered by the Committee was **HB 1098 – FINANCE NC MUSEUM OF ART EXPANSION** (see **attachment 3**). Representative Womble moved that the Proposed Committee Substitute (PCS) for HB 1098 be adopted by the Committee for discussion purposes. The motion carried. Chairman Wainwright then recognized Representative Gibson to explain the bill. Representative Gibson briefly explained that the bill authorizes the State Treasurer to issue up to $50 million of special indebtedness to finance the expansion of the North Carolina Museum of Art. He stated that the PCS specifically states that the authorization for indebtedness includes real estate certificates of participation (COPs). In closing, Representative Gibson expressed his excitement for potential passing of the bill. Following this explanation, Chairman Wainwright then

opened the floor to questions from the committee members. Representative Womble was recognized and asked if everyone was "on board" with the bill. Representative Gibson responded in the affirmative, stating that the State Treasurer was not opposed to the measure and the bill was an opportunity for the State not to be missed. Representative Faison was recognized next and asked how the COPs would be repaid. Representative Gibson responded by stating that COPs are traditionally repaid through the General Fund and noted that there was adequate bond capacity for the issuance of this debt.

Chairman Wainwright then recognized Mr. Larry Wheeler, Director of the North Carolina Museum of Art. Mr. Wheeler provided a brief history of the Museum and reiterated the Museum's commitment to the expansion project. He stated that the project would begin as soon as all of the funds were gathered and would be completed within approximately 2 years.

Representative Faison was then recognized by the Chair and commented that the State had other, more important needs than the expansion of the Museum of Art. He stated that the State already has insufficient funds to provide adequate state employee raises and funding for low-wealth schools. Representative Blackwood was next recognized and asked at what percentage interest rate the money would be borrowed. Representative Gibson responded by stating that the State held the highest possible bond rating, and, as a result, the interest rate would be the lowest available on the market. Representative Ross was then recognized for comment and stated that the $50 million in this bill was only about half of the funds that were being raised for the Museum's expansion. She informed the committee members that Wake County and the City of Raleigh had already pledged $15 million toward the total project costs and that the Museum's Foundation was committed the soliciting the remaining funds. She then moved that the PCS for HB 1098 be given a favorable report, with an unfavorable report as to the original bill.

Before acting on the motion, however, Chairman Wainwright recognized Representatives Capps and Weiss for final questions and comments. Representative Capps asked if any of the COPs would be spent prior to the Museum securing the remainder of the funding needed for the project. Representative Gibson was recognized and responded in the negative. Representative Weiss then urged the members' support, commenting that the bill benefited the entire State and was especially beneficial to the school children of North Carolina who will have the expanded facility to enjoy. Seeing no further discussion, Chairman Wainwright then called Representative Ross' motion to a vote and the motion carried.

Chairman Wainwright then acted to place **SB 327 – NC STATE BAR CHANGES/FEES** (see **attachment 4**) on the calendar for immediate consideration. The bill sponsor, Senator Rand, was recognized to explain the bill. The Senator explained that the bill authorizes the imposition of a $15 late fee for district bar dues and increases from $100 to $125 the fee for out-of-state attorneys practicing in North Carolina. He stated that it also gives explicit authority to the State Bar to impose several other charges that it now collects under the assumption its general authority empowers it to collect. Following this explanation, the Chair recognized Representative Harrell who moved, seconded by Representative Hill, that SB 327 be given a favorable report. Seeing no discussion, Chairman Wainwright then called the motion to a vote, and the motion carried.

The next bill under consideration by the Committee was **HB 20 – SMALL BUSINESS HEALTH INSURANCE CREDIT** (see **attachment 5**). Chairman Wainwright first recognized Representative Alexander who moved for the adoption of the PCS for discussion purposes. Representative Holliman was then recognized to explain Part I of the bill. He stated that the bill provided a tax credit to small businesses that opt to provide health insurance benefits to all of its full-time employees. He noted that the amount of the credit was $400 per employee per year, would

be effective January 1, 2006, and sunset January 1, 2010. Representative Holliman then deferred to Representative Adams to explain the second portion of the bill. She explained that the second part of the bill increased the State's minimum wage from $5.15 an hour to $6.00 an hour. She noted that this part of the bill would be effective January 1, 2006. Representative Adams further stated that there were some 400,000 North Carolina families who were currently living in poverty and that this increase was essential to help those that work everyday but still cannot make ends meet.

Following this explanation, Representative Blackwood was recognized and asked how many jobs would be lost as a result of increasing the minimum wage. Representative Adams responded by stating that extensive research had been done on this question and that there was no evidence to support the claim that jobs would be lost as a result of an 85-cent increase. Chairman Wainwright then recognized Representative Jones who, citing the need for the increase to help the working poor, moved that the PCS for HB 20 be given a favorable report, with an unfavorable report as to the original bill.

The Chair then recognized Greg Thompson with the National Federation of Independent Businesses (NFIB) to comment on the bill. Mr. Thompson stated that the NFIB was in support of the tax credit portion of the bill but was adamantly opposed to the proposed increase in the minimum wage. He further stated that most of individuals working for the minimum wage were those just entering the labor market (i.e. teenagers). He urged the members to oppose the bill or amend it removing the minimum wage portion. John Quinterno with the North Carolina Budget and Tax Center was also recognized to address the Committee. Mr. Quinterno simply reiterated Representative Adams comments that there is no evidence available to support the claim that an increase in the minimum wage results in job losses.

Chairman Wainwright then recognized the members for additional questions. Representative Ross asked Mr. Quinterno who would most benefit from the bill. Mr. Quinterno stated that not just teenagers, as the NFIB suggested, would benefit from a minimum wage increase, but rather the increase would have a widespread effect among those workers. Representative Goforth asked how many people in North Carolina were currently working for the minimum wage. Mr. Quinterno responded by stating approximately 101,000.

Representative Dockham was then recognized by the Chairman. He moved, pursuant to the Rules of the House, when a bill contains two unrelated issues, the issues can be split into two separate bills. Chairman Wainwright, however, ruled the motion out of order.

Representative Hackney was recognized next and stated that the bill both helps the small businesses in the State and increases the number of individuals who will be covered by health insurance. He additionally stated that the bill offers relief for the working poor by increasing the minimum wage to a living wage. In closing, he noted that the PCS was the marriage of two good bills. Chairman Wainwright then recognized Representative Vinson who asked of the 101,000 working for minimum wage, what sort of jobs were these? Mr. Quinterno was again recognized to respond and stated that the majority of these minimum wage jobs were in the retail, leisure, and hospitality sectors. Representative Womble was then recognized to comment on the bill. He stated that the increase in the minimum wage was long overdue and it will help the working poor – people who want to work and work everyday but can never get ahead. He further stated that if North Carolina is the compassionate State it claims to be, then everyone should support the bill. Representative Allen echoed Representative Womble stating that if the committee members could support the expansion of the State Art Museum, then it should also act to support the working poor.

Fran Preston with the North Carolina Retail Merchants Association was recognized for a brief comment and stated her association's opposition to the bill due to the fact that raising the minimum wage has a rippling effect on all other wage levels. She stated that an increase in the minimum wage often required an increase in the level of many other wages.

Representative Daughtridge was next recognized to comment on the bill. He informed the committee members that the credit proposed in the bill sounded better than it actually was. He stated that since the bill prohibits small businesses from taking both the state credit and the current federal deduction, the credit would often only benefit employers in the amount of approximately $50 above the current deduction. He stated that the credit represents only 8 to 10 percent of the actual health insurance costs incurred. Representative Insko was then recognized and reminded the members that with the increase in the minimum wage, there would be increased economic activity and state revenues due to greater spending. Representative Vinson then asked what the total cost of increasing the minimum wage would be in the State. Connie Wilson with the Employers Coalition of North Carolina was recognized and stated that the total cost to businesses associated with the bill had been estimated at $81.3 million.

Seeing no further discussion, Chairman Wainwright then recalled the earlier made motion by Representative Jones to a vote. Announcing that the ayes and nays would be recorded on the bill, the Chair then instructed the Clerk to call the roll (see **attachment 6**). By a vote of 22 ayes and 10 nays, the motion carried.

HB 1349 – RAISE CEILING ON FEES/BOARD OF PHARMACY (see **attachment 7**) was the next bill considered by the Committee. Representative Hill moved for the adoption of the PCS for the purposes of discussion, and the motion carried. Representative Wilkins, the bill sponsor, was then recognized to explain the proposed committee substitute. He first stated that the bill had been filed at the request of the North Carolina Board of Pharmacy. He further explained that the bill authorizes the Board to raise its licensure and registration fees, establishes new fees, and changes the conditions of license renewal under the Pharmacy Practice Act. He stated that the PCS also clarifies that the Director of the Board is not required to investigate minor violations of the Act. (For further detail of the bill, please refer to the attached bill summary and fiscal note.)

Following the explanation, Representative Alexander was recognized to send forth an amendment (see **attachment 8**). She explained that the amendment required the Board of Pharmacy to commit at least $100,000 per year to a Pharmacy Recovery Network (PRN), which provides resources to pharmacists suffering from substance abuse problems. She stated that the Board already contributes $99,000 to a PRN voluntarily and that the amendment simply acts to require it in the law. She then moved the adoption of the amendment. The bill sponsor, Representative Wilkins, was then recognized to comment on the amendment and expressed his and the Board of Pharmacy's support. Seeing no further discussion, Chairman Wainwright then called the amendment to a vote, and it was adopted. Representative Alexander then moved that HB 1349 be given a favorable report as to a new PCS, incorporating the adopted amendment, with an unfavorable report as to the original bill. Seeing no discussion, Chairman Wainwright then called the motion to a vote, it carried by consent.

The next bill considered by the Committee was **SB 757 – ESC OMNIBUS ACT** (see **attachment 9**). Representative Faison moved the adoption of the PCS, and the motion carried. Chairman Wainwright then recognized Senator Nesbitt, the bill sponsor, to explain the bill to the Committee. He briefly explained that the PCS makes changes to the law relating to the Employment Security laws affecting unemployment benefits. He then referred the committee members to the attached bill summary for further detail. In closing, he noted that the bill had been

well "vetted," having been approved in three separate Senate committees. Following this, Chairman Wainwright recognized Representative Glazier who expressed his concern on the verbiage in Section 4 of the bill. He stated that the language used to define "willfully and knowingly" was different and somewhat contrary to the definition of the words in other contexts, such as the criminal code. Harry Payne, Chairman of the Employment Security Commission, was present to address the concern and stated that these changes were being made pursuant to federal law. Chairman Wainwright then accepted a motion from Representative Alexander to give the PCS for SB 757 a favorable report with an unfavorable report as to the original bill. Seeing no further discussion, Chairman Wainwright called the motion to a vote, and it carried with no known opposition.

The final bill considered by the Committee was **SB 796 – CRIMINAL RECORD CHECKS/ARCHAEOLOGICAL OPS.** (see **attachment 10**). Representative Haire, on behalf of the bill sponsor Senator Thomas, was recognized to explain the bill. He explained to the members that the bill requires all persons applying to the Department of Cultural Resources for a permit to conduct underwater archeological activities and archeological activities on State land to submit to a criminal background check. The Department of Justice would be required to conduct the criminal background checks and a fee, up to the cost of the check, would be charged to the permit applicant. Following this explanation, Representative Lucas was recognized and moved that SB 796 be given a favorable report. Seeing no discussion, Chairman Wainwright then called the motion to a vote, and it carried without objection.

As there was no further business before the Committee and the Committee's time had then expired, Chairman Wainwright then adjourned the meeting at 9:55 am.

Respectfully submitted,

Representative William Wainwright
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. House Bill 1098 (and related materials)
4. Senate Bill 327 (and related materials)
5. House Bill 20 (and related materials)
6. Roll Call Vote on Motion for FR to PCS for HB 20 (**PASSES**)
7. House Bill 1349 (and related materials)
8. Alexander Motion on HB 1349 (**ADOPTED**)
9. Senate Bill 757 (and related materials)
10. Senate Bill 796 (and related materials)

AGENDA

ATTACHMENT 1

House Finance Committee

August 4, 2005
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Wainwright

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard

Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order

Introduction of Pages

Bills:

HB 20 **SMALL BUSINESS HEALTH INSURANCE CREDIT**
Reps. Holliman, Bordsen, Goforth, & Ross

HB 1098 **FINANCE NC MUSEUM OF ART EXPANSION**
Reps. Daughtridge, Ross, Gibson, & Weiss

HB 1349 **RAISE CEILING ON FEES/BOARD OF PHARMACY** *Rep. Wilkins*

SB 757 **ESC OMNIBUS ACT** *Sen. Nesbitt*

SB 796 **CRIMINAL RECORD CHECKS/ARCHAEOLOGICAL OPS** *Sen. Thomas*

Adjournment

CORRECTED NOTICE:
HB 1098 – ADDED

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Thursday, August 4, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

H[illegible] – SMALL BUSINESS HEALTH INSURANCE CREDIT – Reps. Holliman, Bordsen, Goforth, & Ross

HB 1098 – FINANCE NC MUSEUM OF ART EXPANSION – Reps. Daughtridge, Ross, Gibson, & Weiss

HB 1349 – RAISE CEILING ON FEES/BOARD OF PHARMACY – Rep. Wilkins

SB 757 – ESC OMNIBUS ACT – Sen. Nesbitt

SB 796 – CRIMINAL RECORD CHECKS/ARCHAEOLOGICAL OPS – Sen. Thomas

Respectfully,
Representatives Alexander, Gibson, Howard,
Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **4:25 p.m.** on **August 3, 2005**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **THURSDAY, AUGUST 4, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 20 – SMALL BUSINESS HEALTH INSURANCE CREDIT – Reps. Holliman, Bordsen, Goforth, & Ross

HB 1349 – RAISE CEILING ON FEES/BOARD OF PHARMACY – Rep. Wilkins

SB 757 – ESC OMNIBUS ACT – Sen. Nesbitt

SB 796 – CRIMINAL RECORD CHECKS/ARCHAEOLOGICAL OPS – Sen. Thomas

Respectfully,
Representatives Alexander, Gibson, Howard,
Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **2:05 p.m.** on **August 2, 2005**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — August 4, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Ellen	NCRMA
Fran Preston	NCRMA
Lyn Webb	NCALTCF
[illegible]	[illegible]
Roberta Ouellette	NC DOJ
Stephen Litsas	Senate Page
Rick Webb	NCGA
Deborah Lee	Gov
Stephanie Dorko	Charlotte Chamber
Mary Thomas	RCBIC
Gregg Hagan	NIFIB

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — August 4, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cam Grey	BPMHL
Ken Johnson	Smith Anderson
Nancy Winter	John Locke + NCAHU
Bill Rustin	AZP
Warren Savage	Bailey & Dixon
David Work	NC Board of Pharmacy
[illegible]	NCSHRAFLCIO
Mike James	AFCP
Kevin G. Leonard	WCSR
Sir Ken Melton	DOR
Rick Zechini	NCAR

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Greg Ratford	DOR
Steve Cornwell	DOR
Jonni Fitzgerald	NCFP
Donna Rosefield	DCR
Hal Miller	NCACCT

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Stone	NC Rest. Assoc.
Jeffrey Crow	DCR
Stephen R Claggett	DCR
Mark Brown	
David Clegg	ESC
Rob Burrus	
Lisa Percy	Duke Energy
	NCRA
	NCMA
Ken O'Hanlon	NCMA
Lennie Collins	DOR

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — August 4, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
BRIAN LEWIS	Covenant w/ NCIS Children

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1098*
PROPOSED COMMITTEE SUBSTITUTE H1098-CSLYx-53 [v.2]

7/28/2005 2:50:45 PM

Short Title: Finance NC Museum of Art Expansion. (Public)

Sponsors:

Referred to:

April 4, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ISSUANCE OF SPECIAL INDEBTEDNESS, INCLUDING REAL ESTATE CERTIFICATES OF PARTICIPATION INDEBTEDNESS, TO FINANCE THE EXPANSION OF THE NORTH CAROLINA MUSEUM OF ART.

The General Assembly of North Carolina enacts:

SECTION 1. In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of fifty million dollars ($50,000,000) to finance the costs of constructing new buildings and pavilions and renovating existing buildings at the North Carolina Museum of Art. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the costs of constructing and renovating the project described in this section. The authorization in this section for the issuance or incurrence of special indebtedness specifically includes an authorization for the issuance or incurrence of real estate certificates of participation indebtedness under G.S. 142-95.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1098*

Short Title:	Finance NC Museum of Art Expansion.	(Public)
Sponsors:	Representatives Daughtridge, Ross, Gibson, Weiss (Primary Sponsors); Adams, Alexander, Bordsen, Coleman, Culp, Farmer-Butterfield, Fisher, Glazier, Goodwin, Hackney, Harrison, Insko, Jeffus, Justice, LaRoque, Lewis, Luebke, McAllister, McLawhorn, Pate, Pierce, Sauls, Steen, Stiller, and Wainwright.	
Referred to:	Appropriations.	

April 4, 2005

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

HOUSE BILL 1098:
Finance NC Museum of Art Expansion

BILL ANALYSIS

Committee:	House Appropriations	**Date:**	August 4, 2005
Introduced by:	Reps. Daughtridge, Ross, Gibson, Weiss	**Summary by:**	Cindy Avrette
Version:	PCS to First Edition H1098-CSLYx-53		Committee Counsel

SUMMARY: House Bill 1098 authorizes the State to use up to $50 million of special indebtedness to finance the expansion of the North Carolina Museum of Art. As introduced, this bill was identical to S836, as introduced by Sen. Kerr, which is currently in Senate Finance. The Proposed Committee Substitute differs from the original bill in that it specifically states the authorization includes real estate certificates of participation indebtedness. The bill becomes effective when it becomes law.

BILL ANALYSIS: House Bill 1098 authorizes the State to issue or incur special indebtedness of $50 million to finance the costs of constructing new buildings and pavilions and renovating existing buildings at the North Carolina Museum of Art. Over the last five years, the North Carolina Museum of Art has developed a plan for a museum campus. The plan preserves and reuses the existing museum building as a center for education, arts services, and administration, and as a venue for large-scale exhibitions of international stature. The projected total cost of building the new gallery pavilions and renovating the existing building is $75 million. To date, the State has allocated $6 million from Repair and Renovation funds toward the renovation of the existing building and the City of Raleigh and Wake County recently approved $15 million in interlocal funds for the art museum expansion project. The Art Museum Boards have agreed to raise $50 million to endow operations as their part in the public-private effort to build and sustain an institution of international stature.

Commonly referred to as "certificates of participation," special indebtedness is nonvoted debt that is typically secured only by an interest in State property being acquired or improved. The term "special indebtedness" covers the various forms this type of debt can take: installment purchase (with or without certificates of participation), lease-purchase (with or without certificates of participation), and bonds.

Last session, in S.L. 2004-179, the General Assembly established the statutory framework for a new type of special indebtedness to be called Real Estate Certificates of Participation (RECOP) indebtedness.[1] RECOP indebtedness is a form of special indebtedness that is intended to be structured so that the principal and a portion of the interest is not paid in installments over the term of the debt. That portion of the interest compounds and is payable, along with the principal, only at maturity or earlier redemption. This structure is intended to reduce ongoing debt service payments and provide for payment of the remaining obligation at a time when the property securing the debt will most likely have appreciated substantially in value. RECOP indebtedness differs from traditional special indebtedness in several ways:

- Special indebtedness may be secured only by the capital facilities being constructed, renovated, or repaired with the proceeds of the debt. RECOP indebtedness may be secured by

[1] As part of the 2004 legislation, the General Assembly directed the State Treasurer to study the effects of refunding State indebtedness or financing new State facilities with RECOP indebtedness, to evaluate the feasibility of incurring RECOP indebtedness, and to report its findings to the Joint Legislative Commission on Governmental Operations. The Treasurer had the financial advisory firm of Davenport & Co. produce the report and the report was remitted to the Commission members on February 1, 2005.

these projects but may also be secured by any other State property. The property to serve as collateral would be selected by the Governor after first consulting with the Joint Governmental Commission on Governmental Operations. The choice of collateral must also be approved by the Council of State.

- State property law does not apply to a transfer of an interest in State property to secure special indebtedness or, in the case of default, to repay special indebtedness. With RECOP indebtedness, there is an additional exemption from State property law for transfers when the proceeds are used first to pay RECOP indebtedness, even if there is no default.
- A major difference between RECOP indebtedness and the types of debt the State and local governments normally incur involves the payment of principal and interest. The usual practice is for the governmental entity to pay off the principal during the term of the debt while also paying interest. Normally, the outstanding principal balance declines relatively steadily during the term of the debt. With RECOP indebtedness, it is intended that no principal would be paid off during the term of the debt. In addition, it is intended that only part of the interest would be paid during the term of the debt. Postponing these payments until maturity makes the debt service payments during the life of the debt much lower than with traditional debt. The entire principal becomes due at maturity along with that portion of the interest that was not paid in installments.

The particular form of special indebtedness to be used for a given project will depend on its size, the nature of the property and the improvement, and other circumstances. Based on these circumstances, one form or another of special indebtedness may be the least expensive and most practical for the State to utilize. Article 9 of Chapter 142 of the General Statutes prohibits the issuance of special indebtedness except for projects specifically authorized by the General Assembly.

Before any type of special indebtedness may be issued or incurred, the State Treasurer must certify that debt financing may be desirable for a specific project presented to it by the Department of Administration. Next, the Council of State must give preliminary approval. If preliminary approval is obtained, the Council of State must give final approval, setting out details such as the maximum amount to be financed, the maximum maturity, and the maximum interest rates. The maximum maturity may not exceed 40 years. The State Treasurer must approve the details of the financing, finding that the amount to be borrowed is adequate and not excessive and will not require an excessive increase in any State revenues to provide for repayment, and that the special indebtedness can be incurred or issued on terms favorable to the State. Finally, the State Treasurer must report to the Joint Legislative Commission on Governmental Operations at least five days before any special indebtedness is issued or incurred.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 1098 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE ISSUANCE OF SPECIAL INDEBTEDNESS TO FINANCE THE EXPANSION OF THE NORTH CAROLINA MUSEUM OF ART.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 3

SENATE BILL 327

Judiciary I Committee Substitute Adopted 6/14/05
Finance Committee Substitute Adopted 7/7/05

Short Title: NC State Bar Changes/Fees. (Public)

Sponsors:

Referred to:

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE STATUTES REGARDING THE NORTH CAROLINA STATE BAR AND TO PROVIDE THE STATE BAR WITH EXPLICIT STATUTORY AUTHORITY TO IMPOSE FEES TO SUPPORT ITS WORK.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 84-4.1 reads as rewritten:

"**§ 84-4.1. Limited practice of out-of-state attorneys.**

Any attorney domiciled in another state, and regularly admitted to practice in the courts of record of and in good standing in that ~~state and in good standing therein,~~state, having been retained as attorney for a party to any civil or criminal legal proceeding pending in the General Court of Justice of North Carolina, the North Carolina Utilities Commission, the North Carolina Industrial Commission, the Office of Administrative Hearings of North Carolina, or any administrative agency, may, on motion, be admitted to practice in that forum for the sole purpose of appearing for a client in the ~~litigation.~~ proceeding. The motion required under this section shall be signed by the attorney and shall contain or be accompanied by:

(1) The attorney's full name, post-office address, bar membership number, and status as a practicing attorney in another state.

(2) A statement, signed by the client, setting forth the client's address and declaring that the client has retained the attorney to represent the client in the proceeding.

(3) A statement that unless permitted to withdraw sooner by order of the court, the attorney will continue to represent the client in the proceeding until ~~the~~ its final ~~determination thereof,~~ determination, and that with reference to all matters incident to the proceeding, the attorney agrees to be subject to the orders and amenable to the disciplinary action and the civil jurisdiction of the General Court of

Justice and the North Carolina State Bar in all respects as if the attorney were a regularly admitted and licensed member of the Bar of North Carolina in good standing.

(4) A statement that the state in which the attorney is regularly admitted to practice grants like privileges to members of the Bar of North Carolina in good standing.

(5) A statement to the effect that the attorney has associated and is personally appearing in the proceeding, with an attorney who is a resident of this State and is duly and legally admitted to practice in the General Court of Justice of North Carolina, upon whom service may be had in all matters connected with the legal proceedings, or any disciplinary matter, with the same effect as if personally made on the foreign attorney within this State.

(6) A statement accurately disclosing a record of all that attorney's disciplinary history. Discipline shall include (i) public discipline by any court or lawyer regulatory organization, and (ii) revocation of any pro hac vice admission.

(7) A fee in the amount of ~~one hundred dollars ($100.00) for support of the General Court of Justice to be remitted to the State Treasurer.~~ one hundred twenty-five dollars ($125.00), of which one hundred dollars ($100.00) shall be remitted to the State Treasurer for support of the General Court of Justice and twenty-five dollars ($25.00) shall be transmitted to the North Carolina State Bar to regulate the practice of out-of-state attorneys as provided in this section.

Compliance with the foregoing requirements does not deprive the court of the discretionary power to allow or reject the application."

SECTION 2. G.S. 84-18.1(b) reads as rewritten:

"(b) Any district bar may from time to time by a majority vote of the members present at a duly called meeting prescribe an annual membership fee to be paid by its active members as a service charge to promote and maintain its administration, activities and programs. The fee shall be in addition to, but shall not exceed, the amount of the membership fee prescribed by G.S. 84-34 for active members of the North Carolina State Bar. The district bar may also charge a late fee, which shall not exceed fifteen dollars ($15.00), for the failure to pay judicial district bar dues on time. The district bar shall mail a written notice to every active member of the district bar at least 30 days before any meeting at which an election is held to impose or increase mandatory district bar dues. Every active member of a district bar which has prescribed an annual membership fee shall keep its secretary-treasurer notified of his correct mailing address and shall pay the prescribed fee at the time and place set forth in the demand for payment mailed to him by its secretary-treasurer. The name of each active member of a district bar who is more than 12 full calendar months in arrears in the payment of any fee shall be furnished by the secretary-treasurer of the district bar to the Council. In the exercise of its powers as set forth in G.S. 84-23, the Council shall

thereupon take disciplinary or other action with reference to the delinquent as it considers necessary and proper."

SECTION 3. G.S. 84-28.1(b) reads as rewritten:

"(b) The disciplinary hearing commission of the North Carolina State Bar, or any ~~committee thereof,~~ committee of the disciplinary hearing commission, ~~is authorized to~~ may hold hearings in discipline, incapacity and disability matters, ~~to~~ make findings of fact and conclusions of law after ~~such~~ these hearings, ~~and to~~ enter orders necessary to carry out the duties delegated to it by the ~~council.~~ Council, and tax the costs to an attorney who is disciplined or is found to be incapacitated or disabled."

SECTION 4. G.S. 84-23(a) reads as rewritten:

"(a) The Council is vested, as an agency of the State, with the authority to regulate the professional conduct of licensed lawyers and State Bar certified paralegals. Among other powers, the Council shall administer this Article; take actions that are necessary to ensure the competence of lawyers and State Bar certified paralegals; formulate and adopt rules of professional ethics and conduct; investigate and prosecute matters of professional misconduct; grant or deny petitions for reinstatement; resolve questions pertaining to membership status; arbitrate disputes concerning legal fees; certify legal specialists and paralegals and charge fees to applicants and participants necessary to administer these certification programs; determine whether a member is disabled; maintain an annual registry of interstate and international law firms doing business in this State; and formulate and adopt procedures for accomplishing these purposes. The Council may do all things necessary in the furtherance of the purposes of this Article that are not otherwise prohibited by law."

SECTION 5. G.S. 84-23.1(b1) reads as rewritten:

"(b1) All organizations offering prepaid legal services plans shall register those plans with the North Carolina State Bar Council on forms provided by the Council. Each plan shall be registered prior to its implementation or operation in this ~~State.~~State and shall renew its registration with the State Bar annually."

SECTION 6. G.S. 84-23.1 is amended by adding a new subsection to read:

"(b2) Every plan shall pay an administrative fee to the Council for the initial registration and an annual renewal fee in amounts determined by the Council."

SECTION 7. Article 4 of Chapter 84 of the General Statutes is amended by adding a new section to read:

"**§ 84-34.2. Specific statutory authority for certain fees.**

In addition to fees the Council is elsewhere authorized to charge and collect, the Council may charge and collect the following fees in amounts determined by the Council:

(1) A reinstatement fee for any attorney seeking reinstatement from inactive status, administrative suspension, or suspension for failure to comply with the annual continuing legal education requirements.

(2) A registration fee and annual renewal fee for an interstate or international law firm.

(3) An attendance fee for continuing legal education programs that may include a fee to support the Chief Justice's Commission on Professionalism.

(4) A late fee for failing to file timely the continuing legal education annual report form, for failure to pay attendance fees, or failure to complete the annual continuing legal education requirements.

(5) An administrative fee for any attorney against whom discipline has been imposed."

SECTION 8. This act is effective when it becomes law and applies to fees assessed on or after that date.

SENATE BILL 327:
NC State Bar Changes/Fees

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 29, 2005
Introduced by:	Sen. Rand	**Summary by:**	Trina Griffin
Version:	PCS to Second Edition S327-CSSVf-50		Committee Counsel

SUMMARY: Senate Bill 327 would authorize the imposition of a $15 late fee for district bar dues and would increase from $100 to $125 the fee for out-of-state attorneys practicing in NC. It would also give explicit authority to the State Bar to impose several other charges that it now collects under the assumption its general authority empowers it to collect. It also makes some other changes to the statutes concerning attorneys.

The Proposed Committee Substitute would change the effective date from July 1, 2005 to when it becomes law.

Section 1 – Out of State Attorneys. This section would increase from $100 to $125 the fee for out-of-state attorneys who seek to represent a client in a proceeding in NC. Currently, the $100 fee is remitted to the State Treasurer for support of the General Court of Justice. The additional $25 would be remitted to the State Bar for its regulation of out-of-state attorneys.

Section 2 – Late Fees for District Bar Dues. Currently, a judicial district bar may assess an annual membership fee if a majority of the members present at the annual meeting vote to do so. The district bar fee may not be in addition to the membership fee the lawyer must pay to the State Bar, but it cannot be higher. This section would authorize the district bar to charge a late fee, not to exceed $15. Late fees are not now being collected.

Section 3 – Costs for Disciplinary Hearing Commission. This section authorizes the Bar's disciplinary hearing commission, or one of its committees, to tax costs to an attorney who is disciplined or is found to be incapacitated or disabled.

Section 4 – Registry of Interstate and International Law Firms. This section authorizes the State Bar Council to maintain an annual registry of interstate and international law firms doing business in NC. The State Bar already does this under the assumption it has general authority to do so.

Section 5 – Annual Renewal of Registration by Prepaid Legal Services Plans. Current law requires a prepaid legal services plan to register with the State Bar Council. This section would require the plan to renew its registration annually.

Section 6 – Fee for Prepaid Legal Services Plans. This section requires every prepaid legal services plan to pay an administrative fee to the State Bar Council for its initial registration and for each annual renewal. The Council is given the authority to set the amount.

Section 7 –Explicit Authority for Other Fees. This gives explicit statutory authority to the State Bar to charge 5 kinds of fees beyond basic membership fee. The Bar is already collecting the fees under the assumption it has general authority to do so. The fees are as follows:

1. Reinstatement fee for any attorney seeking to be reinstated from inactive status, administrative suspension, or suspension for failure to meet the continuing legal education (CLE) requirement.
2. Registration fee and annual renewal fee for an interstate or international law firm.

3. Attendance fee for CLE, including a fee to support the Commission on Professionalism.
4. Late fee for filing the CLE report form late, or failure to complete CLE requirements.
5. Administrative fee for any attorney against whom discipline has been imposed.

EFFECTIVE DATE: The Proposed Committee Substitute for SB 327 would become effective when it becomes law, and apply to fees assessed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 327 (Third Edition)

SHORT TITLE: NC State Bar Changes/Fees.

SPONSOR(S): Senator Rand

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund	**No Impact to General Fund**				
State Bar	**No estimate available: see Assumptions and Methodology**				
District bars	**No estimate available: see Assumptions and Methodology**				
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina State Bar, district bars

EFFECTIVE DATE: When law.

BILL SUMMARY: Senate Bill 327 would authorize the imposition of a $15 late fee for district bar dues and would increase from $100 to $125 the fee for out-of-state attorneys practicing in NC. It would also give explicit authority to the State Bar to impose several other charges that it now collects under the assumption its general authority empowers it to collect. The PCS to version 2 changed the effective date from July 1, 2005 to when it becomes law, but did not change the fiscal impact.

ASSUMPTIONS AND METHODOLOGY: **Out of State Attorneys.** The State Bar does not currently regulate out-of-state attorneys practicing in North Carolina. The $25 fee increase in Section 1 of Senate Bill 327 is intended to defray the administrative cost of regulating the practice of out-of-state attorneys. Because the exact number of out-of-state attorneys practicing in North Carolina is not known, a revenue estimate cannot be made at this time. This fee increase does not affect the amount of funding for the General Court of Justice administered by the State Treasurer.

Late Fees for District Bar Dues. There are 39 district bars in North Carolina, none of which assess late fees for nonpayment of dues at the present time. This change would allow the district bars to assess a late fee at their individual discretion. The State Bar expects that only the larger district bars may pursue this option. Because the exact number of district bars that will choose to assess late fees is unknown, an estimate is unavailable.

Costs for Disciplinary Hearing Commission. An estimate for this change is unavailable since the number of future cases to which this change would apply is unknown and the taxable costs may vary from case to case.

Other fees. Senate Bill 327 adds a number of fees currently collected by the State Bar to statute. All the following fees have been approved by order of the Supreme Court. None constitute a new source of revenue for the State Bar.

Section 6. Prepaid legal service plan providers currently pay the State Bar an annual $100 registration fee. There are currently 54 registered providers in North Carolina. The State Bar intends to assess a $100 initial registration fee to these providers and an annual $100 renewal, which will have no positive or negative effect on overall State Bar revenue.

Section 7. The fees listed in this section are currently assessed by the State Bar at the amounts shown below. Since they are currently in use, none constitute a new source of State Bar revenue.

Section 7 fees	
Reinstatement fee for attorneys seeking reinstatement from inactive status, administrative suspension, or suspension for failure to comply with annual CLE requirements.	$125
Registration & annual renewal for interstate or international law firm	$500
Attendance fee for CLE program (may include fee to support Chief Justice's Commission on Professionalism)	$2.50 per credit hour
Late fee for filing CLE report, failure to pay attendance fees, or failure to complete annual CLEs	$75
Administrative fee for attorneys against whom discipline has been imposed	$50

SOURCES OF DATA: North Carolina State Bar

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brenna Erford and Rodney Bizzell

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: August 4, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute # 2 for

SB 327 A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO THE STATUTES REGARDING THE NORTH CAROLINA STATE BAR AND TO PROVIDE THE STATE BAR WITH EXPLICIT STATUTORY AUTHORITY TO IMPOSE FEES TO SUPPORT ITS WORK.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 20
PROPOSED COMMITTEE SUBSTITUTE H20-CSLY-32 [v.7]

8/3/2005 6:45:09 PM

Short Title: Health Insurance Credit/Minimum Wage. (Public)

Sponsors:

Referred to:

January 31, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A TAX CREDIT FOR SMALL BUSINESSES THAT PROVIDE EMPLOYEE HEALTH INSURANCE AND TO AMEND THE WAGE AND HOUR ACT TO RAISE THE STATE MINIMUM WAGE TO A LIVABLE WAGE.

The General Assembly of North Carolina enacts:

PART I. SMALL BUSINESS HEALTH INSURANCE TAX CREDIT

SECTION 1.1 Article 3B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.16E. Credit for small business employee health benefits.**

(a) Credit. – A small business that provides health benefits for all of its eligible employees during the taxable year is allowed a credit to offset its costs in providing health benefits for its eligible employees. For the purposes of this subsection, a taxpayer provides health benefits if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125 or if its employees have qualifying existing coverage.

The credit is equal to a dollar amount per eligible employee, not to exceed the taxpayer's costs of providing health benefits for its eligible employees during the taxable year. For each eligible employee for whom the taxpayer pays premiums for health care coverage, the amount is four hundred dollars ($400.00).

(b) Allocation. – If the taxpayer is an individual who is a nonresident or a part-year resident, the taxpayer must reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. If the taxpayer is not an individual and is required to apportion its multistate business income to this State, the taxpayer must reduce the amount of the credit by multiplying it by the apportionment fraction used to apportion its business income to this State.

(c) Definitions. – The following definitions apply in this section:
(1) Eligible employee. – Defined in G.S. 58-50-110.
(2) Qualifying existing coverage. – Defined in G.S. 58-50-130(a)(4a).
(3) Small business. – A taxpayer that employs no more than 25 eligible employees throughout the taxable year.

(d) No Double Benefit. – A taxpayer may not claim a credit under this section for costs for which it claimed a deduction under the Code. A taxpayer that claims a credit provided under this section must adjust taxable income as provided in G.S. 105-130.5(a)(16) or G.S. 105-134.6(c)(9), as applicable.

(e) Sunset. – This section expires for taxable years beginning on or after January 1, 2010."

SECTION 1.2. G.S. 105-129.15A is repealed.

SECTION 1.3. G.S. 105-129.16 is repealed.

SECTION 1.4. G.S. 105-129.16A is amended by adding a new subsection to read:

"(e) Sunset. – This section is repealed for renewable energy property placed in service on or after January 1, 2006."

SECTION 1.5. G.S. 105-129.16C is amended by adding a new subsection to read:

"(d) Sunset. – This section is repealed for taxable years beginning on or after January 1, 2006."

SECTION 1.6. G.S. 105-130.5(a) is amended by adding a new subdivision to read:

"(a) The following additions to federal taxable income shall be made in determining State net income:

...

(16) To the extent not included in federal taxable income, the costs of providing employee health benefits for which the taxpayer claims a credit under G.S. 105-129.16E."

SECTION 1.7. G.S. 105-134.6(c) is amended by adding a new subdivision to read:

"(c) Additions. – The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

...

(9) The costs of providing employee health benefits for which the taxpayer claims a credit under G.S. 105-129.16E."

PART II. INCREASE MINIMUM WAGE

SECTION 2. G.S. 95-25.3(a) reads as rewritten:

"**§ 95-25.3. Minimum wage.**

(a) Every employer shall pay to each employee who in any workweek performs any work, wages of at least ~~the minimum wage set forth in paragraph 1 of section 6(a)~~

~~of the Fair Labor Standards Act, 29 U.S.C. 206(a)(1), as that wage may change from time to time,~~ six dollars ($6.00) per hour, except as otherwise provided in this section."

PART III. EFFECTIVE DATES

SECTION 3. Sections 1.1, 1.6, and 1.7 of this act are effective for taxable years beginning on or after January 1, 2006. Section 2 of this act becomes effective January 1, 2006. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 20

Short Title:	Small Business Health Insurance Credit.	(Public)
Sponsors:	Representatives Holliman, Bordsen, Goforth, Ross (Primary Sponsors); Alexander, L. Allen, Allred, Bell, Brown, Carney, Coates, Daughtridge, Dickson, England, Faison, Frye, Gibson, Glazier, Goodwin, Hackney, Haire, Harrell, Harrison, Insko, Johnson, Jones, LaRoque, Luebke, Martin, McGee, McLawhorn, Pate, Rapp, Saunders, Sherrill, Stiller, Underhill, Warren, Weiss, Wilkins, Williams, Womble, and Wray.	
Referred to:	Finance.	

January 31, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A TAX CREDIT FOR SMALL BUSINESSES THAT PROVIDE EMPLOYEE HEALTH INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.16D. Credit for small business employee health benefits.**

(a) Credit. – A small business that provides health benefits for all of its eligible employees during the taxable year is allowed a credit to offset its costs in providing health benefits for its eligible employees. For the purposes of this subsection, a taxpayer provides health benefits if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

The credit is equal to a dollar amount per eligible employee, not to exceed the taxpayer's costs of providing health benefits for its eligible employees during the taxable year. For each eligible employee for whom the taxpayer provides health benefits, the amount is four hundred dollars ($400.00).

(b) Allocation. – If the taxpayer is an individual who is a nonresident or a part-year resident, the taxpayer must reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. If the taxpayer is not an individual and is required to apportion its multistate business income to this State, the taxpayer must reduce the amount of the credit by multiplying it by the apportionment fraction used to apportion its business income to this State.

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

(1) Eligible employee. – Defined in G.S. 58-50-110.

(2) Small business. – A taxpayer that employs no more than 25 employees throughout the taxable year."

SECTION 2. This act becomes effective for taxable years beginning on or after January 1, 2006.

HOUSE BILL 20:
Health Insurance Credit/Minimum Wage

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 27, 2005
Introduced by:	Reps. Holliman, Bordsen, Goforth, Ross	**Summary by:**	Cindy Avrette
Version:	PCS to First Edition H20-CSLY-32		Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 20 does two things:

- ***It would provide a tax credit to a small business that provides health benefits to all of its full-time employees, effective for taxable years beginning on or after January 1, 2006, and expiring for taxable years beginning on or after January 1, 2010.***
- ***It would increase the State's minimum wage from $5.15 an hour to $6.00 an hour, effective January 1, 2006.***

BILL ANALYSIS: Small Business Health Insurance Tax Credit. – Part I creates a new tax credit for a small business that provides health benefits to its eligible employees.

- A *small business* is a taxpayer that employs no more than 25 full-time employees.
- An *eligible employee* is one that works a normal workweek of 30 or more hours.
- *Providing health benefits* means one or more of the following:
    - The taxpayer pays at least 50% of the premiums for health insurance coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee.
    - The employee has existing coverage under one or more of the following: Medicare; Medicaid; a government funded program; a health insurance or benefit arrangement that provides benefits similar to or in excess of benefits provided under the basic health care plan.

The credit amount is equal to $400 per employee for whom the taxpayer pays the health insurance premium, not to exceed the taxpayer's cost of providing the health insurance benefit. The taxpayer may use the credit against either its income tax or its franchise tax liability. The credit may not exceed 50% of the taxpayer's tax liability. Any unused portions of the credit may be carried forward for five years. The credit would be in lieu of any expense deduction the small business claimed on its federal income tax return for the health insurance costs. The credit is effective for taxable years beginning on or after January 1, 2006, and it expires for taxable years beginning on or after January 1, 2010.

This part of the bill is similar to the small business health insurance tax credit the House included in its House Committee Substitute for Senate Bill 622, the 2005 Appropriations Act. This credit differs from the credit in Senate Bill 622 by expanding the meaning of 'providing health benefits' to include employees that are covered under a plan other than the one offered by the small business.

Raise the State Minimum Wage. – Part II would increase the State minimum wage from $5.15 an hour to $6.00 an hour, effective January 1, 2006. Currently the State minimum wage is set at the same rate as the federal minimum wage. Section 2 would amend the State minimum wage by deleting the provision that sets the State minimum wage at the same level as the federal minimum wage and substitute a minimum wage of $6.00. The General Assembly linked the State minimum wage to the federal minimum wage in 1997. The federal minimum wage amount has not changed since 1997.

BACKGROUND: The General Assembly has enacted legislation over the past several years to encourage small businesses to provide health insurance benefits to their employees. In 1991, the General Assembly enacted the 'Small Employer Group Health Insurance Reform Act' to promote the availability of accident and health insurance coverage, to prevent abusive rating practices, and to develop standard and basic health care plan coverage. The General Assembly also made the provision of health insurance a requirement of eligibility for both the Bill Lee Act credits and grants awarded under the Job Development Investment Grant Program. In 2003, the General Assembly established the North Carolina Health Insurance Innovations Commission to address the availability and affordability of adequate health insurance coverage for small business owners and employees.

Under the Internal Revenue Code, an employer may deduct premiums paid for health insurance cost of its employees as a business expense. According to data from the 2001 Medical Expenditure Panel Survey from the Agency for Healthcare Research and Quality, U.S. Department of Health and Human Services, 31% of employees employed by firms with 25 or fewer employees are covered by employer-sponsored plans. For 2001, the average employer's costs of providing this coverage ranged from $3,024 to $4,971 per year, depending on the number of family members covered. Data for 1998-2002 from the Department of Insurance indicates that the average annual cost is rising at double-digit rates.

H0020e1-SMRB-CSLY-32

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: August 3, 2005

TO: House Finance Committee

FROM: David Crotts, Linda Millsaps
Fiscal Research Division

RE: PCS for House Bill 20: Health Insurance Credit/Minimum Wage

FISCAL IMPACT ($MIL.)

	Yes (x)	No ( )	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
State General Fund	**-17.7**	**-39.8**	**-40.2**	**-40.8**	**-22.9**
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Income taxes are administered by the Department of Revenue. The enactment of the bill is not expected to affect the budget requirements of the Department.

EFFECTIVE DATE: See "Bill Summary".

BILL SUMMARY: Small Business Health Insurance Tax Credit. Allows an employer who provides health benefits for all employees to take a state tax credit for the employer's costs in providing the benefits. The credit can be taken against the income or franchise tax. To be eligible, the employer must pay at least 50% of the premiums for health coverage that meets or exceeds the minimum provisions of a basic health care plan of coverage recommended by the Small Employer Carrier Committee, or the employees have qualifying existing coverage (Medicare, Medicaid, a government sponsored program, or a health insurance or benefits arrangement that provides sufficient benefits). In addition, the employer must have no more than 25 employees.

The credit is equal to 100% of the employer's cost of providing the benefits, up to a maximum of $400 for each employee covered. The credit is limited to 50% of tax liability, with a five-year carry forward. Finally, a taxpayer who takes the credit must add back to taxable income the amount of the credit.

The credit is effective for tax years beginning on or after January 1, 2006 and expires for tax years beginning on or after January 1, 2010.

State Minimum Wage. Section 2 of the bill increases the state minimum wage from $5.15 per hour to $6.00 per hour.

ASSUMPTIONS AND METHODOLOGY: Small Business Health Insurance Tax Credit
The first step in the analysis was to review the detailed employer health insurance data from the 2001 Medical Expenditure Panel Survey from the Agency for Healthcare Research and Quality, U.S. Department of Health and Human Services. The data included a tabulation of the number of firms in North Carolina who offered health coverage for employees, by size of firm. One of the breakpoints in the distribution data was for firms of 25 or less employees. The data indicated that 31% of employees are presently covered by employer-sponsored plans in this category.

The survey data included a tabulation of the cost of various types of coverage. For 2001 the average employer's costs ranged from $3,024-$4,971 per year, depending on the number of family members covered. Data for 1998-2002 from the Department of Insurance indicates that the average annual cost is rising at double-digit rates. Since the credit limit is far less than 100% of a typical employer's cost, the actual amount of the average costs do not affect the calculation.

There is no way to make a reliable prediction of the proportion of uncovered employees who would receive coverage as a result of the $400 tax credit. For the purpose of this analysis, it was assumed that 10% of the uncovered employees would begin to be covered.

The credit is limited to 50% of the taxpayer's income tax liability for the tax year. In this analysis, we are assuming that the limitation leads to a credit utilization rate of 66 2/3% in the year of credit eligibility.

The credit cost was calculated using the 2001 survey data. The number was used also for 2005 under the assumption that the sharp rise in the employer's cost for health insurance coverage has reduced the proportion of employers who choose to provide coverage. Thus, the number of

covered workers would not rise even though the number of small business establishments would go up.

For years following 2005, annual growth based on projected nonagricultural employment in North Carolina was used. This estimate was made by the nationally recognized forecasting firm of Economy.com (July 2005).

Under the bill taxpayers claiming the credit must add back to income the amount of the credit. The impact of this offset is calculated by multiplying the assumed credit level by the corporate tax rate of 6.9%.

The tax year costs were then split into fiscal years using the assumption that 45% of the cost of a credit would occur during the January-June period and the remainder during the second half of the tax year. The 45% assumption reflects April and June estimated tax payments and the fact that taxpayers can avoid an underpayment penalty for estimated taxes by sending in at least 90% of the annual liability during the tax year.

A review of similar incentives in a handful of other states did not provide any useful information due to the differences in types of incentives.

State Minimum Wage. Currently no permanent state employee is paid at or below the minimum wage. The State's temporary employment agency – Temporary Solutions – reports that their lowest hourly wage is for an intern, who earns approximately $8.00 per hour. For all others, the hourly wage is $8.63 or more. As such, this change will have no direct impact on the state budget. No data is available on the wages paid by local governments, but the effect on these units is expected to be small.

The Employment Security Commission reports that approximately 2.6% of North Carolina hourly workers make at our below the minimum wage (some food service workers can be paid below minimum wages if they can earn tips). This suggests that approximately 1.4% of all state workers, hourly and salaried, make at or below the minimum wage.

SOURCES OF DATA:
TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

ECNC EMPLOYERS COALITION OF NORTH CAROLINA

resources for an informed workplace and democracy

Facts About A Minimum Wage Increase

- The congressional budget office estimated in 2004 that a $1.85 increase in the minimum wage would have a direct impact on private sector of $6,100,000,000. **Using the CBO's fiscal impact and adjusting for an 85 cent increase and North Carolina's 2.9% of the US population shows a cost of $81,300,000 for the businesses of North Carolina**. (S.A. 2945 Fair Minimum Wage Act of 2004 Impact on Private Sector Prepared by Ralph Smith)

- An employer who is forced to raise the payroll expenses for minimum wage workers, must also increase FICA taxes and worker's compensation insurance expense since theses expenses are a percentage of payroll. This would be on top of the 15% to 20% health insurance premium increases many small businesses are experiencing.

- Most employees in North Carolina being paid minimum wage are part-time and/or students.

- Nearly two-thirds of minimum wage workers move above the minimum wage within one year. Most minimum-wage jobs are entry-level jobs that are not lifelong dead-end jobs. These jobs allow Americans to establish a track record of work that creates opportunities for better paying jobs. (source: NFIB, March 2005)

- Minimum-wage earners typically receive raises and promotions or find more lucrative work without any governmental help. According to economists William Even and David Macpherson, in a report for the Employment Policy Institute, between 1998 and 2002 typical minimum-wage workers saw their wages climb by 10.4 percent within a year of beginning work -- and this during a period in which the minimum wage didn't change.

- The minimum wage in neighboring states

Georgia	$5.15
South Carolina	No State Minimum Wage
Tennesee	No State Minimum Wage
Virginia	$5.15
West Virgnia	$5.15

Help small businesses. Vote no against a minimum wage increase.

- Connie Wilson, ECNC Lobbyist
- C 274/0557

NCRA
NORTH CAROLINA
RESTAURANT ASSOCIATION

NCRA TESTIMONY – HOUSE FINANCE COMMITTEE, August 4, 2005

Thank you chairman and the other members of the house finance committee for allowing me to speak to you today. I am Paul Stone, President & CEO of the North Carolina Restaurant Association. The North Carolina Restaurant Association opposes minimum wage increases above the federal level. We believe the North Carolina minimum wage should continue to mirror the federal wage as well as that in our surrounding states. The higher labor costs associated with a state minimum wage increase will mean fewer jobs for entry level workers. Such a rise in the minimum wage now, with the economy just coming out of the doldrums, would be poor timing indeed.

Allow me to elaborate on several key points.

A minimum wage hike hurts the least skilled employees most

The layoffs that result from mandated wage increases are concentrated on the least skilled employees who must now compete with higher skilled applicants attracted to the new wage. A 2004 study by economists at Duke University found that minimum wage employees are displaced by teens from wealthy families who are attracted to the higher wage.

Wage hikes have a negative impact on labor intensive industries. After the last wage hike, those industries offering the most entry-level jobs suffered significant negative impacts. Restaurants, grocery stores and department stores had major reductions in job growth.

A majority of the poorest families end up losing money after a minimum wage increase

Research from Stanford University shows that minimum wages are so poorly targeted that only one in four of the poorest families benefit, while the remaining families lost income and spending power as the minimum wage benefit is offset by higher prices.

Although a small percentage of North Carolina's workforce earns the minimum wage, the ripple effect it creates by forcing restaurant owners to increase wages to their highest paid employees would result in higher prices for consumers and job reduction.

The members of the North Carolina Restaurant Association strongly urge the committee to vote against any wage increases above the federal minimum wage of $5.15 an hour.

Thank you again chairman and committee members for your time this morning.

6036 Six Forks Road, Raleigh, NC 27609-3899 • (919) 844-0098 • Fax (919) 844-0190 • www.ncra.org

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 20 A BILL TO BE ENTITLED AN ACT TO PROVIDE A TAX CREDIT FOR SMALL BUSINESSES THAT PROVIDE EMPLOYEE HEALTH INSURANCE.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

ROLL CALL VOTE

22 YES | 10 NO | = 32 (TOTAL) | PASSES | Date: 8/4/2005 | HB# 20 (PCS) | SB# _____ | Amendment # _____

HOUSE STANDING COMMITTEE ON FINANCE

MEMBER (last name)	YES	NO
Allen	X	
Blackwood		X
Blust		
Bordsen	X	
Capps		X
Carney	X	
Daughtridge		X
Dockham		X
England	X	
Faison	X	
Fisher	X	
Folwell		X
Glazier	X	
Goforth	X	
Hackney	X	
Harrell	X	
Hill		X
Holliman	X	
Insko	X	
Jones	X	
Lewis		
Lucas	X	
McGee		X
Rayfield		
Ross	X	
Underhill	X	
Vinson		X
Walend		
Weiss	X	
Wiley		X
Womble	X	

MEMBER (last name)	YES	NO
Ex officio Members		
Culpepper	X	
Cunningham		
Eddins		
Co-Chairs		
Alexander	X	
Gibson	X	
Howard		
Luebke		
McComas		X
Wainwright	X	

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H D

HOUSE BILL 1349
PROPOSED COMMITTEE SUBSTITUTE H1349-CSMBf-38 [v.2]

Short Title: Raise Ceiling on Fees/Board of Pharmacy. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE NORTH CAROLINA BOARD OF PHARMACY TO RAISE ITS LICENSURE AND REGISTRATION FEES AND ESTABLISH CERTAIN NEW FEES AND MAKING CERTAIN CHANGES TO THE CONDITIONS OF LICENSE RENEWAL UNDER THE PHARMACY PRACTICE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. It is the goal of the General Assembly that the Board of Pharmacy will use the funds generated by this act to enable it to conduct investigations and inspections under this Article.

SECTION 1.1. G.S. 90-85.12(a) reads as rewritten:

"(a) Upon receiving information concerning a violation of this ~~Article,~~ Article that is a threat to the public safety, health, or welfare, the Executive Director shall promptly conduct an ~~investigation~~investigation, and if he finds evidence of the violation, he may file a complaint and prosecute the offender in a Board hearing. If the Executive Director receives information concerning a violation of this Article that does not pose a threat to the public safety, health, or welfare, the Executive Director may conduct an investigation, and if he finds evidence of the violation, he may file a complaint and prosecute the offender in a Board hearing."

SECTION 2. Effective October 1, 2005, G.S. 90-85.24 reads as rewritten:

"**§ 90-85.24. Fees collectible by Board.**

(a) The Board of Pharmacy shall be entitled to charge and collect not more than the following fees:

(1) ~~for~~ For the examination of an applicant for license as a pharmacist, ~~one hundred sixty dollars ($160.00)~~two hundred dollars ($200.00), plus the cost of the test material;

(2) ~~for~~ For renewing the license as a pharmacist, ~~one hundred ten dollars ($110.00);~~one hundred thirty-five dollars ($135.00);

(3) ~~for~~ For reinstatement of a license as a pharmacist, one hundred thirty-five dollars ($135.00);

(4) ~~for~~ For annual registration of a pharmacy technician, ~~twenty-five dollars ($25.00);~~thirty dollars ($30.00);

(5) ~~for~~ For reinstatement of a registration of a pharmacy technician, thirty dollars ($30.00);

(6) ~~for~~ For licenses without examination as provided in G.S. 90-85.20, original, ~~four hundred dollars ($400.00);~~six hundred dollars ($600.00);

(7) ~~for~~ For original registration of a pharmacy, ~~three hundred fifty dollars ($350.00);~~five hundred dollars ($500.00), and renewal thereof, ~~one hundred seventy-five dollars ($175.00);~~two hundred dollars ($200.00);

(8) ~~for~~For reinstatement of the registration of a pharmacy, two hundred dollars ($200.00);

(9) ~~for~~For annual registration as a dispensing physician under G.S. 90-85.21(b), ~~fifty dollars ($50.00);~~seventy-five dollars ($75.00);

(10) For reinstatement of registration as a dispensing physician, seventy-five dollars ($75.00);

(11) ~~for~~ For annual registration as a dispensing physician assistant under G.S. 90-18.1, ~~fifty dollars ($50.00);~~seventy-five dollars ($75.00);

(12) For reinstatement of registration as a dispensing physician assistant, seventy-five dollars ($75.00);

(13) ~~for~~ For annual registration as a dispensing nurse practitioner under G.S. 90-18.2, ~~fifty dollars ($50.00);~~seventy-five dollars ($75.00);

(14) For reinstatement of registration as a dispensing nurse practitioner, seventy-five dollars ($75.00);

(15) ~~for~~ For registration of any change in pharmacist personnel as required under G.S. 90-85.21(a), ~~twenty-five dollars ($25.00);~~thirty-five dollars ($35.00);

(16) ~~for~~ For a duplicate of any license, permit, or registration issued by the Board, twenty-five dollars ($25.00);

(17) ~~for~~ For original registration to dispense devices, deliver medical equipment, or both, ~~three hundred dollars ($300.00) per year.~~five hundred dollars ($500.00);

(18) For renewal of registration to dispense devices, deliver medical equipment, or both, two hundred dollars ($200.00);

(19) For reinstatement of a registration to dispense devices, deliver medical equipment, or both, two hundred dollars ($200.00).

(b) All fees under this section shall be paid before any applicant may be admitted to examination or the applicant's name may be placed upon the register of pharmacists or before any license or permit, or any renewal or reinstatement thereof, may be issued by the Board."

SECTION 3. Effective October 1, 2005, G.S. 90-85.21A(c) reads as rewritten:

"(c) The Board shall be entitled to charge and collect not more than ~~two hundred fifty dollars ($250.00)~~five hundred dollars ($500.00) for original registration of a pharmacy under this section, and for renewal thereof, not more than ~~one hundred twenty-five dollars ($125.00).~~two hundred dollars ($200.00), and for reinstatement thereof, not more than two hundred dollars ($200.00)."

SECTION 4. Effective January 1, 2008, G.S. 90-85.17 reads as rewritten:

"**§ 90-85.17. License renewal.**

In accordance with Board regulations, each license to practice pharmacy shall expire on December 31 and shall be renewed annually by filing with the Board on or after December 1 an application for license renewal furnished by the Board, accompanied by the required fee. It shall be unlawful to practice pharmacy more than 60 days after the expiration date without renewing the license. All licensees shall give the Board notice of a change of mailing address or a change of place of employment within 30 days after the change. The Board may require licensees to obtain up to ~~10~~ 30 hours of continuing education every two years from Board-approved providers as a condition of license ~~renewal.~~renewal, with a minimum of 10 hours required per year."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1349

Short Title:	Raise Ceiling On Fees/Board of Pharmacy.	(Public)
Sponsors:	Representative Wilkins.	
Referred to:	Finance.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE NORTH CAROLINA BOARD OF PHARMACY TO RAISE THE CEILING ON ITS LICENSURE AND REGISTRATION FEES AND ESTABLISH CERTAIN NEW FEES AND MAKING CERTAIN CHANGES TO THE CONDITIONS OF LICENSE RENEWAL UNDER THE PHARMACY PRACTICE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-85.24 reads as rewritten:

"**§ 90-85.24. Fees collectible by Board.**

The Board of Pharmacy shall be entitled to charge and collect not more than the following fees: for the examination of an applicant for license as a pharmacist, ~~one hundred sixty dollars ($160.00)~~two hundred dollars ($200.00), plus the cost of the test material; for renewing the license as a pharmacist, ~~one hundred ten dollars ($110.00);~~one hundred ninety-five dollars ($195.00); for reinstatement of a license as a pharmacist, three hundred seventy-five dollars ($375.00); for annual registration of a pharmacy technician, ~~twenty-five dollars ($25.00);~~thirty-five dollars ($35.00); for reinstatement of a registration of a pharmacy technician, seventy dollars ($70.00); for licenses without examination as provided in G.S. 90-85.20, original, ~~four hundred dollars ($400.00);~~six hundred dollars ($600.00); for original registration of a pharmacy, ~~three hundred fifty dollars ($350.00);~~five hundred dollars ($500.00), and renewal thereof, ~~one hundred seventy-five dollars ($175.00);~~three hundred dollars ($300.00); for reinstatement of the registration of a pharmacy, four hundred fifty dollars ($450.00); for annual registration as a dispensing physician under G.S. 90-85.21(b), ~~fifty dollars ($50.00);~~one hundred dollars ($100.00); for reinstatement of registration as a dispensing physician, two hundred fifty dollars ($250.00); for annual registration as a dispensing physician assistant under G.S. 90-18.1, ~~fifty dollars ($50.00);~~one hundred dollars ($100.00); for reinstatement of registration as a dispensing physician assistant, two hundred fifty dollars ($250.00); for annual registration as a dispensing nurse practitioner under G.S. 90-18.2, ~~fifty dollars ($50.00);~~one hundred dollars ($100.00); for

reinstatement of registration as a dispensing nurse practitioner, two hundred fifty dollars ($250.00); for registration of any change in pharmacist personnel as required under G.S. 90-85.21(a), ~~twenty-five dollars ($25.00);~~seventy-five dollars ($75.00); for a duplicate of any license, permit, or registration issued by the Board, twenty-five dollars ($25.00); for original registration to dispense devices, deliver medical equipment, or both, ~~three hundred dollars ($300.00) per year.~~five hundred dollars ($500.00); for renewal of registration to dispense devices, deliver medical equipment, or both, three hundred dollars ($300.00); for reinstatement of a registration to dispense devices, deliver medical equipment, or both, four hundred fifty dollars ($450.00). All fees shall be paid before any applicant may be admitted to examination or the applicant's name may be placed upon the register of pharmacists or before any license or permit, or any renewal or reinstatement thereof, may be issued by the Board."

SECTION 2. G.S. 90-85.21A reads as rewritten:

"**§ 90-85.21A. Applicability to out-of-state operations.**

(a) Any pharmacy operating outside the State which ships, mails, or delivers in any manner a dispensed legend drug into this State shall annually register with the Board on a form provided by the Board. In order to satisfy the registration requirements of this subsection, a pharmacy shall certify that the pharmacy employs a pharmacist who is responsible for dispensing, shipping, mailing, or delivering dispensed legend drugs into this State or in a state approved by the Board and has met requirements for licensure equivalent to the requirements for licensure in this State. In order for the pharmacy's certification of the pharmacists to be valid, a pharmacist shall agree in writing, on a form approved by the Board, to be subject to the jurisdiction of the Board, the provisions of this Article, and the rules adopted by the Board. If the Board revokes this certification, the pharmacy shall no longer have authority to dispense, ship, mail, or deliver in any manner a dispensed legend drug into this State.

(b) Any pharmacy subject to this section shall at all times maintain a valid unexpired license, permit, or registration necessary to conduct such pharmacy in compliance with the laws of the state in which such pharmacy is located. No pharmacy operating outside the State may ship, mail, or deliver in any manner a dispensed legend drug into this State unless such drug is lawfully dispensed by a licensed pharmacist in the state where the pharmacy is located.

(c) The Board shall be entitled to charge and collect not more than ~~two hundred fifty dollars ($250.00)~~five hundred dollars ($500.00) for original registration of a pharmacy under this section, and for renewal thereof, not more than ~~one hundred twenty-five dollars ($125.00).~~three hundred dollars ($300.00), and for reinstatement thereof, not more than four hundred fifty dollars ($450.00).

(d) The Board may deny a nonresident pharmacy registration upon a determination that the pharmacy has a record of being formally disciplined in its home state for violations that relate to the compounding or dispensing of legend drugs and presents a threat to the public health and safety.

(e) Except as otherwise provided in this subsection, the Board may adopt rules to protect the public health and safety that are necessary to implement this section. Notwithstanding G.S. 90-85.6, the Board shall not adopt rules pertaining to the

shipment, mailing, or other manner of delivery of dispensed legend drugs by pharmacies required to register under this section that are more restrictive than federal statutes or regulations governing the delivery of prescription medications by mail or common carrier. A pharmacy required to register under this section shall comply with rules adopted pursuant to this section.

(f) The Board may deny, revoke, or suspend a nonresident pharmacy registration for failure to comply with any requirement of this section."

SECTION 3. G.S. 90-85.17 reads as rewritten:

"**§ 90-85.17. License renewal.**

In accordance with Board regulations, each license to practice pharmacy shall expire on December 31 and shall be renewed annually by filing with the Board on or after December 1 an application for license renewal furnished by the Board, accompanied by the required fee. It shall be unlawful to practice pharmacy more than 60 days after the expiration date without renewing the license. All licensees shall give the Board notice of a change of mailing address or a change of place of employment within 30 days after the change. The Board may require licensees to obtain up to ~~10~~ 30 hours of continuing education every two years from Board-approved providers as a condition of license ~~renewal.~~renewal, with a minimum of 10 hours required per year."

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

HOUSE BILL 1349:
Raise Ceiling On Fees/Board of Pharmacy

8/3/2005

BILL ANALYSIS

Committee:	House Finance	**Date:**	August 3, 2005
Introduced by:	Rep. Wilkins	**Summary by:**	Ashley Huffstetler Committee Counsel
Version:	PCS to First Edition H1349-CSMBf-38		

SUMMARY: The PCS to the 1st edition of House Bill 1349 authorizes the North Carolina Board of Pharmacy ("Board") to raise its licensure and registration fees, establishes new fees, and changes the conditions of license renewal under the Pharmacy Practice Act ("Act"). The PCS also clarifies that the director of the Board is not required to investigate minor violations of the Act.

CURRENT LAW: The NC Pharmacy Practice Act has mandatory licensure requirements for all who engage in the practice of pharmacy in the State. An in-state applicant for licensure must complete various requirements and pay a fee. Each license expires on December 31st and must be renewed annually. Any pharmacist who operates outside the State and ships, mails, or delivers drugs into the State must register with the Board and pay an original registration fee and registration renewal fees.

The Board is fully funded by the fees it collects. The last fee increase was in 1997.

BILL ANALYSIS: Section 1.1. of the PCS to House Bill 1349 distinguishes between minor violations of the Act and violations that threaten public safety, health, or welfare. Under existing law, the director must investigate any violation of the Act, no matter how minor. This change clarifies that the director is required to investigate any threat to public safety, health, or welfare, but it is within the discretion of the director to investigate minor violations of the Act.

The PCS also authorizes the Board to raise its licensure and registration fees, effective October 1, 2005. The fees are amended as follows:

Type of Fee	Old Fee	New Fee
Initial pharmacist application/license	$160.00	$200.00
Renew pharmacist license	$110.00	$135.00
Reinstate pharmacist license	No existing fee	$135.00
Pharmacy technician registration	$25.00	$30.00
Reinstate registration for pharmacy technician	No existing fee	$30.00
License without exam (when already licensed in another jurisdiction)	$400.00	$600.00
Original pharmacy registration	$350.00	$500.00
Renew pharmacy registration	$175.00	$200.00
Reinstate pharmacy registration	No existing fee	$200.00
Registration as a dispensing physician	$50.00	$75.00

Reinstate dispensing physician registration	No existing fee	$75.00
Registration as a dispensing physician *assistant*	$50.00	$75.00
Reinstate dispensing physician assistant registration	No existing fee	$75.00
Register as a dispensing nurse practitioner	$50.00	$75.00
Reinstate dispensing nurse practitioner	No existing fee	$75.00
Register change in pharmacy personnel	$25.00	$35.00
Register to dispense devices, deliver medical equipment or both	$300.00	$500.00
Renewal of registration to dispense devices/deliver medical equipment	No existing fee	$200.00
Reinstate registration to dispense devices/deliver medical equipment	No existing fee	$200.00

In addition to the fees above, the bill also increases registration fees for *out-of-state operations* that ship, mail, deliver, or dispense drugs in this State. The pharmacy must register annually with the State. These fees are effective October 1, 2005. The fees are amended as follows:

Type of Fee	Old Fee	New Fee
Original registration of a pharmacy	$250.00	$500.00
Renewal of a pharmacy	$125.00	$200.00
Reinstate registration of pharmacy	No existing fee	$200.00

Finally, effective January 1, 2008, the bill authorizes the Board to require up to 30 hours of continuing education every two years, with a minimum of ten (10) hours required per year. Previously, the requirement was ten (10) hours per year as a condition of license renewal.

EFFECTIVE DATE: When it becomes law.

PCS CHANGES: The PCS makes the following changes to the 1st edition: (1) inserts a new Section 1, setting out the goal that the Board establish routine inspection of pharmacies, (2) inserts a new Section 1.1, which clarifies under what circumstances the director must investigate alleged violations of the Act, (3) changes the format of G.S. 90-85.24, and (4) changes many of the fees.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: August 3, 2005

TO: Representative Wilkins

FROM: Brenna Erford
Fiscal Research Division

RE: House Bill 1349 (Proposed Committee Substitute to 1st Edition)

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund	No Impact to General Fund				
Board of Pharmacy	$ 577,085	$ 605,640	$ 625,175	$ 644,685	$ 664,220
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Board of Pharmacy

EFFECTIVE DATE: When law.

BILL SUMMARY: The PCS to the 1st edition of House Bill 1349 authorizes the North Carolina Board of Pharmacy to raise its licensure and registration fees, establishes new fees, and changes the conditions of license renewal under the Pharmacy Practice Act. It also clarifies that the director of the Board is not required to investigate minor violations of the Act.

ASSUMPTIONS AND METHODOLOGY: The Board of Pharmacy is fully funded by fee revenue and does not receive state appropriations. The Board last requested a fee increase in 1997. Since that time, the Board has commenced registering and regulating more than 9,000 pharmacy

technicians throughout the state, registering and regulating out-of-state medical device and equipment dealers, and jointly regulating clinical pharmacy practitioners in cooperation with the Medical Board. The Board of Pharmacy has also obtained injunctions against Canadian storefront pharmacies operating illegally within the state, enacted rules enabling pharmacists to administer vaccinations, and experienced significant increases in both the number of licensed pharmacists and pharmacies operating in the state. The volume of complaints handled by the Board has increased from 217 in 1997 to 510 in 2004. Although Board staff has increased since 1997, there are currently five vacancies for staff investigators that will not be filled without obtaining additional funding from a fee increase. The Board has been operating at a loss since FY 2003. The chart below shows the number of pharmacy professionals licensed or registered by the Board from 2000 to 2004.

Licensed & registered pharmacy professionals					
Type	**Historic Total**				
	2000	2001	2002	2003	2004
# of licensed pharmacists	9,238	9,397	9,669	9,864	10,136
# of in-state pharmacies	1,983	2,024	2,062	2,123	2,183
# of out-of-state phamacies	207	229	259	286	311
# of dispensing physicians	348	281	376	406	472
Total # dispensing physician's assistants and dispensing nurse practitioners	145	162	169	188	191
# of technicians*	X	X	7,547	7,992	9,048

**The Board began registering pharmacy technicians in 2002.*

Based on the average increase in type of professional by year, the following table estimates the number of pharmacy professionals practicing in North Carolina in future years. Since historic data on the number of dispensing nurse practitioners and physician's assistants is combined, the data for this projection was extrapolated from the totals provided by the Board. The projection assumes an increase of 9 dispensing nurse practitioners and 3 dispensing physician's assistants per year.

Type	**Projected Totals**				
	2005-06	2006-07	2007-08	2008-09	2009-10
# of licensed pharmacists	10,361	10,585	10,810	11,034	11,259
# of in-state pharmacies	2,233	2,283	2,333	2,383	2,433
# of out-of-state pharmacies	337	363	389	415	441
# of dispensing physicians	503	534	565	596	627
Total # dispensing physician's assistants and dispensing nurse practitioners	195	207	219	231	243
# of technicians	9,548	10,048	10,548	11,048	11,548

The fee increases in House Bill 1349 are detailed in the table below. Most are flat increases effective when the bill becomes law with two exceptions. The renewal fee increase for licensed pharmacists and in-state pharmacies are graduated over a three-year period with each incremental

increase effective Sept. 1 of each year. *Each fee increase is expressed as the net increase over the current fee level in order to most accurately reflect the actual increase in fee revenue.*

Fee increases			
Fee type	**Current Fee**	**Increase**	**Total Fee**
Licensed pharmacist			
Examination	$160	$40	$200
Renewal*	$110	$25	$135
Reinstatement	x**	$135	$135
For licenses without examinations	$400	$200	$600
In-state pharmacies			
Original registration	$350	$150	$500
Renewal	$175	$25	$200
Reinstatement	x	$200	$200
Out-of-state pharmacies			
Original registration	$250	$250	$500
Renewal*	$125	$75	$200
Reinstatement	x	$200	$200
Dispensing physicians			
Annual registration	$50	$25	$75
Reinstatement	x	$75	$75
Dispensing physician's assistants			
Annual registration	$50	$25	$75
Reinstatement	x	$75	$75
Dispensing nurse practitioners			
Annual registration	$50	$25	$75
Reinstatement	x	$75	$75
Pharmacy technicians			
Annual registration	$25	$5	$30
Reinstatement	x	$30	$30
Registration of any change in pharmacy personnel	$25	$25	$50
To dispense devices, deliver medical equipment, or both			
Original registration	$300	$200	$500
Renewal	x	$200	$200
Reinstatement	x	$200	$200

**Graduated fee increases are effective Sept. 1 of each year starting in 2005*
*** An 'x' in the current fee column denotes a newly created fee.*

Estimated new fee revenues for the Board of Pharmacy are detailed in the chart below. The number of reinstatements per year for dispensing physicians, physician's assistants, nurse practitioners, and businesses dispensing medical equipment are derived from historical data. The projection assumes 4 reinstatements per year for dispensing physicians and one reinstatement per

year for dispensing physician's assistants, nurse practitioners, and businesses dispensing medical equipment.

Projected new revenue from fee increases					
Fee type	**2005-06**	**2006-07**	**2007-08**	**2008-09**	**2009-10**
Licensed pharmacist					
Examination	$ 9,000	$ 9,000	$ 9,000	$ 9,000	$ 9,000
Renewal*	$ 259,025	$ 264,625	$ 270,250	$ 275,850	$ 281,475
Reinstatement	$ 1,620	$ 10,800	$ 10,935	$ 11,070	$ 11,205
For licenses without examinations	$ 39,200	$ 40,800	$ 42,400	$ 44,000	$ 45,600
In-state pharmacies					
Original registration	$ 7,500	$ 7,500	$ 7,500	$ 7,500	$ 7,500
Renewal	$ 55,825	$ 57,075	$ 58,325	$ 59,575	$ 60,825
Reinstatement	$ 200	$ 200	$ 200	$ 200	$ 200
Out-of-state pharmacies					
Original registration	$ 56,250	$ 56,250	$ 56,250	$ 56,250	$ 56,250
Renewal*	$ 54,425	$ 58,975	$ 63,525	$ 68,075	$ 72,625
Reinstatement	$ 200	$ 200	$ 200	$ 200	$ 200
Dispensing physicians					
Annual registration	$ 12,575	$ 13,350	$ 14,125	$ 14,900	$ 15,675
Reinstatement	$ 300	$ 300	$ 300	$ 300	$ 300
Dispensing physician's assistants					
Annual registration	$ 1,250	$ 1,325	$ 1,400	$ 1,475	$ 1,550
Reinstatement	$ 75	$ 75	$ 75	$ 75	$ 75
Dispensing nurse practitioners					
Annual registration	$ 3,625	$ 3,850	$ 4,075	$ 4,300	$ 4,525
Reinstatement	$ 75	$ 75	$ 75	$ 75	$ 75
Pharmacy technicians					
Annual registration	$ 47,740	$ 50,240	$ 52,740	$ 55,240	$ 57,740
Reinstatement	$ 9,000	$ 9,000	$ 9,000	$ 9,000	$ 9,000
Registration of any change in pharmacy personnel	*Data not available				
To dispense devices, deliver medical equipment, or both					
Original registration	$ 19,000	$ 2,800	$ 2,800	$ 2,800	$ 2,800
Renewal	$ -	$ 19,000	$ 21,800	$ 24,600	$ 27,400
Reinstatement	$ 200	$ 200	$ 200	$ 200	$ 200
Total new revenue	**$ 577,085**	**$ 605,640**	**$ 625,175**	**$ 644,685**	**$ 664,220**

SOURCES OF DATA: NC Board of Pharmacy

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 1349 A BILL TO BE ENTITLED AN ACT AUTHORIZING THE NORTH CAROLINA BOARD OF PHARMACY TO RAISE THE CEILING ON ITS LICENSURE AND REGISTRATION FEES AND ESTABLISH CERTAIN NEW FEES AND MAKING CERTAIN CHANGES TO THE CONDITIONS OF LICENSE RENEWAL UNDER THE PHARMACY PRACTICE ACT.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1349

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

H1349-ALB-108 [v.1]

Date August 4 ,2005

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

Representative Alexander

moves to amend the bill on page 1, line 10, by adding the following at the end of the line: "The Board of Pharmacy shall annually expend at least one hundred thousand dollars ($100,000) of the funds generated by this act for ~~the~~ a Pharmacy Recovery Network."

SIGNED Walter B. Alexander
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 757
Commerce Committee Substitute Adopted 5/31/05
House Committee Substitute Favorable 7/25/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S757-CSST-85 [v.1]

8/1/2005 3:44:51 PM

Short Title: ESC Omnibus Act. (Public)

Sponsors:

Referred to:

March 22, 2005

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-13(a) reads as rewritten:

"(a) An unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that -

(1) The individual has registered for work at and thereafter has continued to report at an employment office as directed by the Commission ~~at regular intervals of not less than three weeks and not more than six weeks apart and~~ in accordance with such regulations as the Commission may prescribe;

(2) ~~He~~ The individual has made a claim for benefits in accordance with the provisions of G.S. 96-15(a);

(3) The individual is able to work, and is available for work: Provided that, unless temporarily excused by Commission regulations, no individual shall be deemed available for work unless he establishes to the satisfaction of the Commission that he is actively seeking work: Provided further, that an individual customarily employed in seasonal employment shall, during the period of nonseasonal operations, show to the satisfaction of the Commission that such individual is actively seeking employment which such individual is qualified to perform by past experience or training during such nonseasonal period: Provided further, however, that no individual shall be considered available for work for any week not to exceed two in any calendar year in which the Commission finds that his unemployment is due to a vacation. In

administering this proviso, benefits shall be paid or denied on a payroll-week basis as established by the employing unit. A week of unemployment due to a vacation as provided herein means any payroll week within which the equivalent of three customary full-time working days consist of a vacation period. For the purpose of this subdivision, any unemployment which is caused by a vacation period and which occurs in the calendar year following that within which the vacation period begins shall be deemed to have occurred in the calendar year within which such vacation period begins. For purposes of this subdivision, no individual shall be deemed available for work during any week that the individual tests positive for a controlled substance if (i) the test is a controlled substance examination administered under Article 20 of Chapter 95 of the General Statutes, (ii) the test is required as a condition of hire for a job, and (iii) the job would be suitable work for the claimant. The employer shall report to the Commission, in accordance with regulations adopted by the Commission, each claimant that tests positive for a controlled substance under this subdivision. ~~For the purposes of this subdivision, no individual shall be deemed available for work during any week in which he is registered at and attending an established school, or is on vacation during or between successive quarters or semesters of such school attendance, or on vacation between yearly terms of such school attendance. Except: (i) Any person who was engaged in full-time employment concurrent with his school attendance, who is otherwise eligible, shall not be denied benefits because of school enrollment and attendance. Except: (ii) Any otherwise qualified unemployed individual who is attending a vocational school or training program which has been approved by the Commission for such individual shall be deemed available for work. However, any unemployment insurance benefits payable with respect to any week for which a training allowance is payable pursuant to the provisions of a federal or State law, shall be reduced by the amount of such allowance which weekly benefit amount shall be rounded to the nearest lower full dollar amount (if not a full dollar amount). The Commission may approve such training course for an individual only if:~~

~~a. 1. Reasonable employment opportunities for which the individual is fitted by training and experience do not exist in the locality or are severely curtailed;~~

~~2. The training course relates to an occupation or skill for which there are expected to be reasonable opportunities for employment; and~~

~~3. The individual, within the judgment of the Commission, has the required qualifications and the aptitude to complete the course successfully; or,~~

~~b. Such approval is required for the Commission to receive the benefits of federal law.~~

a. An unemployed individual shall not be disqualified for eligibility for unemployment compensation solely on the basis that the individual is in school.

(4) No individual shall be deemed able to work under this subsection during any week for which that person is receiving or is applying for benefits under any other State or federal law based on his temporary total or permanent total disability. Provided that if compensation is denied to any individual for any week under the foregoing sentence and such individual is later determined not to be totally disabled, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which the compensation was denied solely by reason of the foregoing sentence.

(5) The individual has participated in reemployment services, if the Division referred the individual to these services after determining, through use of a worker profiling system, that the individual would likely exhaust regular benefits and would need reemployment services to make a successful transition to new employment, unless the individual establishes justifiable cause for failing to participate in the services.

(6) An unemployed individual shall not be disqualified for eligibility for unemployment compensation benefits solely on the basis that the individual is only available for part-time work. If an individual restricts his or her eligibility to part-time work, the individual may be considered able and available to work if it is determined that all the following conditions exist:

a. The claimant's monetary eligibility is based predominately on wages from part-time work.

b. The claimant is actively seeking and is willing to accept work under essentially the same conditions as existed while the claimant's reported wages were accrued.

c. The claimant imposes no other restriction and is in a labor market in which a reasonable demand exists for part-time service.

This subdivision shall not be construed to amend subdivision (3) of this subsection as it applies to students or G.S. 96-16 as it applies to seasonal workers."

SECTION 2. G.S. 96-9(b)(3)d3. reads as rewritten:

"d3. The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, 1999, for any calendar year that the training and reemployment contribution

in G.S. 96-6.1 does apply, not the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds ~~eight hundred million dollars ($800,000,000) on the computation date~~ one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the Commission in the previous calendar year, and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds ~~eight hundred million dollars ($800,000,000) on the computation date,~~ one and ninety-five hundredths percent (1.95%) of the gross taxable wages as reported to the Commission in the previous calendar year, and the fund ratio determined on that date is five percent (5%) or more.

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As Much As	But Less Than	Rate Schedules (%)								
		A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.70%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%
0.2%	0.4%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%
0.4%	0.6%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%
0.6%	0.8%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%
0.8%	1.0%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%
1.0%	1.2%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%
1.2%	1.4%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%
1.4%	1.6%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%
1.6%	1.8%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%
1.8%	2.0%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%
2.0%	2.2%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%
2.2%	2.4%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%
2.4%	2.6%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%
2.6%	2.8%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%
2.8%	3.0%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%

3.0%	3.2%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%
3.2%	3.4%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%
3.4%	3.6%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%
3.6%	3.8%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%
3.8%	4.0%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%
4.0% & OVER		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%"

SECTION 3. G.S. 96-9(a)(3)d5. reads as rewritten:

"d5. The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, 1999, for any calendar year that the training and reemployment contribution in G.S. 96-6.1 applies, the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds ~~eight hundred million dollars ($800,000,000) on the computation date~~ one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the Commission in the previous calendar year, and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds ~~eight hundred million dollars ($800,000,000) on the computation date,~~ one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the Commission in the previous calendar year, and the fund ratio determined on that date is five percent (5%) or more.

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As Much As	But Less Than	Rate Schedules (%)								
		A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.16%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%

0.2%	0.4%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%
0.4%	0.6%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%
0.6%	0.8%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%
0.8%	1.0%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%
1.0%	1.2%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%
1.2%	1.4%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%
1.4%	1.6%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%
1.6%	1.8%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%
1.8%	2.0%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%
2.0%	2.2%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%
2.2%	2.4%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%
2.4%	2.6%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%
2.6%	2.8%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%
2.8%	3.0%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%
3.0%	3.2%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%
3.2%	3.4%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%
3.4%	3.6%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%
3.6%	3.8%	0.24%	0.15%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%
3.8%	4.0%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%	0.03%
4.0% & OVER		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%"

SECTION 4. G.S. 96-8 is amended by adding a new subdivision to read:

"(28) Willfully. – For the purposes of this Chapter, the terms 'willfully' and 'knowingly' shall have the same meaning."

SECTION 5. G.S. 96-9(c)(4)a. reads as rewritten:

"(c) ...

(4) Transfer of account. –

a. Whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires substantially all or a distinct and severable portion of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, the account or that part of the account of the predecessor which relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the Commission in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition of the business to the successor employer for use in the determination of his rate of contributions, provided application for transfer is made within 60 days after the Commission notifies the successor of his right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after

the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business. Provided, however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and the account shall thereafter be used in the computation of the rate of the successor employer for succeeding years, subject, however, to the provisions of paragraph b of this subdivision. Provided there shall be no transfer of account when (i) a person or entity is not an employer at the time of the acquisition and (ii) the person or entity acquired the business or account primarily for the purpose of obtaining a reduced rate of contribution.

On or after August 1, 1988, whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires all of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, the account of the predecessor shall be transferred as of the date of the acquisition of the business to the successor employer for use in the determination of his rate of contributions. Whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires a distinct and severable portion of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, that part of the account of the predecessor which relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the Commission in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition of the business to the successor employer for use in the determination of his rate of contributions, provided application for transfer is made within 60 days after the Commission notifies the successor of his right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business. On or after January 1, 2006, whenever part of an organization, trade, or business is transferred between entities subject to substantially common ownership, management, or control, the tax account shall be transferred in accordance with regulations. However, employing units transferring entities with any common

ownership, management, or control are not entitled to separate and distinct employer status under this Chapter. Provided, however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and the account shall thereafter be used in the computation of the rate of the successor employer for succeeding years, subject, however, to the provisions of paragraph b of this subdivision. No request for a transfer of the account will be accepted and no transfer of the account will be made if the request for the transfer of the account is not received within two years of the date of acquisition or notification by the Commission of the right to request such transfer, whichever occurs later. However, in no event will a request for a transfer be allowed if an account has been terminated because an employer ceases to be an employer pursuant to G.S. 96-9(c)(5) and G.S. 96-11(d) regardless of the date of notification."

SECTION 6. G.S. 96-18(b1) reads as rewritten:

"(b1) Except as provided in this subsection, the penalties and other provisions in subdivisions (6), (7), (9a), and (11) of G.S. 105-236 apply to unemployment insurance contributions under this Chapter to the same extent that they apply to taxes as defined in G.S. 105-228.90(b)(7). The Commission has the same powers under those subdivisions with respect to unemployment insurance contributions as does the Secretary of Revenue with respect to taxes as defined in G.S. 105-228.90(b)(7).

G.S. 105-236(9a) applies to a "contribution tax return preparer" to the same extent as it applies to an income tax preparer. As used in this subsection, a "contribution tax return preparer" is a person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by this Chapter or any claim for refund of tax imposed by this Chapter. For purposes of this definition, the completion of a substantial portion of a return or claim for refund is treated as the preparation of the return or claim for refund. The term does not include a person merely because the person (i) furnishes typing, reproducing, or other mechanical assistance, (ii) prepares a return or claim for refund of the employer, or an officer or employee of the employer, by whom the person is regularly and continuously employed, (iii) prepares as a fiduciary a return or claim for refund for any person, or (iv) represents a taxpayer in a hearing regarding a proposed assessment.

The penalty in G.S. 105-236(7) applies with respect to unemployment insurance contributions under this Chapter only when one of the following circumstances exist in connection with the violation:

(1) Any employing units employing more than 10 employees.

(2) A contribution of more than two thousand dollars ($2,000) has not been paid.

(3) An experience rating account balance is more than five thousand dollars ($5,000) overdrawn.

If none of the circumstances set forth in subdivision (1), (2), or (3) of this subsection exist in connection with a violation of G.S. 105-236(7) applied under this Chapter, the offender is guilty of a Class 1 misdemeanor and each day the violation continues constitutes a separate offense.

If the Commission finds that any person violated G.S. 105-236(9a) and is not subject to a fraud penalty, the person shall pay a civil penalty of five hundred dollars ($500.00) per violation for each day the violations continue, plus the reasonable costs of investigation and enforcement."

SECTION 7. Sections 2 and 3 of this act become effective July 1, 2005. Section 6 of this act becomes effective December 1, 2005. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 3

SENATE BILL 757

Commerce Committee Substitute Adopted 5/31/05
House Committee Substitute Favorable 7/25/05

Short Title: ESC Omnibus Act. (Public)

Sponsors:

Referred to:

March 22, 2005

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-13(a) reads as rewritten:

"(a) An unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that -

(1) The individual has registered for work at and thereafter has continued to report at an employment office as directed by the Commission ~~at regular intervals of not less than three weeks and not more than six weeks apart and~~ in accordance with such regulations as the Commission may prescribe;

(2) ~~He~~ The individual has made a claim for benefits in accordance with the provisions of G.S. 96-15(a);

(3) The individual is able to work, and is available for work: Provided that, unless temporarily excused by Commission regulations, no individual shall be deemed available for work unless he establishes to the satisfaction of the Commission that he is actively seeking work: Provided further, that an individual customarily employed in seasonal employment shall, during the period of nonseasonal operations, show to the satisfaction of the Commission that such individual is actively seeking employment which such individual is qualified to perform by past experience or training during such nonseasonal period: Provided further, however, that no individual shall be considered available for work for any week not to exceed two in any calendar year in which the Commission finds that his unemployment is due to a vacation. In administering this proviso, benefits shall be paid or denied on a payroll-week basis as established by the employing unit. A week of

unemployment due to a vacation as provided herein means any payroll week within which the equivalent of three customary full-time working days consist of a vacation period. For the purpose of this subdivision, any unemployment which is caused by a vacation period and which occurs in the calendar year following that within which the vacation period begins shall be deemed to have occurred in the calendar year within which such vacation period begins. For purposes of this subdivision, no individual shall be deemed available for work during any week that the individual tests positive for a controlled substance if (i) the test is a controlled substance examination administered under Article 20 of Chapter 95 of the General Statutes, (ii) the test is required as a condition of hire for a job, and (iii) the job would be suitable work for the claimant. The employer shall report to the Commission, in accordance with regulations adopted by the Commission, each claimant that tests positive for a controlled substance under this subdivision. ~~For the purposes of this subdivision, no individual shall be deemed available for work during any week in which he is registered at and attending an established school, or is on vacation during or between successive quarters or semesters of such school attendance, or on vacation between yearly terms of such school attendance. Except: (i) Any person who was engaged in full-time employment concurrent with his school attendance, who is otherwise eligible, shall not be denied benefits because of school enrollment and attendance. Except: (ii) Any otherwise qualified unemployed individual who is attending a vocational school or training program which has been approved by the Commission for such individual shall be deemed available for work. However, any unemployment insurance benefits payable with respect to any week for which a training allowance is payable pursuant to the provisions of a federal or State law, shall be reduced by the amount of such allowance which weekly benefit amount shall be rounded to the nearest lower full dollar amount (if not a full dollar amount). The Commission may approve such training course for an individual only if:~~

~~a. 1. Reasonable employment opportunities for which the individual is fitted by training and experience do not exist in the locality or are severely curtailed;~~

~~2. The training course relates to an occupation or skill for which there are expected to be reasonable opportunities for employment; and~~

~~3. The individual, within the judgment of the Commission, has the required qualifications and the aptitude to complete the course successfully; or,~~

~~b. Such approval is required for the Commission to receive the benefits of federal law.~~

a. An unemployed individual shall not be disqualified for eligibility for unemployment compensation solely on the basis that the individual is in school.

(4) No individual shall be deemed able to work under this subsection during any week for which that person is receiving or is applying for benefits under any other State or federal law based on his temporary total or permanent total disability. Provided that if compensation is denied to any individual for any week under the foregoing sentence and such individual is later determined not to be totally disabled, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which the compensation was denied solely by reason of the foregoing sentence.

(5) The individual has participated in reemployment services, if the Division referred the individual to these services after determining, through use of a worker profiling system, that the individual would likely exhaust regular benefits and would need reemployment services to make a successful transition to new employment, unless the individual establishes justifiable cause for failing to participate in the services.

(6) An unemployed individual shall not be disqualified for eligibility for unemployment compensation benefits solely on the basis that the individual is only available for part-time work. If an individual restricts his or her eligibility to part-time work, the individual may be considered able and available to work if it is determined that all the following conditions exist:

a. The claimant's monetary eligibility is based predominately on wages from part-time work.

b. The claimant is actively seeking and is willing to accept work under essentially the same conditions as existed while the claimant's reported wages were accrued.

c. The claimant imposes no other restriction and is in a labor market in which a reasonable demand exists for part-time service.

This subdivision shall not be construed to amend subdivision (3) of this subsection as it applies to students or G.S. 96-16 as it applies to seasonal workers."

SECTION 2. G.S. 96-9(b)(3)d3. reads as rewritten:

"d3. The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, 1999, for any calendar year that the training and reemployment contribution in G.S. 96-6.1 does apply, not the contribution rate of an employer whose account has a credit balance is determined in

accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds ~~eight hundred million dollars ($800,000,000) on the computation date~~ one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the Commission in the previous calendar year, and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds ~~eight hundred million dollars ($800,000,000) on the computation date,~~ one and ninety-five hundredths percent (1.95%) of the gross taxable wages as reported to the Commission in the previous calendar year, and the fund ratio determined on that date is five percent (5%) or more.

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As Much As	But Less Than	Rate Schedules (%)								
		A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.70%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%
0.2%	0.4%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%
0.4%	0.6%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%
0.6%	0.8%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%
0.8%	1.0%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%
1.0%	1.2%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%
1.2%	1.4%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%
1.4%	1.6%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%
1.6%	1.8%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%
1.8%	2.0%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%
2.0%	2.2%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%
2.2%	2.4%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%
2.4%	2.6%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%
2.6%	2.8%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%
2.8%	3.0%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%
3.0%	3.2%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%
3.2%	3.4%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%

3.4%	3.6%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%
3.6%	3.8%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%
3.8%	4.0%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%
4.0%										
&										
OVER		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%"

SECTION 3. G.S. 96-9(a)(3)d5. reads as rewritten:

"d5. The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, 1999, for any calendar year that the training and reemployment contribution in G.S. 96-6.1 applies, the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds ~~eight hundred million dollars ($800,000,000) on the computation date~~ one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the Commission in the previous calendar year, and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds ~~eight hundred million dollars ($800,000,000) on the computation date,~~ one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the Commission in the previous calendar year, and the fund ratio determined on that date is five percent (5%) or more.

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As Much As	But Less Than	Rate Schedules (%)								
		A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.16%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%
0.2%	0.4%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%
0.4%	0.6%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%

0.6% 0.8%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%
0.8% 1.0%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%
1.0% 1.2%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%
1.2% 1.4%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%
1.4% 1.6%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%
1.6% 1.8%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%
1.8% 2.0%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%
2.0% 2.2%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%
2.2% 2.4%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%
2.4% 2.6%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%
2.6% 2.8%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%
2.8% 3.0%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%
3.0% 3.2%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%
3.2% 3.4%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%
3.4% 3.6%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%
3.6% 3.8%	0.24%	0.15%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%
3.8% 4.0%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%	0.03%
4.0% & OVER	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%"

SECTION 4. G.S. 96-8 is amended by adding a new subdivision to read:

"(28) Willfully. – For the purposes of this Chapter, the terms 'willfully' and 'knowingly' shall have the same meaning."

SECTION 5. G.S. 96-9(c)(4)a. reads as rewritten:

"(c) ...

(4) Transfer of account. –

a. Whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires substantially all or a distinct and severable portion of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, the account or that part of the account of the predecessor which relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the Commission in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition of the business to the successor employer for use in the determination of his rate of contributions, provided application for transfer is made within 60 days after the Commission notifies the successor of his right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business.

Provided, however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and the account shall thereafter be used in the computation of the rate of the successor employer for succeeding years, subject, however, to the provisions of paragraph b of this subdivision. Provided there shall be no transfer of account when (i) a person or entity is not an employer at the time of the acquisition and (ii) the Commissioner finds that the person or entity acquired the business or account solely or primarily for the purpose of obtaining a reduced rate of contribution.

On or after August 1, 1988, whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires all of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, the account of the predecessor shall be transferred as of the date of the acquisition of the business to the successor employer for use in the determination of his rate of contributions. Whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires a distinct and severable portion of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, that part of the account of the predecessor which relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the Commission in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition of the business to the successor employer for use in the determination of his rate of contributions, provided application for transfer is made within 60 days after the Commission notifies the successor of his right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business. On or after January 1, 2006, whenever part of an organization, trade, or business is transferred between entities subject to substantially common ownership, management, or control, the tax account shall be transferred in accordance with regulations. However, employing units transferring entities with any common ownership, management, or control are not entitled to separate and distinct employer status under this Chapter. Provided,

however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and the account shall thereafter be used in the computation of the rate of the successor employer for succeeding years, subject, however, to the provisions of paragraph b of this subdivision. No request for a transfer of the account will be accepted and no transfer of the account will be made if the request for the transfer of the account is not received within two years of the date of acquisition or notification by the Commission of the right to request such transfer, whichever occurs later. However, in no event will a request for a transfer be allowed if an account has been terminated because an employer ceases to be an employer pursuant to G.S. 96-9(c)(5) and G.S. 96-11(d) regardless of the date of notification."

SECTION 6. G.S. 96-18(b1) reads as rewritten:

"(b1) Except as provided in this subsection, the penalties and other provisions in subdivisions (6), (7), (9a), and (11) of G.S. 105-236 apply to unemployment insurance contributions under this Chapter to the same extent that they apply to taxes as defined in G.S. 105-228.90(b)(7). The Commission has the same powers under those subdivisions with respect to unemployment insurance contributions as does the Secretary of Revenue with respect to taxes as defined in G.S. 105-228.90(b)(7).

G.S. 105-236(9a) applies to a "contribution tax return preparer" to the same extent as it applies to an income tax preparer. As used in this subsection, a "contribution tax return preparer" is a person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by this Chapter or any claim for refund of tax imposed by this Chapter. For purposes of this definition, the completion of a substantial portion of a return or claim for refund is treated as the preparation of the return or claim for refund. The term does not include a person merely because the person (i) furnishes typing, reproducing, or other mechanical assistance, (ii) prepares a return or claim for refund of the employer, or an officer or employee of the employer, by whom the person is regularly and continuously employed, (iii) prepares as a fiduciary a return or claim for refund for any person, or (iv) represents a taxpayer in a hearing regarding a proposed assessment.

The penalty in G.S. 105-236(7) applies with respect to unemployment insurance contributions under this Chapter only when one of the following circumstances exist in connection with the violation:

(1) Any employing units employing more than 10 employees.

(2) A contribution of more than two thousand dollars ($2,000) has not been paid.

(3) An experience rating account balance is more than five thousand dollars ($5,000) overdrawn.

If none of the circumstances set forth in subdivision (1), (2), or (3) of this subsection exist in connection with a violation of G.S. 105-236(7) applied under this Chapter, the offender is guilty of a Class 1 misdemeanor and each day the violation continues constitutes a separate offense.

If the Commission finds that any person violated G.S. 105-236(9a) and is not subject to a fraud penalty, the person shall pay a civil penalty of five hundred dollars ($500.00) per violation for each day the violations continue, plus the reasonable costs of investigation and enforcement."

SECTION 7. Sections 2 and 3 of this act become effective July 1, 2005. Section 6 of this act becomes effective December 1, 2005. The remainder of this act is effective when it becomes law.

SENATE BILL 757: ESC Omnibus Act

BILL ANALYSIS

Committee:	House Finance	**Date:**	August 1, 2005
Introduced by:	Sen. Nesbitt	**Summary by:**	R. Erika Churchill
Version:	PCS to Third Edition S757-CSST-85		Committee Counsel

SUMMARY: The proposed committee substitute for Senate Bill 757 would make changes to the law relating to the Employment Security laws affecting unemployment benefits.

BILL ANALYSIS: Senate Bill 757 would amend Chapter 96 (Employment Security) in the following ways:

Section 1. G.S. 96-13(a) sets out when an unemployed individual is eligible to receive benefits and requires that the individual be able to work and available for work. The current law provides that a person is not available for work if he is registered at and attending school, but then provides detailed exceptions from that provision. The bill would simplify the current law by providing that a person would not be disqualified for eligibility solely on the basis that he or she is in school.

Sections 2 and 3. G.S. 96-9(b) sets out contribution rates for employers. Under the current law, there is a standard rate, but a different rate is used if the employer has an account with a credit balance, and the contribution rate is reduced for any year in which the balance in the Unemployment Insurance Fund equals or exceeds $800,000,000. The bill would amend the law so the contribution rate would be reduced for any year in which the balance in the Unemployment Insurance Fund equals or exceeds 1.95% of the wages reported in the previous calendar year (rather than the flat $800,000,000 benchmark).

Section 4. This section would add a definition for "willfully" to Chapter 96 to clarify that "willfully" and "knowingly" have the same meaning as used in the Chapter.

Section 5. G.S. 96-9(c)(4) deals with the transfer of an employer's account when the employer's business, or part of the business, is acquired by another individual or employing unit. The bill would provide that an account shall not transfer when the individual is not an employer at the time of the acquisition, or when the individual acquired the business for the purpose of getting a reduced contribution rate. The bill would also provide that, whenever part of a business is transferred between entities with substantially common ownership, the tax account would be transferred in accordance with regulations, but employing units transferring entities with common ownership would not be entitled to separate employer status.

Section 6. G.S. 96-18(b1) provides that the penalty for attempting to evade or defeat a tax (Class H felony), as set out in G.S. 105-236(7), applies to unemployment insurance contributions under Chapter 96 only when one of the following circumstances exist:

- Employing unit employs more than 10 employees.
- A contribution of more than $2000 has not been paid.
- An experience rating account balance is more than $5000 overdrawn.

The bill would provide that, if none of those circumstances exist, attempting to evade or defeat a tax would be a Class 1 misdemeanor. It would also provide that a person who violates G.S. 105-236(9a)

(assisting in preparing fraudulent tax information), and is not subject to a fraud penalty, must pay a civil penalty of $500 per violation for each day the violations continue, plus the reasonable costs of investigation and enforcement.

EFFECTIVE DATE: Sections 2 and 3 of the bill would become effective July 1, 2005. Section 6 of the bill would become effective December 1, 2005. The remainder of the bill would be effective when it becomes law.

§ 105-236. Penalties.

Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:

...

(7) Attempt to Evade or Defeat Tax. – Any person who willfully attempts, or any person who aids or abets any person to attempt in any manner to evade or defeat a tax or its payment, shall, in addition to other penalties provided by law, be guilty of a Class H felony.

...

(9a) Aid or Assistance. – Any person, pursuant to or in connection with the revenue laws, who willfully aids, assists in, procures, counsels, or advises the preparation, presentation, or filing of a return, affidavit, claim, or any other document that the person knows is fraudulent or false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present or file the return, affidavit, claim, or other document, is guilty of a felony as follows:

a. If the person who commits an offense under this subdivision is an income tax return preparer and the amount of all taxes fraudulently evaded on returns filed in one taxable year is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony.

b. If the person who commits an offense under this subdivision is an income tax return preparer and the amount of all taxes fraudulently evaded on returns filed in one taxable year is less than one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

c. If the person who commits an offense under this subdivision is not covered under sub-subdivision a. or b. of this subdivision, the person is guilty of a Class H felony.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒ House Committee Substitute for

SB 757 A BILL TO BE ENTITLED AN ACT MAKING OMNIBUS CHANGES TO THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA.

☒ With a favorable report as to House committee substitute bill 2, unfavorable as to House committee substitute bill 1.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 3

SENATE BILL 796

Judiciary II Committee Substitute Adopted 6/14/05
Finance Committee Substitute Adopted 6/23/05

Short Title: Criminal Record Checks/Archaeological Ops. (Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR CRIMINAL RECORD CHECKS OF APPLICANTS FOR PERMITS AND LICENSES TO CONDUCT ARCHAEOLOGICAL OPERATIONS AND INVESTIGATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.16. Criminal record checks of applicants for permit or license to conduct exploration, recovery, or salvage operations and archaeological investigations.**

The Department of Justice may provide to the Department of Cultural Resources from the State and National Repositories of Criminal Histories the criminal history of any applicant for a permit or license under Article 3 of Chapter 121 of the General Statutes or Article 2 of Chapter 70 of the General Statutes. Along with the request, the Department of Cultural Resources shall provide to the Department of Justice the fingerprints of the applicant, a form signed by the applicant consenting to the criminal history record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Department of Cultural Resources shall keep all information obtained under this section confidential. The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 2. G.S. 121-25 reads as rewritten:

"**§ 121-25. License to conduct exploration, recovery or salvage operations.**

Any qualified person, firm or corporation desiring to conduct any type of exploration, recovery or salvage operations, in the course of which any part of a derelict vessel or its contents or other archaeological site may be removed, displaced or destroyed, shall first make application to the Department of Cultural Resources ~~for~~ and obtain a permit or license to conduct such operations. If the Department of Cultural Resources shall find that the granting of such permit or license is in the best interest of the State, it may grant such applicant a permit or license for such a period of time and under such conditions as the Department may deem to be in the best interest of the State. Such permit or license may include but need not be limited to the following:

(1) Payment of monetary fee to be set by the Department;

(2) That a portion or all of the historic material or artifacts be delivered to custody and possession of the Department;

(3) That a portion of all of such relics or artifacts may be sold or retained by the licensee;

(4) That a portion or all of such relics or artifacts may be sold or traded by the Department.

Permits or licenses may be renewed upon or prior to expiration upon such terms as the applicant and the Department may mutually agree. Holders of permits or licenses shall be responsible for obtaining permission of any federal agencies having jurisdiction, including the United States Coast Guard, the United States Department of the Navy and the United States Army Corps of Engineers prior to conducting any salvaging operations."

SECTION 3. Article 3 of Chapter 121 of the General Statutes is amended by adding a new section to read:

"**§ 121-25.1. Criminal record checks of applicants for permit or license.**

(a) The following definitions apply to this section:

(1) Applicant. – A person or entity applying for a permit or license under G.S. 121-25 to conduct any type of exploration, recovery, or salvage operations of any part of a derelict vessel or its contents or other archaeological site.

(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears upon an applicant's fitness to conduct activities related to the surveillance, protection, preservation, and archaeological recovery of property subject to the exclusive dominion and control of the State under G.S. 121-22. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers and Court Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17,

Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 19C, Financial Identity Fraud; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) All applicants shall consent to a criminal history record check. Refusal to consent to a criminal history record check or to the use of fingerprints or other identifying information may constitute grounds for the Department of Cultural Resources to deny a permit or a license to an applicant. The Department of Cultural Resources shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories, and any additional information required by the Department of Justice. If the applicant is not an individual, the applicant shall provide fingerprints for the principals, officers, directors, and controlling persons of the applicant. Each set of fingerprints shall be certified by an authorized law enforcement officer. The Department of Cultural Resources shall keep all information obtained under this section confidential.

(c) If an applicant's criminal history record check reveals one or more convictions listed under subdivision (a)(2) of this section, the conviction shall not automatically bar the issuance of a permit or a license. When determining whether to issue a permit or license to an applicant, the Department of Cultural Resources shall consider all of the following factors regarding the conviction:

(1) The level and seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the person's responsibilities pursuant to the application.
(6) The incarceration, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
(7) The subsequent commission by the person of a crime."

SECTION 4. Article 2 of Chapter 70 of the General Statutes is amended by adding a new section to read:

"**§ 70-13.1. Criminal record checks of applicants for permit or license.**

(a) The following definitions apply to this section:

(1) Applicant. – A person or entity applying for a permit or license under G.S. 70-13 to conduct any type of archaeological investigation on State lands.

(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears upon an applicant's fitness to conduct archaeological investigations under G.S. 70-13. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers and Court Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 19C, Financial Identity Fraud; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) All applicants shall consent to a criminal history record check. Refusal to consent to a criminal history record check or to the use of fingerprints or other identifying information may constitute grounds for the Department of Cultural Resources to deny a permit or a license to an applicant. The Department of Cultural Resources shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories, and

any additional information required by the Department of Justice. If the applicant is not an individual, the applicant shall provide fingerprints for the principals, officers, directors, and controlling persons of the applicant. Each set of fingerprints shall be certified by an authorized law enforcement officer. The Department of Cultural Resources shall keep all information obtained under this section confidential.

(c) If an applicant's criminal history record check reveals one or more convictions listed under subdivision (a)(2) of this section, the conviction shall not automatically bar the issuance of a permit or a license. When determining whether to issue a permit or license to an applicant, the Department of Cultural Resources shall consider all of the following factors regarding the conviction:

(1) The level and seriousness of the crime.

(2) The date of the crime.

(3) The age of the person at the time of conviction.

(4) The circumstances surrounding the commission of the crime, if known.

(5) The nexus between the criminal conduct of the person and the person's responsibilities pursuant to the application.

(6) The incarceration, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.

(7) The subsequent commission by the person of a crime."

SECTION 5. This act becomes effective October 1, 2005, and applies to applications for permits or licenses submitted to the Department of Cultural Resources on or after that date.

SENATE BILL 796:
Criminal Record Checks/Archaeological Ops

BILL ANALYSIS

Committee:	House Finance	**Date:**	August 2, 2005
Introduced by:	Sen. Thomas	**Summary by:**	Brad Krehely
Version:	Third Edition		Staff Attorney

SUMMARY: ***Senate Bill 796 would require all persons who apply to the Department of Cultural Resources for a permit to conduct underwater archeological activities and archeological activities on State land to submit to a criminal background check. It would also allow the Department of Justice to conduct those State and National checks upon the request of the Department of Cultural Resources.***

CURRENT LAW:

Salvage and recovery of shipwrecks. G.S. 121-25 requires any person who wants to engage in salvage operations to obtain a permit from the Department of Cultural Resources. The Department may grant the permit or license if it finds it is in the best interest of the State. The permit may be for a period of time and under conditions specified by the Department. The permit may require the payment of a fee to the Department, that a portion of the artifacts are delivered to the Department, that a portion of the artifacts are sold or retained by the licensee, or that a portion of the artifacts may be sold or traded by the Department.

Archaeological investigations on State land. G.S. 70-13 requires that persons who want to conduct archaeological investigations on State lands must first obtain a permit from the Department of Cultural Resources. An "archaeological investigation" means any surface collection, subsurface test, excavation, or other activity that results in the disturbance or removal of archaeological resources. The term "archaeological resource" means any material remains of past human life or activities which are at least 50 years old and which are of archaeological interest. These include pieces of pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, rock paintings, rock carvings, graves or human skeletal materials. The term does not include fossils unless found in an archaeological context.

The Department shall issue a permit if it finds that the applicant is qualified to undertake the activity, the activity is undertaken to further archaeological knowledge, the applicant has the funds and technology to retrieve the archaeological resource, the resources will remain the property of the State and attendant data will be preserved by a university or museum, the permit is not inconsistent with a management plan for the State land, and the applicant will bear the cost of reinterment of any human remains. The Department must also notify and consult with the appropriate local religious or cultural group prior to issuing the permit.

BILL ANALYSIS:

Section 1 authorizes the North Carolina Department of Justice (DOJ) to conduct State and national criminal background checks on applicants for permits or licenses from the Department of Cultural Resources to conduct salvage operations or archeological investigations. DOJ may charge a fee to cover the actual cost of locating, editing, researching and retrieving the information.

Section 2 makes technical changes to an existing statute. The word "vessel" was inadvertently omitted from the statute as originally drafted, and the words "and obtain" are simply to clarify that an applicant for a license must not only apply for the license, but must actually obtain the license as well in order to conduct certain recovery or salvage operations.

Sections 3 and 4 are identical, but apply to different permitting processes (Article 3 of Chapter 121 and Article 2 of Chapter 70 respectively). They both require an applicant for a permit or license to conduct salvage operations or archaeological investigations to submit to a criminal background check. The applicant must provide a written consent to the background check, a set of fingerprints, and any other identifying information required by the State or National Repositories of Criminal Histories. The Department of Cultural Resources must keep the information confidential. Evidence of a conviction will not necessarily disqualify an applicant from receiving a permit or license. The Department must consider a number of factors, such as the seriousness of the crime, the age of the person at the time of conviction, the nexus between the nature of the crime and the purpose of the permit, the period of punishment, and whether the person has committed any subsequent offenses.

EFFECTIVE DATE: The act becomes effective October 1, 2005 and would apply to applications for permits submitted to the Department of Cultural Resources on or after that date.

BACKGROUND: The Federal Bureau of Investigation (FBI) has certain criteria that must be met before it will comply with a statute authorizing criminal background checks for employment or licensure. Those criteria include that the statute must: specify who is subject to the statute, require the applicant to provide a fingerprint card, specify the agency responsible for the licensure/employment decision, and clearly indicate that the criminal history access is authorized and identify the criteria by which a person would be denied employment or licensure. In addition, the FBI has a process for providing preliminary approval of proposed legislation and final approval for enacted legislation.

*S0796e3-SMRN * Trina Griffin contributed substantially to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 796 (Third Edition)

SHORT TITLE: Criminal Record Checks/Archaeological Ops.

SPONSOR(S): Senator Thomas

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
DOJ		*** See Assumptions & Methodology ***			
EXPENDITURES:					
DOJ		*** See Assumptions & Methodology ***			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Justice

EFFECTIVE DATE: October 1, 2005

BILL SUMMARY: The 2nd Edition of Senate Bill 796 would require all persons who apply to the Department of Cultural Resources for a permit to conduct underwater archeological activities and archeological activities on State land to submit to a criminal background check. It would also allow the Department of Justice to conduct those State and National checks upon the request of the Department of Cultural Resources. The 3rd Edition adds Section 2 which makes technical changes only to an existing statute, which appeared in the original bill and was inadvertently omitted from the PCS considered in Senate Judiciary II.

ASSUMPTIONS AND METHODOLOGY:
The State Bureau of Investigation (SBI) in the Department of Justice conducts background checks for criminal justice and non-criminal justice agencies. For the latter group, the Department charges fees that are used to support the positions required to conduct the checks. The following fees are charged:

NC Fingerprint Check:	$14
National Fingerprint Check:	$24 ($2 to DOJ, $22 remitted to the FBI)
Total:	$38

In addition to the $22 remitted to the Federal Bureau of Investigation for national checks, costs to the SBI per state and national check average $16.33,[1] not including overhead or equipment.

The Department of Cultural Resources estimates that it issues 10 licenses per year that would require background checks. If each applicant is a single individual, the cost to the SBI would be $383, and $380 would be collected in revenue. However, some licenses may be issued to corporations or other entities, rather than individuals. In these cases, one license application would require multiple criminal history checks of the principals, officers, directors, and controlling persons of the entity. Each person in the SBI fingerprint identification section can perform, on average, 10,000 checks per year. Therefore, even with multiple criminal histories per application, this PCS is not anticipated to increase the number of receipt-supported positions required to process background checks.

The background check fees will be paid by the permit applicants.

SOURCES OF DATA: Department of Justice, Office of State Budget and Management, Department of Cultural Resources

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Chloe Gossage and Rodney Bizzell

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: August 1, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

[1] In 2003, average cost was $11.45 per electronic fingerprint check and $17.95 per paper fingerprint check; proximately 25% of non-criminal justice fingerprint submissions were electronic.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute # 2 for

SB 796 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR CRIMINAL RECORD CHECKS OF APPLICANTS FOR PERMITS AND LICENSES TO CONDUCT ARCHAEOLOGICAL OPERATIONS AND INVESTIGATIONS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

North Carolina General Assembly

House Committee on Finance

Minutes

~

August 23, 2005 – 8:30 a.m.

The House Committee on Finance met on Tuesday, August 23, 2005 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, Luebke, McComas, and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Bordsen, Carney, England, Faison, Fisher, Folwell, Glazier, Goforth, Hackney, Harrell, Holliman, Insko, Jones, Lewis, McGee, Rayfield, Underhill, and Wiley. Also present were Sergeant-at-Arms Bill Freeman, Fred Hines, Dusty Rhodes, and Walter Spell. Staff persons present included Cindy Avrette, Rodney Bizzell, David Crotts, Brenna Erford, Bill Gilkeson, Ashley Huffstetler, Canaan Huie, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairwoman Howard called the meeting to order at 8:30 am and recognized the three (3) pages present: (1) James Gwyn of Guilford County, (2) Candice Clark of Cumberland County, and (3) Michael Ransom of Robeson County, all of which were sponsored by Speaker Black.

The first bill considered by the Committee was **HB 143 – EXEMPT AGRI-TOURISM FROM PRIVILEGE TAX** (see **attachment 3**). Representative Coates, the bill sponsor, was recognized to explain the bill. She stated that the following activities would be exempt from the 3 percent gross receipts privilege tax on amusements: all farm-related exhibitions, shows, attractions, or amusements offered on land for farm purposes, including hayrides, animal exhibitions, and farm pond fishing. Following this explanation, the Chair recognized Representative Hill, who moved that HB 143 be given a favorable report. Seeing no further discussion, Chairwoman Howard then called the motion to a vote, and it carried without objection.

The next bill under consideration by the Committee was **HB 1526 – AVERY COUNTY/HERITAGE PARK AUTHORITY** (see **attachment 4**). Chairwoman Howard first recognized Representative Hill who moved for the adoption of the Proposed Committee Substitute (PCS) for discussion purposes, and the motion carried. The bill sponsor, Representative Frye, was then recognized to explain the bill. He explained to the Committee that the bill would allow the Avery County Board of Commissioners to create an authority that could acquire the property known as "Heritage Park" and to operate and maintain the facilities on that property. He noted that the bill was before the Finance Committee because it allowed this Authority to charge and collect fees and rents for use of the facilities as well as borrow money for use in improving the facilities. Representative McGee was recognized following the explanation and moved that the PCS for HB 1526 be given a favorable report, with an unfavorable report as to the original bill. As there was no

discussion, Chairwoman Howard then called the motion to a vote, and it carried with no known opposition.

HB 1610 – INCORPORATE ROUGEMONT (see **attachment 5**) was the next bill considered by the Committee. Representative Hill moved for the adoption of the PCS for the purposes of discussion, and the motion carried. Representative Wilkins, the bill sponsor, was then recognized to explain the proposed committee substitute. He stated that the bill provided for the incorporation on the Town of Rougemont. The Chair then recognized Representative Hill, who moved that the PCS for HB 1610 be given a favorable report, with an unfavorable report as to the original bill. Seeing no discussion, Chairwoman Howard then called the motion to a vote and motion carried by consent.

The next bill considered by the Committee was **SB 505 – MEDICAL EXAMINER FEE INCREASE** (see **attachment 6**). The Chair recognized Senator Purcell to explain the bill. The Senator noted that the bill had been requested by the Department of Public Health and acted to increase the fees charged by medical examiners from $75 to $100. He also noted that the last increase to this fee dated back to 1991. Following this explanation, Representative Womble was recognized and asked the bill sponsor if there was any opposition to the bill. Senator Purcell responded that he was aware of no opposition. Representative Womble then moved that SB 505 be given a favorable report. Seeing no further discussion, Chairwoman Howard then called the motion to a vote, and the motion carried without objection.

Representative Womble was then again recognized and moved the adoption of the PCS for **HB 990 – DEFINITION OF FARMER FOR SALES AND USE TAX** (see **attachment 7**). The motion carried. Chairwoman Howard then recognized Representative Starnes to explain the bill. He explained that the bill clarifies the definition of "farmer" for purposes of applying the sales and use tax exemption to items sold to farmers. He also noted that the bill expands the exemption to include items sold to lessors of farmland. Representative Hill was recognized following this explanation and moved that the PCS for HB 990 be given a favorable report, with an unfavorable report as to the original bill. As there was no further discussion, Chairwoman Howard called the motion to a vote, and the motion carried.

HB 1050 – PITT COUNTY LOCAL OPTION SALES TAX (see **attachment 8**) was the next bill considered by the Committee. Representative Womble moved for the adoption of the PCS, and the motion carried. The Chair then recognized Representatives Warren and McLawhorn to explain the bill. Each stated that the County of Pitt had enormous capital needs in the public schools and community college arenas totaling some $300 million. They explained that the PCS provides Pitt County, as well as several other counties, the option of instituting a half-cent sales tax increase, so long as the tax was approved by a local referendum, to help in funding these needs. Following this explanation, Representative Faison, stating Pitt County's need for this additional resource, moved that the PCS for HB 1050 be given a favorable report, with an unfavorable report as to the original bill. The Chair accepted the motion but no action due to a number of pending amendments.

Representative Hill was then recognized and sent forth an amendment (see **attachment 9**). He explained that the amendment acted to add Vance County to the list of counties included in the PCS, and then moved its adoption. Seeing no discussion, Chairwoman Howard then called the Hill motion to a vote, and the amendment was adopted. Representative Gibson was recognized next. He acted to send forth an amendment (see **attachment 10**) and then moved its adoption. He explained that, similar to Representative Hill's motion, his amendment simply added Duplin County

to the list of counties included in the PCS. As there was no discussion on the amendment, Chairwoman Howard called the matter to a vote, and the amendment was adopted.

The Chair then recognized Representative Luebke to send forth an amendment (see **attachment 11**). Representative Luebke explained that his amendment would place a 6-year sunset on the bill, which would require counties who institute the additional half-cent sales tax to revisit the issue in 2011. He then moved the adoption of the amendment. Representative Warren spoke in general opposition to the amendment, citing that 6 years was insufficient time for Pitt County to address even its current needs, irrespective of the County's future needs. Representative Gibson also spoke in opposition, citing that such a decision was one that should be left up to the local Boards of Commissioners. Seeing no further discussion, Chairwoman Howard then called the Luebke amendment to a vote, and the amendment failed.

Representative Holliman was then recognized to send forth another amendment (see **attachment 12**). He explained that his amendment added the Counties of Surry, Cumberland, and Davidson to the list of counties included in the PCS. This amendment brought the total number of counties included in the bill to 12. He then moved the adoption of the amendment. As there was no discussion on the amendment, Chairwoman Howard then called the amendment to a vote, and it was adopted.

Chairwoman Howard then recognized Representative Luebke for general comment on the bill. He stated his concern that the Committee was taking hasty action in increasing the sales tax, which is highly regressive and will hurt those who can least afford it.

Representative Gibson was then recognized to send forth a final amendment on the bill (see **attachment 13**). He explained that the amendment simply changed the title of the bill to authorize "certain counties" to levy a one-half cent local option sales tax to allow for additional counties to be added to the bill when debated on the House floor, without the need to continually change the title. Chairwoman Howard called the amendment to a vote, and it was adopted.

Seeing no further debate on the bill, the Chair then acted on Representative Faison's motion, giving a new PCS to HB 1050, incorporating the adopted amendments, a favorable report. She called the matter to a vote, and the motion carried by a majority.

The next bill under consideration was **SB 1149 – ENERGY CREDIT BANKING/SELLING PROGRAM/FUND** (see **attachment 14**). Representative Luebke, on behalf of the bill sponsor Senator Jenkins, was recognized to explain the bill. He stated that the bill establishes a banking and selling program for credits issued under the Federal Energy Policy Act in order to generate funds for the use of alternative fuels and alternative fueled vehicles. He stated that the bill also expands the credit for investment in renewable energy property. As there was no discussion, Chairwoman Howard then recognized Representative Ross, who moved that SB 1149 be given a favorable report. The motion carried with no known opposition.

Representative Alexander then moved that the PCS for **HB 876 – HAYWOOD COUNTY SALES TAX** (see **attachment 15**) be adopted by the Committee for the purposes of discussion. The motion carried. The Chair then recognized Representative Rapp to explain the bill. He explained that the bill authorizes Haywood County, upon approval by a referendum, to levy a one-half cent sales tax for community college capital outlay purposes. He also noted that the bill contained a six-year sunset. Following this explanation, Chairwoman Howard recognized Representative Glazier, who moved that the PCS for HB 876 be given a favorable report, with an unfavorable report as to the original bill. Representative Womble was then recognized and asked

the bill sponsor if there was any opposition to the bill. Rep. Rapp responded in the negative, stating that the bill had bi-partisan support. Seeing no further discussion, Chairwoman Howard then called Representative Glazier's motion to a vote, and the motion carried.

The next bill considered by the Committee was **HB 756 – LEE LOCAL SALES TAX** (see **attachment 16**). Representative Hill moved for the adoption of the PCS, and the motion carried. The Chair then recognized the bill sponsor, Representative Sauls, to explain the bill. Representative Sauls stated that the bill allows Franklin, Lee, and Vance Counties to levy a one-half cent local sales and use tax for public school capital outlay purposes. He cited Lee County's current capital needs in the area of public school construction at $51 million. He also reminded the members that the bill was by referendum of the local voters in each county. Following this explanation, Representative Hackney sent forth an amendment (see **attachment 17**) adding Chatham County to the list of counties that would be allowed to levy the one-half cent sales tax under the bill. He then moved the adoption of the amendment. As there was no discussion, Chairwoman Howard then called the Hackney amendment to a vote, and it was adopted. Representative Daughtridge was then recognized and, noting his support of the bill, moved that the PCS for HB 756 be given a favorable report with an unfavorable report as to the original bill. As there was no further discussion, the Chair then called the matter to a vote, it carried with no known objection.

HB 88 – ELECTORAL FAIRNESS ACT (see **attachment 18**) was the next bill considered. Representative Alexander moved for the adoption of the PCS, and it carried. The Chair then recognized Representative Miller to briefly explain the bill. Representative Miller explained that the PCS for HB 88 equalizes and reduce the number of signatures required of a new political party and of a statewide unaffiliated candidate to achieve ballot access. Further, it would reduce the number of votes a new party must generate for its nominee for President or Governor for the party to maintain ballot eligibility. Finally, he stated that it would move back the deadlines for new parties to submit their petitions and to nominate candidates from dates after the party primaries to dates before the party primaries. Representative closed by stating that the bill is one that should have support from both parties, both Democrat and Republican. Chairwoman Howard then opened the floor to discussion by the members. Representative Womble stated his support of the bill, reminding the members that the issue is one of fairness. Representative Ross echoed his sentiments, stating that the founding fathers of the nation encouraged numerous political parties. However, Representative Blackwood expressed concerns on the principles of the bill. Representative Wainwright asked the bill sponsor if there was anything retroactive in the bill. Representative Miller responded in the negative. Following this debate, Representative Weiss was recognized and moved that the PCS for HB 88 be given a favorable report, with an unfavorable report as to the original bill. Seeing no further discussion, Chairwoman Howard then called the motion to a vote, and it carried by a majority.

The Chair then acted to place **SB 671 – REAL PROP. ELECTRONIC RECORDING/NOTARY ACT** (see **attachment 19**) on the Committee's calendar for immediate consideration. Representative Weiss, on behalf of the bill sponsor Senator Hartsell, was recognized to explain the bill. She informed the members that the House Judiciary IV Committee had approved the bill only the day before. She stated that it enacts the Uniform Real Property Electronic Recording Act, as recommended by the General Statutes Commission, repeals Chapter 10A of the General Statutes regarding the regulation of Notaries Public, and enacts Chapter 10B relating to Notaries. Following this explanation, Representative Weiss also sent forth a clarifying amendment (see **attachment 20**) and moved its adoption. As there was no discussion, Chairwoman Howard called the amendment to a vote, and it was adopted. Representative Wainwright was then recognized for a question and asked why the increased fees for electronic recording were needed. Secretary of State Elaine Marshall was recognized and stated that training for the conduct of

electronic recording by the Secretary of State's office necessitated the fee, as there was no appropriation for the bill included in the budget. Seeing no further debate on the bill, Chairwoman Howard then recognized Representative Weiss, who moved that a new PCS for SB 671, incorporating the adopted clarifying amendment, be given a favorable report, with an unfavorable report as to the original bill. The matter was called to a vote, and the motion carried.

SB 868 – BILL LEE – MULTI-JURISDICTION INDUS. PARK (see **attachment 21**) was considered next by the Committee. Senator Doug Berger was recognized to explain the bill. He informed the members that the bill provides an exception to the tier designation formula under the Bill Lee Act by allowing certain industrial parks located in higher-tiered counties to be treated as if they were located in an enterprise tier one area. Following the explanation, Representative Carney acted to send forth a clarifying amendment (see **attachment 22**) and moved for its adoption. Seeing no discussion on the amendment, Chairwoman Howard called the matter to a vote, and the amendment was adopted. Representative Holliman was next recognized and moved that a new PCS, incorporating the Carney amendment, for SB 868 be given a favorable report, with an unfavorable report as to the original bill. Seeing no further discussion on the bill, Chairwoman Howard called the motion to a vote, and it carried with no known opposition.

Chairwoman Howard then placed SB 290 – SECURITIES TRANSFER ON DEATH (see **attachment 23**) on the calendar for immediate consideration by the Committee. Representatives Glazier and Moore, on behalf of Senator Hoyle, were recognized to explain the bill. Representative Moore stated that the House had passed a nearly identical bill during the 2004 Session. Representative Glazier explained that the bill would allow the transfer of securities, including stocks, bonds, mutual funds, and security accounts, to a beneficiary upon death based on a prior beneficiary designation. Representative Alexander was recognized following this explanation and moved that SB 290 be given a favorable report. As there was no discussion, the motion was brought to a vote, and it carried without objection.

HB 474 – MILL REHABILITATION TAX CREDIT (see **attachment 24**) was then placed on the calendar for the Committee's immediate consideration. Representative Hill moved for the adoption of the PCS for the purposes of discussion. The motion carried. Chairwoman Howard then recognized Representative Ross to explain the bill. Representative Ross stated that North Carolina had lost some 250,000 manufacturing jobs in the last decade, leaving behind numerous empty industrial buildings. Yet, she stated, many of these buildings are excellent candidates for adaptive use. She further stated that this bill would provide tax credits to encourage the renovation and rehabilitation of these vacant properties into other uses. Following this explanation, Representative Ross acted to send forth an amendment (see **attachment 25**). She stated that the amendment simply set a six-year sunset on the tax credits and moved its adoption. Seeing no discussion, the Chair called the amendment to a vote and it was adopted. Representative Holliman was then recognized and, citing his support of the bill, moved that a new PCS for HB 474, incorporating the Ross amendment, be given a favorable report.

The Chair then opened the floor to questions from the Committee members. Representative Hackney asked the bill sponsor who would own these buildings once the state had provided significant credits in their rehabilitation. Representative Ross stated that the ownership would rest with the developer of a rehabilitation project, but also noted that without the credits provided in the bill, these mills would remain vacant liabilities to the local communities across the state. Representative Bordsen remarked on her support of the bill, citing the positive impact the bill could have on the travel and tourism industry. Seeing no further discussion, Chairwoman Howard then called the Holliman motion to a vote, and the motion carried without objection.

The final bill considered by the Committee was **SB 528 – TAX INCREMENT FINANCING CHANGES** (see **attachment 26**). Representative Alexander moved for the adoption of the PCS for discussion purposes, and the motion carried. Chairwoman Howard then recognized Representative Lucy Allen, on behalf of the bill sponsor Senator Clodfelter, to explain the bill. She explained that the bill allows a municipality to use project development financing for a tourism-related development project located outside of its central business district if the project is located in an enterprise tier one area. Following this explanation, Representative Womble was recognized and moved that the PCS for SB 528 be given a favorable report, with an unfavorable report as to the original bill. Seeing no discussion or debate, Chairwoman Howard then called the motion to a vote and the motion carried.

As the Committee's time had then expired, Chairwoman Howard then adjourned the meeting at 10:04 am.

Respectfully submitted,

Representative Julia Howard
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheets
3. House Bill 143 (and related materials)
4. House Bill 1526 (and related materials)
5. House Bill 1610 (and related materials)
6. Senate Bill 505 (and related materials)
7. House Bill 990 (and related materials)
8. House Bill 1050 (and related materials)
9. Hill Amendment on HB 1050 (**ADOPTED**)
10. First Gibson Amendment on HB 1050 (**ADOPTED**)
11. Luebke Amendment on HB 1050 (**FAILED**)
12. Holliman Amendment on HB 1050 (**ADOPTED**)
13. Second Gibson Amendment on HB 1050 (**ADOPTED**)
14. Senate Bill 1149 (and related materials)
15. House Bill 876 (and related materials)
16. House Bill 756 (and related materials)
17. Hackney Amendment on HB 756 (**ADOPTED**)
18. House Bill 88 (and related materials)
19. Senate Bill 671 (and related materials)
20. Weiss Amendment on SB 671 (**ADOPTED**)
21. Senate Bill 868 (and related materials)
22. Carney Amendment on SB 868 (**ADOPTED**)
23. Senate Bill 290 (and related materials)
24. House Bill 474 (and related materials)
25. Ross Amendment on HB 474 (**ADOPTED**)
26. Senate Bill 528 (and related materials)

ATTACHMENT 1

AGENDA

House Finance Committee

August 23, 2005
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Howard

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard

Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order & Introduction of Pages

Bills:

HB 88	**ELECTORAL FAIRNESS ACT**	*Rep. Miller*
HB 143	**EXEMPT AGRI-TOURISM FROM PRIVILEGE TAX**	*Rep. Coates*
HB 756	**LEE LOCAL SALES TAX**	*Rep. Sauls*
HB 876	**HAYWOOD COUNTY SALES TAX**	*Reps. Rapp & Haire*
HB 990	**DEFINITION OF FARMER FOR SALES AND USE TAX**	*Rep. Starnes*
HB 1050	**PITT COUNTY LOCAL OPTION SALES TAX**	*Reps. Warren, McLawhorn, & Williams*
HB 1526	**AVERY COUNTY/HERITAGE PARK AUTHORITY**	*Reps. Frye & Jones*
HB 1610	**ROXBORO UPTOWN DEV. CORP. FUNDS**	*Rep. Wilkins*
SB 505	**MEDICAL EXAMINER FEE INCREASE.-AB**	*Sen. Purcell*
SB 528	**TAX INCREMENT FINANCING CHANGES**	*Sen. Clodfelter*
SB 868	**BILL LEE – MULTI-JURISDICTION INDUS. PARK**	*Sen. D. Berger*
SB 1149	**ENERGY CREDIT BANKING/SELLING PROGRAM/FUND**	*Sen. Jenkins*

Adjournment

CORRECTED NOTICE #3:
SB 868 – ADDED

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, August 23, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 88 – ELECTORAL FAIRNESS ACT – Rep. Miller

HB 143 – EXEMPT AGRI-TOURISM FROM PRIVILEGE TAX – Rep. Coates

HB 756 – LEE LOCAL SALES TAX – Rep. Sauls

HB 876 – HAYWOOD COUNTY SALES TAX – Reps. Rapp & Haire

HB 990 – DEFINITION OF FARMER FOR SALES AND USE TAX – Rep. Starnes

HB 1050 – PITT COUNTY LOCAL OPTION SALES TAX – Reps. Warren, McLawhorn, & Williams

HB 1526 – AVERY COUNTY/HERITAGE PARK AUTHORITY – Reps. Frye & Jones

HB 1610 – ROXBORO UPTOWN DEV. CORP. FUNDS – Rep. Wilkins

SB 505 – MEDICAL EXAMINER FEE INCREASE.-AB – Sen. Purcell

SB 528 – TAX INCREMENT FINANCING CHANGES – Sen. Clodfelter

SB 868 – BILL LEE – MULTI-JURISDICTION INDUS. PARK – Sen. D. Berger

SB 1149 – ENERGY CREDIT BANKING/SELLING PROGRAM/FUND – Sen. Jenkins

Respectfully,
Representatives Alexander, Gibson, Howard,
Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **7:01 pm** on **August 22, 2005**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

CORRECTED NOTICE #2:
HB 1526, HB 1610, SB 528, & SB 1149 – ADDED

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, August 23, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 88 – ELECTORAL FAIRNESS ACT – Rep. Miller

HB 143 – EXEMPT AGRI-TOURISM FROM PRIVILEGE TAX – Rep. Coates

HB 756 – LEE LOCAL SALES TAX – Rep. Sauls

HB 876 – HAYWOOD COUNTY SALES TAX – Reps. Rapp & Haire

HB 990 – DEFINITION OF FARMER FOR SALES AND USE TAX – Rep. Starnes

HB 1050 – PITT COUNTY LOCAL OPTION SALES TAX – Reps. Warren, McLawhorn, & Williams

HB 1526 – AVERY COUNTY/HERITAGE PARK AUTHORITY – Reps. Frye & Jones

HB 1610 – ROXBORO UPTOWN DEV. CORP. FUNDS – Rep. Wilkins

SB 505 – MEDICAL EXAMINER FEE INCREASE.-AB – Sen. Purcell

SB 528 – TAX INCREMENT FINANCING CHANGES – Sen. Clodfelter

SB 1149 – ENERGY CREDIT BANKING/SELLING PROGRAM/FUND – Sen. Jenkins

Respectfully,
Representatives Alexander, Gibson, Howard,
Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **6:30 pm** on **August 22, 2005**:
X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

CORRECTED NOTICE:
HB 530 – REMOVED

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, August 23, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 88 – ELECTORAL FAIRNESS ACT – Rep. Miller

HB 143 – EXEMPT AGRI-TOURISM FROM PRIVILEGE TAX – Rep. Coates

~~**H[redacted]30 – HISTORIC OAK GROVE SCHOOL FUNDS – Reps. Brown, Parmon, & Womble**~~

HB 756 – LEE LOCAL SALES TAX – Rep. Sauls

HB 876 – HAYWOOD COUNTY SALES TAX – Reps. Rapp & Haire

HB 990 – DEFINITION OF FARMER FOR SALES AND USE TAX – Rep. Starnes

HB 1050 – PITT COUNTY LOCAL OPTION SALES TAX – Reps. Warren, McLawhorn, & Williams

SB 505 – MEDICAL EXAMINER FEE INCREASE.-AB – Sen. Purcell

Respectfully,
Representatives Alexander, Gibson, Howard,
Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **4:15 Pm** on **August 22, 2005**:

X Principal Clerk
X Reading Clerk - House Chamber

J[redacted]A. Cannon (Committee Clerk)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, August 23, 2005**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

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

HB 88 – ELECTORAL FAIRNESS ACT – Rep. Miller

HB 143 – EXEMPT AGRI-TOURISM FROM PRIVILEGE TAX – Rep. Coates

HB 530 – HISTORIC OAK GROVE SCHOOL FUNDS – Reps. Brown, Parmon, & Womble

HB 756 – LEE LOCAL SALES TAX – Rep. Sauls

HB 876 – HAYWOOD COUNTY SALES TAX – Reps. Rapp & Haire

HB 990 – DEFINITION OF FARMER FOR SALES AND USE TAX – Rep. Starnes

HB 1050 – PITT COUNTY LOCAL OPTION SALES TAX – Reps. Warren, McLawhorn, & Williams

SB 505 – MEDICAL EXAMINER FEE INCREASE.-AB – Sen. Purcell

Respectfully,
Representatives Alexander, Gibson, Howard,
Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **10:55 am** on **August 18, 2005**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — August 23, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DAVID SMITHERMAN	LEE COUNTY PO BOX 1968, SANFORD 27331
HERB HINCKS	" " "
JERRY LEMMOND	" " "
BOB BROWN	" " "
AMY STEVENS	" " "
Jim McCormick	LEE County Schools P.O. BOX 1010 SANFORD, 27331
Bill TATUM	
FRANK THOMPSON	
SHARON Spence	Lee Co. Schools
Bob HUEYS	LEE County ECONOMIC Development Corp 106 Hillcrest SANFORD 27330
Hart Matthews	NC Green Party 1607 Maryland Ave., Durham, NC

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — August 23, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lyn Buffaloe	Franklin County.
Robert Swanson	Franklin County
Elena Everett	NC Green Party, Raleigh, NC
Hussam Eltayeb	NC Green Party, Raleigh, NC
Neal Ensley	Haywood Community College
Jack Horton	Haywood County
Mark Swanger	Haywood County
Dr. Don Stanton	Haywood Community College
Sandra Hayes	" " "
Ellene Francis	" " "
Lonnie Ensley	Haywood County

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — August 23, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Terry Rogers	Haywood Community College
Carson Carmichael	Bailey & Dixon LLP
Susanne Sartelle	Greenville - Pitt Chamber of Commerce
Frank Thompson	Lee County Bd of Education
Herb Hines	Lee County Commissioner, Chair
John K Burns	Pitt County - Greenville, N.C.
Raymond Goodrich	Pitt County Greenville, N.C.
Melonie Bryan	Pitt County, Greenville, NC
Lori Drake	Farmville Development Partnership
Charlotte Batts	Farmville Chamber of Commerce
Charita M. Dodge	Pitt County, Greenville NC
Virginia C. Joyner	Pitt County Schools, Greenville, NC

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — August 23, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Larry Seigler	Pitt Co. Educ. Foundation Greenville NC
Mark Phillips	Greenville-Pitt Co. Chamber of Commerce Greenville, NC
Randy Collier	Pitt Co. Educ. Council, Greenville
Susan Q. Nobles	Pitt Community College, Greenville
Walker Matthews	Durham county
Wilson Matthews	Durham county
Patsy S James	Pitt Co.
Eugene James	Pitt Co.
John Minges	Pitt County Commissioner
Sean Haugh	Libertarian Party of NC
THOMAS HILL	" " "

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — August 23, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Milton C. Holland	LIBERTARIAN PARTY OF WAKE COUNTY
Tom Howe	Libertarian Party
Barbara Howe	Libertarian Party
Jim Capo	Libertarian Party of NC
Aimee Schmidt	Wake County Progressive Democrat Caucus

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — 8/23/05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John H. Gilbert	Chairman, Wake County Bd of Elections 311 Forest Rd. Raleigh, NC 27605
[illegible]	NRA - NRWC -
Andrew Stewart	Empire Properties 133 Fayetteville St. / Raleigh, NC 27601
[illegible]	S.C.S.
Amanda Kerr	Daily Reflector 1150 Stancil Parkway Greenville, NC 27834
Frances Jarrett	302 S. Greene St. - Greenville-Pitt Greenville, NC 27834 County Chamber
Phillip R. Dixon	1727 Graystone Place Pitt Co Bd of Ed Greenville N.C. 27834 & Pitt Comm College
Frankie Beeker	Greenville - Pitt Chamber Greenville, NC
Rick Benton	City of Roanoke Rapids
Beth Edwards	P.O. Box 283 · Simpson, NC 27879 - PCS
Selma Cherry	Pitt Co. Schools 4710 Courthouse Rd, Greenville, 27858
Deborah Key	GA
Richard Hyde	Town of Farmville

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — 8/23/05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steven Hilton	Libertarian Party
Sandra Hayes	NC State Board of Community Colleges - Haywood Co
Ellene Francis	Haywood Community College Haywood County
Kenneth HARRELL	MARTIN County School Bd.
Tom Daly	Martin County Schools
Russell Overman	Martin County
AL PERRY	MARTIN County Commissioner
Jerry Aycue	Vance County
Tommy RIDDLE	VANCE County schools
NORMAN SHEARIN	VANCE County Schools
Terry W. Rogers	Haywood Co Community College
MARVIN W. DAVIS	City of Greenville/Pitt County
Austin Bunch	East Carolina University

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — 8/23/05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Alice Keene	Pitt County Schools 1717 W. 5th St. Greenville, NC 27834
Deborah Long	Pitt County Schools 1717 W. 5th St. Greenville, NC 27834
Rachel Mills	NC Libertarian Party
Coleman Bailey	Pitt County Schools Teacher of Year 1717 W. 5th St. Greenville, N.C. 27834
Robert Evans	Mayor, Town of Farmville Pitt County
Andy Sabol	NC DOR
Anna Mitchell	NC DOR
A. A. Delamar	Victim Adv.
JIM PITTS	LIBERTARIAN PARTY
DAVE HOLEC	City Attorney City of Greenville
Barbara Howe	Libertarian Party
Andreas Stende	Libertarian Party
Randy Lee	Pitt County

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — August 23, 2005

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Delano Wilson	Pitt Co Bd. of Ed.
MARK SELPH	NC CONTRACTORS Lic. BOARD
Steve Tripp	Mayor of Ayden
Haley Montgomery	NC SOS
Tom Bacon	WCSED NCED

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H 1

HOUSE BILL 143

Short Title:	Exempt Agri-Tourism From Privilege Tax.	(Public)
Sponsors:	Representatives Coates; Alexander, B. Allen, Allred, Bell, Brubaker, Church, Cleveland, Cole, Coleman, Cunningham, Daughtridge, Faison, Farmer-Butterfield, Fisher, Frye, Glazier, Hill, Holliman, Holmes, Howard, Johnson, Justice, Justus, Kiser, Lewis, Lucas, Moore, Parmon, Preston, Rapp, Steen, Tucker, Underhill, Walker, Warren, Wilkins, Williams, and Wray.	
Referred to:	Agriculture, if favorable, Finance.	

February 9, 2005

A BILL TO BE ENTITLED

AN ACT TO EXEMPT AGRI-TOURISM ACTIVITIES FROM THE PRIVILEGE TAX ON AMUSEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-40 is amended by adding a new subdivision to read:

"(12) All farm-related exhibitions, shows, attractions, or amusements offered on land used for bona fide farm purposes as defined in G.S. 153A-340, including hayrides, animal exhibitions, and farm pond fishing."

SECTION 2. This act becomes effective January 1, 2001, and applies to activities occurring on or after that date.

HOUSE BILL 143:
Exempt Agri-Tourism From Privilege Tax

BILL ANALYSIS

Committee:	House Finance	**Date:**	August 22, 2005
Introduced by:	Rep. Coates	**Summary by:**	Martha Walston
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 143 would exempt the following activities from the 3% gross receipts privilege tax on amusements: all farm-related exhibitions, shows, attractions, or amusements offered on land used for farm purposes, including hayrides, animal exhibitions, and farm pond fishing.

House Bill 143 was given a favorable report in House Agriculture.

CURRENT LAW: Article 2 of Chapter 105 imposes a 3% gross receipts tax on anyone engaged in the business of giving, offering, or managing any form of amusements, athletic events, dances, and entertainment for which an admission is charged. A privilege tax of 1% is imposed on the gross receipts from operating motion picture shows. G.S. 105-40 sets out a number of exemptions to the privilege tax on amusements.

BILL ANALYSIS: House Bill 143 would add the following to the list of exemptions from the privilege tax on amusements: "all farm-related exhibitions, shows, attractions, or amusements offered on land used for bona fide farm purposes as defined in G.S. 153A-340, including hayrides, animal exhibitions, and farm pond fishing. The exemption would also apply to attractions such as corn mazes. The term "bona fide farm purposes", as defined in G.S. 153A-340, includes the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market.

Under current law, all exhibitions, shows, attractions, and amusements operated by a society or association organized under Chapter 106 (Agriculture) of the General Statutes are exempt from the payment of State, county, and city license taxes if the society or association has obtained a permit from the Secretary of Revenue to operate without the payment of the taxes. Specifically, G.S. 106-507 requires the society or organization to file an application with the Secretary of Revenue for a permit to operate without the payment of any State, county or city license tax not later than 60 days prior to the opening date of its fair. The Secretary of Revenue must refer the application to the Commissioner of Agriculture for approval or rejection. If the application is approved by the Commissioner, then the Secretary of Revenue must issue a permit to the society or association authorizing it to exhibit within its fairgrounds and during the period of its fair, all exhibits, shows, attractions, and amusements as approved without payment of taxes.

EFFECTIVE DATE: House bill 143 is retroactive to January 1, 2001. This would allow persons who have engaged in the business of providing farm-related entertainment and paid the tax to apply for a refund of the taxes paid.

H0143e1-SMLA

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 143 (First Edition)

SHORT TITLE: Exempt Agri-Tourism From Privilege Tax.

SPONSOR(S): Representative Coates

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:	**($655,600)**	**($124,624)**	**($127,366)**	**($129,913)**	**($132,512)**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue

EFFECTIVE DATE: January 1, 2001

BILL SUMMARY:
This bill would exempt the following activities from the 3% gross receipts privilege tax: all farm-related exhibitions, shows, attractions, or amusements offered on land used for farm purposes, including hayrides, animal exhibitions, and farm pond fishing.

ASSUMPTIONS AND METHODOLOGY:
According to the NC Department of Revenue, the privilege tax is not collected for activities such as hayrides and farm pond fishing because of the participatory nature of the entertainment. Animal exhibitions are considered to be taxable under current law, however, the Department is aware of only two instances in which current taxpayers would be affected by the proposed bill. Because it is unclear whether additional businesses may qualify, this estimate assumes a total of four businesses would be exempted under the bill.

The first step of the fiscal impact analysis is to calculate the annual privilege tax that would be lost from the exemption. For the purposes of this estimate, an average privilege tax revenue per business is calculated based on the average for the two businesses cited by the Department of Revenue. The average is then multiplied by four businesses for a total annual revenue loss of $119,200. Because the effective date for this bill is January 1, 2001, the annual revenue loss is multiplied by 5.5 to calculate the total first-year impact. The impact of each subsequent year is calculated based on the annual privilege tax revenue plus an inflation factor of 2-2.3%.

SOURCES OF DATA: NC Department of Revenue

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: March 8, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 143 A BILL TO BE ENTITLED AN ACT TO EXEMPT AGRI-TOURISM ACTIVITIES FROM THE PRIVILEGE TAX ON AMUSEMENTS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1526

Committee Substitute Reported Without Prejudice 5/31/05
PROPOSED COMMITTEE SUBSTITUTE H1526-PCS50477-ST-81

Short Title: Avery County/Heritage Park Authority. (Local)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE HERITAGE PARK AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. There is created the "Heritage Park Authority" which, when duly established as provided for in this act, shall be both a body politic and corporate, having all of the following enumerated powers and jurisdiction as well as any other additional powers that may be conferred upon it by the general law and by act of the General Assembly.

SECTION 2. For purposes of this act:

(1) "Authority" means the Heritage Park Authority or its governing board, as the case may be.

(2) "Board" means the Board of Commissioners of Avery County.

(3) "Heritage Park" means the 52 acres of land known as "Heritage Park" and all facilities located on that land.

(4) "Member" means a member of the Authority.

SECTION 3. The Board may by ordinance create the Authority. The Board shall hold a public hearing on the ordinance to create the Authority. The location of the public hearing shall be determined by the Board and established by resolution. The Board shall cause notice of the hearing to be published once a week for two successive calendar weeks in a newspaper of general circulation in each county. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. Upon its creation, the Authority shall enjoy the powers and have the duties and responsibilities conferred upon it by ordinance, subject to the provisions of this Article and the laws of the State of North Carolina. The provisions of any ordinance may be modified, amended, or rescinded by a subsequent ordinance.

SECTION 4.(a) Upon its creation, the Authority shall have a governing board of nine. Except as otherwise provided for the initial appointees, each

commissioner shall serve a four-year staggered term. Upon creation of the Authority, the members of the Authority shall be appointed by the Board as follows:

(1) One member shall be appointed upon the recommendation of the Avery County Agricultural and Horticultural Fair, Inc., a nonprofit corporation.

(2) One member shall be appointed from the Avery County Recreational Advisory Commission.

(3) The southern portion of Avery County shall recommend one member, with that nomination to be determined by the Frank and Green Valley Fire Departments.

(4) One member each recommended by the Board of Commissioners of Banner Elk, Beech Mountain, Crossnore, Elk Park, Newland, and Sugar Mountain.

SECTION 4.(b) All members must maintain a permanent residence within the County of Avery. No member of the Board may serve on the Authority. In the event that the Avery County Agricultural and Horticultural Fair, Inc., becomes nonexistent, then the Authority shall have only eight members.

SECTION 4.(c) Any member who has served two consecutive terms, including any initial term of less than four years, may not be reappointed to a third consecutive term. Such a member may, however, be appointed to serve again after the expiration of the term of the member's successor.

SECTION 4.(d) On the death of a commissioner, resignation, incapacity, or inability to serve, as determined by the board appointing that commissioner, or removal of the commissioner for cause, as determined by the board appointing that commissioner, the board affected may appoint another commissioner to fill the unexpired term.

SECTION 5. The members of the Authority shall receive no compensation or per diem, but shall be allowed and paid their actual traveling expenses incurred in transacting the official business of the Authority.

SECTION 6. Upon creation of the Authority, its governing board shall meet at a time and place set by the Board. The Authority shall elect from among its members a chair, a secretary, and a treasurer at its initial meeting and then annually thereafter. In order to conduct business, a quorum must be present. A majority of the Authority shall control its decisions. Each member of the Authority, including the chair, shall have one vote. The Authority shall meet at the places and times designated by the chair. The provisions of the Open Meetings Law, Article 33C of Chapter 143 of the General Statutes, shall apply.

SECTION 7.(a) Within the limits of the funds available to it, and subject to the provisions of this Article and the ordinance, the Authority may:

(1) Purchase, acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate Heritage Park facilities for the use of the general public within Avery County for the purpose to purchase, improve, own, hold, lease, or operate real or personal property.

(2) Sue and be sued in the name of the Authority, to make contracts and hold any personal property necessary for the exercise of the powers of the Authority, and to acquire by purchase, lease, or otherwise any existing lease or leasehold right.

(3) Charge and collect reasonable and adequate fees and rents for the use of Heritage Park or for services rendered in the operation of the facilities. Revenues from fees and rents shall be used only for upkeep and operation of Heritage Park.

(4) Make reasonable regulations it deems necessary for the proper maintenance, use, operation, and control of Heritage Park facilities and to provide and enforce penalties for the violation of these rules and regulations; provided, however, that the regulations and schedules of fees shall not be in conflict with the laws of the State of North Carolina.

(5) Sell, lease, or otherwise dispose of any property, real or personal, belonging to the Authority, according to the procedures described in Article 12 of Chapter 160A of the General Statutes, but no sale of real property shall be made without the express approval of the Board.

(6) Deposit or invest and reinvest any of its funds as provided in Chapter 159 of the General Statutes, as it may be amended from time to time.

(7) Purchase any of its own outstanding bonds or notes.

(8) Operate, own, lease, control, regulate, or grant to others, for a period not to exceed five years, with an option to renew the right to operate on Heritage Park any snack bars, vending machines, food and beverages dispensing outlets, advertising media, automobile parking facilities, and other types of facilities as may be directly related to the maintenance and furnishing of a complete parks and recreational facility to the public.

(9) Erect and construct buildings and other improvements and facilities not inconsistent with or in violation of the agreements applicable to and the grants under which real property of the Authority is held.

(10) Borrow money for use in the making and paying of these improvements and facilities, secured by and on the credit only of any lease agreements in respect to these improvements and facilities, and to pledge and assign leases and lease agreements as security for the authorized loans.

(11) Employ any agents or professionals whose services may be deemed by the Authority to be necessary and useful.

(12) Procure grants to allow for the installation of improvements upon real property.

(13) Have a corporate seal that may be altered at will.

(14) Contract with and accept grants from the State of North Carolina, the federal government, or any of the agencies or representatives of either said governmental bodies relating to the purchase of land and to the

grading, constructing, equipping, improving, maintaining, or operating of Heritage Park facilities.

SECTION 7.(b) The Avery County Board of Commissioners may appropriate funds as the Board of Commissioners deems necessary to carry out the provisions of this act in any proportion or upon any basis as may be determined by the Avery County Board of Commissioners. The Authority may make recommendations to the Avery County Board of Commissioners with respect to such appropriations.

SECTION 7.(c) The Authority shall possess the same exemptions in respect to payment of taxes and license fees and shall be eligible for sales and use tax refunds to the same extent as provided for municipal corporations by the laws of the State of North Carolina.

SECTION 7.(d) The Authority may acquire from the Board, and the Board may grant and convey, either by gift or for such consideration as the Board may deem appropriate, any real or personal property which it now owns or may hereafter acquire, which may be necessary for the construction, operation, and maintenance of Heritage Park facilities.

SECTION 7.(e) Any lands acquired, owned, controlled, or occupied by the Authority shall be, and are hereby declared to be acquired, owned, controlled, and occupied for a public purpose.

SECTION 8.(a) A copy of the ordinance creating the Authority and of any ordinance amending or repealing the joint resolution creating the Authority shall be filed with the following:

(1) The Secretary of State.
(2) The clerk to the Board.
(3) The Clerk of Superior Court of Avery County.
(4) A newspaper of general circulation in Avery County.

SECTION 8.(b) Unless an ordinance specifies a later date, it shall take effect when the ordinance has been submitted to the Secretary of State for filing. Certifications by the clerk of superior court of the text of any ordinance filed with that clerk are admissible in evidence.

SECTION 9.(a) Except as limited by restrictions in any ordinance and by other supervening provisions of law, the Authority may make regulations applicable to Heritage Park concerning all matters relating to or affecting the use of Heritage Park. These regulations may not conflict with or supersede provisions of general or special acts or of regulations of State agencies promulgated under the authority of general law. No regulations adopted under the provisions of this section may be adopted by the Authority except after public hearing, with publication of notice of the hearing in a newspaper of general circulation in the county at least 10 days before the hearing.

SECTION 9.(b) Violation of any regulation of the Authority commanding or prohibiting an act shall be a Class 3 misdemeanor.

SECTION 9.(c) The regulations promulgated under this section take effect upon passage or upon such dates as may be stipulated in the regulations except that no regulation may be enforced unless adequate notice of the regulation has been posted in Heritage Park. Ordinances providing regulations for specific areas shall clearly establish

the boundaries of the affected area by including a map of the regulated area, with the boundaries clearly drawn, by setting out the boundaries in a written description, or by a combination of these techniques. Adequate notice as to a regulation affecting only a particular location shall be given in the following manner. When a regulation applies generally as to Heritage Park, there must be a posting of notices, signs, or markers communicating the essential provisions in at least three different places throughout the area, and it shall be printed in a newspaper of general circulation in the county.

SECTION 9.(d) A copy of each regulation promulgated under this section must be filed by the Authority with the following persons:

(1) The Secretary of State.

(2) The Clerk of Superior Court of Avery County.

(3) The clerk to the Board.

SECTION 9.(e) Any official designated in subsection (d) of the section may issue certified copies of regulations filed with the official under the seal of the official's office. Such certified copies may be received in evidence in any proceeding.

SECTION 9.(f) Publication and filing of regulations promulgated under this section as required above are for informational purposes and is not a prerequisite to their validity if they in fact have been duly promulgated, the public has been notified as to the substance of the regulations, a copy of the text of all regulations is in fact available to any person who may be affected, and no party to any proceeding has been prejudiced by any defect that may exist with respect to publication and filing. Rules and regulations promulgated by the Authority under the provisions of other sections of this Article relating to internal governance of the Authority need not be filed or published. Where posting of any sign, notice, or marker, or the making of other communication is essential to the validity of a regulation duly promulgated, it is presumed in any proceeding that prior notice was given and maintained and the burden lies upon the party asserting to the contrary to prove lack of adequate notice of any regulation.

SECTION 10.(a) Where an ordinance so provides, all law enforcement officers, or those officers as may be designated in the ordinance, with territorial jurisdiction as to any part of Heritage Park within the limitations of their subject matter jurisdiction, have the authority of peace officers in enforcing the laws over all of Heritage Park. A certificate of training issued by the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriffs' Education and Training Standards Commission will suffice for certification for the purposes of this Article.

SECTION 10.(b) Where a law enforcement officer with jurisdiction over any part of Heritage Park is performing duties relating to the enforcement of the laws, the officer shall have such extraterritorial jurisdiction as may be necessary to perform the officer's duties. These duties include investigations of crimes an officer reasonably believes have been, or are about to be, committed within the area in question. This includes traversing by reasonable routes from one portion of this area to another although across territory not within the boundaries of Heritage Park; conducting prisoners in custody to a court or to detention facilities as may be authorized by law, although this may involve going outside the area in question; and execution of process

connected with any criminal offense alleged to have been committed within the boundaries in question, except that this process may not be executed by virtue of this provision beyond the boundaries of the two counties. This also includes continuing pursuit of and arresting any violator or suspected violator as to which grounds for arrest arose within the area in question.

SECTION 10.(c) Where law enforcement officers are given additional territorial jurisdiction under the provisions of this section, this shall be considered an extension of the duties of the office held and no officer shall take any additional oath or title of office.

SECTION 11. The Authority shall report annually to the Board regarding its operations and activities during the previous year and on any other matter requested by the Board.

SECTION 12. If one or more sections, clauses, sentences, or parts of this act shall be adjudged invalid, such judgment shall not affect, impair, or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision held invalid, and the inapplicability or invalidity of any section, clause, sentence, or part of this act in one or more instances or circumstances shall not be taken in affect or prejudice in any way its applicability or validity in any other instance.

SECTION 13. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H **2**

HOUSE BILL 1526

Committee Substitute Reported Without Prejudice 5/31/05

Short Title: Avery County/Heritage Park Authority. (Local)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO ENABLE THE COUNTY OF AVERY TO ESTABLISH THE HERITAGE PARK AUTHORITY FOR THE MAINTENANCE AND DEVELOPMENT OF THE HERITAGE PARK FACILITIES IN AVERY COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. There is hereby created the Heritage Park Authority ("Park Authority"). The Park Authority is a body politic and corporate having the powers and jurisdiction hereinafter enumerated and any other additional powers as shall be conferred upon it by general law and the future acts of the General Assembly.

SECTION 2. The Park Authority shall consist of nine members who shall be appointed to staggered terms of four years by the Avery County Board of Commissioners. All of the members shall be permanent residents of Avery County. Of the initial nine members, five shall be appointed to a term of four years and four shall be appointed to a term of two years. Thereafter, all terms shall be for four years, thus creating the staggered positions. Each member shall take and subscribe before the Clerk of the Superior Court of Avery County an oath of office and file the same with the Avery County Board of Commissioners. Upon the occurrence of any vacancy on the Park Authority, the vacancy shall be filled within 60 days after the vacancy occurs by the recommending entity upon approval of the Board of Commissioners. If the Authority fails to recommend a replacement to fill the vacancy within 60 days, the Board of Commissioners shall fill the vacancy at their next regular meeting.

SECTION 3.(a) The members of the Park Authority shall be appointed by the Avery County Board of Commissioners, as follows:

(1) One member shall be appointed upon the recommendation of the Avery County Agricultural and Horticultural Fair, Inc., a nonprofit corporation.

(2) One member shall be appointed from the Avery County Recreational Advisory Commission.

(3) The Towns of Banner Elk, Beech Mountain, Crossnore, Elk Park, Newland, and Sugar Mountain shall each nominate one member.

(4) The southern portion of Avery County shall recommend one member, with that nomination to be determined by the Frank and Green Valley Fire Departments.

No member of the Avery County Board of Commissioners may serve on the Park Authority Board. In the event that the Avery County Agricultural and Horticultural Fair, Inc., becomes nonexistent, then the Park Authority Board will have only eight members.

SECTION 3.(b) The Park Authority shall elect from among its members a Chair, a Secretary, and a Treasurer at its initial meeting and then annually thereafter. A majority of the Park Authority shall control its decisions. Each member of the Park Authority, including the Chair, shall have one vote. The Park Authority shall meet at the places and times designated by the Chair and shall be subject to the Open Meetings Law.

SECTION 3.(c) The Park Authority may adopt suitable bylaws for its management, subject to approval of the Avery County Board of Commissioners. The members of the Park Authority shall receive no compensation or per diem, but shall be allowed and paid their actual traveling expenses incurred in transacting the official business of the Park Authority.

SECTION 4. The Park Authority shall have the following powers and authority:

(1) To purchase, acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate Heritage Park facilities for the use of the general public within Avery County for the purpose to purchase, improve, own, hold, lease, or operate real or personal property.

(2) To sue and to be sued in the name of the Park Authority, to make contracts and hold any personal property necessary for the exercise of the powers of the Park Authority, and to acquire by purchase, lease, or otherwise any existing lease or leasehold right.

(3) To charge and collect reasonable and adequate fees and rents for the use of the Heritage Park facilities or for services rendered in the operation of the facilities. Revenues from fees and rents shall be used only for upkeep and operation of Heritage Park.

(4) To make all reasonable rules and regulations it deems necessary for the proper maintenance, use, operation, and control of Heritage Park facilities and to provide and enforce penalties for the violation of these rules and regulations; provided, however, that the rules and regulations and schedules of fees shall not be in conflict with the laws of the State of North Carolina.

(5) To sell, lease, or otherwise dispose of any property, real or personal, belonging to the Park Authority, according to the procedures described in Article 12 of Chapter 160A of the General Statutes, but no sale of

real property shall be made without the express approval of the Avery County Board of Commissioners.

(6) To deposit or invest and reinvest any of its funds as provided by the Local Government Finance Act, as it may be amended from time to time.

(7) To purchase any of its own outstanding bonds or notes.

(8) To operate, own, lease, control, regulate, or grant to others, for a period not to exceed five years, with an option to renew the right to operate on the Heritage Park facilities any snack bars, vending machines, food and beverages dispensing outlets, advertising media, automobile parking facilities, and other types of facilities as may be directly related to the maintenance and furnishing of a complete parks and recreational facility to the public.

(9) To erect and construct buildings and other improvements and facilities not inconsistent with or in violation of the agreements applicable to and the grants under which real property of the Park Authority is held.

(10) To lease their improvements and facilities for a term or terms not to exceed five years, with an option to renew at the termination of the lease.

(11) To borrow money for use in the making and paying of these improvements and facilities, secured by and on the credit only of any lease agreements in respect to these improvements and facilities, and to pledge and assign leases and lease agreements as security for the authorized loans.

(12) To procure grants to allow for the installation of improvements upon real property.

(13) To have a corporate seal which may be altered at will.

SECTION 5. The Park Authority shall possess the same exemptions in respect to payment of taxes and license fees and shall be eligible for sales and use tax refunds to the same extent as provided for municipal corporations by the laws of the State of North Carolina.

SECTION 6. The Park Authority may acquire from Avery County, by agreement with the County, and the County may grant and convey, either by gift or for such consideration as the County may deem appropriate, any real or personal property which it now owns or may hereafter acquire, which may be necessary for the construction, operation, and maintenance of Heritage Park facilities.

SECTION 7. Any lands acquired, owned, controlled, or occupied by the Park Authority shall be, and are hereby declared to be acquired, owned, controlled, and occupied for a public purpose.

SECTION 8. Subject to the limitations as set out in this act, all rights and powers given and granted to counties and municipalities by general law, which may now be in effect, or enacted in the future relating to the development, regulation, and control of Heritage Park facilities, are vested in the Park Authority. The Avery County Board of Commissioners may delegate its powers under these acts of the Park

Authority, and the Park Authority shall have concurrent rights with Avery County to control, regulate, and provide for the development of Heritage Park in Avery County.

SECTION 9. The Park Authority may contract with and accept grants from the State of North Carolina, the federal government, or any of the agencies or representatives of either said governmental bodies relating to the purchase of land and to the grading, constructing, equipping, improving, maintaining, or operating of Heritage Park.

SECTION 10. The Park Authority may employ any agents or professionals whose services may be deemed by the Park Authority to be necessary and useful in carrying out the provisions of this act.

SECTION 11. The Avery County Board of Commissioners may appropriate funds as the Board of Commissioners deems necessary to carry out the provisions of this act in any proportion or upon any basis as may be determined by the Avery County Board of Commissioners. The Park Authority may make recommendations to the Avery County Board of Commissioners with respect to such appropriations.

SECTION 12. The Park Authority may expend the funds that are appropriated by the County and may pledge the credit of the Park Authority only to the extent of the appropriate funds.

SECTION 13. The Park Authority shall not have the power to pledge the credit of Avery County, or any subdivision thereof, or to impose any obligation upon Avery County or any of its subdivisions except when the power is expressly granted by statute.

SECTION 14. The Park Authority shall make an annual report to the Avery County Board of Commissioners in July of each year setting forth in detail the operations and transactions conducted by it pursuant to this act.

SECTION 15. The powers granted to the Park Authority shall not be effective until the members of the Park Authority have been appointed by the Avery County Board of Commissioners, and nothing in this act shall require the Board of Commissioners to make the initial appointments. It is the intent of this act to enable, but not require, the formation of the Avery County Parks and Recreational Authority.

SECTION 16. If one or more sections, clauses, sentences, or parts of this act shall be adjudged invalid, such judgment shall not affect, impair, or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision held invalid, and the inapplicability or invalidity of any section, clause, sentence, or part of this act in one or more instances or circumstances shall not be taken in affect or prejudice in any way its applicability or validity in any other instance.

SECTION 17. This act is effective when it becomes law.

HOUSE BILL 1526:
Avery County/Heritage Park Authority

BILL ANALYSIS

Committee:	House Finance	**Date:**	August 22, 2005
Introduced by:	Reps. Frye, Jones	**Summary by:**	Cindy Avrette
Version:	PCS to Second Edition H1526-CSST-81		Committee Counsel

SUMMARY: ***The proposed committee substitute for House Bill 1526 would allow the Avery County Board of Commissioners to create an authority that could acquire the property known as "Heritage Park" and operate and maintain the facilities on that property. The bill would become effective when it becomes law. The original bill, sponsored by Rep. Frye, would have eliminated the automobile insurance comprehensive deductible on motor vehicle windshield glass.***

BILL ANALYSIS: There is approximately 52 acres of property in Avery County known as "Heritage Park". The property has some facilities on it and is used by the county for certain purposes, including its Agricultural and Horticultural Fair. This bill would establish an authority that would have the ability to acquire the property and to improve, maintain, operate, and regulate the facilities on that property. The Authority would have the ability to charge and collect fees and rents for the use of the facilities as well as borrow money for use in improving the facilities. The Authority may make regulations concerning Heritage Park and law enforcement officers with jurisdiction of the Park may enforce those regulations. A violation of a regulation of the Authority would be a Class 3 misdemeanor. The Avery County Board of Commissioners may appropriate funds to the Authority and the Authority is entitled to the same exemptions in respect to payment of taxes as municipal incorporations.

The Authority may be created by ordinance of the Board of Commissioners of Avery County after notice and public hearing. Upon creation of the Authority, the Board must appoint a nine-member governing body for the Authority. To be eligible to serve on the governing body, a person must maintain a permanent residence in Avery County. A majority of the Authority shall control its decisions. The members of the governing body would serve four-year staggered terms. A member could not serve more than two consecutive terms. The members would not receive compensation or per diem, but they may be allowed their actual traveling expenses. The members of the governing body of the Authority must be appointed as follows:

- One member upon the recommendation of the Avery County Agricultural and Horticultural Fair, Inc. (If the Avery County Agricultural and Horticultural Fair, Inc. becomes nonexistent, then the governing body of the Authority shall have only eight members.)
- One member must be appointed from the Avery County Recreational Advisory Commission.
- One member from the southern portion of Avery County upon the recommendation of the Frank and Green Valley Fire Departments.
- Six members representing the municipalities in Avery County. The Board must appoint the members upon the recommendation of each of the following Board of Commissioners: Banner Elk, Beech Mountain, Crossnore, Elk Park, Newland, and Sugar Mountain.

EFFECTIVE DATE: The bill would become effective when it becomes law.

H1526e2-SMRB-CSST

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

HB 1526 A BILL TO BE ENTITLED AN ACT TO ENABLE THE COUNTY OF AVERY TO ESTABLISH THE HERITAGE PARK AUTHORITY FOR THE MAINTENANCE AND DEVELOPMENT OF THE HERITAGE PARK FACILITIES IN AVERY COUNTY.

☒ With a favorable report as to the Committee Substitute Bill #2, which changes the title, unfavorable as to Committee Substitute Bill #1.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H **D**

HOUSE BILL 1610
PROPOSED COMMITTEE SUBSTITUTE H1610-CSLAx-28 [v.2]

8/22/2005 6:30:16 PM

Short Title: Incorporate Rougemont. (Local)

Sponsors:

Referred to:

May 9, 2005

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF ROUGEMONT.

The General Assembly of North Carolina enacts:

SECTION 1. A Charter for the Town of Rougemont is enacted to read:

"CHARTER OF THE TOWN OF ROUGEMONT.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Rougemont are a body corporate politic under the name 'Town of Rougemont'. Under that name they shall have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"ARTICLE II. CORPORATE BOUNDARIES.

"Section 2.1. **Town Boundaries.** Until modified in accordance with the law, the boundaries of the Town of Rougemont are as follows:

Beginning at the intersection of the Flat River and Red Mountain Road, thence in an easterly direction following the Flat River north and west to the northeast corner of PIN 190702, thence in a southerly direction along the eastern boundary of aforementioned parcel, thence in a westerly direction along the southern boundary of aforementioned parcel, thence in a northerly direction along the eastern boundary of PIN 190703, thence in a westerly direction along the northern boundaries of aforementioned parcel and PIN 190701 to the eastern boundary of PIN 196596, thence in a northerly direction along the western boundary of PIN 190700, thence in an easterly direction along the northern boundary of aforementioned property to the Flat River, thence in a northerly, westerly, and southwesterly direction following the Flat River to the northeast corner of PIN 190725, thence in a southerly direction along the eastern boundary of aforementioned parcel, thence in a westerly direction following Bowen Road to its intersection with Moore's Mill Road, thence in a southerly direction along Moore's Mill Road to the northeast corner of PIN 190584, thence in a westerly direction along the northern boundary of aforementioned parcel, thence in a southern direction along the western

boundary of aforementioned parcel, thence in a westerly direction along the southern boundary of PIN 190585, thence in a northerly direction along the western boundaries of PIN 190585, PIN 190586, PIN 190717, PIN 190715, PIN 190714, PIN 190712, and PIN 190713 to the Durham/Person County line, thence in a westerly direction following the Durham/Person County line to the northwest corner of PIN 190783, thence in a southerly direction along the western boundaries of PIN 190783, PIN 190784, PIN 190785, PIN 190786, PIN 190787 and PIN 190788, thence in a westerly direction and along the northern boundaries of PIN 190788 and PIN 190803, thence in a southerly direction along the eastern boundary of PIN 189591 to the northwest corner of PIN 189592, thence in an easterly direction along the northern boundary of PIN 189592, thence in a southerly direction along the eastern boundary of aforementioned parcel, thence in a westerly direction along the southern boundary of aforementioned parcel to PIN 189593, thence in a southerly direction along the eastern boundary of PIN 189593, thence in a westerly direction along the southern boundary of PIN 189593 and the northern boundary of PIN 190812, thence in a southerly direction along the eastern boundaries of PIN 189594 and PIN 189595, thence in a westerly direction along the southern boundary of PIN 189595, thence in a northerly direction along the western boundary of aforementioned parcel and continuing northerly along the western boundary of PIN 189594 to PIN 189599, thence in an easterly direction along the southern boundary of aforementioned parcel, thence in a northerly direction along the eastern boundary of aforementioned parcel, thence in a westerly direction along the northern boundary of aforementioned parcel, thence in a northerly direction along the western boundaries of PIN 189590 and PIN 189589 to Harris Mill Road, thence in a northerly direction along the eastern boundary of the Norfolk Southern railroad right-of-way to the Durham/Person County line. Thence in a westerly direction along the Durham/Person County line to the western right-of-way of U.S. Highway 501, thence in a southerly direction along the western right-of-way of U.S. 501 to PIN 189580, thence in an easterly direction along the southern boundary of PIN 189580 to the northwest corner of PIN 189542, thence, in a southerly direction along the western boundary of PIN 189542, thence in an easterly direction along the southern boundary of aforementioned parcel to the western boundary of right-of-way of U.S. 501, thence in a southerly direction along the western boundary of U.S. 501 right-of-way to the northeast corner of PIN 189662, thence in a westerly direction along the northern boundary of PIN 189662, thence in an easterly direction along the southern boundary of aforementioned parcel to the western boundary of the U.S. 501 right-of-way, thence in a southerly direction along the western boundary of U.S. 501 right-of-way to northeast corner of PIN 189657, thence in a southwesterly direction along the northern boundary of aforementioned parcel, thence in a southeasterly direction along the western boundary of aforementioned parcel, thence in a westerly direction along the northern boundary of PIN 189656, thence in a southerly direction along the western boundaries of PIN 189656 and 189655, thence in a westerly direction along the northern boundaries of PIN 189654 and 189636, thence in a southerly direction along the western boundary of PIN 189636, thence in a westerly direction along the northern boundary of PIN 189653, thence in a northwesterly direction along the eastern boundary of PIN 189665,

thence in a westerly direction along the northern boundary of aforementioned parcel, thence in a southerly direction along the western boundary of aforementioned parcel to the northern right-of-way of Bacon Road, thence in a westerly direction along the northern right-of-way of Bacon Road to the intersection of the southern section (between Bacon Road and Bill Poole Road) of Chambers Road, thence in a southerly direction along the western boundary of the right-of-way of Chambers Road to the northeast corner of PIN 189521, thence in a westerly direction along the northern boundary of the aforementioned parcel, thence in a southerly direction along the western boundary of aforementioned parcel, thence in an easterly direction along the southern boundary of aforementioned parcel to the western boundary of the Chambers Road right-of-way, thence in a southerly direction along the western boundary of the Chambers Road right-of-way to the northeast corner of PIN 189519, thence in a westerly direction along the northern boundary of the aforementioned parcel, thence in a southerly direction along the western boundary of aforementioned parcel, thence in a westerly direction along the northern boundary of PIN 189517, thence in a southerly direction along the western boundary of aforementioned parcel, thence in an easterly direction along southern boundary of aforementioned parcel to the western boundary of the Chambers Road right-of-way, thence in a southerly direction along the western boundary of the Chambers Road right-of-way to the northeast corner of PIN 189515, thence in a westerly direction along the northern boundary of aforementioned parcel, thence in a southerly direction along the eastern boundary of PIN 189511 to the northern boundary of the Cothran Road right-of-way, thence in a westerly direction along the northern boundary of the Cothran Road right-of-way to southeast corner of PIN 189507, thence in a northerly direction along the eastern boundary of aforementioned parcel, thence in a westerly direction along the northern boundary of aforementioned parcel, thence in a southerly direction along the western boundary of aforementioned parcel and PIN 189484, thence in an easterly direction along the southern boundary of PIN 189484, thence in a southerly direction along the western boundaries of PIN 189483, PIN 189488, and PIN 189489 to the northern boundary of the Bill Poole Road right-of-way, thence in a southwesterly direction along northern boundary of the Bill Poole right-of-way to its intersection with Rougemont Road, thence in a southerly direction along the western boundary of the Rougemont Road right-of-way to the southwest corner of PIN 189890. Thence in an easterly direction along the southern boundary of aforementioned parcel, thence in a northerly direction along the eastern boundary of aforementioned parcel, thence in an easterly direction along the southern boundary of PIN 189498, thence in a southeasterly direction along the western boundary of PIN 189494, thence in an easterly direction along the southern boundary of aforementioned parcel, thence in a northerly direction along the eastern boundaries of aforementioned parcel and PIN 189493, thence in an easterly direction along the southern boundaries of PIN 189885 and PIN 189886 to the western boundary of the Harris Road right-of-way, thence in a northerly direction along the western boundary of the right-of-way of Harris Road to the northern boundary of the Bill Poole Road right-of-way, thence in a northeasterly direction along the northern right-of-way of Bill Poole Road to the southeastern corner of PIN 189884, thence in a northwesterly

direction along the eastern boundary of aforementioned parcel, thence in a southwesterly direction along the northern boundaries of aforementioned parcel to PIN 189879, thence in a northwesterly direction along the eastern boundary of aforementioned parcel, thence in a northerly direction along the western boundary of parcel 189848, thence in an easterly direction along the northern boundary of aforementioned parcel, thence in a southerly direction along the eastern boundary of aforementioned parcel, thence in a southwesterly direction along the northwest boundary of PIN 197183, thence in a southeasterly direction along the southwest boundary of aforementioned parcel and crossing Bill Poole Road, thence in a westerly direction along the southern right-of-way of Bill Poole Road to the western boundary of PIN 189847, thence in a southerly direction along the western boundary of aforementioned parcel, thence in an easterly direction along the southern boundary of aforementioned parcel and continuing in an easterly direction along the southern boundaries of parcels through PIN 189831 to the northwest corner of PIN 189830, thence in a southerly direction along the western boundary of aforementioned parcel, thence in an easterly direction along the southern boundary of aforementioned parcel to the western right-of-way of U.S. 501, thence in a southerly direction along the western boundary of the U.S. 501 right-of-way to PIN 189824, thence in a westerly direction along the northern boundary of aforementioned parcel, thence in a southerly direction along the eastern boundaries of PIN 189834, PIN 189835, and PIN 189867, thence in a southeasterly direction along the northern boundary of PIN 190517, thence in a southeasterly direction along the southwest boundary of PIN 190513, thence in a northeasterly direction along the southeast boundary of aforementioned parcel to the western right-of-way of U.S. 501. Thence crossing U.S. 501 and continuing along the southeastern boundary of PIN 190530, thence in a northwesterly direction along the northeast boundary of aforementioned parcel, thence in a southwesterly direction along the northwestern boundary of aforementioned parcel to the northeastern boundary of the U.S. 501 right-of-way, thence in a northwesterly and then northerly direction along the eastern right-of-way of U.S. 501 to the southwestern corner of PIN 189820, thence in a northeasterly direction along the southeastern boundary of aforementioned parcel to the western boundary of the Norfolk Southern railroad right-of-way, thence in a southerly direction along the western boundary of the Norfolk Southern railroad right-of-way to the southwest corner of PIN 189793, thence in an easterly direction along the southern boundary of aforementioned parcel, thence in a southeasterly direction along the northeastern boundary of PIN 190625, thence in a southerly direction along the northeastern boundary of PIN 190512, thence in a southeasterly and then easterly direction along the northern boundary of aforementioned parcel to the southeast corner of PIN 190645, thence in a northerly direction along the eastern boundary of aforementioned parcel to the southern right-of-way of Lake Winds Trail, thence in an easterly direction along the southern right-of-way of Lake Winds Trail, thence in a southerly direction along the western boundary of PIN 190644, thence in an easterly direction along the southern boundary of aforementioned parcel and continuing in an easterly direction to the western right-of-way of Moores Mill Road, thence in a northerly direction crossing Lake Winds Trail to the northeast corner of PIN 190663,

thence in a westerly direction along the northern boundary of aforementioned parcel and continuing in a westerly direction to the northwest corner of PIN 190677, thence in a southerly direction along the western boundary of aforementioned parcel to the northern right-of-way of Lake Winds Trail, thence in a westerly direction along the northern right-of-way of Lake Winds Trail to the southeastern corner of PIN 190665, thence in a northerly direction along the eastern boundary of aforementioned parcel, thence in a westerly direction along the northern boundary of aforementioned parcel and continuing to the northeastern boundary of PIN 190671, thence in a northerly direction and continuing to the northeast corner of PIN 190627 (located north of PIN 190628), then in a westerly direction along the northern boundary of aforementioned parcel and continuing in a westerly direction to PIN 190697, thence in a northeasterly direction along the eastern boundary of aforementioned parcel, thence in a northwesterly direction along the northeastern boundary of aforementioned parcel, thence in a southwesterly direction along the northwestern boundary of aforementioned parcel, thence in a northwesterly direction along the eastern right-of-way of Lake Winds Trail, thence in a southwesterly direction crossing Lake Winds Trail and continuing to the northwest corner of PIN 190688, thence in a southeasterly direction along the western boundary of aforementioned parcel, thence in a westerly direction along the northern boundary of PIN 190627 (located west of PIN 190688) to the southeast corner of PIN 189793, thence in a northerly direction along the eastern boundary of aforementioned parcel and continuing to the southwest corner of PIN 190638, thence in an easterly direction along the southern boundary of aforementioned parcel and continuing in an easterly direction to the northwest corner of PIN 190629, thence in a southerly direction along the western boundary of aforementioned parcel, then in an easterly direction along the southern boundary of aforementioned parcel to the western right-of-way of Moores Mill Road, thence in a northerly direction along the western right-of-way of Moores Mill Road to the northwest corner of PIN 190706, thence in an easterly direction along the northern boundary of aforementioned parcel, thence in a southerly direction along the eastern boundary of aforementioned parcel and continuing across Red Mountain Road along the western boundary of PIN 190587, thence in an easterly direction along the southern boundary of aforementioned parcel, thence in a northerly direction along the eastern boundary of aforementioned parcel, thence in an easterly direction along the southern boundary of PIN 190704 and continuing in an easterly direction to the Flat River, thence in a northerly and northeasterly direction along the Flat River to the bridge over the Flat River on Red Mountain Road. PIN 190576 and PIN 189728 are located within the contiguous outer boundaries of the Town of Rougemont, but are excluded from the municipality of Rougemont.

"ARTICLE III. GOVERNING BODY.

"Section 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Town of Rougemont is the Mayor and Town Council, which shall consist of four members.

"Section 3.2. **Temporary Officers.** Until the organizational meeting after the initial election in 2005 provided for by Section 4.1 of this Charter, Paula Hawkins, Linwood Hedspeth, James Horton, Jean Laws, and Denise Smith are appointed

members of the Town Council, and they shall possess and exercise the powers granted to the governing body until their successors are elected or appointed and qualified pursuant to this Charter. The temporary officers shall elect a person from among the members of the temporary governing body to serve as interim mayor. If any person named in this section is unable to serve, the remaining temporary officers shall, by majority vote, appoint a person to serve until the initial municipal election is held in 2005.

"Section 3.3. **Manner of Electing Town Council**. The qualified voters of the entire Town shall elect the members of the Town Council and, except as provided in this section, they shall serve four-year terms. In 2005, the three candidates receiving the highest numbers of votes shall be elected to four-year terms and the two candidates receiving the next highest numbers of votes shall be elected to two-year terms. In 2007, and quadrennially thereafter, two members shall be elected to four-year terms. In 2009, and quadrennially thereafter, three members shall be elected to four-year terms.

"Section 3.4. **Manner of Electing Mayor; Term of Office; Duties**. At the organizational meeting following each municipal election, the Town Council shall elect one of its members as Mayor, and the Mayor shall serve at the pleasure of the Town Council. The Mayor shall be the official head of Town government, shall preside at all meetings of the Town Council, shall have the right to vote only when there is an equal division on any question or matter before the Town Council, and shall exercise the powers and duties conferred by law or as directed by the Town Council.

"Section 3.5. **Residency Requirement**. Members of the governing body of the Town of Rougemont, whether elected or appointed, must be qualified voters who reside within the corporate limits of the Town in order to qualify to take, hold, and continue in office.

"ARTICLE IV. ELECTIONS.

"Section 4.1. **Conduct of Town Elections**. Elections shall be conducted on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

"Section 4.2. **Special Elections and Referenda**. Special elections and referenda may be held only as provided by the general law of North Carolina, local acts of the General Assembly, or as provided for in this Charter.

"ARTICLE V. ADMINISTRATION.

"Section 5.1. **Town to Operate Under Mayor-Council Plan**. The Town shall operate under the Mayor-Council form of government as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Section 5.2. **Town Attorney**. The Town Council shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, advise Town officials, and perform other duties as required by law or as directed by the Town Council.

"Section 5.3. **Town Clerk**. The Town Council shall appoint a Town Clerk who shall perform duties as required by law or as directed by the Town Council. The Town Clerk shall serve at the pleasure of the Town Council.

"Section 5.4. **Other Officers and Employees.** The Town Council may appoint other officers and positions as deemed appropriate, subject to the requirements of general law.

"Section 5.5. **Consolidation of Functions.** Where positions are not incompatible, the Town Council may combine in one person the powers and duties of two or more officers created or authorized by this Charter.

"Section 5.6. **Compensation for Mayor and Town Council Members.** The Mayor and members of the Town Council shall be reimbursed for ordinary and necessary expenses and may receive salary and honoraria only upon a majority vote of the qualified voters of the Town who vote on the question in a special referendum.

"ARTICLE VI. TAXES AND BUDGET ORDINANCE.

"Section 6.1. **Powers of the Town Council.** The Town Council may levy those taxes and fees authorized by general law. An affirmative vote equal to a majority of all the members of the Town Council shall be required to change the ad valorem tax from that rate established during the prior fiscal year.

"Section 6.2. **Budget.** The Town may adopt a budget ordinance for fiscal year 2005-2006 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 2005-2006, ad valorem taxes may be paid at par or face amount within 90 days of the adoption of the budget ordinance and thereafter in accordance with the schedule in G.S. 105-360. No ad valorem taxes may be levied for the 2004-2005 fiscal year.

"Section 6.3. **Ad Valorem Taxes.** The Town Council shall not increase the ad valorem tax rate more than $0.05/$100.00 valuation, except for fire protection services, above the ad valorem tax rate established on the date of incorporation of the Town of Rougemont without the vote or consent of a majority of the qualified voters of the Town of Rougemont. The election on the question of increasing the ad valorem tax rate shall be conducted in accordance with G.S. 160A-209.

"ARTICLE VII. ORDINANCES.

"Section 7.1. **Ordinances.** Except as otherwise provided in this Charter, the Town of Rougemont is authorized to adopt such ordinances as the Town Council deems necessary for the governance of the Town.

"ARTICLE VIII. MISCELLANEOUS.

"Section 8.1. **Enlargement of Town Council.** The qualified voters of the Town of Rougemont may seek to enlarge the number of members of the Town Council by submitting a petition to that effect signed by twenty percent (20%) of the qualified voters. Upon the passage of a resolution as provided in G.S. 160A-102 or upon receipt of a valid petition, the Town Council shall immediately take steps as provided in Part 4 of Article 5 of Chapter 160A of the General Statutes to determine by referendum whether the number of members of the Town Council should be increased. If a majority of the votes cast in the referendum are in the affirmative, a special election shall be held at the earliest possible date to elect the additional members required to enlarge the Town Council to the number set forth in the referendum.

"Section 8.2. **Amendments to Charter.** The Town Council may propose and enact amendments to this Charter in accordance with Part 4 of Article 5 of Chapter 160A of the General Statutes. No amendment to this Charter shall become effective until public notice is given and a public hearing is held to receive comments on the proposed Charter amendment. Notwithstanding G.S. 160A-103, upon receipt of a referendum petition bearing the signatures and residence addresses of twenty percent (20%) of the qualified voters of the Town, the Town Council shall submit ordinances adopted under G.S. 160A-102 to a vote of the people.

"Section 8.3. **Provision of Services and Administration of Functions.** The Town Council may enter into agreements with other governmental bodies and private enterprises for the provision of services and administration of corporate functions in order to provide the services and administer the functions in the most efficient and cost-effective manner.

"Section 8.4. **Conflict of Interest.** No person, or a member of the person's immediate family, who is employed by or is an official of the Town of Rougemont shall do business with the Town unless the Town Council specifically approves the activity. All appointed officials of the Town must inform the Town Council of any conflicts of interest and the failure to so inform shall constitute grounds for immediate dismissal for cause. No official of the Town may accept any gratuity from any business, person, or other official if the gratuity is related to his or her official duties.

"Section 8.5. **Nepotism.** No person who is an immediate family member of an elected official of the Town of Rougemont shall be appointed to or employed in a position within Town government unless the appointment or employment is approved by the entire Town Council.

"Section 8.6. **Annexation.** The Town of Rougemont shall not extend its boundaries into an adjoining county.

"ARTICLE IX. SPECIAL PROVISIONS.

"Section 9.1. **Fire Protection.** The Town of Rougemont shall contract with the Bahama Volunteer Fire, Rescue, and EMS Company, Inc. to provide fire protection for the Town. The contract terms and amount paid by the Town of Rougemont to the Bahama Volunteer Fire, Rescue, and EMS Company, Inc. shall be mutually agreed upon and annually renewed by the Board of Directors of the Bahama Volunteer Fire, Rescue, and EMS Company, Inc. and the Town Council.

"Section 9.2. **Safety Protection.** The Town of Rougemont shall contract with the Durham County Sheriff's Department to provide safety protection for the Town. The contract terms and amount paid by the Town of Rougemont to the Durham County Sheriff's Department shall be mutually agreed upon and annually renewed by the Durham County Commissioners and the Town Council.

"Section 9.3. **Impact Fees.** The Town of Rougemont shall not impose impact fees without the vote of a majority of the qualified voters of the Town of Rougemont."

SECTION 2. The Durham County Board of Elections shall conduct an election on a date set by the Board, to be not less than 60 nor later than 120 days after this act becomes law, for the purpose of submission to the qualified voters for the area described in Section 2.1 of the Charter of the Town of Rougemont the question of

whether or not the area shall be incorporated as the Town of Rougemont. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

SECTION 3. In the election, the question on the ballot shall be:

"[ ]FOR [ ]AGAINST
Incorporation of the Town of Rougemont."

SECTION 4. In the election, if a majority of the votes are cast "For the Incorporation of the Town of Rougemont", Section 1 of this act shall become effective on the date that the Durham County Board of Elections certifies the results of the election. Otherwise, Section 1 of this act shall have no force and effect.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1610

Short Title:	Roxboro Uptown Dev. Corp. Funds.	(Public)
Sponsors:	Representative Wilkins.	
Referred to:	Appropriations.	

May 9, 2005

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS TO THE ROXBORO UPTOWN DEVELOPMENT CORPORATION.

The General Assembly of North Carolina enacts:

SECTION 1. There is appropriated from the General Fund to the Roxboro Uptown Development Corporation, a nonprofit organization, the sum of five thousand dollars ($5,000) for the 2005-2006 fiscal year to enhance its Merritt-Kane Pavilion.

SECTION 2. This act becomes effective July 1, 2005.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 1610 A BILL TO BE ENTITLED AN ACT TO APPROPRIATE FUNDS TO THE ROXBORO UPTOWN DEVELOPMENT CORPORATION.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 505
Finance Committee Substitute Adopted 8/9/05

Short Title: Medical Examiner Fee Increase.-AB (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE FEE PAID TO LOCAL MEDICAL EXAMINERS FOR EACH INVESTIGATION CONDUCTED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-387 reads as rewritten:

"**§ 130A-387. Fees.**

For each investigation and prompt filing of the required report, the medical examiner shall receive a fee paid by the State. However, if the deceased is a resident of the county in which the death or fatal injury occurred, that county shall pay the fee. The fee shall be ~~seventy-five dollars ($75.00)~~ one hundred dollars ($100.00)."

SECTION 2. This act is effective when it becomes law and applies to deaths investigated on or after that date.

SENATE BILL 505:
Medical Examiner Fee Increase.-AB

BILL ANALYSIS

Committee:	House Finance	**Date:**	August 23, 2005
Introduced by:	Sen. Purcell	**Summary by:**	Ashley Huffstetler
Version:	Second Edition		Bill Drafting

SUMMARY: Senate Bill 505 increases from $75 to $100 the fee paid to medical examiners for each investigation and report.

CURRENT LAW: The North Carolina Medical Examiner System is a network of over 600 medical doctors throughout North Carolina who investigate deaths of a suspicious, unusual or unnatural nature.

The Office of the Chief Medical Examiner of the State of North Carolina (OCME) is a division of the NC Department of Health and Human Services. The OCME also functions as the Division of Forensic Pathology of the UNC School of Medicine Department of Pathology. The Chief Medical Examiner appoints one or more county medical examiners for each county for a three-year term.

Upon the death of any person resulting from violence, poisoning, accident, suicide or homicide; occurring suddenly when the deceased had been in apparent good health; occurring in jail or prison; occurring by State execution, or occurring under any suspicious, unusual or unnatural circumstance, the medical examiner must be notified. Upon being notified, the medical examiner must take charge of the body, make inquiries regarding the cause and manner of death, and promptly report his findings in writing to the Chief Medical Examiner. The completed report must be mailed by the local medical examiner to the state Office of the Chief Medical Examiner within 14 days of the time the local medical examiner assumes jurisdiction of a dead body.

A medical examiner receives a fee of $75.00 for each investigation and filing of the required report. The fee is paid by the State, unless the deceased is a resident of the county in which the death or fatal injury occurred, in which case the county pays the fee.

BILL ANALYSIS: Senate Bill 505 would increase the fee from $75 to $100.

EFFECTIVE DATE: The act would become effective when it becomes law, and apply to fees paid for deaths investigated on or after that date.

BACKGROUND: This fee was last increased in 1991 from $50.00 to $75.00.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 505 (Second Edition)

SHORT TITLE: Medical Examiner Fee Increase.-AB

SPONSOR(S): Senator Purcell

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund		**No Impact to General Fund**			
OCME	**$232,125**	**$238,025**	**$244,100**	**$250,300**	**$256,675**
EXPENDITURES:					
General Fund		**No Impact to General Fund**			
DHS	**$44,150**	**$45,025**	**$45,925**	**$46,825**	**$47,750**
County governments	**$187,975**	**$193,000**	**$198,175**	**$203,475**	**$208,925**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Office of the Chief Medical Examiner, DHS, county governments

EFFECTIVE DATE: July 1, 2005

BILL SUMMARY: Senate Bill 505 raises the fee paid to medical examiners for a postmortem investigation and report from $75 to $100.

ASSUMPTIONS AND METHODOLOGY: The Office of the Chief Medical Examiner (OCME) is a division of the Department of Health and Human Services. The OCME maintains a network of 600 medical doctors throughout North Carolina who voluntarily devote their time to investigate deaths of a suspicious, unusual or unnatural nature. Under current law, the medical examiner receives a $75 fee paid by the State unless the deceased is a resident of the county in which the death or fatal injury occurred. If the deceased is a resident of the county in which they are found, the county pays the fee. No fee is paid to the Mecklenburg County medical examiner

who examines the death of a Mecklenburg County resident, and no fee is paid to the OCME or the Mecklenburg County Medical Examiner when the state, not the county, is liable for the $75 fee.

Based on historical data, the projected number of medical examiner cases is shown below, followed by the estimated increase in total revenue from the $25 increase over the current $75 fee.

Projected number of medical examiner cases					
Number of cases	2005-06	2006-07	2007-08	2008-09	2009-10
Cases paid by counties	7,519	7,720	7,927	8,139	8,357
Cases paid by state	1,766	1,801	1,837	1,873	1,910
No payment	918	965	1,014	1,065	1,119
Total	**10,203**	**10,486**	**10,778**	**11,077**	**11,386**

Projected new fee revenues from Senate Bill 505					
	2005-06	2006-07	2007-08	2008-09	2009-10
Paid by counties	$ 187,975	$ 193,000	$ 198,175	$ 203,475	$ 208,925
Paid by state	$ 44,150	$ 45,025	$ 45,925	$ 46,825	$ 47,750
No payment	$ -	$ -	$ -	$ -	$ -
Total	**$ 232,125**	**$ 238,025**	**$ 244,100**	**$ 250,300**	**$ 256,675**

SOURCES OF DATA: Office of the Chief Medical Examiner

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brenna Erford and Rodney Bizzell

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: August 9, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

SB 505 A BILL TO BE ENTITLED AN ACT TO INCREASE THE FEE PAID TO LOCAL MEDICAL EXAMINERS FOR EACH INVESTIGATION CONDUCTED.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 990
PROPOSED COMMITTEE SUBSTITUTE H990-CSLA-27 [v.2]

8/20/2005 2:14:51 PM

Short Title: Definition of Farmer for Sales and Use Tax. (Public)

Sponsors:

Referred to:

March 30, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DEFINITION OF FARMER FOR PURPOSES OF APPLYING THE SALES AND USE TAX EXEMPTION TO ITEMS SOLD TO FARMERS AND TO EXPAND THE EXEMPTION TO INCLUDE ITEMS SOLD TO LESSORS OF FARMLAND.

The General Assembly of North Carolina enacts:

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

"(9a) Farmer. – A dairy operator, poultry farmer, egg producer, livestock farmer, crop farmer, nursery operator, greenhouse operator, orchardist, a farmer of an aquatic species as defined in G.S. 106-758, and any other person coming within the generally accepted definition of the word. Farmer does not include a person who merely cultivates a garden for personal use."

SECTION 2. G.S. 105-164.13(1) and (1a), as amended by Section 33.9 of S.L. 2005-276, reads as rewritten:

"(1) Any of the following items sold to a farmer or to a lessor of farmland who is responsible for the upkeep and maintenance of farmland for use by the farmer or by a lessor of farmland or the lessor's lessee in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals. ~~A 'farmer' includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758.~~

a. Commercial fertilizer, lime, land plaster, plastic mulch, plant bed covers, potting soil, and seeds.

b. Farm machinery, attachment and repair parts for farm machinery, and lubricants applied to farm machinery. The term

'machinery' includes implements that have moving parts or are operated or drawn by an animal. The term does not include implements operated wholly by hand or motor vehicles required to be registered under Chapter 20 of the General Statutes.

c. A horse or mule.

d. Fuel other than electricity.

(1a) A container sold to a farmer, as defined in subdivision (1) of this ~~section,~~section or to a lessor of farmland who is responsible for the upkeep and maintenance of farmland used for a purpose set out in that subdivision or in packaging and transporting the farmer's or lessor's product for sale."

SECTION 3. This act becomes effective January 1, 2006, and applies to sales made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 990

Short Title:	Definition of Farmer for Sales and Use Tax.	(Public)
Sponsors:	Representatives Starnes; and Faison.	
Referred to:	Finance.	

March 30, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DEFINITION OF FARMER FOR PURPOSES OF APPLYING THE SALES AND USE TAX TO PURCHASES MADE BY FARMERS.

The General Assembly of North Carolina enacts:

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

"(9a) Farmer. – A dairy operator, poultry farmer, egg producer, farmer who raises fish or water plants, livestock farmer, crop farmer, nursery operator, greenhouse operator, orchardist, lessor of farmland responsible for upkeep and maintenance of the farmland, a farmer of an aquatic species as defined in G.S. 106-758, and any other person coming within the generally accepted definition of the word. Farmer does not include a person who merely cultivates a garden for personal use."

SECTION 2. G.S. 105-164.4A(1) reads as rewritten:

"(1) Farm machinery. – Sales to a farmer of machines and machinery, and parts and accessories for these machines and machinery, for use by the farmer in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals. ~~A "farmer" includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758.~~ Items that are exempt from tax under G.S. 105-164.13(4c) are not subject to tax under G.S. 105-164.4.

The term 'machines and machinery' as used in this subdivision is defined as follows:

The term shall include all vehicular implements, designed and sold for any use defined in this subdivision, which are operated, drawn or propelled by motor or animal power, but shall not include vehicular

implements which are operated wholly by hand, and shall not include any motor vehicles required to be registered under Chapter 20 of the General Statutes.

The term shall include all nonvehicular implements and mechanical devices designed and sold for any use defined in this subdivision, which have moving parts, or which require the use of any motor or animal power, fuel, or electricity in their operation but shall not include nonvehicular implements which have no moving parts and are operated wholly by hand.

The term shall also include metal flues sold for use in curing tobacco, whether such flues are attached to handfired furnaces or used in connection with mechanical burners."

SECTION 3. This act becomes effective October 1, 2005, and applies to sales made on or after that date.

HOUSE BILL 990:
Definition of Farmer for Sales and Use Tax

BILL ANALYSIS

Committee:	House Finance	**Date:**	August 20, 2005
Introduced by:	Rep. Starnes	**Summary by:**	Martha Walston
Version:	PCS to First Edition H990-CSLA		Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 990 does two things:

- *It clarifies the definition of farmer for sales and use tax purposes so that the definition mirrors the definition in the sales and use tax technical bulletin.*
- *It expands the sales and use tax exemption for items sold to farmers to include items sold to a lessor of farmland who is responsible for the upkeep and maintenance of farmland for use by a lessor of farmland or the lessor's lessee.*

The 1st edition made the above changes to the statute that imposes a preferential tax rate of 1% with an $80 maximum per article on items sold to farmers. Since S.L. 2005-236 repeals the preferential sales and use tax rate and replaces it with a sales and use tax exemption, effective January 1, 2006, the PCS makes the changes to conform to this exemption.

CURRENT LAW: Under G.S. 105-164.4A, sales to a farmer of machines and machinery, and parts and accessories for these machines and machinery, for use by the farmer in the planting, cultivating, harvesting, or curing of farm crops in the production of dairy products, eggs, or animals are taxed at the preferential rate of 1% with a maximum of $80 per article. Under G.S. 105-164.4(a)(1c), sales of fuel, other than electricity, to farmers to be used for any farm purposes are taxed at 1%. A 'farmer' includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758.[1]

The following items are exempt from sales and use tax:

1. commercial fertilizer, lime, land plaster, plastic mulch, plant bed covers, and seeds purchased by farmers for agricultural purposes.
2. packaging materials purchased by farmers and producers.
3. remedies, vaccines, medications, litter materials, and feeds for animals; rodenticides, insecticides, herbicides, fungicides, and pesticides; defoliants for use on crops; and plant growth inhibitors, regulators, or stimulators when purchased for animals or plants held or produced for commercial purposes.
4. tangible personal property purchased for commercial animal farmers or contractors or subcontractors for a commercial animal farmer.

To receive the above preferential sales and use tax rate or exemption, a person must apply for and obtain an exemption certificate from the Department of Revenue. An exemption certificate authorizes a retailer to sell tangible personal property to the holder of the certificate and either collect tax at a preferential

[1] G.S. 106-758 defines "aquatic species" as any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant, and including, but not limited to, "fish' and "fishes" "Fish" and "fishes" are defined as all marine mammals; all shellfish; all crustaceans; and all other fishes.

rate or not collect tax on the sale. A person who purchases property under an exemption certificate is liable for any tax due on the sale if the Department determines that the person is not eligible for the certificate or the property was not used as intended.

BILL ANALYSIS: Section 1 of House Bill 990 clarifies the definition of farmer for sales and use tax purposes so that it is identical to the definition in the Department's sales and use tax technical bulletin.

Section 2 of House Bill 990 expands the sales and use tax exemption for items sold to a farmer to include items sold to a lessor of farmland who is responsible for the upkeep and maintenance of farmland for use by a lessor of farmland or the lessor's lessee. S.L. 2005-276 repeals the preferential sales and use tax rate for items sold to farmers and replaces it with a sales and use tax exemption, effective January 1, 2006

EFFECTIVE DATE: The bill becomes effective January 1, 2006.

H0990e1-SMLA-CSLA

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: August 22, 2005

TO: Representative Starnes

FROM: Linda Struyk Millsaps
Fiscal Research Division

RE: House Bill 990 (PCS)

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES					
Sales Tax	* Small Revenue Loss – See Assumptions *				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue, Sales Tax Division.

EFFECTIVE DATE: January 1, 2006.

BILL SUMMARY: The legislation clarifies the definition of a farmer for sales and use tax purposes to mirror the current Department interpretation. It also expands who is eligible for special sales tax treatment for farmers to include items sold to a lessor of farmland or the lessor's lessee.

ASSUMPTIONS AND METHODOLOGY: Currently farmers purchasing most farm equipment are charged a sales tax of 1%, or a tax of 1% with an $80 cap, depending on the item. Recently approved SB 622 (2005 Appropriations Act) moved farmers from this type of taxation to a complete exemption from sales tax.

The legislation makes two changes to existing law. First, it alters the definition of a farmer to reflect the definition in the sales and use tax technical bulletins. Because this mirrors current Department practice, no fiscal impact is expected as a result of this portion of the bill. Second, the bill expands that definition of a farmer to include lessors and lessor's lesses. In the past the Department has denied issuing exemption numbers for farm exemptions to some applicants because they were not the landowners. As a result, it is assumed that the change will result in additional taxpayers being eligible for the exemption. However, no estimate is available on the number of individuals that would likely qualify under the bill, or the amount of tax they would have paid under existing law. However, given the limited number of times this issue has been highlighted in an audit leads the Department to believe the amount of purchases attributable to this class of taxpayers would not be very large. Thus a small but negative revenue impact is expected.

SOURCES OF DATA: NC Department of Revenue.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Linda Struyk Millsaps

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 990 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE DEFINITION OF FARMER FOR PURPOSES OF APPLYING THE SALES AND USE TAX TO PURCHASES MADE BY FARMERS.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1050
PROPOSED COMMITTEE SUBSTITUTE H1050-CSMBx-15 [v.7]

8/23/2005 12:15:56 AM

Short Title: Local Tax for Public Schools & Comm Colleges. (Local)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE PITT, MARTIN, DAVIE, BUNCOMBE, CHATHAM, ANSON, AND UNION COUNTIES TO LEVY ONE-HALF CENT LOCAL SALES AND USE TAXES FOR PUBLIC SCHOOL CAPITAL OUTLAY PURPOSES AND COMMUNITY COLLEGE PLANT FUND PURPOSES, IF APPROVED BY THE VOTERS OF THE COUNTIES.

The General Assembly of North Carolina enacts:

SECTION 1. This act applies to Pitt, Martin, Davie, Bumcombe, Chatham, Anson, and Union counties only.

SECTION 2. Subchapter VIII of Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 46.

"Fourth One-Half Cent (1/2¢) Local Government Sales and Use Tax.

"**§ 105-535. Short title.**

This Article is the Fourth One-Half Cent (1/2¢) Local Government Sales and Use Tax Act.

"**§ 105-536. Limitations.**

This Article applies only to counties that levy the first one-cent (1¢) local sales and use tax under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws, the first one-half cent (1/2¢) local sales and use tax under Article 40 of this Chapter, the second one-half cent (1/2¢) local sales and use tax under Article 42 of this Chapter, and the third one-half cent (1/2¢) local sales and use tax under Article 44 of this Chapter.

"**§ 105-537. Levy.**

(a) Authority. – If the majority of those voting in a referendum held pursuant to this Article vote for the levy of the taxes, the board of commissioners of the county

may, by resolution, levy one-half percent (1/2%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law.

(b) Vote. – The board of commissioners of a county may direct the county board of elections to conduct an advisory referendum on the question of whether to levy local one-half percent (1/2%) sales and use taxes in the county as provided in this Article. The election shall be held on a date jointly agreed upon by the two boards and shall be held in accordance with the procedures of G.S. 163-287.

(c) Ballot Question. – The form of the question to be presented on a ballot for a special election concerning the levy of the taxes authorized by this Article shall be:

'[ ] **FOR** [ ] **AGAINST**

One-half percent (1/2%) local sales and use taxes, in addition to the current local sales and use taxes, to be used only for public school capital outlay purposes or community college plant fund purposes.'

"**§ 105-538. Administration.**

Except as provided in this Article, the adoption, levy, collection, administration, and repeal of the additional taxes authorized by this Article shall be in accordance with Article 39 of this Chapter. A tax levied under this Article does not apply to the sales price of food that is exempt from tax pursuant to G.S. 105-164.13B.

"**§ 105-539. Distribution and use.**

(a) Distribution. – The Secretary shall, on a monthly basis, distribute to each taxing county the net proceeds of the tax collected in that county under this Article. If the Secretary collects taxes under this Article in a month and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary shall allocate these taxes among the taxing counties in proportion to the amount of taxes collected in each county under this Article in that month and shall include them in the monthly distribution.

(b) Use. – Counties may use the proceeds of a tax levied under this Article only for public school capital outlay purposes as defined in G.S. 115C-426(f) or for community college plant fund purposes as defined in G.S. 115D-32 and to retire indebtedness incurred by the counties for these purposes.

(c) Nonsupplant Restriction. – It is the purpose of this Article for counties to appropriate funds generated under this Article to increase the level of county spending for public school capital outlay purposes and community college plant fund purposes above the level of spending before the levy of the tax authorized in this Article. A county that levies a tax under this Article must continue to spend for public school capital outlay and community college plant fund purposes the same amount of money it would have spent for those purposes if it had not levied the tax."

SECTION 3. A tax levied under Article 46 of Chapter 105 of the General Statutes, as enacted by this act, does not apply to construction materials purchased to fulfill a lump-sum or unit-price contract entered into or awarded before the effective date of the levy or entered into or awarded pursuant to a bid made before the effective date of the levy when the construction materials would otherwise be subject to the tax levied under Article 46 of Chapter 105 of the General Statutes.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1050

Short Title:	Pitt County Local Option Sales Tax.	(Local)
Sponsors:	Representatives Warren, McLawhorn, and Williams (Primary Sponsors).	
Referred to:	Finance.	

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE PITT COUNTY TO LEVY A ONE-CENT LOCAL SALES AND USE TAX FOR PUBLIC SCHOOL CAPITAL OUTLAY PURPOSES OR COMMUNITY COLLEGE PLANT FUND PURPOSES, IF APPROVED BY THE VOTERS OF THE COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. This act applies to Pitt County only.

SECTION 2. Subchapter VIII of Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 46.

"Second One-Cent (1¢) Local Government Sales and Use Tax.

"**§ 105-535. Short title.**

This Article is the Second One-Cent (1¢) Local Government Sales and Use Tax Act.

"**§ 105-536. Limitations.**

This Article applies only to counties that levy the first one-cent (1¢) local sales and use tax under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws, the first one-half cent (1/2¢) local sales and use tax under Article 40 of this Chapter, the second one-half cent (1/2¢) local sales and use tax under Article 42 of this Chapter, and the third one-half cent (1/2¢) local sales and use tax under Article 44 of this Chapter.

"**§ 105-537. Levy.**

(a) Authority. – If the majority of those voting in a referendum held pursuant to this Article vote for the levy of the taxes, the board of commissioners of the county may, by resolution, levy one percent (1%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law.

(b) Vote. – The board of commissioners of a county may direct the county board of elections to conduct an advisory referendum on the question of whether to levy local one percent (1%) sales and use taxes in the county as provided in this Article. The

election shall be held on a date jointly agreed upon by the two boards and shall be held in accordance with the procedures of G.S. 163-287.

(c) Ballot Question. – The form of the question to be presented on a ballot for a special election concerning the levy of the taxes authorized by this Article shall be:

'[ ] FOR [ ] AGAINST

One percent (1%) local sales and use taxes, in addition to the current local sales and use taxes, to be used only for public school capital outlay purposes or community college plant fund purposes.'

"**§ 105-538. Administration.**

Except as provided in this Article, the adoption, levy, collection, administration, and repeal of the additional taxes authorized by this Article shall be in accordance with Article 39 of this Chapter. A tax levied under this Article does not apply to the sales price of food that is exempt from tax pursuant to G.S. 105-164.13B.

"**§ 105-539. Distribution and use.**

(a) Distribution. – The Secretary shall, on a monthly basis, distribute to each taxing county the net proceeds of the tax collected in that county under this Article. If the Secretary collects taxes under this Article in a month and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary shall allocate these taxes among the taxing counties in proportion to the amount of taxes collected in each county under this Article in that month and shall include them in the monthly distribution.

(b) Use. – Counties may use the proceeds of a tax levied under this Article only for public school capital outlay purposes as defined in G.S. 115C-426(f) or for community college plant fund purposes as defined in G.S. 115D-32 and to retire indebtedness incurred by the county for these purposes.

(c) Nonsupplant Restriction. – It is the purpose of this Article for counties to appropriate funds generated under this Article to increase the level of county spending for public school capital outlay purposes and community college plant fund purposes above the level of spending before the levy of the tax authorized in this Article. A county that levies a tax under this Article must continue to spend for public school capital outlay and community college plant fund purposes the same amount of money it would have spent for those purposes if it had not levied the tax."

SECTION 3. A tax levied under Article 46 of Chapter 105 of the General Statutes, as enacted by this act, does not apply to construction materials purchased to fulfill a lump-sum or unit-price contract entered into or awarded before the effective date of the levy or entered into or awarded pursuant to a bid made before the effective date of the levy when the construction materials would otherwise be subject to the tax levied under Article 46 of Chapter 105 of the General Statutes.

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

HOUSE BILL 1050:
Local Taxes for Public Schools & Comm Colleges

BILL ANALYSIS

Committee:	House Finance	**Date:**	August 23, 2005
Introduced by:	Reps. Warren, McLawhorn, and Williams	**Summary by:**	Ashley Huffstetler
Version:	PCS to First Edition H1050-CSMBx-15		Committee Counsel

SUMMARY: ***The PCS to House Bill 1050 authorizes Pitt, Martin, Davie, Chatham, Anson, and Union counties to levy one-half cent local sales and use taxes, if approved by a referendum of the voters of the county. The proceeds of the tax are to be used only for public school capital outlay purposes and for community college plant fund purposes.***

CURRENT LAW: The General Assembly has previously authorized the levy of three one-half cent local sales and use taxes, in addition to a one-cent local sales and use tax authorized in 1971. Previous local sales taxes have given the local governments two options for levying the tax: (1) by vote of the people in a special election, and (2) by vote of the county commissioners, by resolution and after ten days' public notice and a public hearing.

All counties in North Carolina currently levy local sales taxes at a rate of at least 2.5% (the maximum allowed under current law for all counties other than Mecklenburg and Dare).

BILL ANALYSIS: The PCS to House Bill 1050 authorizes Pitt, Martin, Davie, Chatham, Anson and Union counties to hold referendums on the issue of whether to levy additional one-half cent local sales taxes to be used only for public school capital outlay and community college plant fund purposes. The taxes will be administered as is the current first one-half cent local sales tax in Article 39 of the General Statutes. The fourth one-half cent local sales tax does not apply to the sales price of food that is currently exempt from tax.

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

Re: H1050

PITT COUNTY
BOARD OF COMMISSIONERS
1717 W. 5TH STREET
GREENVILLE, NC 27834-1696
TELEPHONE: (252) 902-2950
FAX: (252) 830-6311

D. Scott Elliott
County Manager

BOARD OF COUNTY COMMISSIONERS
Mark W. Owens, Jr., Chairman
Jimmy Garris, Vice-Chairman
Glenn Bowen
Tom Coulson
David Hammond
Eugene James
Melvin McLawhorn
John Minges
Beth B. Ward

Comments Before the House Finance Committee Meeting

Speaker One: Mr. Mark Owens, Jr., Chairman, Pitt County Board of Commissioners

PRIMARY POINTS: 1) Stress unity of county/community around this initiative, 2) Legislation will require voter referendum and 3) Tax base differential

* We are here before you today for something that is very important to Pitt County - a means to us assist in the financing of facilities for our Public Schools and Community College.

* We are here for something that is widely supported in our County and would have the ultimate test of democracy - a citizen referendum on this measure.

* The Pitt County Board Commissioners has unanimously asked for the legislation before you today.

* Our citizens are fully aware of it and we believe they support it.

* We have nineteen (19) organizations (municipalities, university, hospital, farm bureau, etc.) that have endorsed it by adopting a two page resolution of support on the matter.

* Every municipality (10) in Pitt County has formally endorsed it.

* Our Legislative Delegation on both sides has introduced legislation supporting the additional sales tax.

* Of course what I am talking about is the additional sales tax authorization in Pitt County for public school and community college facilities.

*As a county we have been responsible and done what we could within the ad valorem funding structure for both the schools and community college.

* In the past two years, we funded capital construction in the amount of $40 million dollars (total for PCS & PCC). (This included a $30 million dollar COPS financing package that resulted in a property tax increase to retire this debt.)

* Thus, we are committed at the local level, but it is not enough.

* This request is caused by a unique confluence of three items - First we are growing rapidly – 24% in the last decade. You will hear more about our population growth pressures from one of the other speakers.

* Second- we are a low wealth area. We are moving from a rural/agriculture community to a more suburban environment and are feeling the pressures of rapid growth. Additionally, there are a great number of non-property owners in Pitt County, including ECU students and others who drive into our area, who are using our services.

* Third- many of our largest employers are tax exempt entities. This is the primary reason for the low wealth in the tax base.

* These three factors produce a unique situation that is not readily replicated in other areas of North Carolina.

* Because of the county's traditional reliance on agriculture vs. industry and the lack of major corporations, this has limited our tax base.

* At all levels - national, state and local, economic development is discussed and is vitally important.

* We, like you, believe that education is important for economic development, but we can not educate when we do not have adequate facilities.

* We ask you for the same authority that others in unique situations in the state already have - the additional sales tax authorization.

* We ask you to let our citizens decide through a democratic referendum.

Our next two speakers will be Mr. Michael Dixon, Chairman of the Pitt County Board of Education and Henry Hinton of the Greenville-Pitt County Chamber of Commerce.

Speaker Two: Mr. Michael Dixon, Chairman, Pitt Board of Education

PRIMARY POINTS: 1) Speak on behalf of PCS &PCC, 2) Create visual understanding of the enrollment growth, special needs classrooms and available space for class size reductions and 3) Space crisis even with new schools and classrooms over past several years.

*Recognize Mr. Raymond Reddrick, Chairman of the Pitt Community College Board of Trustees.

* Speaking for both Public Schools and Community College in the interest of time.

* Currently Pitt County Schools has a total enrollment of 22,500 students. Pitt Community College has a total enrollment of 11,500 students each semester in credit and non-credit programs. Approximately one-third of credit students are not Pitt County residents.

* We have had professional outside analysis of our space needs - these needs are real: Pitt County Schools documented $217 million in needs in 2003 and Pitt Community College has developed a Master Plan whose cost is $70 million in today's dollars. Thus, our need totals almost $300 million dollars! (Would require a property tax increase of 25-27 cents for debt service – does not include additional operating costs!!)

* The community college is the sixth largest, but most crowded of any community college in the state! It ranks 58 out of 58 in space per student.

* Enrollment for Pitt County Schools has increased 20% over the past five (5) years.

* Enrollment at Pitt Community College increased 5.3% annually over the past the past 5 years.

* In the public school system, our students are presently housed in 140 modular classrooms.

* Our public school system is growing at a rate of 400+ students per year which is equivalent to the construction of one new elementary school each year (avg. cost $10 million).

* We have teachers who work out of grocery carts and move from place to place. We cannot get additional trailers permitted at most schools. Even new schools are opening at or beyond capacity.

* Introduce Mr. Henry Hinton, immediate past Chairman of the Greenville-Pitt County Chamber of Commerce.

Speaker Three: Mr. Henry Hinton, Immediate Past Chairman, Greenville-Pitt County Chamber of Commerce

PRIMARY POINTS: 1) Business community at-large endorses additional sales tax, 2) Growth aspects of county – population at large as well as school aged children and 3) Make formal request to act on this bill!

* State that the Greenville-Pitt County Chamber of Commerce has formally endorsed this request.

* We believe that it is good business to invest in educational facilities that will in turn produce productive future citizens and leaders.

* Sound and basic educational facilities are the root of every county's ability to succeed and prosper in today's highly competitive economic development environment.

* Pitt County has grown tremendously over the past three decades and will duplicate this same growth over the next 30 years. In 1970 the population was 74,000 – thirty years later it practically doubled to 133,000. Current projections in 2030 place the population doubling again to 242,000!

* In comparison, the ad valorem property tax base will also grow – however – with many of the county's top employers being tax exempt, the growth of this tax base has not, is not, and will not be anywhere sufficient to meet our capital facility needs of the public school and community college systems.

* We are not running from our responsibility to pay and provide for educational facilities. And we are not asking for outright approval for this increase in sales tax, just the permission to go to our voters in a referendum election

* We are not asking the state for a handout – we would like to leverage an additional sales tax and use these revenues along with local tax dollars to meet the needs of our public education system.

* We are asking for a means to better our County which will also benefit Eastern North Carolina.

***REQUEST**: We are asking that you as the House Finance Committee vote favorably on this bill today so that it can then be read "into the calendar" on the floor of the House today for consideration and action tomorrow. (Time is of the essence.)

* THANK YOU for you consideration of this request. Questions.....?

Re: H1050

"Pitt County's *'Article 46'* Sales Tax Initiative"

Information Sheet

- Initiative has been endorsed by every municipality (10 total) in Pitt County along with all other primary organizations (i.e. Greenville-Pitt County Chamber of Commerce, Pitt County Memorial Hospital, Pitt County Development Commission, East Carolina University, Farm Bureau).

- Legislative authorization for the additional sales tax revenues would be restricted to education related capital construction debt service payments and pay as you go financing.

- Purpose is to provide a dedicated revenue source to supplement existing revenue sources to pay off debt service costs on public schools and community college building needs. Identification of new local revenues will still be needed to pay for increased operational expenses related to any new construction (i.e. utilities, insurance, custodial, etc.)!

- Pitt County Board of Education has identified, through their Long Range Educational Plan, *$217 million* in building requests for the public K-12 system.

- Pitt Community College, through its Master Plan process, has documented *$70 million* in building construction needs.

- If the sales tax measure is not approved, the county's property owners could have to shoulder a 25-27 cent increase in property tax to cover debt service costs – this excludes operational costs (i.e. utilities, insurance, custodial, etc.)!

- "Tax payer equity" is created through this additional sales tax; all citizens would contribute to the construction of classroom space, not just property owners.

- Many of Pitt County's largest employers do not pay property taxes, thus contributing to the property tax burden on residential properties.

- Sales tax collections will be enhanced by the fact that Greenville/Pitt County serves eastern North Carolina as a "regional hub" for retail, food, health care entertainment and education.

- Once approved by the General Assembly and then by the citizens of Pitt County through a referendum, funds will address close to $300 million in severe building needs.

RESOLUTION IN SUPPORT OF 1% LOCAL OPTION SALES TAX EXCLUSIVELY FOR EDUCATION CAPITAL NEEDS IN PITT COUNTY

WHEREAS, the quality of educational facilities within Pitt County is vital to create strong learning environments that will have a direct bearing on the present and future educational achievements of our students; and

WHEREAS, the quality of facilities as well, as school curriculum, is a primary factor in economic development recruitment efforts; and

WHEREAS, the continued economic future of Pitt County is predicated on strong public school and community college systems; and

WHEREAS, the Pitt County School System currently has greater than 21,500 students and is experiencing a trend of significant growth in student enrollment with the last 5 years growth rate being greater than 1,500 students and with this level of growth projected to continue; and

WHEREAS, the Pitt Community College system has greater than 15,000 students between degree seeking and continuing education programs and is also experiencing a trend of significant annual growth in student enrollment with last year's growth rate being 5% and this growth is projected to continue; and

WHEREAS, because the Pitt County School System cannot adequately accommodate the current student population, space shortages require the use of over 140 mobile classrooms and a portion of the FY 04-05 teaching positions were not allocated due to the lack of classroom space; and

WHEREAS, Pitt Community College ranks last (58 out of 58) as compared to other community college campuses when calculating square footage per student. This is indicative of a severe space shortage at the community college; and

WHEREAS, both present and future student population growth has exceeded each institution's ability to provide for adequate classroom space; and

WHEREAS, Pitt County Schools has identified $217 million in capital needs over the next twelve to fifteen years; and

WHEREAS, Pitt Community College had identified $80 million in capital needs over the next ten to fifteen years; and

WHEREAS, if both the $217 million and $80 million in capital needs ($297 million) were implemented all at once, this would result in a twenty-five to twenty-seven cent (25-27) ad valorem tax increase for debt service in Pitt County. This being equivalent to a 38% tax increase; and

WHEREAS, in addition to debt service considerations, Pitt County will also be responsible for the "new operating costs" associated with the proposed capital construction (i.e. utilities, insurance & janitorial service); and

WHEREAS, based upon current data, a 1% sales tax in Pitt County would yield an estimated $16 million per year and would be dedicated exclusively for debt retirement on capital projects for Pitt County Schools and Pitt Community College; and

WHEREAS, relying solely on the ad valorem property tax base to leverage funding for debt service does not create "tax payer equity", but with a sales tax all citizens will contribute to this revenue stream, not just property owners; and

WHEREAS, most counties in North Carolina have a 50-50 split in their tax base between residential and commercial/industrial value; and

WHEREAS, Pitt County has a 70-30 split in its tax base, in which residential properties carry a disproportionate share of the ad valorem tax burden compared to other counties; and

WHEREAS, the three largest employers in Pitt County do not pay ad valorem property taxes; and

WHEREAS, Pitt County has been designated a "Low Wealth" county by the State of North Carolina; and

WHEREAS, in order to adequately address both the immediate and future facility needs of both PreK-12 and community college students, it is necessary that a new dedicated revenue stream be created.

NOW, THEREFORE, BE IT RESOLVED by the Pitt County Board of Commissioners that it does hereby express its support to the Pitt County Legislative Delegation and North Carolina General Assembly to allow Pitt County the ability to implement a 1% local option sales tax to be dedicated exclusively for education related capital needs.

Mark W. Owens, Jr.
Chairman

Attest:

Susan J. Banks
Clerk to the Board

PITT COUNTY
BOARD OF COMMISSIONERS
1717 W. 5TH STREET
GREENVILLE, NC 27834-1696
TELEPHONE: (252) 902-2950
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BOARD OF COUNTY COMMISSIONERS
Glenn Bowen
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Resolutions In Support of Pitt County's 1% Local Option Sales Tax

The following is a comprehensive list of local jurisdictions/entities that have passed a Resolution in support of Pitt County's effort to gain a local option sales tax for school (public schools and community college) construction needs. Please note that there is a ground swell of support for the 1% sales tax in Pitt County and that all of the County's municipalities recognize and support this option. It should be noted that no jurisdictions/entities voted against this initiative!

Jurisdiction/Entity

- Town of Ayden
- Town of Bethel
- City of Greenville
- Town of Grifton
- Town of Grimesland
- Town of Falkland
- Town of Farmville
- Town of Fountain
- Village of Simpson
- Town of Winterville
- Pitt County Mayor's Association
- Pitt County Board of Commissioners
- Pitt County Memorial Hospital
- Pitt County Development Commission
- Pitt Community College
- Pitt County Board of Education
- Pitt County Farm Bureau
- Greenville-Pitt County Chamber of Commerce
- ECU Board of Trustees

DOCS#11899/sjb

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 1050 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE PITT COUNTY TO LEVY A ONE-CENT LOCAL SALES AND USE TAX FOR PUBLIC SCHOOL CAPITAL OUTLAY PURPOSES OR COMMUNITY COLLEGE PLANT FUND PURPOSES, IF APPROVED BY THE VOTERS OF THE COUNTY.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1050

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

H1050-ALY-80 [v.2]

Date August 23 ,2005

Comm. Sub. [NO]
Amends Title [NO]
PCS to First Edition

Representative Hill

moves to amend the bill on page 1, line 10, by inserting the word "Vance," before the word "and"; and

on page 2, lines 37-38, by adding the following between those lines:

"**SECTION 2.1.** Notwithstanding the provisions of G.S. 105-539(b), enacted by Section 2 of this act, Vance County may use the proceeds of a tax levied pursuant to Article 46, enacted pursuant to Section 2 of this act, for public school capital outlay purposes or to retire indebtedness incurred for that purpose only."

SIGNED Henry Hill
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 10

EDITION No. PCS to 1st Edition

H. B. No. 1050 DATE August 23, 2005

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

COMMITTEE SUBSTITUTE _____

Rep.) Gibson
Sen.)

moves to amend the bill on page 1, line 3
(✓) WHICH CHANGES THE TITLE
by rewriting the line to read:
" ANSON, UNION, AND DUPLIN COUNTIES TO LEVY ONE-HALF CENT LOCAL"

moves to amend the bill on page 1, line 10, by rewriting the line to read:
" Anson, Union, and Duplin counties only."

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1050

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

H1050-ALY-79 [v.3]

Date August 23 ,2005

Comm. Sub. [NO]
Amends Title [NO]
PCS to First Edition

Representative Luebke

moves to amend the bill on page 2, line 37, by removing the quotation marks on that line and adding the following immediately below that line:

" '**§ 105-540. Expiration.**

A tax levied under this Article expires six years after the effective date of its levy. A county's authorization to levy a tax under this Article expires six years after the effective date of the first tax a county levies under this Article, even if the tax has not remained in effect for the entire six-year period. The expiration of a tax pursuant to this Article does not affect the rights or liabilities of a county, a taxpayer, or another person arising under the expired tax; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the expired tax before its expiration.

If the Secretary receives a valid request for a refund of a tax levied under this Article after the tax has expired and the net proceeds have been distributed, the Secretary shall draw the refund from the taxing county's share of the net proceeds of the tax it levies under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws, as applicable.' ".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

ATTACHMENT 12

(Please type or use ballpoint pen)

EDITION No. PCS to 1st Edition

H. B. No. 1050 DATE August 23, 2005

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

COMMITTEE SUBSTITUTE _____

(Rep.) Sen.) HOLLIMAN

moves to amend the bill on page 1, line 3

(✓) WHICH CHANGES THE TITLE

by rewriting the line to read: "CUMBERLAND, ANSON, UNION, SURREY, AND DAVIDSON COUNTIES TO LEVY ONE-HALF CENT LOCAL"

moves to amend the bill on page 1, line 10, by rewriting the line to read: "Anson, Union, Surrey, Cumberland, and Davidson counties only."

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT 13**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1050 (PCS) DATE 8/23/05

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

COMMITTEE SUBSTITUTE _____

(Rep.) Gibson
Sen.)

1 moves to amend the bill on page 1, line 2-3
2 ( ) WHICH CHANGES THE TITLE
3 by rewriting those lines to read:
4
5 "AN ACT TO AUTHORIZE CERTAIN
6 COUNTIES TO LEVY ONE-HALF CENT
7 LOCAL"
8
9
10
11
12
13
14
15
16
17
18
19

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 3

SENATE BILL 1149

Agriculture/Environment/Natural Resources Committee Substitute Adopted 8/11/05

Third Edition Engrossed 8/12/05

Short Title: Energy Credit Banking/Selling Program/Fund. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A BANKING AND SELLING PROGRAM FOR CREDITS ISSUED UNDER THE FEDERAL ENERGY POLICY ACT IN ORDER TO GENERATE FUNDS FOR THE USE OF ALTERNATIVE FUELS AND ALTERNATIVE FUELED VEHICLES BY STATE DEPARTMENTS, INSTITUTIONS, AND AGENCIES AND TO EXTEND AND EXPAND THE CREDIT FOR INVESTMENT IN RENEWABLE ENERGY PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 143 of the General Statutes is amended by adding two new sections to read:

"**§ 143-58.4. Energy credit banking and selling program.**

(a) As used in this section:

(1) 'AFV' means a hybrid electric vehicle that derives its transportation energy from gasoline and electricity. AFV also means an original equipment manufactured vehicle that operates on compressed natural gas, propane, or electricity.

(2) 'Alternative fuel' means biodiesel, ethanol, compressed natural gas, propane, and electricity used as a transportation fuel in blends or in a manner as defined by the Energy Policy Act.

(3) 'B-20' means a blend of twenty percent (20%) by volume biodiesel fuel and eighty percent (80%) by volume petroleum-based diesel fuel.

(4) 'Department' means the Department of Administration.

(5) 'Energy Policy Act' means the federal Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2782, 42 U.S.C. § 13201, et seq.

(6) 'EPAct credit' means a credit issued pursuant to the Energy Policy Act.

(7) 'E-85' means a blend of eighty-five percent (85%) by volume ethanol and fifteen percent (15%) by volume gasoline.

(8) 'Incremental fuel cost' means the difference in cost between an alternative fuel and conventional petroleum fuel at the time the fuel is purchased.

(9) 'Incremental vehicle cost' means the difference in cost between an AFV and conventional vehicle of the same make and model. For vehicles with no comparable conventional model, incremental vehicle cost means the generally accepted difference in cost between an AFV and a similar conventional model.

(b) Establish Program. – The State Energy Office of the Department, in cooperation with State departments, institutions, and agencies, shall establish and administer an energy credit banking and selling program to allow State departments, institutions, and agencies to use moneys generated by the sale of EPAct credits to purchase alternative fuel, develop alternative fuel refueling infrastructure, and purchase AFVs for use by State departments, institutions, and agencies. Each State department, institution, and agency shall provide the State Energy Office with all vehicle fleet information necessary to determine the number of EPAct credits generated annually by the State. The State Energy Office may sell credits in any manner that is in accordance with the provisions of the Energy Policy Act.

(c) Adopt Rules. – The Secretary of Administration shall adopt rules as necessary to implement this section.

"**§ 143-58.5. Alternative Fuel Revolving Fund.**

(a) The definitions set out in G.S. 143-58.4 apply to this section.

(b) The Alternative Fuel Revolving Fund is created and shall be held by the State Treasurer. The Fund shall consist of moneys received from the sale of EPAct credits under G.S. 143-58.4, any moneys appropriated to the Fund by the General Assembly, and any moneys obtained or accepted by the Department for deposit into the Fund. The Fund shall be managed to maximize benefits to the State for the purchase of alternative fuel, related refueling infrastructure, and AFV purchases. To the extent possible, benefits from the sale of EPAct credit shall be distributed to State departments, institutions, and agencies in proportion to the number of EPAct credits generated by each. No portion of the Fund shall be transferred to the General Fund, and any appropriation made to the Fund shall not revert. The State Treasurer shall invest moneys in the Fund in the same manner as other funds are invested. Interest and moneys earned on such investments shall be credited to the Fund.

(c) The Fund shall be used to offset the incremental fuel cost of biodiesel fuel with a minimum biodiesel concentration of B-20 for use in State vehicles, for the purchase of ethanol fuel with a minimum ethanol concentration of E-85 for use in State vehicles, the incremental vehicle cost of purchasing AFVs, for the development of related refueling infrastructure, for the costs of administering the Fund, and for projects approved by the Energy Policy Council.

(d) The Secretary of Administration shall adopt rules as necessary to implement this section.

(e) The Department shall submit to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division no later than 1 October of each year a report on the expenditures from the Fund during the preceding fiscal year."

SECTION 2. Article 2 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-28.13. Participation in the energy credit banking and selling program.**

The Department of Transportation shall participate in the energy credit banking and selling program under G.S. 143-58.4 and is eligible to receive proceeds from the Alternative Fuel Revolving Fund under G.S. 143-58.5 to purchase alternative fuel, develop alternative fuel refueling infrastructure, or purchase AFVs as defined in G.S. 143-58.4."

SECTION 3. G.S. 143-341(8)i. reads as rewritten:

"i. To establish and operate a central motor pool and such subsidiary related facilities as the Secretary may deem necessary, and to that end:

1. To establish and operate central facilities for the maintenance, repair, and storage of state-owned passenger motor vehicles for the use of State agencies; to utilize any available State facilities for that purpose; and to establish such subsidiary facilities as the Secretary may deem necessary.
2. To acquire passenger motor vehicles by transfer from other State agencies and by purchase. All motor vehicles transferred to or purchased by the Department shall become part of a central motor pool.

2a. To participate in the energy credit banking and selling program under G.S. 143-58.4. The Division of Motor Fleet Management of the Department of Administration is eligible to receive proceeds from the Alternative Fuel Revolving Fund under G.S. 143-58.5 to purchase alternative fuel, develop alternative fuel refueling infrastructure, or purchase AFVs as defined in G.S. 143-58.4.

...."

SECTION 4. G.S. 105-129.15(7) reads as rewritten:

"**§ 105-129.15. Definitions.**

The following definitions apply in this Article:

...

(6) Renewable biomass resources. – Organic matter produced by terrestrial and aquatic plants and animals, such as standing vegetation, aquatic crops, forestry and agricultural residues, spent pulping liquor, landfill wastes, and animal wastes.

(7) Renewable energy property. – Any of the following machinery and equipment or real property:

a. Biomass equipment that uses renewable biomass resources for biofuel production of ethanol, methanol, and biodiesel; anaerobic biogas production of methane utilizing agricultural and animal waste or garbage; or commercial thermal or electrical ~~generation from renewable energy crops or wood waste materials.~~generation. The term also includes related devices for converting, conditioning, and storing the liquid fuels, gas, and electricity produced with biomass equipment.

b. Hydroelectric generators located at existing dams or in free-flowing waterways, and related devices for water supply and control, and converting, conditioning, and storing the electricity generated.

c. Solar energy equipment that uses solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, daylighting, generating electricity, distillation, desalination, detoxification, or the production of industrial or commercial process heat. The term also includes related devices necessary for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy.

d. Wind equipment required to capture and convert wind energy into electricity or mechanical power, and related devices for converting, conditioning, and storing the electricity produced.

..."

SECTION 5. G.S. 105-129.16A reads as rewritten:

"**§ 105-129.16A. Credit for investing in renewable energy property.**

(a) Credit. – If a taxpayer that has constructed, purchased, or leased renewable energy property places it in service in this State during the taxable year, the taxpayer is allowed a credit equal to thirty-five percent (35%) of the cost of the property. In the case of renewable energy property that serves a single-family dwelling, the credit must be taken for the taxable year in which the property is placed in service. For all other renewable energy property, the entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in five equal installments beginning with the taxable year in which the property is placed in service.

(b) Expiration. – If, in one of the years in which the installment of a credit accrues, the renewable energy property with respect to which the credit was claimed is disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17. No credit is allowed under this section to the extent the cost of the renewable energy property was provided by public funds.

(c) Ceilings. – The credit allowed by this section may not exceed the applicable ceilings provided in this subsection.

(1) Nonresidential Property. – A ceiling of two ~~hundred fifty~~ million five hundred thousand dollars ~~($250,000)~~($2,500,000) per installation applies to renewable energy property placed in service for any purpose other than residential.

(2) Residential Property. – The following ceilings apply to renewable energy property placed in service for residential purposes:

a. One thousand four hundred dollars ($1,400) per dwelling unit for solar energy equipment for domestic water ~~heating~~.heating, including pool heating.

b. Three thousand five hundred dollars ($3,500) per dwelling unit for solar energy equipment for active space heating, combined active space and domestic hot water systems, and passive space heating.

c. Ten thousand five hundred dollars ($10,500) per installation for any other renewable energy property for residential purposes.

(d) No Double Credit. – A taxpayer that claims any other credit allowed under this Chapter with respect to renewable energy property may not take the credit allowed in this section with respect to the same property. A taxpayer may not take the credit allowed in this section for renewable energy property the taxpayer leases from another unless the taxpayer obtains the lessor's written certification that the lessor will not claim a credit under this Chapter with respect to the property.

(e) Sunset. – This section is repealed effective for renewable energy property placed into service on or after January 1, 2011."

SECTION 6. G.S. 105-129.15A is repealed.

SECTION 7. G.S. 105-129.16 is repealed.

SECTION 8. G.S. 105-129.16C is amended by adding a new subsection to read:

"(d) Sunset. – This section is repealed for taxable years beginning on or after January 1, 2006."

SECTION 9. Sections 1 through 3 of this act become effective January 1, 2006. Sections 4 and 5 of this act are effective for taxable years beginning on or after January 1, 2006. The remainder of this act is effective when it becomes law.

SENATE BILL 1149:
Energy Credit Banking/Selling Program/Fund

BILL ANALYSIS

Committee:	House Finance	**Date:**	August 20, 2005
Introduced by:	Sen. Jenkins	**Summary by:**	Martha Walston
Version:	Third Edition		Committee Counsel

SUMMARY: Senate Bill 1149 does the following:

- ***Directs the State Energy Office of the Department of Administration to establish and administer an energy credit banking and selling program. Energy credits are earned by State agency purchases of alternative fueled vehicles (AFVs) that exceed federal requirements. Revenues generated from the sale of credits would be used to purchase alternative fuel, to develop alternative fuel refueling infrastructure, and to purchase AFVs for use by State departments, institutions, and agencies.***
- ***Increases the ceiling on the credit for investing in renewable energy property from $250,000 for nonresidential property to $2.5 million and includes pool heating in the residential property ceiling for solar energy equipment.***
- ***Expands the definition of renewable energy property in G.S. 105-129.15 to include any biomass equipment that uses renewable biomass resources for commercial thermal or electrical generation (was, for commercial thermal or electrical generation from renewable energy crops or wood waste materials)***
- ***Expands the definition of biomass resources to include spent pulping liquor.***
- ***Extends the sunset on the credit for investing in renewable energy property from January 1, 2006, to January 1, 2011.***

Sections 1 through 3 of Senate Bill 1149 apply to the new energy credit banking and selling program and Alternative Fuel Revolving Fund.

BACKGROUND: The federal Energy Policy Act of 1992 (P.L. No. 102-486, commonly referred to as EPAct) requires fleets operated by state governments and alternative fuel providers (primarily utilities) to acquire a certain percentage of AFVs each year. Current requirements are that 75% of a State's fleet new light-duty vehicle acquisitions must run on AFVs. EPAct also provides that fleets can participate in a credit program that allows them to bank credits for future use or to sell excess credits to other covered fleets. Covered fleets earn one vehicle credit for every light-duty AFV they acquired beyond their base vehicle acquisition requirements. State and fuel provider fleets must annually report compliance with EPAct to the U.S. Department of Energy.

BILL ANALYSIS: The State Energy Office is directed to establish and administer a banking and selling program for energy credits earned under EPAct. Revenues generated from the sale of credits would be deposited in the newly established Alternative Revolving Fund held by the State Treasurer and would be used to pay for the incremental fuel costs of biodiesel fuel, to purchase ethanol with a minimum octane of E-85, to pay for the incremental vehicle cost of purchasing AFVs, to develop alternative fuel refueling infrastructure, and to administer the program. To the extent possible, credits would be distributed to State institutions, departments, and agencies in proportion to the number of credits generated by the institution, department, or agency. The Secretary of Administration is directed to adopt rules to implement the program.

The Department of Administration must report on expenditures from the Fund to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division no later than October 1 of each year.

The Department of Transportation and the Division of Motor Fleet Management of the Department of Administration must participate in the energy credit and banking and selling program

Sections 4 through 8 of Senate Bill 1149 apply to the renewable energy tax credits

BILL ANALYSIS: The credit for investing in renewable energy property applies to any of the following machinery and equipment or real property:

- Biomass equipment that uses renewable biomass resources for biofuel production of ethanol, methanol, and biodiesel. Renewable biomass resources are organic matters produced by terrestrial and aquatic plants and animals, such as standing vegetation, forestry and agricultural residues, landfill wastes, and animal wastes. **The bill adds spent pulping liquor to the definition of renewable biomass resources, and expands the definition of renewable energy property to include any biomass equipment that uses renewable biomass resources from commercial thermal or electrical generation (was, for commercial thermal or electrical generation from renewable energy crops or wood waste materials).**
- Hydroelectric generators
- Solar energy equipment
- Wind equipment

The amount of the credit is 35% of the cost of the property placed in service. In the case of renewable energy property that services a single-family dwelling, the credit must be taken for the taxable year in which the property is placed in service. For all other renewable energy property, the credit must be taken in five equal installments, beginning with the taxable year in which the property is placed in service. The credit may not exceed the following amounts:

TYPE OF PROPERTY	*MAXIMUM CREDIT*
Nonresidential Property	$250,000 per installation **The bill would increase the credit to $2,500,000 per installation**
Residential Property - Solar energy equipment for domestic water heating **The bill would include pool heating**	$1,400 per dwelling unit
Residential Property - Solar energy equipment for active space heating, combined active space and domestic hot water systems, and passive space heating	$3,500 per dwelling unit
Residential Property - All other renewable energy property for residential purposes	$10,500 per installation

The renewable energy tax credit has the following limitations and conditions:

- The renewable energy tax credit may not exceed 50% of the tax against which it is claimed for the taxable year. Any unused portion of the credit may be carried forward for the succeeding five years.

- A taxpayer that claims any other credit allowed with respect to renewable energy property may not take the renewable energy tax credit with respect to the same property.
- A taxpayer may not take the renewable energy tax credit if the taxpayer leases the property from another person, unless the taxpayer obtains the lessor's written certification that the lessor will not claim a credit with respect to this property.
- The Department of Revenue must report each year on the number of taxpayers claiming the credits, the cost of the property for which the credits were claimed, and the total cost to the General Fund of the credits claimed.

The bill extends the sunset on the renewable energy tax credit from January 1, 2006 to January 1, 2011, and maintains the existing sunsets on the other credits in Article 3B of Chapter 105 of the General Statutes.

S1149e3-SMLA

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

SB 1149 A BILL TO BE ENTITLED AN ACT TO ESTABLISH A BANKING AND SELLING PROGRAM FOR CREDITS ISSUED UNDER THE FEDERAL ENERGY POLICY ACT IN ORDER TO GENERATE FUNDS FOR THE USE OF ALTERNATIVE FUELS AND ALTERNATIVE FUELED VEHICLES BY STATE DEPARTMENTS, INSTITUTIONS, AND AGENCIES AND TO EXTEND AND EXPAND THE CREDIT FOR INVESTMENT IN RENEWABLE ENERGY PROPERTY.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 876
PROPOSED COMMITTEE SUBSTITUTE H876-CSMB-49 [v.2]

8/22/2005 12:58:38 PM

Short Title: Haywood County Sales Tax. (Local)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE HAYWOOD COUNTY TO LEVY A ONE-HALF CENT LOCAL SALES AND USE TAX FOR COMMUNITY COLLEGE CAPITAL OUTLAY PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. This act applies to Haywood County only.

SECTION 2. Subchapter VIII of Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 46.

"Fourth One-Half Cent (1/2¢) Local Government Sales and Use Tax.

"**§ 105-535. Short title.**

This Article is the Fourth One-Half Cent (1/2¢) Local Government Sales and Use Tax Act.

"**§ 105-536. Limitations.**

This Article applies only to counties that levy the first one-cent (1¢) local sales and use tax under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws, the first one-half cent (1/2¢) local sales and use tax under Article 40 of this Chapter, the second one-half cent (1/2¢) local sales and use tax under Article 42 of this Chapter, and the third one-half cent (1/2¢) local sales and use tax under Article 44 of this Chapter.

"**§ 105-537. Levy.**

(a) Authority. – If the majority of those voting in a referendum held pursuant to this Article vote for the levy of the taxes, the board of commissioners of the county may, by resolution, levy one-half percent (1/2%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law.

(b) Vote. – The board of commissioners of a county may direct the county board of elections to conduct an advisory referendum on the question of whether to levy local one-half percent (1/2%) sales and use taxes in the county as provided in this Article.

The election shall be held on a date jointly agreed upon by the two boards and shall be held in accordance with the procedures of G.S. 163-287.

(c) Ballot Question. – The form of the question to be presented on a ballot for a special election concerning the levy of the taxes authorized by this Article shall be:

'[ ] FOR [ ] AGAINST

One-half percent (1/2%) local sales and use taxes, in addition to the current local sales and use taxes, to be used only for community college capital outlay and infrastructure improvements."

"**§ 105-538. Administration.**

Except as provided in this Article, the adoption, levy, collection, administration, and repeal of the additional taxes authorized by this Article shall be in accordance with Article 39 of this Chapter. A tax levied under this Article does not apply to the sales price of food that is exempt from tax pursuant to G.S. 105-164.13B.

"**§ 105-539. Distribution and use of taxes.**

(a) Distribution. – The Secretary shall, on a monthly basis, distribute to each taxing county the net proceeds of the tax collected in that county under this Article. If the Secretary collects taxes under this Article in a month and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary shall allocate these taxes among the taxing counties in proportion to the amount of taxes collected in each county under this Article in that month and shall include them in the monthly distribution.

(b) Use. – The proceeds of a tax levied under this Article may be used only for community college capital outlay and infrastructure improvements or to retire indebtedness incurred by the county for these purposes.

(c) Nonsupplant Restriction. – It is the purpose of this Article for counties to appropriate funds generated under this Article to increase the level of county spending for community college capital outlay and infrastructure improvements above the level of spending before the levy of the tax authorized in this Article. A county that levies a tax under this Article must continue to spend for community college capital outlay and infrastructure improvements the same amount of money it would have spent for those purposes if it had not levied the tax.

"**§ 105-540. Expiration.**

A tax levied under this Article expires six years after the effective date of its levy. A county's authorization to levy a tax under this Article expires six years after the effective date of the first tax a county levies under this Article, even if the tax has not remained in effect for the entire six-year period. The expiration of a tax pursuant to this Article does not affect the rights or liabilities of a county, a taxpayer, or another person arising under the expired tax; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the expired tax before its expiration. If the Secretary receives a valid request for a refund of a tax levied under this Article after the tax has expired and the net proceeds have been distributed, the Secretary shall draw the refund from the taxing county's share of the net proceeds of the tax it levies under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws, as applicable."

SECTION 3. A tax levied under Article 46 of Chapter 105 of the General Statutes, as enacted by this act, does not apply to construction materials purchased to fulfill a lump-sum or unit-price contract entered into or awarded before the effective date of the levy or entered into or awarded pursuant to a bid made before the effective date of the levy when the construction materials would otherwise be subject to the tax levied under Article 46 of Chapter 105 of the General Statutes.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 876

Short Title:	Haywood County Sales Tax.	(Local)
Sponsors:	Representatives Rapp and Haire (Primary Sponsors).	
Referred to:	Finance.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE HAYWOOD COUNTY TO LEVY A ONE-HALF CENT LOCAL SALES AND USE TAX FOR COMMUNITY COLLEGE CAPITAL OUTLAY PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. This act applies to Haywood County only.

SECTION 2. Subchapter VIII of Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 46.

"Fourth One-Half Cent (1/2¢) Local Government Sales and Use Tax.

"**§ 105-535. Short title.**

This Article is the Fourth One-Half Cent (1/2¢) Local Government Sales and Use Tax Act.

"**§ 105-536. Limitations.**

This Article applies only to counties that levy the first one-cent (1¢) local sales and use tax under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws, the first one-half cent (1/2¢) local sales and use tax under Article 40 of this Chapter, the second one-half cent (1/2¢) local sales and use tax under Article 42 of this Chapter, and the third one-half cent (1/2¢) local sales and use tax under Article 44 of this Chapter.

"**§ 105-537. Levy of tax.**

(a) After Vote. – If a majority of those voting in a special election held pursuant to this Article vote for the levy of the taxes in a county, the board of commissioners of a county may, by resolution, levy one-half percent (1/2%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law.

(b) Without Vote. – If the question of whether to levy taxes under this Article has not been defeated in a special election held in the county within two years, the board of commissioners of a county may, by resolution, levy one-half percent (1/2%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant

to law. Before adopting a resolution under this subsection, the board of commissioners must give at least 10 days' public notice of its intent to adopt the resolution and must hold a public hearing on the issue of adopting the resolution.

"**§ 105-538. County election on adoption of tax.**

(a) Resolution. – The board of commissioners of a county may direct the county board of elections to conduct a special election on the question of whether to levy local one-half percent (1/2%) sales and use taxes in the county as provided in this Article. The election must be held on a date jointly agreed upon by the two boards and must be held in accordance with the procedures of G.S. 163-287.

(b) Ballot Question. – The question to be presented on a ballot for a special election concerning the levy of the taxes authorized by this Article must be in the following form:

'[ ] FOR [ ] AGAINST

One-half percent (1/2%) local sales and use taxes, in addition to all current State and local sales and use taxes.'

"**§ 105.539. Administration.**

Except as provided in this Article, the adoption, levy, collection, administration, and repeal of the additional taxes authorized by this Article shall be in accordance with Article 39 of this Chapter. A tax levied under this Article does not apply to the sales price of food that is exempt from tax pursuant to G.S. 105-164.13B.

"**§ 105-540. Distribution and use of taxes.**

(a) Distribution. – The Secretary shall, on a monthly basis, distribute to each taxing county the net proceeds of the tax collected in that county under this Article. If the Secretary collects taxes under this Article in a month and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary shall allocate these taxes among the taxing counties in proportion to the amount of taxes collected in each county under this Article in that month and shall include them in the monthly distribution.

(b) Use. – The proceeds of a tax levied under this Article may be used only for community college capital outlay and infrastructure improvements or to retire indebtedness incurred by the county for these purposes.

(c) Nonsupplant Restriction. – It is the purpose of this Article for counties to appropriate funds generated under this Article to increase the level of county spending for community college capital outlay and infrastructure improvements above the level of spending before the levy of the tax authorized in this Article. A county that levies a tax under this Article must continue to spend for community college capital outlay and infrastructure improvements the same amount of money it would have spent for those purposes if it had not levied the tax.

"**§ 105-541. Expiration.**

A tax levied under this Article expires six years after the effective date of its levy. A county's authorization to levy a tax under this Article expires six years after the effective date of the first tax a county levies under this Article, even if the tax has not remained in effect for the entire six-year period. The expiration of a tax pursuant to this Article does not affect the rights or liabilities of a county, a taxpayer, or another person arising under

the expired tax; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the expired tax before its expiration. If the Secretary receives a valid request for a refund of a tax levied under this Article after the tax has expired and the net proceeds have been distributed, the Secretary shall draw the refund from the taxing county's share of the net proceeds of the tax it levies under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws, as applicable."

SECTION 3. A tax levied under Article 46 of Chapter 105 of the General Statutes, as enacted by this act, does not apply to construction materials purchased to fulfill a lump-sum or unit-price contract entered into or awarded before the effective date of the levy or entered into or awarded pursuant to a bid made before the effective date of the levy when the construction materials would otherwise be subject to the tax levied under Article 46 of Chapter 105 of the General Statutes.

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

HOUSE BILL 876:
Haywood County Sales Tax

BILL ANALYSIS

Committee:	House Finance	**Date:**	August 23, 2005
Introduced by:	Reps. Rapp, Haire	**Summary by:**	Ashley Huffstetler
Version:	PCS to First Edition H876-CCSMB		Committee Counsel

SUMMARY: ***The PCS to House Bill 876 authorizes Haywood County to levy a one-half cent local sales and use tax, if approved by a referendum. The proceeds of the tax are to be used only for community college capital outlay and infrastructure improvements or to retire indebtedness incurred for these purposes.***

CURRENT LAW: The General Assembly has previously authorized the levy of three one-half cent local sales and use taxes, in addition to a one-cent local sales and use tax authorized in 1971. Previous local sales taxes have given the local governments two options for levying the tax: (1) by vote of the people in a special election, and (2) by vote of the county commissioners, by resolution and after ten days' public notice and a public hearing.

All counties in North Carolina currently levy local sales taxes at a rate of at least 2.5% (the maximum allowed under current law for all counties other than Mecklenburg and Dare).

BILL ANALYSIS: The PCS to House Bill 876 authorizes Haywood County to hold a referendum on the issue of whether to levy an additional one-half cent sales tax to be used only for community college capital outlay and infrastructure improvements. The tax will be administered as is the current first one-half cent local sales tax in Article 39 of the General Statutes. The fourth one-half cent local sales tax does not apply to the sales price of food that is currently exempt from tax.

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

H0876e1-SMMB-CCSMB

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 876 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE HAYWOOD COUNTY TO LEVY A ONE-HALF CENT LOCAL SALES AND USE TAX FOR COMMUNITY COLLEGE CAPITAL OUTLAY PURPOSES.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 756
PROPOSED COMMITTEE SUBSTITUTE H756-CSMBx-47 [v.2]

8/22/2005 11:56:20 PM

Short Title: Lee, Franklin, and Vance Local Sales Tax. (Local)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE FRANKLIN, LEE, AND VANCE COUNTIES TO LEVY A ONE-HALF CENT LOCAL SALES AND USE TAX FOR PUBLIC SCHOOL CAPITAL OUTLAY PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. This act applies to Franklin, Lee, and Vance Counties only.

SECTION 2. Subchapter VIII of Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 46.

"Fourth One-Half Cent (1/2¢) Local Government Sales and Use Tax.

"**§ 105-535. Short title.**

This Article is the Fourth One-Half Cent (1/2¢) Local Government Sales and Use Tax Act.

"**§ 105-536. Limitations.**

This Article applies only to counties that levy the first one cent (1¢) local sales and use tax under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws, the first one-half cent (1/2¢) local sales and use tax under Article 40 of this Chapter, the second one-half cent (1/2¢) local sales and use tax under Article 42 of this Chapter, and the third one-half cent (1/2¢) local sales and use tax under Article 44 of this Chapter.

"**§ 105-537. Levy.**

(a) Authority. – If the majority of those voting in a referendum held pursuant to this Article vote for the levy of the taxes, the board of commissioners of the county may, by resolution, levy one-half percent (1/2%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law.

(b) Vote. – The board of commissioners of a county may direct the county board of elections to conduct an advisory referendum on the question of whether to levy local one-half percent (1/2%) sales and use taxes in the county as provided in this Article.

The election shall be held on a date jointly agreed upon by the two boards and shall be held in accordance with the procedures of G.S. 163-287.

(c) Ballot Question. – The form of the question to be presented on a ballot for a special election concerning the levy of the taxes authorized by this Article shall be:

'[ ] FOR [ ] AGAINST

One-half percent (1/2%) local sales and use taxes, in addition to the current local sales and use taxes, to be used for public school capital outlay purposes.'

"**§ 105-538. Administration.**

Except as provided in this Article, the adoption, levy, collection, administration, and repeal of the additional taxes authorized by this Article shall be in accordance with Article 39 of this Chapter. A tax levied under this Article does not apply to the sales price of food that is exempt from tax pursuant to G.S. 105-164.13B.

"**§ 105-539. Distribution and use.**

(a) Distribution. – The Secretary shall, on a monthly basis, distribute to each taxing county the net proceeds of the tax collected in that county under this Article. If the Secretary collects taxes under this Article in a month and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary shall allocate these taxes among the taxing counties in proportion to the amount of taxes collected in each county under this Article in that month and shall include them in the monthly distribution.

(b) Use. – Counties may use the proceeds of a tax levied under this Article only for public school capital outlay purposes as defined in G.S. 115C-426(f) and to retire indebtedness incurred by the county for these purposes.

(c) Nonsupplant Restriction. – It is the purpose of this Article for counties to appropriate funds generated under this Article to increase the level of county spending for public school capital outlay purposes above the level of spending before the levy of the tax authorized in this Article. A county that levies a tax under this Article must continue to spend for public school capital outlay purposes the same amount of money it would have spent for those purposes if it had not levied the tax."

SECTION 3. A tax levied under Article 46 of Chapter 105 of the General Statutes, as enacted by this act, does not apply to construction materials purchased to fulfill a lump-sum or unit-price contract entered into or awarded before the effective date of the levy or entered into or awarded pursuant to a bid made before the effective date of the levy when the construction materials would otherwise be subject to the tax levied under Article 46 of Chapter 105 of the General Statutes.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 756

Short Title:	Lee Local Sales Tax.	(Local)
Sponsors:	Representative Sauls.	
Referred to:	Finance.	

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE LEE COUNTY TO LEVY A ONE-HALF CENT LOCAL SALES AND USE TAX FOR PUBLIC SCHOOL CAPITAL OUTLAY PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. This act applies to Lee County only.

SECTION 2. Subchapter VIII of Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 46.

"Fourth One-Half Cent (1/2¢) Local Government Sales and Use Tax.

"**§ 105-535. Short title.**

This Article is the Fourth One-Half Cent (1/2¢) Local Government Sales and Use Tax Act.

"**§ 105-536. Limitations.**

This Article applies only to counties that levy the first one-cent (1¢) local sales and use tax under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws, the first one-half cent (1/2¢) local sales and use tax under Article 40 of this Chapter, the second one-half cent (1/2¢) local sales and use tax under Article 42 of this Chapter, and the third one-half cent (1/2¢) local sales and use tax under Article 44 of this Chapter.

"**§ 105-537. Levy.**

(a) After Vote. – If a majority of those voting in a special election held pursuant to this Article vote for the levy of the taxes in a county, the board of commissioners of a county may, by resolution, levy one-half percent (1/2%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law.

(b) Without Vote. – If the question of whether to levy taxes under this Article has not been defeated in a special election held in the county within two years, the board of commissioners of a county may, by resolution, levy one-half percent (1/2%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant

to law. Before adopting a resolution under this subsection, the board of commissioners must give at least 10 days' public notice of its intent to adopt the resolution and must hold a public hearing on the issue of adopting the resolution.

"**§ 105-538. County election on adoption of tax.**

(a) Resolution. – The board of commissioners of a county may direct the county board of elections to conduct a special election on the question of whether to levy local one-half percent (1/2%) sales and use taxes in the county as provided in this Article. The election must be held on a date jointly agreed upon by the two boards and must be held in accordance with the procedures of G.S. 163-287.

(b) Ballot Question. – The question to be presented on a ballot for a special election concerning the levy of the taxes authorized by this Article must be in the following form:

'[ ] FOR [ ] AGAINST

One-half percent (1/2%) local sales and use taxes, in addition to all current State and local sales and use taxes.'

"**§ 105-539. Administration.**

Except as provided in this Article, the adoption, levy, collection, administration, and repeal of the additional taxes authorized by this Article shall be in accordance with Article 39 of this Chapter. A tax levied under this Article does not apply to the sales price of food that is exempt from tax pursuant to G.S. 105-164.13B.

"**§ 105-540. Distribution and use.**

(a) Distribution. – The Secretary shall, on a monthly basis, distribute to each taxing county the net proceeds of the tax collected in that county under this Article. If the Secretary collects taxes under this Article in a month and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary shall allocate these taxes among the taxing counties in proportion to the amount of taxes collected in each county under this Article in that month and shall include them in the monthly distribution.

(b) Use. – Counties may use the proceeds of a tax levied under this Article only for public school capital outlay purposes as defined in G.S. 115C-426(f) and to retire indebtedness incurred by the county for these purposes.

(c) Nonsupplant Restriction. – It is the purpose of this Article for counties to appropriate funds generated under this Article to increase the level of county spending for public school capital outlay purposes above the level of spending before the levy of the tax authorized in this Article. A county that levies a tax under this Article must continue to spend for public school capital outlay purposes the same amount of money it would have spent for those purposes if it had not levied the tax."

SECTION 3. A tax levied under Article 46 of Chapter 105 of the General Statutes, as enacted by this act, does not apply to construction materials purchased to fulfill a lump-sum or unit-price contract entered into or awarded before the effective date of the levy or entered into or awarded pursuant to a bid made before the effective date of the levy when the construction materials would otherwise be subject to the tax levied under Article 46 of Chapter 105 of the General Statutes.

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

HOUSE BILL 756:
Lee, Franklin, and Vance County Sales Tax

BILL ANALYSIS

Committee:	House Finance	**Date:**	August 23, 2005
Introduced by:	Reps. Sauls	**Summary by:**	Ashley Huffstetler
Version:	PCS to First Edition H756-CSMBx-47		Committee Counsel

SUMMARY: ***The PCS to House Bill 756 authorizes Franklin, Lee, and Vance counties to levy one-half cent local sales and use taxes, if approved by a referendum of the voters of the county. The proceeds of the tax are to be used only for public school capital outlay purposes.***

CURRENT LAW: The General Assembly has previously authorized the levy of three one-half cent local sales and use taxes, in addition to a one-cent local sales and use tax authorized in 1971. Previous local sales taxes have given the local governments two options for levying the tax: (1) by vote of the people in a special election, and (2) by vote of the county commissioners, by resolution and after ten days' public notice and a public hearing.

All counties in North Carolina currently levy local sales taxes at a rate of at least 2.5% (the maximum allowed under current law for all counties other than Mecklenburg and Dare).

BILL ANALYSIS: The PCS to House Bill 756 authorizes Franklin, Lee, and Vance counties to hold referendums on the issue of whether to levy additional one-half cent local sales taxes to be used only for public school capital outlay purposes. The taxes will be administered as is the current first one-half cent local sales tax in Article 39 of the General Statutes. The fourth one-half cent local sales tax does not apply to the sales price of food that is currently exempt from tax.

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

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 756 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE LEE COUNTY TO LEVY A ONE-HALF CENT LOCAL SALES AND USE TAX FOR PUBLIC SCHOOL CAPITAL OUTLAY PURPOSES.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 17

EDITION No. _____

H. B. No. 756 DATE 8/23/05

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

COMMITTEE SUBSTITUTE _____

(Rep.) Hackney
Sen.)

1 moves to amend the bill on page 1, line 3 2 & 6

2 ( ) WHICH CHANGES THE TITLE

3 by adding the word "Chatham," before

4 the word "Franklin," on each of

5 those lines.

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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 88
Committee Substitute Favorable 3/28/05
PROPOSED COMMITTEE SUBSTITUTE H88-CSRRf-61 [v.2]

8/22/2005 10:53:16 AM

Short Title: Electoral Fairness Act. (Public)

Sponsors:

Referred to:

February 7, 2005

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE NUMBER OF SIGNATURES REQUIRED OF A NEW POLITICAL PARTY AND OF A STATEWIDE UNAFFILIATED CANDIDATE TO ACHIEVE BALLOT ELIGIBILITY; TO REDUCE THE NUMBER OF VOTES A NEW POLITICAL PARTY MUST GAIN FOR A NOMINEE IN ORDER TO MAINTAIN BALLOT ELIGIBILITY; TO MOVE TO A DATE BEFORE THE POLITICAL PARTY PRIMARIES THE DEADLINES FOR FILING NEW POLITICAL PARTY PETITIONS AND NOMINATING NEW POLITICAL PARTY CANDIDATES; TO EXTEND FILING FEE PROVISIONS TO NEW PARTY AND UNAFFILIATED CANDIDATES; AND TO PROVIDE THAT A CANDIDATE WHO RAN IN A PARTY PRIMARY FOR AN OFFICE IS NOT ELIGIBLE FOR NOMINATION BY ANOTHER PARTY TO FILL A VACANCY IN ITS NOMINATION FOR THE SAME OFFICE IN THE SAME YEAR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-96(a) reads as rewritten:

"(a) Definition. – A political party within the meaning of the election laws of this State shall be either:

(1) Any group of voters which, at the last preceding general State election, polled for its candidate for Governor, or for presidential electors, at least ~~ten~~ two percent ~~(10%)~~ (2%) of the entire vote cast in the State for Governor or for presidential electors; or

(2) Any group of voters which shall have filed with the State Board of Elections petitions for the formulation of a new political party which are signed by registered and qualified voters in this State equal in number to ~~two~~ one-half of one percent ~~(2%)~~ (0.5%) of the total number of voters who voted in the most recent general election for Governor.

Also the petition must be signed by at least 200 registered voters from each of four congressional districts in North Carolina. To be effective, the petitioners must file their petitions with the State Board of Elections before 12:00 noon on the first day of ~~June~~ April preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the State chairman of the proposed new political party."

SECTION 2. G.S. 163-97 reads as rewritten:

"**§ 163-97. Termination of status as political party.**

When any political party fails to poll for its candidate for governor, or for presidential electors, at least ~~ten~~ two percent ~~(10%)~~ (2%) of the entire vote cast in the State for governor or for presidential electors at a general election, it shall cease to be a political party within the meaning of the primary and general election laws and all other provisions of this Chapter."

SECTION 3. G.S. 163-98 reads as rewritten:

"**§ 163-98. General election participation by new political party.**

In the first general election following the date on which a new political party qualifies under the provisions of G.S. 163-96, it shall be entitled to have the names of its candidates for national, State, congressional, and local offices printed on the official ~~ballots.~~ballots upon paying a filing fee equal to that provided for candidates for the office in G.S. 163-107 or upon complying with the alternative available to candidates for the office in G.S. 163-107.1.

For the first general election following the date on which it qualifies under G.S. 163-96, a new political party shall select its candidates by party convention. Following adjournment of the nominating convention, but not later than the first day of ~~July~~ May prior to the general election, the president of the convention shall certify to the State Board of Elections the names of persons chosen in the convention as the new party's candidates ~~for State, congressional, and national offices~~ in the ensuing general election. The State Board of Elections shall print names thus certified on the appropriate ballots as the nominees of the new party. The State Board of Elections shall send to each county board of elections the list of any new party candidates so that the county board can add those names to the appropriate ballot."

SECTION 4. G.S. 163-122(a)(1) reads as rewritten:

"(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. – Any qualified voter who seeks to have his name printed on the general election ballot as an unaffiliated candidate shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the State equal in number to ~~two percent (2%)~~ one-half of one percent (0.5%) of the total

number of ~~registered voters in the State as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held.~~voters who voted in the most recent general election for Governor. Also, the petition must be signed by at least 200 registered voters from each of four congressional districts in North Carolina. No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. Provided the petitions are timely submitted, the chairman shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county and shall attach to the petition his signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in his county. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. Verification by the chairman of the county board of elections shall be completed within two weeks from the date such petitions are presented.

...."

SECTION 5. G.S. 163-122 is amended by adding a new subsection to read:

"(d) Any candidate seeking to have that candidate's name printed on the general election ballot under this section shall pay a filing fee equal to that provided for candidates for the office in G.S. 163-107 or comply with the alternative available to candidates for the office in G.S. 163-107.1."

SECTION 6. G.S. 163-114 reads as rewritten:

"**§ 163-114. Filling vacancies among party nominees occurring after nomination and before election.**

If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position	
President Vice President	Vacancy is to be filled by appointment of national executive committee of political party in which vacancy occurs
Presidential elector or alternate elector Any elective State office United States Senator	Vacancy is to be filled by appointment of State executive committee of political party in which vacancy occurs

A district office, including: Member of the United States House of Representatives District Attorney State Senator in a multi-county senatorial district Member of State House of Representatives in a multi-county representative district	Appropriate district executive committee of political party in which vacancy occurs
State Senator in a single-county senatorial district Member of State House of Representatives in a single-county representative district Any elective county office	County executive committee of political party in which vacancy occurs, provided, in the case of the State Senator or State Representative in a single-county district where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, that has jurisdiction over the ballot item under G.S. 163-182.4. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S.163-165.3(c) shall apply. If a vacancy occurs in a nomination of a political party and that vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this section only if the appropriate executive committee certifies the name of the nominee in accordance with this paragraph at least 75 days before the general election.

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote.

An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to be nominated to fill a vacancy in the nomination of another party for the same office in the same year."

SECTION 7. This act becomes effective January 1, 2006, and applies to all primaries and elections held on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 88
Committee Substitute Favorable 3/28/05

Short Title: Electoral Fairness Act. (Public)

Sponsors:

Referred to:

February 7, 2005

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE NUMBER OF SIGNATURES REQUIRED OF A NEW POLITICAL PARTY AND OF A STATEWIDE UNAFFILIATED CANDIDATE TO ACHIEVE BALLOT ELIGIBILITY; TO REDUCE THE NUMBER OF VOTES A NEW POLITICAL PARTY MUST GAIN FOR A NOMINEE IN ORDER TO MAINTAIN BALLOT ELIGIBILITY; TO MOVE TO A DATE BEFORE THE POLITICAL PARTY PRIMARIES THE DEADLINES FOR FILING NEW POLITICAL PARTY PETITIONS AND NOMINATING NEW POLITICAL PARTY CANDIDATES; TO EXTEND FILING FEE PROVISIONS TO NEW PARTY AND UNAFFILIATED CANDIDATES; AND TO PROVIDE THAT A CANDIDATE WHO RAN IN A PARTY PRIMARY FOR AN OFFICE IS NOT ELIGIBLE FOR NOMINATION BY ANOTHER PARTY TO FILL A VACANCY IN ITS NOMINATION FOR THE SAME OFFICE IN THE SAME YEAR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-96(a) reads as rewritten:

"(a) Definition. – A political party within the meaning of the election laws of this State shall be either:

(1) Any group of voters which, at the last preceding general State election, polled for its candidate for Governor, or for presidential electors, at least ~~ten~~ two percent ~~(10%)~~ (2%) of the entire vote cast in the State for Governor or for presidential electors; or

(2) Any group of voters which shall have filed with the State Board of Elections petitions for the formulation of a new political party which are signed by registered and qualified voters in this State equal in number to ~~two~~ one-half of one percent ~~(2%)~~ (0.5%) of the total number of voters who voted in the most recent general election for Governor. Also the petition must be signed by at least 200 registered voters from each of four congressional districts in North Carolina. To be effective,

the petitioners must file their petitions with the State Board of Elections before 12:00 noon on the first day of ~~June~~ April preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the State chairman of the proposed new political party."

SECTION 2. G.S. 163-97 reads as rewritten:

"**§ 163-97. Termination of status as political party.**

When any political party fails to poll for its candidate for governor, or for presidential electors, at least ~~ten~~ two percent ~~(10%)~~ (2%) of the entire vote cast in the State for governor or for presidential electors at a general election, it shall cease to be a political party within the meaning of the primary and general election laws and all other provisions of this Chapter."

SECTION 3. G.S. 163-98 reads as rewritten:

"**§ 163-98. General election participation by new political party.**

In the first general election following the date on which a new political party qualifies under the provisions of G.S. 163-96, it shall be entitled to have the names of its candidates for national, State, congressional, and local offices printed on the official ~~ballots.~~ballots upon paying a filing fee equal to one percent (1%) of the office sought.

For the first general election following the date on which it qualifies under G.S. 163-96, a new political party shall select its candidates by party convention. Following adjournment of the nominating convention, but not later than the first day of ~~July~~ May prior to the general election, the president of the convention shall certify to the State Board of Elections the names of persons chosen in the convention as the new party's candidates ~~for State, congressional, and national offices~~ in the ensuing general election. The State Board of Elections shall print names thus certified on the appropriate ballots as the nominees of the new party. The State Board of Elections shall send to each county board of elections the list of any new party candidates so that the county board can add those names to the appropriate ballot."

SECTION 4. G.S. 163-122(a)(1) reads as rewritten:

"(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. – Any qualified voter who seeks to have his name printed on the general election ballot as an unaffiliated candidate shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the State equal in number to ~~two percent (2%)~~ one-half of one percent (0.5%) of the total number of ~~registered voters in the State as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held.~~voters who voted in the most recent general election for Governor. Also, the petition must

be signed by at least 200 registered voters from each of four congressional districts in North Carolina. No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. Provided the petitions are timely submitted, the chairman shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county and shall attach to the petition his signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in his county. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. Verification by the chairman of the county board of elections shall be completed within two weeks from the date such petitions are presented.

...."

SECTION 5. G.S. 163-122 is amended by adding a new subsection to read:

"(d) Any candidate seeking to have his name printed on the general election ballot under this section shall pay a filing fee equal to one percent (1%) of the annual salary of the office sought."

SECTION 6. G.S. 163-114 reads as rewritten:

"**§ 163-114. Filling vacancies among party nominees occurring after nomination and before election.**

If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position	
President Vice President	Vacancy is to be filled by appointment of national executive committee of political party in which vacancy occurs
Presidential elector or alternate elector Any elective State office United States Senator	Vacancy is to be filled by appointment of State executive committee of political party in which vacancy occurs
A district office, including: Member of the United States House of Representatives District Attorney	Appropriate district executive committee of political party in which vacancy occurs

State Senator in a multi-county senatorial district Member of State House of Representatives in a multi-county representative district	
State Senator in a single-county senatorial district Member of State House of Representatives in a single-county representative district Any elective county office	County executive committee of political party in which vacancy occurs, provided, in the case of the State Senator or State Representative in a single-county district where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, that has jurisdiction over the ballot item under G.S. 163-182.4. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S.163-165.3(c) shall apply. If a vacancy occurs in a nomination of a political party and that vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this section only if the appropriate executive committee certifies the name of the nominee in accordance with this paragraph at least 75 days before the general election.

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote.

An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to be nominated to fill a vacancy in the nomination of another party for the same office in the same year."

SECTION 7. This act becomes effective January 1, 2006, and applies to all primaries and elections held on or after that date.

HOUSE BILL 88:
Electoral Fairness Act

BILL ANALYSIS

Committee:	House Finance	**Date:**	August 21, 2005
Introduced by:	Rep. Miller	**Summary by:**	William R. Gilkeson
Version:	PCS to Second Edition H88-CSRRf-61		Committee Counsel

SUMMARY: This Proposed Committee Substitute for House Bill 88 would equalize and reduce the number of signatures required of a new political party and of a statewide unaffiliated candidate to achieve ballot access. It would reduce the number of votes a new party must generate for its nominee for President or Governor for the party to maintain ballot eligibility. And it would move backward the deadlines for new parties to submit their petitions and to nominate candidates from dates after the party primaries to dates before the party primaries.

CURRENT LAW:

New Parties. A new party, In order to qualify to nominate candidates who will appear on the North Carolina ballot under its party label, a new party must first collect signatures of registered NC voters on petitions equal to 2% of the votes cast in the last general election for Governor. In the 2004 election for Governor, the number of votes cast was **3,486,688**. Two percent of that is **69,734**. So, to nominate candidates to be on the ballot under its label in 2006, a new party must collect 69,734 signatures and get them to the State Board of Elections by June 1, 2006.

(For a party to qualify to be on the ballot anywhere in North Carolina, it must qualify statewide. This State has no regional or local new party qualification. The petition signatures must include at least 200 voters from each of 4 congressional districts.)

Once on the ballot, a new party may stay on the ballot only if its nominee for President, or its nominee for Governor, receives in the next election at least 10% of the vote. If neither party nominee gets that much of the vote, the party loses its ballot status and may only regain it by again collecting signatures equal to 2% of the vote in the last Governor's race. In 2004 in NC:

- **3,501,007** voted for President and 10% of that is **350,101.**
- **3,486,688** voted for Governor and 10% of that is **348,669**.

The closest any new party candidate came in 2004 to that ballot-access-maintenance threshold was Barbara Howe, the Libertarian candidate for Governor, who received 52,513 votes.

In its first election after gaining – or regaining – ballot access, a new party nominates its candidates in a convention rather than in a primary. The new party must complete the nominations and certify them to the State Board of Elections by July 1.

Unaffiliated Candidates. To qualify as an unaffiliated candidate for statewide office, a person must collect signatures equal to 2% of all the registered voters in the State. That number of registered voters is measured at the beginning of the election year in which the candidate seeks to be on the ballot. That precise number cannot be known now, but the total voter registration in NC in February 2005 was **5,388,094**. Two percent of that is **107,762**. So, to be on the ballot as an unaffiliated candidate for a statewide office, a person must collect 107,762 names on petitions and submit them to the State Board of Elections by the last Friday in June of the election year.

Delaney v. Bartlett. In the lawsuit of *Delaney v. Bartlett*, U.S. District Judge Frank Bullock of Greensboro looked at the difference between the threshold for new parties and the threshold for statewide unaffiliated candidates and said he saw no reasonable basis for the wide disparity. He concluded that the disparity between the two paths for getting on the ballot infringed on constitutional rights under the First and Fourteenth Amendments to the US Constitution. The judge noted that the percentages NC used for both the new party threshold and the unaffiliated threshold had been upheld in court, either in NC or elsewhere. But the disparity between the two, he said, was constitutionally indefensible. Paul Delaney, the plaintiff, was challenging the unaffiliated threshold. IN July 2004

Judge Bullock held subsection (a) of G.S. 163-122, which contains the procedure for statewide unaffiliated candidates, unconstitutional. The State did not appeal.

BILL ANALYSIS: House Bill 88 would close the disparity between the signature thresholds for a new party and for an unaffiliated candidate for statewide office, satisfying the *Delaney* decision. Going beyond that, it would drop the thresholds to a level well below where either is now. Following the formula now used for new parties, the bill would set the signature threshold for both a new party and a statewide unaffiliated candidate at 0.05% of the turnout in the most recent Governor's race.

The bill would also lower the percentage the new party's nominee for either President or Governor in order for the party to remain on the ballot. That maintenance threshold would drop from 10% to 2%.

And the bill would set two months earlier both the new party's deadline for filing its signature petitions to qualify and its deadline for nominating candidates. The signature petition filing deadline would go from June 1 to April 1. The candidate nomination deadline would go from July 1 to May 1. In both cases, the deadlines would be before the major party primaries. Now they come after the primaries.

As amended in the House Election Law Committee, the bill would impose the same filing fee requirements on new party candidates and unaffiliated candidates as is imposed on candidates in party primaries.

	Current Statute	House Bill 88
NEW PARTY: Formula for gaining ballot access	2% of last Governor's race turnout (200 signatures from each of 4 congressional districts)	0.05% of last Governor's race turnout (200 signatures from each of 4 congressional districts)
NEW PARTY: Raw number of signatures for gaining access in 2006.	69,734	17,434
NEW PARTY: Formula for maintaining ballot access	10% of vote by party's nominee for President or Governor	2% of vote by party's nominee for President or Governor
NEW PARTY: Raw number of votes for maintaining access in 2004	President – 350,101 Governor – 348,669	President – 70,021 Governor – 69,734
NEW PARTY: Deadline for signatures to be filed with State Board of Elections	June 1 of the election year	April 1 of the election year
NEW PARTY: Deadline for nominating candidates	July 1 of the election year	May 1 of the election year
STATEWIDE UNAFFILIATED CANDIDATE: Formula for gaining ballot access	2% of all registered voters as of Jan. 1 of the election year (Invalid after *Delaney v. Bartlett* case)	0.05% of last Governor's race turnout (200 signatures from each of 4 congressional districts)
STATEWIDE UNAFFILIATED CANDIDATE: Raw number of signatures (using 2-20-05 registration figures	107,762 (Invalid after *Delaney v. Bartlett* case)	17,434
STATEWIDE UNAFFILIATED CANDIDATE: Deadline for signatures to be filed with State Board of Elections	Last Friday in June of election year	Last Friday in June of election year

BACKGROUND: In 2003, HB 867, a bill almost identical to HB 88 was approved by the House Committee on Election Law and Campaign Finance Reform in 2003. The bill was never taken up on the House floor.

In 2001 the Senate passed SB 10, a bill to equalize the statewide unaffiliated signature requirement with that for new parties at 2% of the Governor's race turnout. The bill was defeated 45-71 in the House.

In 2005 the House passed HB 1115, which contained a provision responding to the Delaney decision by dropping the statewide unaffiliated signature threshold to the new-party level at 2% of the Governor's race turnout. But the Senate deleted that provision before passing the House bill.

H0088e2-SMRR-CSRR-61

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: August 22, 2005

TO: Representative Miller

FROM: Marilyn Chism
Fiscal Research Division

RE: PCS-H88-CSRRf-61 [v2]

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES					
EXPENDITURES					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: State Board of Elections, County Boards of Elections

EFFECTIVE DATE: January 1, 2006 and applies to all primaries and elections held after that date.

BILL SUMMARY:
This bill amends G.S. §§ 163-96(a) and 163-97 by (1) reducing the number of votes required to qualify as a political party and to maintain that status to 2% of the votes cast in any statewide election (current requirement is 10% of the votes cast for Governor and presidential electors) and

(2) by reducing the number of signatures required to achieve political party status to 0.5% (current requirement is 2%) of the total number of voters. The bill also amends G.S. § 163-98 to provide that a new political party must certify its candidates to the State Board of Elections no later than May 1 (now July 1) preceding the general election. It amends G.S. § 163-122(a)(1) to require that, to be placed on the ballot, an unaffiliated candidate must present a petition with signatures of 0.5% of voters who voted in the most recent election for Governor and at least 200 voters from each of four congressional districts.

This bill would also impose the same filing fee requirement that is imposed on candidates in party primaries on new party candidates and unaffiliated candidates who are seeking to have their names printed on a general election ballot.

The bill applies to elections held after January 1, 2006.

Source: Adopted from the 2/7/2005 Bill Digest for H.B. 88 and from 8/21/2005 Bill Analysis for PCS-H88-CSRRf-61 prepared by Committee Counsel.

ASSUMPTIONS AND METHODOLOGY:
The Fiscal Research Division estimates that this bill will have little to no fiscal impact on the State Board of Elections or the county boards of elections. Currently, county boards of elections must verify the validity of petition signatures obtained by groups seeking political party status and by unaffiliated candidates seeking ballot access. This bill would reduce the number of signatures required for a group of voters to achieve political party status and for an unaffiliated candidate to achieve ballot access. The reduction in the number of signatures required for ballot access may result in an increase in the number of petitions that are submitted. However, the State Board of Elections has automated the petition process such that petitions can be checked through the Statewide Election Information Management System (SEIMS - a suite of applications that automates voter registration and greatly simplifies the administration of voter records). Thus, the cost of processing any additional petitions that may be submitted is expected to be insignificant to the county boards as well as to the State Board. Further, the cost of adding names to ballots is expected to be insignificant as well.

Fiscal Research cannot estimate the impact that the new filing fee requirement for new party and unaffiliated candidates will have without data on the offices that those candidates will seek or without knowing whether those candidates will pay the filing fee or will choose the alternative available by statute of collecting the requisite number of signatures in lieu of paying the filing fee. However, the State Board of Elections expects that the fiscal impact of the new filing fee will be insignificant.

SOURCES OF DATA: State Board of Elections

TECHNICAL CONSIDERATIONS: None

House Bill 88: The Electoral Fairness Act

Intent: *To reform North Carolina's regressive ballot access laws.*

- North Carolina currently boasts the 2nd WORST ballot access laws in the country for independents and third parties seeking to run for office.

- In 2004 a federal judge ruled that North Carolina imposes an unconstitutional burden on unaffiliated political candidates who want a spot on the ballot in a suit brought by NC resident Paul Delaney against the NC Board of Elections

- Independent candidates and newly forming parties must gather petition signatures equal to 2% of the number of people who voted in the last gubernatorial election – in effect newly forming parties must spend in excess of $100,000 and hundreds of hours of labor simply to get an opportunity to run for office

A Comparison of Southern States' Ballot Access Requirements:

Virginia	10,000
South Carolina	10,000
Kentucky	5,000
Tennessee	60
North Carolina	**70,000**

(this number is closer to **109,000** as many signatures are disqualified by county BOEs)

Third parties have played a critical role in the political and social development of our country; from the abolition movement to the civil rights movement, third parties have played critical roles in raising consciousness and moving our society forward.

An ideal ballot access system encourages participation and competition by treating candidates of all political parties equally and fairly without overly-burdensome fees, restrictive deadlines or excessive petition requirements.

Please **support House Bill 88, The Electoral Fairness Act** and give North Carolinians the right to exercise their political right to choose.

HB88 has been endorsed by the following organizations:

Democracy North Carolina
North Carolina League of Women Voters
North Carolina Green Party
North Carolina Libertarian Party

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

HB 88 A BILL TO BE ENTITLED AN ACT TO REDUCE THE NUMBER OF SIGNATURES REQUIRED OF A NEW POLITICAL PARTY AND OF A STATEWIDE UNAFFILIATED CANDIDATE TO ACHIEVE BALLOT ELIGIBILITY; TO REDUCE THE NUMBER OF VOTES A NEW POLITICAL PARTY MUST GAIN FOR A NOMINEE IN ORDER TO MAINTAIN BALLOT ELIGIBILITY; TO MOVE TO A DATE BEFORE THE POLITICAL PARTY PRIMARIES THE DEADLINES FOR FILING NEW POLITICAL PARTY PETITIONS AND NOMINATING NEW POLITICAL PARTY CANDIDATES; TO EXTEND FILING FEE PROVISIONS TO NEW PARTY AND UNAFFILIATED CANDIDATES; AND TO PROVIDE THAT A CANDIDATE WHO RAN IN A PARTY PRIMARY FOR AN OFFICE IS NOT ELIGIBLE FOR NOMINATION BY ANOTHER PARTY TO FILL A VACANCY IN ITS NOMINATION FOR THE SAME OFFICE IN THE SAME YEAR.

☒ With a favorable report as to Committee Substitute bill #2, unfavorable as to Committee Substitute Bill #1.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 3

SENATE BILL 671*

Judiciary II Committee Substitute Adopted 5/4/05
House Committee Substitute Favorable 8/22/05

Short Title: Real Prop. Electronic Recording/Notary Act. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO ENACT THE UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, TO REPEAL CHAPTER 10A OF THE GENERAL STATUTES REGARDING THE REGULATION OF NOTARIES PUBLIC, AND TO ENACT CHAPTER 10B RELATING TO NOTARIES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 47 of the General Statutes is amended by adding a new Article to read:

"Article 1A.

"Uniform Real Property Electronic Recording Act.

"**§ 47-16.1. Short title.**

This Article may be cited as the Uniform Real Property Electronic Recording Act.

"**§ 47-16.2. Definitions.**

In this Article:

(1) "Document" means information that is:

a. Inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

b. Eligible to be recorded in the land records maintained by the register of deeds.

(2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) "Electronic document" means a document that is received by the register of deeds in an electronic form.

(4) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

(5) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"**§ 47-16.3. Validity of electronic documents.**

(a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document satisfying this Article.

(b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to notarize, acknowledge, verify, witness, or administer the oath, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature. Nothing in this act shall prohibit the North Carolina Board of Examiners for Engineers and Surveyors from requiring that the image of a seal accompany any plat or map that is presented electronically for recording.

"**§ 47-16.4. Recording of documents.**

(a) In this section, "paper document" means a document that is received by the register of deeds in a form that is not electronic.

(b) A register of deeds:

(1) Who implements any of the functions listed in this section shall do so in compliance with standards adopted by the Secretary of State.

(2) May receive, index, store, archive, and transmit electronic documents.

(3) May provide for access to, and for search and retrieval of, documents and information by electronic means.

(4) Who accepts electronic documents for recording shall continue to accept paper documents as authorized by law and shall place entries for both types of documents in the same index.

(5) May convert paper documents accepted for recording into electronic form.

(6) May convert into electronic form information recorded before the register of deeds began to record electronic documents.

(7) May accept electronically any fee or tax that the register of deeds is authorized to collect.

(8) May agree with other officials of this State or a political subdivision thereof on procedures or processes to facilitate the electronic satisfaction of conditions to recording and the electronic payment of fees and taxes.

"**§ 47-16.5. Administration and standards.**

(a) Standard-Setting Agency. – The Secretary of State shall adopt standards to implement this Article upon recommendation of the Electronic Recording Council. The

Secretary of State may direct the Council to revise any portion of the recommended standards the Secretary deems inadequate or inappropriate. Technological standards and specifications adopted by the Secretary of State to implement this Article are engineering standards for the purposes of G.S. 150B-2(8a)h.

(b) Electronic Recording Council Created. – The Electronic Recording Council is created in the Department of the Secretary of State to advise and assist the Secretary of State in the adoption of standards to implement this Article. The Council shall review the functions listed in G.S. 47-16.4 and shall formulate and recommend to the Secretary standards for recording electronic documents and implementing the other functions listed in G.S. 47-16.4. The Council shall report its findings and recommendations to the Secretary of State at least once each calendar year. The Council shall advise the Secretary of State on a continuing basis of the need to adopt, amend, revise, or repeal standards. The Council may advise the Secretary of State on any other matter the Secretary refers to the Council.

(c) Council Membership, Terms, and Vacancies. – The Council shall consist of 13 members as follows:

(1) Seven members appointed by the North Carolina Association of Registers of Deeds. It is the intent of the General Assembly that the North Carolina Association of Registers of Deeds shall appoint as members a representative selection of registers of deeds from large, medium, and small counties, urban and rural counties, and the different geographic areas of this State.

(2) One member appointed by the North Carolina Bar Association.

(3) One member appointed by the North Carolina Society of Land Surveyors.

(4) One member appointed by the North Carolina Bankers Association.

(5) One member appointed by the North Carolina Land Title Association.

(6) One member appointed by the North Carolina Association of Assessing Officers.

(7) The Secretary of Cultural Resources or the Secretary's designee.

In making appointments to the Council, each appointing authority shall select appointees with the ability and commitment to fulfill the purposes of the Council.

Appointed members shall serve four-year terms, except that the initial appointments by the North Carolina Bar Association, the North Carolina Bankers Association, the North Carolina Association of Assessing Officers, and three of the initial appointments by the North Carolina Association of Registers of Deeds shall be for two years. All initial terms shall commence on the effective date of this Article. Members shall serve until their successors are appointed. An appointing authority may reappoint a member for successive terms. A vacancy on the Council shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term.

(d) Council Meetings and Officers. – The Secretary of State shall call the first meeting of the Council. At the first meeting and biennially thereafter, the Council shall elect from its membership a chair and a vice-chair to serve two-year terms. Meetings

may be called by the chair, the vice-chair, or the Secretary of State. Meetings shall be held as often as necessary, but at least once a year.

(e) Council Compensation. – None of the members of the Council shall receive compensation for serving on the Council, but Council members shall receive per diem, subsistence, and travel expenses in accordance with G.S. 138-5 and G.S. 138-6, as applicable.

(f) Staff and Other Assistance. – As soon as practicable and as needed thereafter, the Council shall identify the information technology expertise it needs and report its needs to the Secretary of State. The Council shall also report any other expertise needed to fulfill its responsibilities. The Secretary of State shall provide professional and clerical staff and other services and supplies, including meeting space, as needed for the Council to carry out its duties in an effective manner. The Secretary of State may appoint additional committees to advise and assist the Council in its work.

The Council shall consult with the North Carolina Local Government Information Systems Association, and may consult with any other person the Council deems appropriate, to advise and assist the Council in its work.

(g) Uniformity of Standards. – To keep the standards and practices of registers of deeds in this State in harmony with the standards and practices of recording offices in other jurisdictions that enact substantially this Article and to keep the technology used by registers of deeds in this State compatible with technology used by recording offices in other jurisdictions that enact substantially this Article, the Secretary of State and the Council shall consider all of the following in carrying out their responsibilities under this Article, so far as is consistent with its purposes, policies, and provisions:

(1) Standards and practices of other jurisdictions.

(2) The most recent standards adopted by national standard-setting bodies, such as the Property Records Industry Association.

(3) The views of interested persons and other governmental officials and entities.

(4) The needs of counties of varying size, population, and resources.

(5) Standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.

"**§ 47-16.6. Uniformity of application and construction.**

In applying and construing this Article, consideration shall be given to promoting uniformity of interpretation of the Uniform Real Property Electronic Recording Act among states that enact it.

"**§ 47-16.7. Relation to Electronic Signatures in Global and National Commerce Act.**

This Article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001, et seq.) but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. § 7003(b))."

SECTION 2. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Real Property Electronic Recording Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

SECTION 3. Chapter 10A of the General Statutes is repealed.

SECTION 4. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 10B.**

"**Notaries.**

"Article 1.

"Notary Public Act.

"Part 1. General Provisions.

"**§ 10B-1. Short title.**

This act is the "Notary Public Act" and may be cited by that name.

"**§ 10B-2. Purposes.**

This Chapter shall be construed and applied to advance its underlying purposes, which are the following:

(1) To promote, serve, and protect the public interests.

(2) To simplify, clarify, and modernize the law governing notaries.

(3) To prevent fraud and forgery.

(4) To foster ethical conduct among notaries.

(5) To enhance interstate recognition of notarial acts.

(6) To integrate procedures for traditional paper and electronic notarial acts.

"**§ 10B-3. Definitions.**

The following definitions apply in this Chapter:

(1) "Acknowledgment" means a notarial act in which an individual, at a single time and place:

a. Appears in person before the notary and presents a record; and

b. Is personally known to the notary or identified by the notary through satisfactory evidence and indicates to the notary that the signature on the record was voluntarily affixed by the individual for the purposes stated within the record.

(2) "Affirmation" means a notarial act, or part thereof, which is legally equivalent to an oath and in which an individual at a single time and place:

a. Appears in person before the notary;

b. Is personally known to the notary or identified by the notary through satisfactory evidence; and

c. Makes a vow of truthfulness on penalty of perjury, based on personal honor and without invoking a deity or using any form of the word "swear".

(3) "Attest" or "attestation" means the act of completing the written evidence of a notarial act, to wit: completion of a certificate by a

notary who has performed a notarial act by witnessing a signature or administering an oath or affirmation.

(4) "Commission" means the empowerment to perform notarial acts and the written evidence of authority to perform those acts.

(5) "Credible witness" means an honest, reliable, and impartial person who is personally known to the notary and takes an oath or affirmation from the notary to confirm a signer's identity.

(6) "Department" means the North Carolina Department of the Secretary of State.

(7) "Director" means the Division Director for the North Carolina Department of the Secretary of State Notary Public Section.

(8) "Jurat" means a certification added to an affidavit or deposition that states when and before what authority an affidavit or deposition was made, to wit, "Subscribed and sworn to before me this the ___ day of _____ 20__." The notary's signature and seal shall be affixed below the sworn or affirmed statement and signature of the affiant. In so doing, the notary shall certify the following:

a. That the person signing the affidavit or deposition did so in the notary's presence and indicates the county in which the notarial act took place;

b. That the signer appeared before the notary on the date indicated;

c. That the notary administered an oath or affirmation to the signer, who swore to or affirmed the contents of the document.

(9) "Moral turpitude" means conduct contrary to expected standards of honesty, morality, or integrity.

(10) "Nickname" means a descriptive, familiar, or shortened form of a proper name.

(11) "Notarial act," "notary act," and "notarization" mean the act of taking an acknowledgment, taking a verification or proof or administering an oath or affirmation that a notary is empowered to perform under this Chapter, as authorized by G.S. 10B-20.

(12) "Notarial certificate" and "certificate" mean the portion of a notarized record that is completed by the notary, bears the notary's signature and seal, and states the facts attested by the notary in a particular notarization.

(13) "Notary public" and "notary" mean a person commissioned to perform notarial acts under this Chapter. A notary is a public officer of the State of North Carolina and shall act in full and strict compliance with this act.

(14) "Oath" means a notarial act, or part thereof, which is legally equivalent to an affirmation and in which an individual at a single time and place:

a. Appears in person before a notary;

b. Is personally known to the notary or identified by the notary through satisfactory evidence; and

c. Makes a vow of truthfulness on penalty of perjury while invoking a deity or using any form of the word "swear".

(15) "Official misconduct" means either of the following:

a. A notary's performance of a prohibited act or failure to perform a mandated act set forth in this Chapter or any other law in connection with notarization.

b. A notary's performance of a notarial act in a manner found by the Secretary to be negligent or against the public interest.

(16) "Personal appearance" and "appear in person before a notary" mean an individual and a notary are in close physical proximity to one another so that they may freely see and communicate with one another and exchange records back and forth during the notarization process.

(17) "Personal knowledge of identity" means familiarity with an individual resulting from interactions with that individual over a period of time sufficient to eliminate every reasonable doubt that the individual has the identity claimed.

(18) "Principal" means an individual whose signature is notarized; or an individual other than a credible witness, taking an oath or affirmation from the notary.

(19) "Record" means information that is inscribed on a tangible medium and called a traditional or paper record.

(20) "Regular place of work or business" means a location, office or other workspace, where an individual regularly spends all or part of the individual's work time.

(21) "Revocation" means the cancellation of the notary's commission stated in the order of revocation.

(22) "Satisfactory evidence of a signer's identity" means identification of an individual based on either of the following:

a. At least one current document issued by a federal, state, or federal or state-recognized tribal government agency bearing the photographic image of the individual's face and either the signature or a physical description of the individual.

b. The oath or affirmation of one credible witness unaffected by the record or transaction who is personally known to the notary and who personally knows the individual seeking to be identified.

(23) "Seal" and "stamp" mean a device for affixing on a paper record an image containing a notary's name, the words "notary public," and other information as required in G.S. 10B-24.

(24) "Secretary" means the North Carolina Secretary of State or the Secretary's designee.

(25) "Signature" means the act of personally signing one's name in ink by hand.

(26) "Subscribing witness" means a person who either watches another individual sign a record or takes that individual's acknowledgment of an already-signed record and appears before the notary on behalf of the principal. The subscribing witness must sign the document in addition to the principal, must be personally known by the notary or prove identity to the notary by satisfactory evidence, and must take an oath or affirmation stating that he or she witnessed the principal sign.

(27) "Suspension" and "restriction" means the termination of a notary's commission for a period of time stated in an order of restriction or suspension. The terms "restriction" or "suspension" or a combination of both terms shall be used synonymously.

(28) "Verification" or "proof" means a notarial act where a person certifies under oath or affirmation that the person witnessed the principal either execute, record, or acknowledge the principal's signature on an already-executed record.

"Part 2. Commissioning.

"**§ 10B-4. Qualifications.**

(a) Except as provided in subsection (d) of this section, the Secretary shall commission as a notary any qualified person who submits an application in accordance with this Chapter.

(b) A person qualified for a notarial commission shall meet all of the following requirements:

(1) Be at least 18 years of age or legally emancipated as defined in Article 35 of Chapter 7B of the General Statutes.

(2) Reside or have a regular place of work or business in this State.

(3) Reside legally in the United States.

(4) Speak, read, and write the English language.

(5) Possess a high school diploma or equivalent.

(6) Pass the course of instruction described in this Article, unless the person is a licensed member of the North Carolina State Bar.

(7) Purchase and keep as a reference the most recent manual approved by the Secretary that describes the duties and authority of notaries public.

(8) Submit an application containing no significant misstatement or omission of fact. The application form shall be provided by the Secretary and be available at the register of deeds office in each county. Every application shall include the signature of the applicant written with pen and ink, and the signature shall be acknowledged by the applicant before a person authorized to administer oaths. The applicant shall also obtain the recommendation of one publicly elected official in North Carolina whose recommendation shall be contained on the application.

(9) Pay a nonrefundable application fee of fifty dollars ($50.00).

(c) The notary shall be commissioned in his or her county of residence, unless the notary is not a North Carolina resident, in which case he or she shall be commissioned in the county of his or her employment or business.

(d) The Secretary may deny an application for commission or recommission if any of the following apply to an applicant:

(1) Submission of an incomplete application or an application containing material misstatement or omission of fact.

(2) The applicant's conviction or plea of admission or nolo contendere to a felony or any crime involving dishonesty or moral turpitude. In no case may a commission be issued to an applicant within 10 years after release from prison, probation, or parole, whichever is later.

(3) A finding or admission of liability against the applicant in a civil lawsuit based on the applicant's deceit.

(4) The revocation, suspension, restriction, or denial of a notarial commission or professional license by this or any other state or nation. In no case may a commission be issued to an applicant within five years after the completion of all conditions of any disciplinary order.

(5) A finding that the applicant has engaged in official misconduct, whether or not disciplinary action resulted.

(6) An applicant knowingly using false or misleading advertising in which the applicant as a notary represents that the applicant has powers, duties, rights, or privileges that the applicant does not possess by law.

(7) A finding by a state bar or court that the applicant has engaged in the unauthorized practice of law.

"**§ 10B-5. Application for commission.**

Every application for a notary commission shall be made on paper with original signatures, or in another form determined by the Secretary, and shall include all of the following:

(1) A statement of the applicant's personal qualifications as required by this Chapter.

(2) A certificate or signed statement by the instructor evidencing successful completion of the course of instruction as required by this Chapter.

(3) A notarized declaration of the applicant, as required by this Chapter.

(4) Any other information that the Secretary deems appropriate.

(5) The application fee required by this Chapter.

"**§ 10B-6. Statement of personal qualification.**

(a) The application for a notary commission shall include at least all of the following:

(1) The applicant's full legal name and the name to be used for commissioning, excluding nicknames.

(2) The applicant's date of birth.

(3) The mailing address for the applicant's residence, the street address for the applicant's residence, and the telephone number for the applicant's residence.
(4) The applicant's county of residence.
(5) The name of the applicant's employer, the street and mailing address for the applicant's employer, and telephone number for the applicant's employer.
(6) The applicant's last four digits of the applicant's social security number.
(7) The applicant's personal and business e-mail addresses.
(8) A declaration that the applicant is a citizen of the United States or proof of the applicant's legal residency in this country.
(9) A declaration that the applicant can speak, read, and writes in the English language.
(10) A complete listing of any issuances, denials, revocations, suspensions, restrictions, and resignations of a notarial commission, professional license, or public office involving the applicant in this or any other state or nation.
(11) A complete listing of any criminal convictions of the applicant, including any pleas of admission or nolo contendere, in this or any other state or nation.
(12) A complete listing of any civil findings or admissions of fault or liability regarding the applicant's activities as a notary, in this or any other state or nation.

(b) The information contained in an application under this section is a public record as defined in G.S 132-1. The information contained in subdivisions (2), (3), (6) and (7) of subsection (a) of this section shall be considered confidential information and shall not be subject to disclosure except as provided in Chapter 132 of the General Statutes.

"**§ 10B-7. Course of study and examination.**

(a) Every applicant for an initial notary commission shall, within the three months preceding application, take a course of classroom instruction of not less than six hours approved by the Secretary and take a written examination approved by the Secretary. An applicant must answer at least eighty percent (80%) of the questions correctly in order to pass the exam. This subsection shall not apply to a licensed member of the North Carolina State Bar.

(b) Every applicant for recommissioning shall pass a written examination approved by and administered by or under the direction of the Secretary, unless the person is a licensed member of the North Carolina State Bar.

(c) The content of the course of instruction and the written examinations shall be notarial laws, procedures, and ethics.

(d) The Secretary may charge such fees as are reasonably necessary to pay the cost associated with developing and administering examinations permitted by this Chapter and for conducting the training of notaries and notary instructors. All funds

received by the Secretary under this section shall be deposited into the Notary Public Special Fund and used for the purposes authorized under G.S. 10B-58.

"**§ 10B-8. Length of term and jurisdiction.**

A person commissioned under this Chapter may perform notarial acts in any part of this State for a term of five years, unless the commission is earlier revoked or resigned. No commissions shall be effective prior to the administration of the oath of office. Any notarial acts performed before the administration of the oath of office, either the original commissioning or recommissioning, are invalid.

"**§ 10B-9. Commission; oath of office.**

(a) If the Secretary grants a commission to an applicant, the Secretary shall notify the appointee and shall instruct the appointee regarding the proper procedure for taking the oath at the register of deeds office in the county of the appointee's commissioning.

(b) The appointee shall appear before the register of deeds no later than 45 days after commissioning and shall be duly qualified by taking the general oath of office prescribed in G.S. 11-11 and the oath prescribed for officers in G.S. 11-7.

(c) The register of deeds shall then place the notary record in a book designated for that purpose, or the notary record may be recorded in the Consolidated Document Book and indexed in the Consolidated Real Property Index under the notary's name in the grantor index. The notary record may be kept in electronic format so long as the signature of the notary public may be viewed and printed. The notary record shall contain the name and the signature of the notary as commissioned, the effective date and expiration date of the commission, the date the oath was administered, and the date of any restriction, suspension, revocation, or resignation. The record shall constitute the official record of the qualification of notaries public.

(d) The register of deeds shall deliver the commission to the notary following completion of the requirements of this section and shall notify the Secretary of the delivery.

(e) If the appointee does not appear before the register of deeds within 45 days of commissioning, the register of deeds must return the commission to the Secretary, and the appointee must reapply for commissioning. If the appointee reapplies within one year of the granting of the commission, the Secretary may waive the educational requirements of this Chapter.

"**§ 10B-10. Recommissioning.**

(a) A commissioned notary may apply for recommissioning no earlier than 10 weeks prior to the expiration date of the notary's commission.

(b) A notary whose commission has not expired must comply with the following requirements to be recommissioned:

(1) Submit a new application under G.S. 10B-5.

(2) Meet the requirements of G.S. 10B-4(b).

(3) Pass the written examination required under G.S. 10B-7, unless the notary is a licensed member of the North Carolina State Bar.

(c) An individual may apply for recommissioning within one year after the expiration of the individual's commission. The individual must comply with the

requirement of subsection (b) of this section. The individual must also fulfill the educational requirement under G.S. 10B-7(a), unless the Secretary waives that requirement.

"**§ 10B-11. Notarized declaration.**

The application for a notary public commission shall contain the following declaration to be executed by each applicant under oath:

Declaration of Applicant

I, _____ (name of applicant), solemnly swear or affirm under penalty of perjury that the information in this application is true, complete, and correct; that I understand the official duties and responsibilities of a notary public in this State, as described in the statutes; and that I will perform to the best of my ability all notarial acts in accordance with the law.

_____

(signature of applicant)

"**§ 10B-12. Application fee.**

Every applicant for a notary commission shall pay to the Secretary a nonrefundable application fee of fifty dollars ($50.00).

"**§ 10B-13. Instructor's certification.**

(a) The course of study required by G.S. 10B-4(b) shall be taught by an instructor certified under rules adopted by the Secretary. An instructor must meet the following requirements to be certified to teach a course of study for notaries public:

(1) Complete and pass an instructor certification course of not less than six hours taught by the Director or other person approved by the Secretary.
(2) Have at least one year of active experience as a notary public.
(3) Maintain a current commission as a notary public.
(4) Possess the current notary public guidebook.
(5) Pay a nonrefundable fee of fifty dollars ($50.00).

(b) Certification to teach a course of study for notaries shall be effective for two years. A certification may be renewed by passing a recertification course taught by the Director or other person approved by the Secretary and by paying a nonrefundable fee of fifty dollars ($50.00). All funds received by the Secretary under this section shall be deposited into the Notary Public Special Fund and used for the purposes authorized under G.S. 10B-60.

(c) The following individuals may be certified to teach a course of study for notaries public without paying the fee required by this section, and they may renew their certification without paying the renewal fee, so long as they remain actively employed in the capacities named:

(1) Registers of deeds.
(2) Clerks of court.
(3) The Director and other duly authorized employees of the Secretary.

(d) Former registers of deeds and clerks of court who have been certified as notary public instructors must apply for commissioning as a notary public but are

exempt from the education requirements of G.S. 10B-7 after successful completion of an examination administered by the Secretary.

(e) Assistant and deputy registers of deeds and assistant and deputy clerks of court must have a regular notary commission prior to receiving a certification or recertification as a notary public instructor.

(f) The Secretary may suspend or revoke the certification of a notary instructor for violating the provisions of this Chapter or any of the administrative rules implementing it.

"Part 3. Notarial Acts, Powers, and Limitations.

"**§ 10B-14. Powers and limitations.**

(a) A notary may perform any of the following notarial acts:

(1) Acknowledgments.

(2) Oaths and affirmations.

(3) Execute jurats.

(4) Verifications or proofs.

(b) A notarial act shall be attested by all of the following:

(1) The signature of the notary, exactly as shown on the notary's commission.

(2) The readable appearance of the notary's name, from the notary's typed or printed name near the signature.

(3) The clear and legible appearance of the notary's stamp or seal.

(4) A statement of the date the notary's commission expires.

(c) A notary is disqualified from performing a notarial act if any of the following apply:

(1) The principal or subscribing witness is not in the notary's presence at the time the notarial act is to be performed; however, nothing in this Chapter shall require a notary to complete the certificate in the presence of the principal or subscribing witness.

(2) The principal or subscribing witness is not personally known to the notary or identified by the notary through satisfactory evidence.

(3) The principal or subscribing witness shows a demeanor that causes the notary to have a compelling doubt about whether the principal knows the consequences of the transaction requiring a notarial act.

(4) The principal or subscribing witness, in the notary's judgment, is not acting of the principal's or the subscribing witness's own free will.

(5) The notary is a signer of or is named, other than as a trustee in a deed of trust, in the document that is to be notarized.

(6) The notary will receive directly from a transaction connected with the notarial act any commission, fee, advantage, right, title, interest, cash, property, or other consideration exceeding in value the fees specified in G.S. 10B-20, other than fees or other consideration paid for services rendered by a licensed attorney, a licensed real estate broker or salesperson, a motor vehicle dealer, or a banker.

(d) A notary may certify the affixation of a signature by mark on a record presented for notarization if:

(1) The mark is affixed in the presence of the notary;

(2) The notary writes below the mark: "Mark affixed by (name of signer by mark) in presence of undersigned notary"; and

(3) The notary notarizes the signature by performing an acknowledgment, oath or affirmation, jurat, or verification or proof.

(e) If a principal is physically unable to sign or make a mark on a record presented for notarization, that principal may designate another person as his or her designee, who shall be a disinterested party, to sign on the principal's behalf pursuant to the following procedure:

(1) The principal directs the designee to sign the record in the presence of the notary and two witnesses unaffected by the record;

(2) The designee signs the principal's name in the presence of the principal, the notary, and the two witnesses;

(3) Both witnesses sign their own names to the record near the principal's signature;

(4) The notary writes below the principal's signature: "Signature affixed by designee in the presence of (names and addresses of principal and witnesses)"; and

(5) The notary notarizes the signature through an acknowledgment, oath or affirmation, jurat, or verification or proof.

(f) A notarial act performed in another jurisdiction in compliance with the laws of that jurisdiction is valid to the same extent as if it had been performed by a notary commissioned under this Chapter if the notarial act is performed by a notary public of that jurisdiction or by any person authorized to perform notarial acts in that jurisdiction under the laws of that jurisdiction , the laws of this State, or federal law.

(g) Commissioned officers on active duty in the United States armed forces who are authorized to perform notarial acts and other persons authorized by federal law or regulation to perform notarial acts may perform the acts for persons serving in or with the United States armed forces, their spouses, and their dependents.

(h) The Secretary and register of deeds in the county in which a notary qualified may certify to the commission of the notary.

(i) A notary public who is not an attorney licensed to practice law in this State who advertises the person's services as a notary public in a language other than English, by radio, television, signs, pamphlets, newspapers, other written communication, or in any other manner, shall post or otherwise include with the advertisement the notice set forth in this subsection in English and in the language used for the advertisement. The notice shall be of conspicuous size, if in writing, and shall state: "I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF NORTH CAROLINA, AND I MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE." If the advertisement is by radio or television, the statement may be modified but must include substantially the same message.

(j) A notary public who is not an attorney licensed to practice law in this State is prohibited from representing or advertising that the notary public is an "immigration consultant" or expert on immigration matters unless the notary public is an accredited representative of an organization recognized by the Board of Immigration Appeals pursuant to Title 8, Part 292, section 2(a-e) of the Code of Federal Regulations (8 C.F.R. § 292.2(a-e)).

(k) A notary public who is not an attorney licensed to practice law in this State is prohibited from rendering any service that constitutes the unauthorized practice of law. A nonattorney notary shall not assist another person in drafting, completing, selecting, or understanding a record or transaction requiring a notarial act.

(l) A notary public required to comply with the provisions of subsection (g) of this section shall prominently post at the notary public's place of business a schedule of fees established by law, which a notary public may charge. The fee schedule shall be written in English and in the non-English language in which the notary services were solicited and shall contain the notice required in subsection (i) of this section, unless the notice is otherwise prominently posted at the notary public's place of business.

(m) If notarial certificate wording is not provided or indicated for a record, a nonattorney notary shall not determine the type of notarial act or certificate to be used. This does not prohibit a notary from offering the selection of certificate forms recognized in this Chapter or as otherwise authorized by law.

(n) A notary shall not claim to have powers, qualifications, rights, or privileges that the office of notary does not provide, including the power to counsel on immigration matters.

(o) Before signing a notarial certificate and except as provided in this subsection, a notary shall cross out or mark through all blank lines or spaces in the certificate. However:

(1) Notwithstanding the provisions of this section or G.S. 10B-22(b), a notary shall not be required to complete, cross out, or mark through blank lines or spaces in the notary certificate form provided for in G.S. 47-43 indicating when and where a power of attorney is recorded if that recording information is not known to the notary at the time the notary completes and signs the certificate;

(2) A notary's failure to cross out or mark through blank lines or spaces in a notarial certificate shall not affect the sufficiency, validity, or enforceability of the certificate or the related record; and

(3) A notary's failure to cross out or mark through blank lines or spaces in a notarial certificate shall not be grounds for a register of deeds to refuse to accept a record for registration.

"**§ 10B-15. Notaries ex officio.**

(a) The clerks of the superior court may act as notaries public in their several counties by virtue of their offices as clerks and may certify their notarial acts only under the seals of their respective courts. Assistant and deputy clerks of superior court, by virtue of their offices, may perform the following notarial acts and may certify these notarial acts only under the seals of their respective courts:

(1) Oaths and affirmations.
(2) Verifications or proofs.

Upon completion of the course of study provided for in G.S. 10B-4(b), assistant and deputy clerks of superior court may, by virtue of their offices, perform all other notarial acts and may certify these notarial acts only under the seals of their respective courts. A course of study attended only by assistant and deputy clerks of superior court may be taught at any mutually convenient location agreed to by the Secretary and the Administrative Office of the Courts.

(b) Registers of deeds may act as notaries public in their several counties by virtue of their offices as registers of deeds and may certify their notarial acts only under the seals of their respective offices. Assistant and deputy registers of deeds, by virtue of their offices, may perform the following notarial acts and may certify these notarial acts only under the seals of their respective offices:

(1) Oaths and affirmations.
(2) Verifications or proofs.

Upon completion of the course of study provided for in G.S. 10B-4(b), assistant and deputy registers of deeds may, by virtue of their offices, perform all other notarial acts and may certify these notarial acts only under the seals of their respective offices. A course of study attended only by assistant and deputy registers of deeds may be taught at any mutually convenient location agreed to by the Secretary and the North Carolina Association of Registers of Deeds.

(c) The Director may act as a notary public by virtue of the Director's employment in the Department of the Secretary and may certify a notarial act performed in that capacity under the seal of the Secretary.

(d) Unless otherwise provided by law, a person designated a notary public by this section may charge a fee for a notarial act performed in accordance with G.S. 10B-20. The fee authorized by this section is payable to the governmental unit or agency by whom the person is employed.

(e) Nothing in this section shall authorize a person to act as a notary public other than in the performance of the official duties of the person's office unless the person complies fully with the requirements of G.S. 10B-4.

"**§ 10B-16. False certificate.**

(a) A notary shall not execute a notarial certificate containing information known or believed by the notary to be false.

(b) A notary shall not execute a certificate that is not written in the English language. A notary may execute a certificate written in the English language that accompanies a record written in another language, which record may include a translation of the notarial certificate into the other language. In those instances, the notary shall execute only the English language certificate.

"**§ 10B-17. Improper records.**

(a) A notary shall not notarize a signature on a record without a notarial certificate indicating what type of notarial act was performed.

(b) A notary shall neither certify, notarize, nor authenticate a photograph. A notary may notarize an affidavit regarding and attached to a photograph.

"**§ 10B-18. Testimonials.**

A notary shall not use the official notary title or seal in a manner intended to endorse, promote, denounce, or oppose any product, service, contest, candidate, or other offering. This section does not prohibit a notary public from performing a notarial act upon a record executed by another individual.

"Part 4. Fees.

"**§ 10B-19. Imposition and waiver of fees.**

(a) For performing a notarial act, a notary may charge up to the maximum fee specified in this Chapter.

(b) A notary shall not discriminatorily condition the fee for a notarial act on any attribute of the principal that would constitute unlawful discrimination.

(c) Nothing in this Chapter shall compel a notary to charge a fee.

"**§ 10B-20. Fees for notarial acts.**

The maximum fees that may be charged by a notary for notarial acts are as follows:

(1) For acknowledgments, jurats, verifications or proofs, five dollars ($5.00) per principal signature.

(2) For oaths or affirmations without a signature, five dollars ($5.00) per person, except for an oath or affirmation administered to a credible witness to vouch for a principal's identity.

"**§ 10B-21. Notice of fees.**

Notaries who charge for their notarial services shall conspicuously display in their places of business, or present to each principal outside their places of business, an English-language schedule of fees for notarial acts. No part of any notarial fee schedule shall be printed in smaller than 10-point type.

"Part 5. Signature and Seal.

"**§ 10B-22. Official signature.**

(a) A notary shall keep an official seal or stamp (herein "seal") that is the exclusive property of the notary. The notary shall keep the seal in a secure location that is accessible only to the notary. A notary shall not allow another person to use or possess the seal, and shall not surrender the seal to the notary's employer upon termination of employment.

(b) The seal shall be affixed only after the notarial act is performed. The notary shall place the image or impression of the seal near the notary's signature on every paper record notarized. The seal and the signature shall appear on the same page.

(c) A notary shall do the following within 10 days of discovering that the notary's seal has been stolen, lost, damaged, or otherwise rendered incapable of affixing a legible image:

(1) Inform the appropriate law enforcement agency in the case of theft or vandalism.

(2) Notify the appropriate register of deeds and the Secretary in writing and signed in the official name in which he or she was commissioned.

(d) As soon as is reasonably practicable after resignation, revocation, or expiration of a notary commission, or death of the notary, the seal shall be delivered to the Secretary for disposal.

"**§ 10B-23. Official seal.**

(a) A notary shall keep an official seal or stamp (herein "seal") that is the exclusive property of the notary. The notary shall keep the seal in a secure location that is accessible only to the notary. A notary shall not allow another person to use or possess the seal, and shall not surrender the seal to the notary's employer upon termination of employment.

(b) The seal shall be affixed only after the notarial act is performed. The notary shall place the image or impression of the seal near the notary's signature on every paper record notarized. The seal and the signature shall appear on the same page.

(c) A notary shall do the following within 10 days of discovering that the notary's seal has been stolen, lost, damaged, or otherwise rendered incapable of affixing a legible image:

(1) Inform the appropriate law enforcement agency in the case of theft or vandalism.

(2) Notify the appropriate register of deeds and the Secretary in writing and signed in the official name in which he or she was commissioned.

(d) As soon as is reasonably practicable after resignation, revocation, or expiration of a notary commission, or death of the notary, the seal shall be delivered to the Secretary for disposal.

"**§ 10B-24. Seal image.**

(a) Near the notary's official signature on the notarial certificate of a paper record, the notary shall place a sharp, legible, permanent, and photographically reproducible image of the official seal.

(b) A notary's official seal shall include only the following elements:

(1) The notary's name exactly as commissioned;

(2) The words "Notary Public";

(3) The county of commissioning, including the word "County" or the abbreviation "Co."; and

(4) The words "North Carolina" or the abbreviation "NC".

(c) The notary seal may be either circular or rectangular in shape. The circular seal shall not be less than 1 1/2 inches, nor more than 2 inches in diameter. The rectangular seal shall not be over 1 inch high and 2 1/2 inches long. The perimeter of the seal shall contain a border that is visible when impressed.

(d) A notarial seal may contain the notary's commission expiration date; however, a notarial act shall be invalid if the expiration date contained on the seal is incorrect at that time that the notarial act is performed.

"Part 6. Certificate Forms.

"**§ 10B-25. Notarial certificates in general.**

(a) A notary shall not make or give a notarial certificate unless the notary has either (i) personal knowledge of the identity of the principal or, if applicable, the subscribing witness, or (ii) satisfactory evidence of a signer's identity.

(b) A notarial certificate for the acknowledgment of a principal who is an individual acting in his or her own right or in a representative capacity taken by a notary is sufficient and shall be accepted in this State if it is substantially in the form set forth

in G.S. 10B-26, if it is substantially in a form otherwise prescribed by the law of this State, or if it:

(1) Identifies the state and county in which the acknowledgment occurred;

(2) Names the principal who appeared in person before the notary;

(3) States that the notary has either (i) personal knowledge of the identity of the principal or (ii) satisfactory evidence of the principal's identity, indicating the nature of that satisfactory evidence;

(4) Indicates that the principal who appeared in person before the notary acknowledged that the signature on the record presented is his or her signature, that the principal voluntarily signed the record for the purpose stated therein;

(5) States the date of the acknowledgment;

(6) Contains the signature and seal or stamp of the notary who took the acknowledgment; and

(7) States the notary's commission expiration date.

(c) A notarial certificate for the verification or proof of the signature of a principal by a subscribing witness taken by a notary is sufficient and shall be accepted in this State if it is substantially in the form set forth in G.S. 10B-27, if it is substantially in a form otherwise prescribed by the law of this State, or if it:

(1) Identifies the state and county in which the verification or proof occurred;

(2) Names the subscribing witness who appeared in person before the notary;

(3) States that the notary has either (i) personal knowledge of the identity of the subscribing witness or (ii) satisfactory evidence of the subscribing witness's identity, indicating the nature of that satisfactory evidence;

(4) Names the principal whose signature on the record is to be verified or proven;

(5) Indicates that the subscribing witness certified to the notary under oath or by affirmation that the subscribing witness is not a named party to the record in question, has no interest in the transaction, signed the record as a subscribing witness, and either (i) witnessed the principal sign the record, or (ii) witnessed the principal acknowledge the principal's signature on the already-signed record;

(6) States the date of the verification or proof;

(7) Contains the signature and seal or stamp of the notary who took the verification or proof; and

(8) States the notary's commission expiration date.

(d) A notarial certificate for an oath or affirmation taken by a notary is sufficient and shall be accepted in this State if it is substantially in the form set forth in G.S. 10B-28, if it is substantially in a form otherwise prescribed by the law of this State, or if it:

(1) Identifies the state and county in which the oath or affirmation occurred;
(2) Names the principal who appeared in person before the notary;
(3) States that the notary has either (i) personal knowledge of the identity of the principal or (ii) satisfactory evidence of the principal's identity, indicating the nature of that satisfactory evidence;
(4) Indicates that the principal who appeared in person before the notary signed the record in question and certified to the notary under oath or by affirmation as to the truth of the matters stated in the record;
(5) States the date of the oath or affirmation;
(6) Contains the signature and seal or stamp of the notary who took the oath or affirmation; and
(7) States the notary's commission expiration date.

(e) Any notarial certificate made in another jurisdiction shall be sufficient in this State if it is made in accordance with federal law or the laws of the jurisdiction where the notarial certificate is made.

(f) On records to be filed, registered, recorded, or delivered in another state or jurisdiction of the United States, a North Carolina notary may complete any notarial certificate that may be required in that other state or jurisdiction.

(g) Nothing in this Chapter shall be deemed to authorize the use of a notarial certificate authorized by this Part in place of or as an alternative to a notarial certificate required by any other provision of the General Statutes outside of Chapter 47 of the General Statutes that prescribes the specific form or content for a notarial certificate (including, but not limited to, G.S. 31-11.6, Chapter 32A of the General Statutes, and G.S. 90-321). However, any statute that permits or requires the use of a notarial certificate contained within Chapter 47 of the General Statutes may also be satisfied by the use of a notarial certificate permitted by this Part.

"**§ 10B-26. Notarial certificate for an acknowledgment.**

(a) When properly completed by a notary, a notarial certificate in substantially the following form may be used and shall be sufficient under the law of this State to satisfy the requirements for a notarial certificate for the acknowledgment of a principal who is an individual acting in his or her own right or in a representative capacity. The authorization of the form in this section does not preclude the use of other forms.

_____ County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: *name(s) of principal(s).*

Date: _____ *Official Signature of Notary*

Notary's printed or typed name, Notary Public

(Official Seal) My commission expires: _____

(b) By signing a notarial certificate for the acknowledgment of a principal who is an individual acting in his or her own right or in a representative capacity substantially in the form set forth in subsection (a) of this section, the notary thereby certifies:

(1) That the principal acknowledging his or her signature appeared in person before the notary on the date indicated;

(2) That the principal stated to the notary that he or she voluntarily signed the record for the purpose stated therein;

(3) That, if the principal signed the record in a representative capacity, the principal stated that he or she signed the record in the particular representative capacity; and

(4) That the notary has either (i) personal knowledge of the identity of the principal or (ii) satisfactory evidence of the principal's identity.

"**§ 10B-27. Notarial certificate for a verification or proof.**

(a) When properly completed by a notary, a notarial certificate in substantially the following form may be used and shall be sufficient under the law of this State to satisfy the requirements for a notarial certificate for the verification or proof of the signature of a principal by a subscribing witness. The authorization of the form in this section does not preclude the use of other forms.

_____ County, North Carolina

I certify that *name of subscribing witness* personally appeared before me this day and certified to me under oath or by affirmation that he or she is not a named party to the foregoing document, has no interest in the transaction, signed the foregoing document as a subscribing witness, and either (i) witnessed *name of principal* (the principal) sign the foregoing document or (ii) witnessed the principal acknowledge the principal's signature on the already-signed document.

Date: _____ *Official Signature of Notary*

Notary's printed or typed name, Notary Public

(Official Seal) My commission expires: _____

(b) By signing a notarial certificate for the verification or proof of the signature of a principal by a subscribing witness substantially in the form set forth in subsection (a) of this section, the notary thereby certifies:

(1) That the subscribing witness appeared in person before the notary on the date indicated;

(2) That the subscribing witness certified to the notary under oath or by affirmation that the subscribing witness is not a named party to the record in question, has no interest in the transaction, signed the record as a subscribing witness, and either (i) witnessed the named principal

sign the record, or (ii) witnessed the named principal acknowledge the principal's signature on the already-signed record; and

(3) That the notary has either (i) personal knowledge of the identity of the subscribing witness or (ii) satisfactory evidence of the subscribing witness's identity.

"**§ 10B-28. Notarial certificate for an oath or affirmation.**

(a) When properly completed by a notary, a notarial certificate in substantially either of the following forms may be used and shall be sufficient under the law of this State to satisfy the requirements for a notarial certificate for an oath or affirmation. The authorization of the forms in this section does not preclude the use of other forms.

_____ County, North Carolina

Signed and sworn to (or affirmed) before me this day by *name of principal.*

Date: _____ _____ *Official Signature of Notary* _____

Notary's printed or typed name, Notary Public

(Official Seal) My commission expires: _____

-OR-

_____ County, North Carolina

Sworn to (or affirmed) and subscribed before me this day by *name of principal.*

Date: _____ _____ *Official Signature of Notary* _____

Notary's printed or typed name, Notary Public

(Official Seal) My commission expires: _____

(b) By signing a notarial certificate for an oath or affirmation substantially in the form set forth in subsection (a) of this section, the notary thereby certifies:

(1) That the principal appeared in person before the notary on the date indicated;

(2) That either (i) the notary witnessed the principal sign the record or (ii) the principal stated to the notary that he or she voluntarily signed the record for the purpose stated therein;

(3) That the principal certified to the notary under oath or by affirmation as to the truth of the matters stated in the record; and

(4) That the notary has either (i) personal knowledge of the identity of the principal or (ii) satisfactory evidence of the principal's identity.

"Part 7. Changes in Status.

"**§ 10B-29. Change of address.**

Within 45 days after the change of a notary's residence, business, or any mailing address or telephone number, the notary shall send to the Secretary by fax, e-mail, or certified mail, return receipt requested, a signed notice of the change, giving both old and new addresses or telephone numbers.

"**§ 10B-30. Change of name.**

(a) Within 45 days after the legal change of a notary's name, the notary shall send to the Secretary by fax, e-mail, or certified mail, return receipt requested, a signed notice of the change. The notice shall include both the notary's former name and the notary's new name.

(b) A notary with a new name may continue to use the former name in performing notarial acts until all of the following steps have been completed:

(1) The notary receives a confirmation of Notary's Name Change from the Secretary.

(2) The notary obtains a new seal bearing the new name exactly as that name appears in the confirmation from the Secretary.

(3) The notary appears before the register of deeds to which the commission was delivered within 45 days of the effective date of the change to be duly qualified by taking the general oath of office prescribed in G.S. 11-11 and the oath prescribed for officers in G.S. 11-7 under the new name and to have the notary public record changed to reflect the new commissioned name.

(c) Upon completion of the requirements in subsection (b) of this section, the notary shall use the new name.

"**§ 10B-31. Change of county.**

(a) A notary who has moved to another county in North Carolina remains commissioned until the current commission expires, is not required to obtain a new seal, and may continue to notarize without changing his or her seal.

(b) When a notary who has moved applies to be recommissioned, if the commission is granted the, Secretary shall issue a notice of recommissioning. The commission applicant shall then do all of the following:

(1) Obtain a new seal bearing the new county exactly as in the notice of recommissioning.

(2) Appear before the register of deeds to which the commission was delivered within 45 days of recommissioning, to be duly qualified by taking the general oath of office prescribed in G.S. 11-11 and the oath prescribed for officers in G.S. 11-7 under the new county and to have the notary public record changed to reflect the new county name.

"**10B-32. Change of both name and county.**

(a) Within 45 days after the legal change of a notary's name, and if the notary has also moved to a different county than as last commissioned, the notary shall submit to the Secretary a recommissioning application and fee pursuant to this Chapter. The notary may continue to perform notarial acts under the notary's previous name and seal until all of the following steps have been completed:

(1) The notary receives a transmittal receipt of reappointment due to name and county change from the Secretary.
(2) The notary obtains a new seal bearing the new name and county exactly as those items appear in the transmittal receipt.
(3) The notary appears before the register of deeds to which the commission was delivered within 45 days of recommissioning to be duly qualified by taking the general oath of office prescribed in G.S. 11-11 and the oath prescribed for officers in G.S. 11-7 under the new name and county and to have the notary public record changed to reflect the new name and county.

"**§ 10B-33. Resignation.**

(a) A notary who resigns the notary's commission shall send to the Secretary by fax, e-mail, or certified mail, return receipt requested, a signed notice indicating the effective date of resignation.

(b) Notaries who cease to reside in or to maintain a regular place of work or business in this State, or who become permanently unable to perform their notarial duties, shall resign their commissions and shall deliver their seals to the Secretary by certified mail, return receipt requested.

"**§ 10B-34. Disposition of seal; death of notary.**

(a) When a notary commission is resigned or revoked, the notary shall deliver the notary's seal to the Secretary within 45 days of the resignation or revocation. Delivery shall be accomplished by certified mail, return receipt requested. The Secretary shall destroy any seal received under this subsection.

(b) A notary whose commission has expired and whose previous commission or application was not revoked or denied by this State, is not required to deliver the seal to the Secretary as provided under subsection (a) of this section if the notary intends to apply to be recommissioned and is recommissioned within three months after the notary's commission expires.

(c) If a notary dies while commissioned or before fulfilling the disposition of seal requirements in this section, the notary's estate shall, as soon as is reasonably practicable and no later than the closing of the estate, notify the Secretary in writing of the notary's death and deliver the notary's seal to the Secretary for destruction.

"Part 8. Enforcement, Sanctions, and Remedies.

"**§ 10B-35. Enforcement and penalties.**

(a) The Secretary may warn, restrict, suspend, or revoke a notarial commission for a violation of this Chapter and on any ground for which an application for a commission may be denied under this Chapter. Any period of restriction, suspension, or revocation shall not extend the expiration date of a commission.

(b) Except as otherwise permitted by law, a person who commits any of the following acts is guilty of a Class 1 misdemeanor:
(1) Holding one's self out to the public as a notary if the person does not have a commission.
(2) Performing a notarial act if the person's commission has expired or been suspended.

(3) Performing a notarial act before the person had taken the oath of office.

(c) A notary shall be guilty of a Class 1 misdemeanor if the notary does any of the following:

(1) Takes an acknowledgment, performs an oath, affirmation, or jurat without the principal personally appearing before the notary;

(2) Takes a verification or proof of a subscribing witness without personal knowledge of the subscribing witness's identity, or without satisfactory evidence of the subscribing witness's identity;

(d) A notary shall be guilty of a Class I felony if the notary does any of the following:

(1) Takes an acknowledgment, verification, proof, or jurat, or performs an oath or affirmation if the notary knows it is false or fraudulent.

(2) Takes an acknowledgment, or jurat without the principal appearing if the notary does so with the intent to commit fraud.

(3) Takes a verification or proof without the subscribing witness appearing in person before the notary if the notary does so with the intent to commit fraud.

(e) It is a Class I felony for any person to perform notarial acts in this State with the knowledge that the person is not commissioned under this Chapter.

(f) Any person who without authority obtains, uses, conceals, defaces, or destroys the seal or notarial records of a notary is guilty of a Class I felony.

(g) For purposes of enforcing this Chapter and Article 34 of Chapter 66 of the General Statutes, the law enforcement agents of the Department of the Secretary of State have statewide jurisdiction and have all of the powers and authority of law enforcement officers. The agents have the authority to assist local law enforcement agencies in their investigations and to initiate and carry out, on their own or in coordination with local law enforcement agencies, investigations of violations.

(h) Resignation or expiration of a notarial commission does not terminate or preclude an investigation into a notary's conduct by the Secretary, who may pursue the investigation to a conclusion, whereupon it may be a matter of public record whether or not the finding would have been grounds for disciplinary action.

(i) The Secretary may seek injunctive relief against any person who violates the provisions of this Chapter. Nothing in this Chapter diminishes the authority of the North Carolina State Bar.

(j) Any person who knowingly solicits, coerces, or in any material way influences a notary to commit official misconduct, is guilty as an aider and abettor and is subject to the same level of punishment as the notary.

(k) The sanctions and remedies of this Chapter supplement other sanctions and remedies provided by law, including, but not limited to, forgery and aiding and abetting.

"Part 9. Validation of Notarial Acts.

"**§ 10B-36. Acts of notaries public in certain instances validated.**

(a) Any acknowledgment taken and any instrument notarized by a person prior to qualification as a notary public but after commissioning or recommissioning as a notary

public, or by a person whose notary commission has expired, is hereby validated. The acknowledgment and instrument shall have the same legal effect as if the person qualified as a notary public at the time the person performed the act.

(b) All documents bearing a notarial seal and which contain any of the following errors are validated and given the same legal effect as if the errors had not occurred:

(1) The date of the expiration of the notary's commission is stated, whether correctly or erroneously.

(2) The notarial seal does not contain a readable impression of the notary's name, contains an incorrect spelling of the notary's name, or does not bear the name of the notary exactly as it appears on the commission, as required under G.S. 10B-24.

(3) The notary's signature does not comport exactly with the name on the notary commission or on the notary seal, as required by G.S. 10B-14.

(4) The notarial seal contains typed, printed, drawn, or handwritten material added to the seal, fails to contain the words "North Carolina" or the abbreviation "NC", or contains correct information except that instead of the abbreviation for North Carolina contains the abbreviation for another state.

(c) All deeds of trust in which the notary was named in the document as a trustee only are validated.

(d) All notary acknowledgments performed before January 1, 1953, bearing a notarial seal are hereby validated.

(e) This section applies to notarial acts performed on or before February 1, 2004.

"**§ 10B-37. Certain notarial acts validated.**

(a) Any acknowledgment taken and any instrument notarized by a person whose notarial commission was revoked on or before January 30, 1997, is hereby validated.

(b) This section applies to notarial acts performed on or before August 1, 1998.

"Article 2.

"Electronic Notary Act.

"Part 1. General Provisions.

"**§ 10B-38. Short title.**

This act is the Electronic Notary Public Act and may be cited by that name.

"**§ 10B-39. Definitions.**

The following definitions apply in this Article:

(1) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(2) "Electronic Notary Public" and "Electronic Notary" mean a notary public who has registered with the Secretary the capability of performing electronic notarial acts in conformance with this Article.

(3) "Electronic Document" means information that is created, generated, sent, communicated, received, or stored by electronic means.

(4) "Electronic Notarial Act" and "Electronic Notarization" mean an official act by an electronic notary public that involves electronic documents.

(5) "Electronic Notary Seal" and "Electronic Seal" mean information within a notarized electronic document that includes the notary's name, jurisdiction, and commission expiration date, and generally corresponds to data in notary seals used on paper documents.

(6) "Electronic Signatures" means an electronic symbol or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the document.

(7) "Notary's Electronic Signature" means those forms of electronic signature which have been approved by the Secretary as authorized in G.S. 10B-49, as an acceptable means for an electronic notary to affix the notary's official signature to an electronic record that is being notarized.

"**§ 10B-40. Scope of this Article.**

Article 1 of this Chapter applies to all acts authorized under this Article unless the provisions of Article 1 directly conflict with the provisions of this Article, in which case provisions of Article 2 shall control.

"Part 2. Registration.

"**§ 10B-41. Qualifications.**

(a) A person qualified for electronic notary registration shall meet all of the following requirements:

(1) Hold a valid commission as a notary public in the State of North Carolina.

(2) Except as otherwise provided, abide by all the provisions of Article 1 of this Chapter.

(3) Satisfy the requirements of G.S. 10B-43.

(4) Submit an electronic registration form containing no significant misstatement or omission of fact.

(5) Pay an additional nonrefundable registration fee of fifty dollars ($50.00).

(b) The Secretary may deny a registration as an electronic notary as authorized in G.S. 10B-4(d). All funds received by the Secretary under this section shall be deposited into the Notary Public Special Fund and used for the purposes authorized under G.S. 10B-58.

"**§ 10B-42. Registration with the Secretary of State.**

(a) Before performing notarial acts electronically, a notary shall register the capability to notarize electronically with the Secretary.

(b) The term of registration as an electronic notary shall coincide with the term of the notary's commission under Article 1 of this Chapter.

(c) An electronic notary shall reregister the capability to notarize electronically at the same time the notary applies for recommissioning under the requirements of Article 1 of this Chapter.

(d) An electronic form shall be used by an electronic notary in registering with the Secretary and it shall include, at least all of the following:

(1) The applicant's full legal name and the name to be used for commissioning, excluding nicknames.
(2) The state and county of commissioning of the registrant.
(3) The expiration date of the registrant's notary commission.
(4) Proof of successful completion of the course of instruction on electronic notarization as required by this Article.
(5) A description of the technology the registrant will use to create an electronic signature in performing official acts.
(6) If the device used to create the registrant's electronic signature was issued or registered through a licensed certification authority, the name of that authority, the source of the license, the starting and expiration dates of the device's term of registration, and any revocations, annulments, or other premature terminations of any registered device of the registrant that was due to misuse or compromise of the device, with the date, cause, and nature of each termination explained in detail.
(7) The e-mail address of the registrant.

The information contained in a registration under this section is a public record as defined in G.S. 132-1, except for information contained in subsection (7), which shall be considered confidential information and shall not be subject to disclosure except as provided in Chapter 132 of the General Statutes or as provided by rule.

(e) The electronic registration form for an electronic notary shall be transmitted electronically to the Secretary and shall include any decrypting instructions, codes, keys, or software that allow the registration to be read.

(f) Within 10 business days after the change of any registration information required of an electronic notary, the notary shall electronically transmit to the Secretary a notice of the change of information signed with the notary's official electronic signature.

"**§ 10B-43. Course of instruction.**

(a) Before performing electronic notarial acts, a notary shall take a course of instruction of least three hours approved by the Secretary and pass an examination of this course, which shall be in addition to the educational requirements provided in Article 1 of this Chapter.

(b) The content of the course and the basis for the examination shall be notarial laws, procedures, technology, and ethics as they pertain to electronic notarization.

"**§ 10B-44. Fees for registration.**

The fee payable to the Secretary for registering or reregistering as an electronic notary is fifty dollars ($50.00), which shall be in addition to the fee required in G.S. 10B-12. All funds received by the Secretary under this section shall be deposited into the Notary Public Special Fund and used for the purposes authorized under G.S. 10B-58.

"Part 3. Electronic Notarial Acts, Powers, and Limitations.

"**§ 10B-45. Types of electronic notarial acts.**

The following types of notarial acts may be performed electronically:

(1) Acknowledgments;

(2) Jurats;
(3) Verifications or proofs; and
(4) Oaths or affirmations.

"**§ 10B-46. Prohibitions.**

An electronic notarization shall not be performed if the signer of the electronic document:

(1) Is not in the presence of the electronic notary at the time of notarization; and
(2) Is not personally known to the notary or identified by the evidence in accordance with other provisions of this Chapter; or
(3) For any reason set forth in G.S. 10B-14.

"**§ 10B-47. Notarial components of electronic document.**

In performing an electronic notarial act, all of the following components shall be attached to, or logically associated with, the electronic document by the electronic notary, all of which shall be immediately perceptible and reproducible in the electronic record to which the notary's electronic signature is attached:

(1) The notary's name, state, and county of commissioning exactly as stated on the commission issued by the Secretary;
(2) The words "Electronic Notary Public";
(3) The words "State of North Carolina";
(4) The expiration date of the commission;
(5) The notary's electronic signature; and
(6) The completed wording of one of the following notarial certificates:
a. Acknowledgment;
b. Jurat;
c. Verification or proof; or
d. Oath or affirmation.

"**§ 10B-48. Maximum fees.**

For performing electronic notarial acts, the maximum fees that may be charged by an electronic notary are as follows:

(1) For acknowledgments, $10.00 per signature.
(2) For jurats, $10.00 per signature.
(3) For verifications or proofs, $10.00 per signature.
(4) For oaths or affirmations, $10.00 per signature.

"Part 4. Electronic Notary Records, Maintenance, and Disposition.

"**§ 10B-49. Electronic signature, electronic seal.**

(a) The notary's electronic signature in combination with the electronic notary seal shall be used only for the purpose of performing electronic notarial acts.

(b) The Secretary shall adopt rules necessary to establish standards, procedures, practices, forms, and records relating to a notary's electronic signature and electronic seal. The notary's electronic seal and electronic signature shall conform to any standards adopted by the Secretary.

"**§ 10B-50. Security measures.**

(a) A notary shall safeguard the notary's electronic signature, the notary's electronic seal, and all other notarial records. Notarial records shall be maintained by the notary, and the notary shall not surrender or destroy the records except as required by a court order or as allowed under rules adopted by the Secretary.

(b) When not in use, the notary shall keep the notary's electronic signature, electronic seal, and all other notarial records secure, under the exclusive control of the notary, and shall not allow them to be used by any other notary or any other person.

(c) A notary shall do the following within 10 days of discovering that the notary's electronic seal or electronic signature has been stolen, lost, damaged, or otherwise rendered incapable of affixing a legible image:

(1) Inform the appropriate law enforcement agency in the case of theft or vandalism.

(2) Notify the appropriate register of deeds and the Secretary in writing and signed in the official name in which he or she was commissioned.

(d) The Secretary may adopt rules necessary to insure the integrity, security, and authenticity of electronic notarizations.

(e) The Secretary may require an electronic notary to create and to maintain a record, journal, or entry of each electronic notarial act. The rule-making authority contained in this subsection shall become effective 18 months after the effective date of this act.

(f) The failure of an electronic notary to produce within 10 days of the Department's request any record required by a rule adopted under this section shall result in the suspension of the electronic notary's power to act as a notary under the provision of this Chapter until the Secretary reinstates the notary's commission.

(g) Upon resignation, revocation, or expiration of an electronic notary commission, or death of the notary, all notarial records required by statute or rule shall be delivered to the Secretary.

"**§ 10B-51. Maintenance of electronic device.**

(a) An electronic notary shall take reasonable steps to ensure that any registered device used to create the notary's electronic signature is current and has not been revoked or terminated by its issuing or registering authority.

(b) If the registration of the device used to create electronic signatures either expires or is changed during the electronic notary's term of office, the notary shall cease performing electronic notarizations until:

(1) A new device is duly issued or registered to the notary; and

(2) An electronically signed notice is sent to the Secretary that shall include the starting and expiration dates of any new registration term and any other new information at variance with information in the most recently executed electronic registration form.

"**§ 10B-52. Disposition of records.**

(a) Upon compliance with G.S. 10B-51 and except as provided in subsection (b) of this section, when an electronic notary's commission expires or is resigned or revoked, or when an electronic notary dies, the notary or the notary's duly authorized representative shall erase, delete, or destroy the coding, disk, certificate, card, software,

file, or program that enables electronic affixation of the notary's official electronic signature.

(b) A former electronic notary whose previous commission or application was not revoked or denied by the Secretary need not erase, delete, or destroy the coding, disk, certificate, card, software, file, or program enabling electronic affixation of the official electronic signature if he or she is recommissioned and reregistered as an electronic notary using the same electronic signature within three months after commission expiration.

"Part 5. Certificate Forms.

"§ 10B-53. Validity of notarial certificates.

The provisions contained in Article 1, Part 6, of this Chapter, with regard to notarial certificate forms, are applicable for the purposes of this Article.

"§ 10B-54. Form of evidence of authority of electronic notarial act.

Electronic evidence of the authenticity of the official electronic signature and electronic seal of an electronic notary of this State, if required, shall be attached to, or logically associated with, a notarized electronic document transmitted to another state or nation and shall be in the form of an electronic certificate of authority signed by the Secretary in conformance with any current and pertinent international treaties, agreements, and conventions subscribed to by the government of the United States.

"§ 10B-55. Certificate of authority for electronic notarial act.

(a) An electronic certificate of authority evidencing the authenticity of the official electronic signature and electronic seal of an electronic notary of this State shall contain substantially the following words:

Certificate of Authority for an Electronic Notarial Act

I, _____ (name, title, jurisdiction of commissioning official) certify that _____ (name of electronic notary), the person named as an electronic notary public in the attached or associated document, was indeed registered as an electronic notary public for the State of North Carolina and authorized to act as such at the time of the document's electronic notarization.

To verify this Certificate of Authority for an Electronic Notarial Act, I have included herewith my electronic signature this _____ day of _____, 20___.

(Electronic signature (and seal) of commissioning official)

(b) The Secretary may charge ten dollars ($10.00) for issuing an electronic certificate of authority.

"Part 6. Enforcement.

"§ 10B-56. Restriction or revocation of registration.

The Secretary or the Secretary's designee shall have the authority to warn, restrict, suspend, or revoke an electronic notary registration for a violation of this Chapter and on any ground for which electronic notary registration may be denied under this Chapter.

"§ 10B-57. Wrongful manufacture, distribution, or possession of software or hardware.

(a) Any person who knowingly creates, manufactures, or distributes software for the purpose of allowing a person to act as an electronic notary without being commissioned and registered in accordance with this act shall be guilty of a Class G felony.

(b) Any person who wrongfully obtains, conceals, damages, or destroys the certificate, disk, coding, card, program, software, file, or hardware enabling an electronic notary to affix an official electronic signature is guilty of a Class I felony.

"Article 3.

"Notary Public Special Fund.

"**§ 10B-58. Notary Public Special Fund; established.**

There is established the Notary Public Special Fund in the Secretary of State's Office. The Secretary shall hold the Fund separate and apart from all other moneys, funds, and accounts. Investment earnings credited to the assets of the Fund shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be carried-forward in the Fund for the next succeeding fiscal year. Moneys from the Fund are appropriated annually and shall be used for the administration of this Chapter."

SECTION 5. G.S. 66-271 reads as rewritten:

"**§ 66-271. Definitions.**

The following definitions apply in this Article:

...

(5) Notary public. – Defined in ~~G.S. 10A-3.~~G.S. 10B-3.

...."

SECTION 6. G.S. 66-272 reads as rewritten:

"**§ 66-272. Certificate of authentication.**

To authenticate a document, the Secretary must compare the official's seal and signature on the document with a specimen of the official's seal and signature on file in the Department. If no specimen is on file in the Department, the Secretary must require that the document be authenticated by an official for whom the Department does have a specimen. The Secretary must also verify the official's authority to perform a particular act when the law of a foreign jurisdiction requires it to be verified before it will recognize the authenticity of the document. When the Secretary is able to authenticate the official's seal, signature, position, and authority, the Secretary shall sign and issue a certificate of authentication. The certificate of authentication ~~may be placed on the document itself, if space is available, or by appending it~~ shall be appended to the document on a separate sheet."

SECTION 7. G.S. 66-273 reads as rewritten:

"**§ 66-273. Prerequisites for authentication.**

All of the following conditions must be met before a document can be authenticated:

(1) All seals and signatures must be originals.

(2) All dates must follow in chronological order on all certifications.

(3) All acknowledgments to be authenticated by the Secretary shall be in ~~English or accompanied by a certified or notarized English translation.~~ English and must comply with Chapter 10B of the General Statutes.

(4) Whenever a copy is used, it must include a statement that it is a true and accurate copy.

(5) Whenever a document is to be authenticated by the United States Department of State, it must comply with all applicable statutes, rules, and regulations of that office."

SECTION 8. G.S. 161-10(a) reads as rewritten:

"(a) Except as provided in G.S. 161-11.1 or 161-11.2, all fees collected under this section shall be deposited into the county general fund. While performing the duties of the office, the register of deeds shall collect the following fees which shall be uniform throughout the State:

...

(12) Notarial Acts. – For taking an acknowledgment, oath, or affirmation or performing any other notarial act the maximum fee set in ~~G.S. 10A-10.~~ G.S. 10B-20 or G.S. 10B-48 for electronic notarial acts. This fee shall not be charged if the act is performed as a part of one of the services for which a fee is provided by this subsection; except that this fee shall be charged in addition to the fees for registering, filing, or recording instruments or plats as provided by subdivisions (1) and (3) of this subsection.

....

(17) Qualification of Notary Public. – For administering the oaths of office to a notary public and making the appropriate record entries as provided in ~~G.S. 10A-8~~ G.S. 10B-9 ten dollars ($10.00).

..."

SECTION 9. Article 3 of Chapter 47 of the General Statutes is amended by adding a new section to read:

"**§ 47-37.1. Other forms of proof.**

(a) The proof and acknowledgment forms set forth in this Article are not exclusive. Without regard to whether an instrument presented for registration was signed by an individual acting in his or her own right or by an individual acting in a representative capacity, a notarial certificate that complies with the provisions of Part 6 of Article 1 of Chapter 10B (G.S. 10B-25 et. seq.) shall be deemed a sufficient form of probate or acknowledgment for purposes of this Chapter. Use of a notarial certificate that satisfies the requirements of Part 6 of Article 1 of Chapter 10B shall not be grounds for a register of deeds to refuse to accept a record for registration.

(b) When an instrument presented for registration purports to be signed by an individual in a representative capacity, the acknowledgment or proof of that individual's signature may, but is not required to, (i) state that the individual signed the instrument in a representative capacity, (ii) state that the individual who signed the instrument in a representative capacity had due authority to do so, and/or (iii) identify the represented person or entity."

SECTION 10. Of the funds appropriated to the Department of the Secretary, the Secretary of State is authorized to utilize the Department of the Secretary of State's

Information Technology staff and to expend up to $200,000 from the Department of the Secretary of State E-Commerce Transaction Fund for the implementation of this act.

SECTION 11. As soon as practicable, or within 24 months of the effective date of this act, all North Carolina registers of deeds and clerks of superior court shall submit to the Department of the Secretary of State legible and reproducible copies of the pages contained in their "Records of Notaries Public" created prior to 1991 for archiving in permanent storage. The copies shall be reproduced pursuant to standards set by the Department to ensure the legibility of the copies and the compatibility with the Department's existing systems. The Department shall be responsible for any expense incurred relating to the shipment or transfer of these records. The original permanent records shall be returned to the Register of Deeds if submitted to the Secretary for copying.

SECTION 12. Sections 1, 2, 10 and 12 of this act are effective when they become law. The remainder of the act becomes effective December 1, 2005, and applies to notarial acts and applications for notary commissions and recommissions made on or after that date. Notary commissions issued under Chapter 10A of the General Statutes prior to December 1, 2005, shall remain valid unless otherwise revoked or suspended by the Secretary until those commissions expire as provided in Chapter 10A. G.S. 10B-37 and G.S. 10B-59 apply to offenses committed on or after December 1, 2005, without regard to whether a commission was issued under Chapter 10A or Chapter 10B of the General Statutes.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒ House Committee Substitute for

SB 671 A BILL TO BE ENTITLED AN ACT TO ENACT THE UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☒ With a favorable report as to House committee substitute bill #2, unfavorable as to House committee substitute bill #1.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 671*

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

S671-ARI-22 [v.3]

Date 8/23/05 ,2005

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

Representative Weiss

moves to amend the bill on page 8, line 44, by deleting that line;

on page 8, lines 40 through 43, by rewriting those lines to read:

"the applicant before a person authorized to administer oaths. Except for any applicant who seeks to receive the oath of office from the register of deeds of a county where more than 15,000 active notaries public are on record on January 1 of the year when the application is filed, the applicant shall also obtain the recommendation of one publicly elected official in North Carolina whose recommendation shall be contained on the application.";

on page 27, lines 28 and 29, by deleting those lines;

on page 34, lines 12 and 13, by inserting between those lines:

"**SECTION 12.** This act shall not affect any civil or criminal litigation pending on the effective date of this act. Any act committed prior to the effective date of this act which violated any provision of the statutes repealed or amended by this act shall be subject to enforcement, prosecution, conviction and punishment as if this act had not been enacted. Any claim arising under any provisions of the statutes repealed or amended by this act prior to the effective date of this act shall remain valid as if this act had not been enacted.", and by renumbering the remaining section accordingly; and

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 671*

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

S671-ARI-22 [v.3]

on page 34, line 21, by inserting at the end of that line:

"Notary instructor certifications issued under G.S. 10A-7 shall remain valid until the date of expiration provided for on the certificate, and persons holding those certificates may provide instruction until their certificates expire.".

SIGNED Jennifer Weis
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

ATTACHMENT 21

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 2

SENATE BILL 868
Finance Committee Substitute Adopted 8/12/05

Short Title: Bill Lee – Multi-Jurisdiction Indus. Park. (Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE ENTERPRISE TIER STRUCTURE UNDER THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-129.3 is amended by adding a new subsection to read:

"(d1) Exception for Certain Multi-Jurisdictional Industrial Park. – For the purpose of this Article, an eligible industrial park created by interlocal agreement under G.S. 158-7.4 has the lowest enterprise tier designation of the designations of the counties in which it is located if all of the following conditions are satisfied:

(1) The industrial park is located, at one or more sites, in four or more contiguous counties.

(2) At least two of the counties in which the industrial park is located are enterprise tier one areas.

(3) The industrial park is owned by four or more units of local government or a nonprofit corporation owned or controlled by four or more units of local government.

(4) In each county in which the industrial park is located, the park has at least 300 developable acres. For the purposes of this subdivision, 'developable acres' includes acreage that is owned directly by the industrial park or its owners or that is the subject of a development agreement between the industrial park or its owners and a third-party owner.

(5) The total population of all of the counties in which the industrial park is located is less than 200,000.

(6) In each county in which the industrial park is located, at least sixteen percent (16%) of the population was Medicaid eligible as of January 1, 2005."

SECTION 2. This act is effective for taxable years beginning on or after January 1, 2005.

SENATE BILL 868:
Bill Lee – Multi-Jurisdiction Indus. Park

BILL ANALYSIS

Committee:	House Finance	**Date:**	August 22, 2005
Introduced by:	Sen. Berger of Franklin	**Summary by:**	Canaan Huie
Version:	Second Edition		Staff Attorney

SUMMARY: This act would provide an exception to the tier designation formula under Article 3A of the Chapter 105 of the General Statutes (the Bill Lee Act). It would allow certain industrial parks located in higher-tiered counties to be treated as if they were located in an enterprise tier one area.

CURRENT LAW: The William S. Lee Quality Jobs and Business Expansion Act (hereinafter Bill Lee Act) was enacted in 1996, effective beginning with the 1996 tax year with a 2002 sunset. The Act is a package of State tax incentives and has been modified in each subsequent year. The incentives are primarily in the form of tax credits for investment in machinery and equipment and real property, for job creation, for worker training, and for research and development. Counties are divided into five economic distress tiers based on the unemployment rate, per capita income, and population growth of the county. For many of the credits, the lower the tier of a county, the more favorable the incentive. The Act requires the Department of Commerce and the Department of Revenue to report periodically on the credits allowed by the Act.

Before 1996, North Carolina had made little use of tax incentives to lure businesses to the State. Even without incentives, North Carolina was consistently one of the top states in attracting industry. The array of credits authorized by the Bill Lee Act was viewed as an experiment, to be evaluated in five years to determine whether the incentives were cost effective and actually affected behavior, or merely provided tax reductions to businesses that would have located or expanded in any case. In 2000, the General Assembly extended the sunset on the Act until January 1, 2006. In 2005, the General Assembly again voted to extend the sunset on the Act until January 1, 2008,[1] but stated that its intent was to revamp the act before the beginning of 2007.

By December 31 of each year, the Department of Commerce is required to assign a tier designation to each of the 100 counties in the State. In order to make these assignments, the Department of Commerce must rank all 100 counties based on the following three factors: the rank of the county in a ranking of counties by average rate of unemployment over the preceding 12 months from lowest to highest, the rank of the county in a ranking of counties by average per capita income over the proceeding 12 months from highest to lowest, and the rank of the county in a ranking of counties by percentage growth in

[1] There are several exceptions to the 2008 sunset date. Interstate air couriers are eligible to claim the credits for business activity that occurs on or before January 1, 2010, provided that the interstate air courier entered into a real estate lease on or before January 1, 2006 with an airport authority that provides for the lease of at least 100 acres of land for a term of at least 15 years. "Eligible major industries" that qualify as such before January 1, 2006, are also allowed to claim credits for business activity that occurs on or before January 1, 2010. A taxpayer is an eligible major industry if it will invest at least $100 million in acquiring, constructing, and equipping a facility and it is engaged in bioprocessing, the manufacture or distribution of pharmaceuticals or medicines, aircraft manufacturing, computer manufacturing, motor vehicle manufacturing, and semiconductor manufacturing. Finally, for certain projects that locate in development zones before January 1, 2006, the Act does not expire until January 1, 2010. In order to qualify for this extension, the taxpayer must (a) sign a letter of commitment with the Department of Commerce promising to create at least 300 new jobs and to invest at least $10 million in real property and machinery and equipment over a three year period and (b) create at least 20 new jobs and invest at least $4 million before January 1, 2006.

population over the preceding 12 months from highest to lowest.[2] Each of these factors is given equal weight. The Secretary of Commerce is required to use the latest data available in making these calculations. Counties with one of the 10 highest rankings are designated enterprise tier one, the next 15 counties are enterprise tier two, the next 25 counties are enterprise tier 3, the next 25 counties are enterprise tier 4, and the remaining counties are enterprise tier 5. There are numerous exceptions to this formula. A county designated as enterprise tier one or two may not be designated a higher tier until it has been at its current tier for at least two consecutive years. Certain lower-population counties also enjoy exceptions that could result in those counties receiving a lower tier designation. Finally, certain industrial parks that are located at one site in two are more counties receive the tier designation of the lower-ranked county.

BILL ANALYSIS: This bill would create an additional exception to the Bill Lee Act tier designation formula. Under this bill, sites within certain industrial parks would be able to qualify for enterprise tier one are status. In order to take advantage of this exception, all the following conditions would have to be satisfied:

- The site is located in an industrial park created by interlocal agreement pursuant to G.S. 158-7.4.
- The industrial park is located, at one or more site, in at least four contiguous counties.
- At least two of the counties in which the industrial park is located are designated as enterprise tier one areas.
- Four or more units of local government, or a nonprofit corporation owned and controlled by four or more units of local government, own the industrial park.
- In each county in which the industrial park is located, the park has at least 300 developable acres.
- The total population of all the counties in which the industrial park is located is less than 200,000.
- In each county in which the industrial park is located, at least 16% of the population was Medicaid eligible as of January 1, 2005.

EFFECTIVE DATE: This bill would become effective for taxable years beginning on or after January 1, 2005.

BACKGROUND: At the present time, the only industrial park that meets the criteria specified in this bill is an industrial park in the Kerr-Tar region. It is possible that other counties could enter into similar agreements in order to take advantage of this exception in the future, but the restrictions are so stringent as to make it unlikely that a significant number of high-tiered counties could qualify under this provision. The four counties involved in the Kerr-Tar industrial park project are Franklin, Granville, Vance, and Warren. In 2005, Franklin County was an enterprise tier five area; Granville County was an enterprise tier three area; and Vance and Warren Counties were enterprise tier one areas.

S0868e2-SMLY

[2] Prior to the designations for the 2005 calendar year, these rankings were based on longer time periods. Unemployment and per capita income were averaged over three years rather than 12 months. There was no time period specified for measuring population growth, but it was the practice of the Department of Commerce to measure population growth by comparing the most recent estimates of population in the county with the figures derived from the last decennial federal census.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

SB 868 A BILL TO BE ENTITLED AN ACT TO AMEND THE ENTERPRISE TIER STRUCTURE UNDER THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT.

☒ With a favorable report as to the House committee substitute bill, unfavorable as to the Senate committee substitute bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

ATTACHMENT 22

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 868

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

S868-ALY-76 [v.1]

Date 8/23/ ,2005

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

Representative Carney

moves to amend the bill on page 1, lines 27-28, by rewriting those lines to read:
"and eight tenths percent (16.8%) of the population was Medicaid eligible for the 2003-2004 fiscal year based on 2003 population estimates.' ".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 2

SENATE BILL 290
Judiciary I Committee Substitute Adopted 4/6/05

Short Title: Securities Transfer on Death. (Public)

Sponsors:

Referred to:

March 2, 2005

A BILL TO BE ENTITLED

AN ACT TO ENACT THE UNIFORM TRANSFER ON DEATH (TOD) SECURITY REGISTRATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by rewriting the title of Chapter 41 of the General Statutes to read "Estates and Interests in Property", and Chapter 41 of the General Statutes is amended by adding a new Article to read:

"Article 4.

"The Uniform Transfer on Death (TOD) Security Registration Act.

"**§ 41-40. Definitions.**

In this Article, unless the context otherwise requires:

(1) 'Beneficiary form' means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(2) 'Devisee' means any person designated in a will to receive a disposition of real or personal property.

(3) 'Heirs' means those persons, including the surviving spouse, who are entitled under Chapter 29 of the General Statutes or the statutes of intestate succession of other states to take the property of a decedent by intestate succession.

(4) 'Person' means an individual, a corporation, an organization, or other legal entity.

(5) 'Personal representative' includes executor, administrator, collector, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

(6) 'Property' includes both real and personal property or any interest in real or personal property and means anything that may be the subject of ownership.

(7) 'Register', including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(8) 'Registering entity' means a person who originates or transfers a security title by registration and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(9) 'Security' means a share, participation, or other interest in property, a business, or an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, a security account, and a security entitlement as defined in G.S. 25-8-102.

(10) 'Security account' means (i) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death, or (ii) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(11) 'State' includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

"**§ 41-41. Registration in beneficiary form; sole or joint tenancy ownership.**

Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more individuals with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties, or as owners of community property held in survivorship form, and not as tenants in common.

"**§ 41-42. Registration in beneficiary form; applicable law.**

A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

"**§ 41-43. Origination of registration in beneficiary form.**

A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

"**§ 41-44. Form of registration in beneficiary form.**

Registration in beneficiary form may be shown by the words 'transfer on death' or the abbreviation 'TOD', or by the words 'pay on death' or the abbreviation 'POD', after the name of the registered owner or owners and before the name of a beneficiary.

"**§ 41-45. Effect of registration in beneficiary form.**

The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership of the security until the owner's death. A registration of a security in beneficiary form may be cancelled or changed at any time by the sole owner or all then-surviving owners, without the consent of the beneficiary.

"**§ 41-46. Ownership on death of owner.**

On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survive the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

"**§ 41-47. Protection of registering entity.**

(a) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this Article.

(b) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in this Article.

(c) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of a security in accordance with G.S. 41-46 and does so in good faith reliance (i) on the registration, (ii) on this Article, and (iii) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of this Article do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this Article.

(d) The protection provided by this Article to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

"**§ 41-48. Nontestamentary transfer on death.**

(a) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this Article and is not testamentary.

(b) The interest of a deceased owner when there are one or more surviving owners remains liable for the debts of the decedent in the same manner as the personal property included in the decedent's estate, and recovery of that interest shall be made from the surviving owner or owners when the decedent's estate is insufficient to satisfy the debts. The interest of a deceased sole owner, or the last to die of several owners, remains liable for the debts of the decedent in the same manner as the personal property included in the decedent's estate, and recovery of that interest shall be made from the TOD beneficiary when the decedent's estate is insufficient to satisfy the debts.

(c) This Article does not repeal or modify any provision of law relating to estate taxes.

"**§ 41-49. Terms, conditions, and forms for registration.**

(a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests (i) for registrations in beneficiary form, and (ii) for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions established may provide for proving death, avoiding or resolving any problems concerning fractional shares, and designating primary or contingent beneficiaries. Forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(b) The following are illustrations of registrations in beneficiary form that a registering entity may authorize:

(1) Sole owner-sole beneficiary: 'John S. Brown TOD (or POD) John S. Brown, Jr.'

(2) Multiple owners-sole beneficiary: 'John S. Brown, Mary B. Brown JT TEN WROS TOD John S. Brown, Jr.'

(3) Multiple owners-primary and secondary (substituted) beneficiaries: 'John S. Brown, Mary B. Brown JT TEN WROS TOD John S. Brown, Jr. SUB BENE Peter O. Brown'.

"**§ 41-50. Short title; rules of construction.**

(a) This Article shall be known as and may be cited as the 'Uniform TOD Security Registration Act'.

(b) This Article shall be applied and construed to effectuate its general purposes and to make uniform the laws with respect to the subject of this Article among states enacting it.

(c) This Article does not repeal G.S. 41-2.2. G.S. 41-2.2 applies in determining whether a right of survivorship exists among multiple owners of a security.

"§ 41-51. Application of Article.

This Article applies to registrations of securities in beneficiary form made before, on, or after the effective date of this Article, by decedents dying on or after the effective date of this Article."

SECTION 2. G.S. 28A-15-10(a) reads as rewritten:

"(a) When needed to satisfy claims against a decedent's estate, assets may be acquired by a personal representative or collector from the following sources:

(1) Tentative trusts created by the decedent in savings accounts for other ~~persons;~~ persons.

(2) Gifts causa mortis made by the ~~decedent;~~decedent.

(3) Joint deposit accounts with right of survivorship created by decedent pursuant to the provisions of G.S. 41-2.1 or otherwise; and joint tenancies with right of survivorship created by decedent in corporate stocks or other investment securities.

(4) An interest in a security passing to a beneficiary pursuant to the provisions of Article 4 of Chapter 41 of the General Statutes.

Such assets shall be acquired solely for the purpose of satisfying such claims, however, and shall not be available for distribution to heirs or devisees."

SECTION 3. G.S. 41-2.2 reads as rewritten:

"**§ 41-2.2. Joint ownership of ~~corporate stock and investment~~ securities.**

(a) In addition to other forms of ownership, ~~shares of corporate stock or investment~~ securities may be owned by any parties as joint tenants with rights of survivorship, and not as tenants in common, in the manner provided in this section.

(b) (1) A joint tenancy in ~~shares of corporate stock or investment~~ securities as provided by this section shall exist when such ~~shares or~~ securities indicate that they are owned with the right of survivorship, or otherwise clearly indicate an intention that upon the death of either party the interest of the decedent shall pass to the surviving party.

(2) Such a joint tenancy may also exist when a broker or custodian holds the ~~shares or~~ securities for the joint tenants and by book entry or otherwise indicates (i) that the ~~shares or~~ securities are owned with the right of survivorship, or (ii) otherwise clearly indicates that upon the death of either party, the interest of the decedent shall pass to the surviving party. Money in the hands of such broker or custodian derived from the sale of, or held for the purpose of, such ~~shares or~~ securities shall be treated in the same manner as such ~~shares or~~ securities.

(c) Upon the death of a joint tenant his interest shall pass to the surviving joint tenant. The interest of the deceased joint tenant, even though it has passed to the surviving joint tenant, remains liable for the debts of the decedent in the same manner as the personal property included in his estate, and recovery thereof shall be made from the surviving joint tenant when the decedent's estate is insufficient to satisfy such debts.

(d) This section does not repeal or modify any provisions of the law relating to estate or inheritance taxes.

(e) As used in this section, "securities" has the same meaning as in G.S. 41-40(9) and includes "security account" as that term is defined in G.S. 41-40(10)."

SECTION 4. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the Official Commentary to the Uniform TOD Security Registration Act and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

SECTION 5. This act becomes effective October 1, 2005.

SENATE BILL 290:
Securities Transfer on Death

BILL ANALYSIS

Committee:	House Finance	**Date:**	August 23, 2005
Introduced by:	Sen. Hoyle	**Summary by:**	Cindy Avrette
Version:	Second Edition		Committee Counsel

SUMMARY: Senate Bill 290 would amend Chapter 41 (Estates), to allow owners of securities to register their title in transfer-on-death (TOD) form. This would allow the transfer of securities, including stocks, bonds, mutual funds, and security accounts, to a beneficiary upon death based on a prior beneficiary designation by registration. The bill previously came to the General Assembly as a recommendation of the General Statutes Commission and is modeled after the Uniform Transfer on Death (TOD) Securities Registration Act. The Uniform Act has been adopted in 46 states and the District of Columbia.

CURRENT LAW: Under current law securities can only be passed upon death by probate or by joint tenancy with right of survivorship.

BILL ANALYSIS: Senate Bill 290 would rename Chapter 41 of the General Statutes as "Estates and Interests in Property" and would add a new Article 4 to that Chapter, entitled "The Uniform Transfer on Death (TOD) Security Registration Act". This act would allow the owner of securities to designate a beneficiary of the securities to be received upon the death of the owner. The owner may revoke or modify this designation at any time up until death. Also, this designation does not convey any right or interest in the beneficiary until the time of death. Title to the securities would be transferred as a matter of contract (like life insurance policies or individual retirement accounts), not as a testamentary bequest, and as such would not be part of the probate estate.

Some of the advantages provided by the bill appear to be: 1) provides an alternative to joint ownership with right of survivorship, avoiding the complications and restrictions of dealing with a co-owner but effecting the same transfer upon death; 2) avoids probate and probate fees; and 3) simplifies the process of changing names on securities after death. The bill would not affect claims creditors, who would still be able to claim these securities if necessary to satisfy claims against the decedent's estate in the same ways as with joint bank accounts with right of survivorship. This form of ownership would not affect estate tax collection, and these securities would be counted as part of the taxable estate.

One change that would result from this bill would be a reduction in the collection of probate fees by the clerks of court. Probate fees are collected on all personal property that passes through the probate estate. Because these changes would transfer these securities outside the probate estate, probate fees would not be collected on the value of the securities transferred by this method.

Section 2 of this bill would make a conforming change to the statute governing the rights of creditors to collect estate debts from assets passing outside the estate. This statute is only triggered when other assets of the estate are insufficient to satisfy all claims.

Section 3 amends G.S. 41-2.2 (Joint Ownership of corporate stock and investment securities) by adding a new subsection. The new subsection clarifies that "securities" is as defined in the Uniform Act.

Section 4 would authorize the Revisor of Statutes to include the Official Comments to the Uniform Act from the Uniform Commissioners with the published statutes.

EFFECTIVE DATE: The bill would take effect October 1, 2005.

BACKGROUND: Similar bills were introduced in the 1997, 1999, 2001 and the 2003 Sessions of the General Assembly. In 2003, House Bill 798, which was virtually identical to this bill, passed the House and was given a favorable report by the Senate Judiciary II Committee.

O. Walker Reagan, co- counsel to Senate Judiciary I, substantially contributed to this summary.

S0290e2-SMRB

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 290 (Second Edition)

SHORT TITLE: Securities Transfer on Death.

SPONSOR(S): Senator Hoyle

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:	**Losses in General Fund revenues may range from $4.3 to $5.5 million**				
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Administrative Office of the Courts.

EFFECTIVE DATE: October 1, 2005

BILL SUMMARY:

Enacts new GS Ch. 41, Art. 4. Provides for registration of securities in "beneficiary form" to transfer on death or be paid on death. Defines registration as issuance of a certificate showing ownership of a certificated security, or in the case of an uncertificated security, initiation or transfer of an account showing ownership of securities. Beneficiary form is defined as registration that indicates the present owner of the security and his or her intention regarding the person to become the owner when the present owner dies. Upon death of a sole owner or last to die of multiple owners, ownership of securities registered in beneficiary form passes to the beneficiaries who survive all owners. Provides that transfer resulting from registration in beneficiary form is effective by reason of the contract for registration and is not testamentary. The law does not affect estate tax laws and has no effect on ownership of the securities until the owner's death. Registration is allowed only for securities held by a sole owner or by joint tenants with right of survivorship, not for securities owned by tenants in common. Registration may be made when authorized by this law or by a similar statute in the state of the registering entity or owner at the time of registration. Contains protections for registering entities and sets out acceptable language for registration. Clarifies that act does not repeal GS 41-2.2, which applies in making right of survivorship determinations. Amends GS 41-2.2 (joint ownership of corporate stock and

investment securities) to provide that term "securities" used in that statute has same meaning as in GS 41-40(9) and includes "security account" as defined in GS 41-40(10). Makes conforming changes. Effective October 1, 2005.

ASSUMPTIONS AND METHODOLOGY: A change in the handling of securities transfers upon death could affect General Fund revenues either through its impact on estate taxes or through its impact on court fees collected related to estates.

According to the Department of Revenue, the addition of a new article to Chapter 41 to allow a change in ownership of a security resulting from a "transfer on death" will **not** affect inheritance or estate taxes. The provisions of G. S. 105-2 (taxation of assets) and G. S. 105-24 (tax waiver requirements) are clear, and the new section G. S. 41-48 (c) preserves the requirements of the two provisions.

However, this legislation would change the way some securities and security accounts are handled during the administration of estates. Specifically, it would allow the owner of a security or account to pass the security or account directly to the named beneficiary without passing under the owner's will or under the laws of intestacy. As a result, the value of the securities or accounts would not be included as part of the estate for probate.

This would result in some cases in a reduction in revenues to the General Fund from the General Court of Justice Fees dealing with estates [G. S. 7A-307(a)(2)]. Currently, the clerk collects a flat $30 fee, other fees pursuant to G. S. 7A-307, and forty cents per $100 of the gross value of personal property in the estate (referred to as ad valorem fee), up to $3,000. To the extent that securities currently owned by a single individual are subsequently registered in accordance with this bill, they would not be included in the value of the estate, and the forty cents per $100 in value that is collected under current law would not be collected. If the security is already owned by multiple individuals with rights of survivorship, their value is already excluded from the ad valorem fee.

There are several reasons why it is difficult to precisely estimate the fiscal impact of the bill. Fiscal Year 2001-2002 data shows that a total of 59,136 estate cases were filed statewide and $12.34 million was collected in estate costs. However, it is not known how much of this is from the ad valorem fee.

Data is not collected on the amount derived from each type of property in the estate so it cannot be determined how much of the $10.14 million is fees paid on securities. Because the ad valorem fee is capped at $3,000, if other assets exceed $750,000, the removal of securities from the base would have no impact on the fees due. Thus, estimating the impact of the bill requires detailed information on each estate.

Even if it were possible to estimate the amount in court costs being collected from the ad valorem fee on securities, it would be difficult to estimate the extent to which the owners of the securities would take advantage of the provisions of the bill and avoid those costs. Since these court fees are only one factor in the many issues involved in estate planning, it is not possible to project how many people will choose this option.

Study of Estate Fees; the Sample

The Administrative Office of the Courts (AOC) conducted a study in July 2001 to estimate the impact of the bill. They sampled 400 estates settled throughout Calendar Year 1999 in five counties (200 cases in Wake and 50 each in Guilford, Polk, Wayne and Johnston). These counties together represent 12.5% of estate files docketed that year and 16.2% of the state's population but 19.3% of intangible wealth (based on reimbursement amounts), so this sample was somewhat biased towards higher wealth populations. The total value of property itemized in these files included $59.9 million subject to the ad valorem levy. A total of $160,413 was collected from the ad valorem fee.

The sample included $41.6 million in securities with 10.4% of those jointly owned and not subject to the ad valorem fee. In addition, there was $22.6 million of property other than securities (e.g. bank accounts, personal property) subject to the 40 cents/$100.

Of the 400 cases in the sample, there were 93 estates including solely owned securities totaling $37,325,091. The total value of property subject to the ad valorem fee in these 93 cases was $47,331,088; securities represented 79% of the assets.

If the bill had been law, and securities owners in each case had taken advantage of the securities transfer on death option, court fees collected on these 400 cases would have been decreased by $71,850. Of the sample, 23.25% of the cases would be potentially affected. The amount of lost fees per estate varied from $1 to $2,947.

The sample also indicated a substantial impact from the $3,000 cap on the ad valorem fee. In 16 of the cases, the total value of property subject to probate exceeded $750,000 so that the $3,000 cap was effective, lowering ad valorem fees by $78,091. In Polk County alone, 7 of the 50 cases sampled had estates exceeding $750,000, reducing the ad valorem fee by $29,189.

Projecting Annualized Loss Statewide

In Calendar Year 1999, there were 59,290 estate files docketed. However, not all of these files involved settling of an estate or payment of probate fees. (e.g. this number includes appointments of guardian, inventory of lock boxes, etc). In that same year, AOC data indicates 23,904 cases where there was an itemization of assets for the purpose of assessing fees. Using this number as a base, the sample of 400 cases represents 1.67% (400/23904) of the annual number of estates potentially paying ad valorem fees. Extrapolating from the $71,850 loss found in the sample, the estimated annual loss statewide would be $4,328,313. *This is a conservative estimate (e.g. higher potential revenue loss) because it assumes all affected individuals would choose to register their securities to allow security transfer on death. It is not possible to project the percentage of people who will choose to do this.*

An alternative method to estimate the impact is to note that in the sample, the potential loss in court fees ($71,850) was 44.8% of fees collected ($160,431) in those 400 estates. Applying this 44.8% figure to the estimated $12,332,647 in ad valorem fees in 2003-04, the potential loss is $5,525,026. This is the higher estimate in the box on page 1.

Because of the difficulty of extrapolating from this sample and of predicting how many people would take advantage of securities transfer on death, Fiscal Research cannot assign a specific dollar amount to the fiscal impact of this bill. However, based on the analysis above, there will be a significant fiscal impact because of lost court fees.

SOURCES OF DATA: Department of Revenue; Administrative Office of the Courts

TECHNICAL CONSIDERATIONS: Senate Bill 622, the 2005 Appropriations Act, raises the cap on probate fees from $3,000 to $6,000. This change generates $1.6 million in additional revenues, which can offset some of the revenues lost due to allowing the transfer of securities.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Douglas Holbrook

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: August 11, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

SB 290 A BILL TO BE ENTITLED AN ACT TO ENACT THE UNIFORM TRANSFER ON DEATH (TOD) SECURITY REGISTRATION ACT.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 474*
PROPOSED COMMITTEE SUBSTITUTE H474-CSLY-14 [v.2]

5/19/2005 10:40:16 AM

Short Title: Mill Rehabilitation Tax Credit. (Public)

Sponsors:

Referred to:

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A TAX CREDIT FOR REVITALIZATION OF HISTORIC MILL FACILITIES.

Whereas, the State of North Carolina has lost more than 164,000 jobs in the textile industry during the past decade; and

Whereas, the State of North Carolina has also lost a large number of manufacturing jobs in other industries such as tobacco and furniture; and

Whereas, the losses of these manufacturing jobs have resulted in the vacancy of numerous mill buildings, many of which are historic; and

Whereas, a large vacant mill can be a cancer in a community, if it remains vacant and unused, resulting in the deterioration of surrounding neighborhoods and commercial districts, crime, vandalism, vagrancy, arson, and a loss of community spirit; and

Whereas, renovated for new adaptive uses or for new industrial or business uses, a large old factory or mill can have significant environmental, economic development, cultural, tourism, tax base, and affordable housing benefits for a community; and

Whereas, the Historic Rehabilitation Tax Credits created by the North Carolina General Assembly in 1997 have proved to be successful in the revitalization of numerous major historic buildings; and

Whereas, additional incentives would help encourage the rehabilitation of the numerous industrial buildings that have been vacated in recent years, especially those in smaller towns and counties that have been hardest hit by the loss of manufacturing jobs; and

Whereas, the rehabilitation of historic buildings has been proven to be a successful economic development strategy for creating jobs and stimulating new investment; and

Whereas, Virginia and South Carolina have each adopted generous incentives for the rehabilitation of similar buildings that are resulting in new investment in their communities; Now, therefore,

The General Assembly of North Carolina enacts:

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

"Article 3H.

"Mill Rehabilitation Tax Credit.

"**§ 105-129.70. Definitions.**

The following definitions apply in this Article:

(1) Certified historic structure. – Defined in G.S. 105-129.35.

(2) Certified rehabilitation. – Defined in G.S. 105-129.36.

(3) Cost certification. – The certification obtained by the State Historic Preservation Officer from the taxpayer of the amount of the qualified rehabilitation expenditures or the rehabilitation expenses incurred with respect to an eligible site.

(4) Eligibility certification. – The certification obtained from the State Historic Preservation Officer that the applicable facility comprises an eligible site and that the rehabilitation is a certified rehabilitation.

(5) Eligible site. – A site located in this State that satisfies all of the following conditions:

a. It was designed for use or was used as a manufacturing facility or for purposes ancillary to manufacturing or as a facility for providing utility services.

b. It is a certified historic structure or a State-certified historic structure.

c. It has been at least eighty percent (80%) vacant for a period of at least two years immediately preceding the time at which the eligibility certification is made.

d. The cost certification documents that the qualified rehabilitation expenditures for a site for which a taxpayer is allowed a credit under section 47 of the Code or the rehabilitation expenses for a site for which the taxpayer is not allowed a credit under section 47 of the Code exceed two million dollars ($2,000,000) for the site as a whole.

(6) Enterprise tier area. – Defined in G.S. 105-129.3.

(7) Pass-through entity. – Defined in G.S. 105-228.90.

(8) Qualified rehabilitation expenditures. – Defined in section 47 of the Code.

(9) Rehabilitation expenses. – Defined in G.S. 105-129.36.

(10) State-certified historic structure. – Defined in G.S. 105-129.36.

(11) State Historic Preservation Officer. – Defined in G.S. 105-129.36.

"**§ 105-129.71. Credit for income-producing rehabilitated mill property.**

(a) Credit. – A taxpayer who is allowed a credit under section 47 of the Code for making qualified rehabilitation expenditures with respect to an eligible site is allowed a credit equal to a percentage of the expenditures that qualify for the federal credit. The credit may be claimed in the year in which the eligible site is placed into service. When the eligible site is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the qualified rehabilitation expenditures associated with the phase placed into service during that year. In order to be eligible for a credit allowed by this Article, the taxpayer must provide to the Secretary a copy of the eligibility certification and the cost certification. The amount of the credit is as follows:

(1) For eligible sites located in an enterprise tier one, two, or three area, determined as of the time the eligibility certification is obtained, the amount of the credit is equal to forty percent (40%) of the qualified rehabilitation expenditures.

(2) For eligible sites located in an enterprise tier four or five area, determined as of the time the eligibility certification is obtained, the amount of the credit is equal to thirty percent (30%) of the qualified rehabilitation expenditures.

(b) Allocation. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this Article may allocate the credit among any of its owners in its discretion as long as an owner's adjusted basis in the pass-through entity, as determined under the Code, at the end of the taxable year in which the eligible site is placed in service, is at least forty percent (40%) of the amount of credit allocated to that owner. Owners to whom a credit is allocated are allowed the credit as if they had qualified for the credit directly. A pass-through entity and its owners must include with their tax returns for every taxable year in which an allocated credit is claimed a statement of the allocation made by the pass-through entity and the allocation that would have been required under G.S. 105-131.8 or G.S. 105-269.15.

(c) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has qualified for the credit allowed under this section disposes of all or a portion of the owner's interest in the pass-through entity within five years from the date the eligible site is placed in service and the owner's interest in the pass-through entity is reduced to less than two-thirds of the owner's interest in the pass-through entity at the time the eligible site was placed in service, the owner forfeits a portion of the credit. The amount forfeited is determined by multiplying the amount of credit by the percentage reduction in ownership and then multiplying that product by the forfeiture percentage. The forfeiture percentage equals the recapture percentage found in the table in section 50(a)(1)(B) of the Code.

(d) Exceptions to Forfeiture. – Forfeiture as provided in subsection (c) of this section is not required if the change in ownership is the result of any of the following:

(1) The death of the owner.

(2) A merger, consolidation, or similar transaction requiring approval by the shareholders, partners, or members of the taxpayer under

applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, consolidation, or other similar transaction.

(e) Liability From Forfeiture. – A taxpayer or an owner of a pass-through entity that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer or owner of a pass-through entity that fails to pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

"**§ 105-129.72. Credit for non-income-producing rehabilitated mill property.**

(a) Credit. – A taxpayer who is not allowed a federal income tax credit under section 47 of the Code and who makes rehabilitation expenses with respect to an eligible site is allowed a credit equal to a percentage of the rehabilitation expenses. The entire credit may not be taken for the taxable year in which the property is placed in service, but must be taken in five equal installments beginning with the taxable year in which the property is placed in service. When the eligible site is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the rehabilitation expenses associated with the phase placed into service during that year. In order to be eligible for a credit allowed by this Article, the taxpayer must provide to the Secretary a copy of the eligibility certification and the cost certification. The amount of the credit is as follows:

(1) For eligible sites located in an enterprise tier one, two, or three area, determined as of the time the eligibility certification is obtained, the amount of the credit is equal to fifty percent (50%) of the rehabilitation expenses.

(2) For eligible sites located in an enterprise tier four or five area, determined as of the time the eligibility certification is obtained, the amount of the credit is equal to forty percent (40%) of the rehabilitation expenses.

(b) Allocation. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this Article may allocate the credit among any of its owners in its discretion as long as an owner's adjusted basis in the pass-through entity, as determined under the Code, at the end of the taxable year in which the eligible site is placed in service, is at least forty percent (40%) of the amount of credit allocated to that owner. Owners to whom a credit is allocated are allowed the credit as if they had qualified for the credit directly. A pass-through entity and its owners must include with their tax returns for every taxable year in which an allocated credit is claimed a statement of the allocation made by the pass-through entity and the allocation that would have been required under G.S. 105-131.8 or G.S. 105-269.15.

(c) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has qualified for the credit allowed under this section disposes of all or a portion of the owner's interest in the pass-through entity within five years from the date the

eligible site is placed in service and the owner's interest in the pass-through entity is reduced to less than two-thirds of the owner's interest in the pass-through entity at the time the eligible site was placed in service, the owner forfeits a portion of the credit. The amount forfeited is determined by multiplying the amount of credit by the percentage reduction in ownership and then multiplying that product by the forfeiture percentage. The forfeiture percentage equals the recapture percentage found in the table in section 50(a)(1)(B) of the Code. The remaining allocable credit is allocated equally among the five years in which the credit is claimed.

(d) Exceptions to Forfeiture. – Forfeiture as provided in subsection (c) of this section is not required if the change in ownership is the result of any of the following:

(1) The death of the owner.

(2) A merger, consolidation, or similar transaction requiring approval by the shareholders, partners, or members of the taxpayer under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, consolidation, or other similar transaction.

(e) Liability From Forfeiture. – A taxpayer or an owner of a pass-through entity that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer or owner of a pass-through entity that fails to pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

"**§ 105-129.73. Tax credited; cap.**

(a) Taxes Credited. – The credits allowed by this Article may be claimed against the franchise tax imposed under Article 3 of this Chapter, the income taxes imposed under Article 4 of this Chapter, or the gross premiums tax imposed under Article 8B of this Chapter. The taxpayer may take the credits allowed by this Article against only one of the taxes against which it is allowed. The taxpayer shall elect the tax against which a credit will be claimed when filing the return on which it is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. – A credit allowed under this Article may not exceed the amount of the tax against which it is claimed for the taxable year reduced by the sum of all credits allowed, except payment of tax made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding nine years.

"**§ 105-129.74. Coordination with Article 3D of this Chapter.**

A taxpayer that claims a credit under this Article may not also claim a credit under Article 3D of this Chapter with respect to the same activity. The rules and fee schedule adopted under G.S. 105-129.36A apply to this Article."

SECTION 2. This act is effective for taxable years beginning on or after January 1, 2006, and applies to eligible sites placed into service on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 474*

Short Title:	Mill Rehabilitation Tax Credit.	(Public)
Sponsors:	Representatives Ross, Howard, Brubaker, Goodwin (Primary Sponsors); Bordsen, Harrison, and Martin.	
Referred to:	Finance.	

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A TAX CREDIT FOR REVITALIZATION OF HISTORIC MILL FACILITIES AND TO ALLOW TAX CREDITS FOR CERTAIN HISTORIC REHABILITATIONS TO BE TRANSFERRED TO LONG-TERM LESSEES.

Whereas, the State of North Carolina has lost more than 164,000 jobs in the textile industry during the past decade; and

Whereas, the State of North Carolina has also lost a large number of manufacturing jobs in other industries such as tobacco and furniture; and

Whereas, the losses of these manufacturing jobs have resulted in the vacancy of numerous mill buildings, many of which are historic; and

Whereas, a large vacant mill can be a cancer in a community, if it remains vacant and unused, resulting in the deterioration of surrounding neighborhoods and commercial districts, crime, vandalism, vagrancy, arson, and a loss of community spirit; and

Whereas, renovated for new adaptive uses or for new industrial or business uses, a large old factory or mill can have significant environmental, economic development, cultural, tourism, tax base, and affordable housing benefits for a community; and

Whereas, the Historic Rehabilitation Tax Credits created by the North Carolina General Assembly in 1997 have proved to be successful in the revitalization of numerous major historic buildings; and

Whereas, additional incentives would help encourage the rehabilitation of the numerous industrial buildings that have been vacated in recent years, especially those in smaller towns and counties that have been hardest hit by the loss of manufacturing jobs; and

Whereas, the rehabilitation of historic buildings has been proven to be a successful economic development strategy for creating jobs and stimulating new investment; and

Whereas, Virginia and South Carolina have each adopted generous incentives for the rehabilitation of similar buildings that are resulting in new investment in their communities; Now, therefore,

The General Assembly of North Carolina enacts:

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

"Article 3H.

"Mill Rehabilitation Tax Credit.

"**§ 105-129.70. Definitions.**

The following definitions apply in this Article:

(1) Certified historic structure. – Defined in G.S. 105-129.35.

(2) Certified rehabilitation. – Defined in G.S. 105-129.36.

(3) Cost certification. – The certification obtained by the State Historic Preservation Officer from the taxpayer of the amount of the qualified rehabilitation expenditures or the rehabilitation expenses incurred with respect to an eligible site.

(4) Eligibility certification. – The certification obtained from the State Historic Preservation Officer that the applicable facility comprises an eligible site and that the rehabilitation is a certified rehabilitation.

(5) Eligible site. – A site located in this State that satisfies all of the following conditions:

a. It was designed for use or was used as a manufacturing facility or for purposes ancillary to manufacturing or as a facility for providing utility services.

b. It is a certified historic structure or a State-certified historic structure.

c. It has been at least eighty percent (80%) vacant for a period of at least two years immediately preceding the time at which the eligibility certification is made.

d. The cost certification documents that the qualified rehabilitation expenditures for a site for which a taxpayer is allowed a credit under section 47 of the Code or the rehabilitation expenses for a site for which the taxpayer is not allowed a credit under section 47 of the Code exceed two million dollars ($2,000,000) for the site as a whole.

(6) Enterprise tier area. – Defined in G.S. 105-129.3.

(7) Pass-through entity. – Defined in G.S. 105-228.90.

(8) Qualified rehabilitation expenditures. – Defined in section 47 of the Code.

(9) Rehabilitation expenses. – Defined in G.S. 105-129.36.

(10) State-certified historic structure. – Defined in G.S. 105-129.36.

(11) State Historic Preservation Officer. – Defined in G.S. 105-129.36.

"**§ 105-129.71. Credit.**

(a) Credit. – A taxpayer who rehabilitates an eligible site is allowed a credit equal to a percentage of the qualified rehabilitation expenditures or the rehabilitation expenses with respect to the eligible site. The credit may be claimed in the year in which the eligible site is placed into service. When the eligible site is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the qualified rehabilitation expenditures or the rehabilitation expenses associated with the phase placed into service during that year. In order to be eligible for a credit allowed by this Article, the taxpayer must provide to the Secretary a copy of the eligibility certification and the cost certification. The amount of the credit is as follows:

(1) For eligible sites located in an enterprise tier one, two, or three area, determined as of the time the eligibility certification is obtained, for which the taxpayer is allowed a credit under section 47 of the Code, the amount of the credit is equal to forty percent (40%) of the qualified rehabilitation expenditures.

(2) For eligible sites located in an enterprise tier one, two, or three area, determined as of the time the eligibility certification is obtained, for which the taxpayer is not allowed a credit under section 47 of the Code, the amount of the credit is equal to fifty percent (50%) of the rehabilitation expenses.

(3) For eligible sites located in an enterprise tier four or five area, determined as of the time the eligibility certification is obtained, for which the taxpayer is allowed a credit under section 47 of the Code, the amount of the credit is equal to thirty percent (30%) of the qualified rehabilitation expenditures.

(4) For eligible sites located in an enterprise tier four or five area, determined as of the time the eligibility certification is obtained, for which the taxpayer is not allowed a credit under section 47 of the Code, the amount of the credit is equal to forty percent (40%) of the rehabilitation expenses.

(b) Taxes Credited. – The credit allowed by this Article may be claimed against the franchise tax imposed under Article 3 of this Chapter, the income taxes imposed under Article 4 of this Chapter, or the gross premiums tax imposed under Article 8B of this Chapter. The taxpayer may take the credit allowed by this Article against only one of the taxes against which it is allowed. The taxpayer shall elect the tax against which a credit will be claimed when filing the return on which it is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(c) Cap. – A credit allowed under this Article may not exceed the amount of the tax against which it is claimed for the taxable year reduced by the sum of all credits allowed, except payment of tax made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding nine years.

(d) Allocation. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this Article may allocate the credit among any of its owners without limitation. Owners to whom a credit is allocated are allowed the credit as if they had qualified for the credit directly. A pass-through entity and its owners must include with their tax returns for every taxable year in which an allocated credit is claimed a statement of the allocation made by the pass-through entity and the allocation that would have been required under G.S. 105-131.8 or G.S. 105-269.15.

(e) Long-Term Leases. – If a taxpayer is eligible for a credit under section 47 of the Code with respect to property for which the taxpayer is eligible for a credit under this section and the taxpayer elects, pursuant to section 50(d)(5) of the Code, to transfer the federal credit to a lessee of the property, the taxpayer may elect to transfer the credit allowed by this section to the lessee. If a credit is transferred to a lessee under this subsection, the lessee may take the credit subject to the provisions of this Article.

"**§ 105-129.72. Coordination with Article 3D of this Chapter.**

A taxpayer that claims a credit under this Article may not also claim a credit under Article 3D of this Chapter with respect to the same activity. The rules and fee schedule adopted under G.S. 105-129.36A apply to this Article."

SECTION 2. G.S. 105-129.35 is amended by adding a new subsection to read:

"(d) Long-Term Leases. – If a taxpayer elects, pursuant to section 50(d)(5) of the Code, to transfer the credit allowed under section 47 of the Code to a lessee of the property, the taxpayer may elect to transfer the credit allowed by this section to the lessee. If a credit is transferred to a lessee under this subsection, the lessee may take the credit subject to the provisions of this Article."

SECTION 3. This act is effective for taxable years beginning on or after January 1, 2006, and applies to eligible sites placed into service on or after that date.

Mill Rehabilitation Tax Credit

Senate Bill 352 and House Bill 474

Need: North Carolina has lost more than 250,000 manufacturing jobs in the last decade, leaving behind numerous empty industrial buildings. Many are historic and fine candidates for adaptive use. The existing North Carolina historic rehabilitation tax credits have successfully stimulated the rehabilitation of a number of vacant mill buildings since 1998, especially in urban areas. Those projects have had major impacts on their adjacent downtowns and/or neighborhoods. However, the credits have been less effective in encouraging the renovation of vacant mills in smaller cities and towns or in more distressed urban areas. The cost of rehabilitating a historic mill is similar for urban and rural locations, but the low rents and purchase prices in many of North Carolina's smaller cities and towns are too low to justify the projects. This tax credit would increase the incentive for rehabilitating those mills.

Eligible buildings: Historic industrial and utility buildings that have been vacant for two years or more, and whose rehabilitation costs exceed $2 million.

Estimated Cost to State and Fiscal Impact

	FY 2005-06	FY2006-07	FY2007-08	FY2008-09	FY2009-10
Cost to General Fund per Fiscal Research	$0	$3.5 mil	$9.9 mil	$15.6 mil	$10.9 mil
Number of Mill Rehabs per Fiscal Research	0	4	6	6	7
Amount of Rehab	$0	$32.3 mil	$61.4 mil	$72.2 mil	$76.8 mil

Total Cost to General Fund from 2005 through 2010: $39.9 million
[Cost may be overstated since the estimate assumes that 100% of credit users will take full credit in one (for income-producing projects) or five years (for non-income producing projects). Especially with the latter, that is very unlikely.]

Total Rehabilitation Expenditures from 2005 through 2010: $242.7 million
[Exclusive of purchase, additions, site improvements, environmental cleanup, and other non-rehab expenditures]

$242.7 million in historic rehabilitation will produce:

- Direct income and sales taxes for the State of North Carolina (estimated at $21 million during the five year period – the State will receive the benefit of these taxes 18-30 months prior to paying out the tax credit)
- Indirect income and sales taxes (from expenditures of construction workers, suppliers, etc.)
- Construction jobs (estimated 2,000 per year)
- Permanent jobs (jobs created by businesses that occupy the rehabilitated buildings)
- Revitalization of historic mills, surrounding neighborhoods and downtowns
- Attraction of new businesses
- Significant increases in local property tax revenue
- Reuse of existing infrastructure (roads, water, sewer, etc.)
- Increased Federal investment in NC due to the increased use of Federal tax credits
- Utility revenues for local governments
- Cleanup of environmental contamination at private expense

For income-producing projects (such as offices, commercial, apartments, lodging, etc.)

	Amount of Credit	*Number of Tax Years*	*Sources of Equity*
Federal rehabilitation tax credit	20%	1 year	All
Existing NC rehabilitation tax credit	20%	5 years	Not premium tax Not franchise tax
Proposed NC Mills Rehab Credit Tiers 1, 2, and 3	40%	1 year	All
Proposed NC Mills Rehab Credit Tiers 4 and 5	30%	1 year	All

For non-income-producing projects (such as owner-occupied residential units)

	Amount of Credit	*Number of Tax Years*	*Sources of Equity*
Federal rehabilitation tax credit	0%		
Existing NC rehabilitation tax credit	30%	5-10 years	Purchasers, developer
Proposed NC Mills Rehab Credit Tiers 1, 2, and 3	50%	5-10 years	Purchasers, developer
Proposed NC Mills Rehab Credit Tiers 4 and 5	40%	5-10 years	Purchasers, developer

Limits on rehabilitation: Since these projects would piggyback on the Federal tax credits program, projects must follow the Secretary of the Interior's Standards for Rehabilitation. These standards have been in place for more than 25 years and have governed many large adaptive use projects nationally.

Administration: Review and approval would be by the National Park Service, with preliminary review and technical support from the NC Historic Preservation Office (Department of Cultural Resources). An existing fee structure exists for the administration of tax credit projects by the NC Historic Preservation Office, so fees from developers will pay for the administration of the program.

Neighboring States: In 2004 South Carolina enacted a 25% tax credit for the rehabilitation of vacant textile mills, which may be used in addition to the existing historic tax credits (modeled after NC). All of Virginia's 25% historic tax credits may be taken in one year and allow every type of equity investor, thereby making them substantially more attractive for development than North Carolina's. Georgia allows a significant property tax abatement, which is not permitted in North Carolina.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 474 A BILL TO BE ENTITLED AN ACT TO PROVIDE A TAX CREDIT FOR REVITALIZATION OF HISTORIC MILL FACILITIES AND TO ALLOW TAX CREDITS FOR CERTAIN HISTORIC REHABILITATIONS TO BE TRANSFERRED TO LONG-TERM LESSEES.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 474*

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

H474-ARB-47 [v.1]

Date 8/23/ ,2005

Comm. Sub. [YES]
Amends Title [NO]
H474-CSLY-14

Representative Ross

moves to amend the bill on page 5, line 39, by removing the quotation marks and adding the following immediately after that line:

"'**§ 105-129.75. Sunset.**

This article expires for qualified rehabilitation expenditures and rehabilitation expenses incurred on or after January 1, 2011.'".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 528
Finance Committee Substitute Adopted 8/4/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S528-CSLA-29 [v.3]

8/22/2005 8:25:42 PM

Short Title: Tax Increment Financing Changes. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW A MUNICIPALITY TO USE PROJECT DEVELOPMENT FINANCING FOR TOURISM-RELATED DEVELOPMENT PROJECTS LOCATED IN AN ENTERPRISE TIER ONE AREA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 158-7.3(a)(1) reads as rewritten:

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

(1) Development project. – A capital project that includes capital expenditures by both private persons and one or more units of local government and that increases net employment opportunities for residents of the development district or within a two-mile radius of the project, whichever is larger, and increases the local government tax base.

If the district in which such a project will occur is outside a city's central business district (as that district is defined by resolution of the city council, which definition is binding and conclusive), then, of the private development forecast for a development project by the development financing plan for the district in which the project will occur, a maximum of twenty percent (20%) of the plan's estimated square footage of floor space may be proposed for use in retail sales, hotels, banking, and financial services offered directly to consumers, and other commercial uses other than office space. The twenty percent (20%) limitation in the preceding sentence does not apply to development financing districts located in an enterprise tier one area, as defined in G.S. 105-129.3, and created primarily for tourism-related economic development, such as developments featuring facilities for exhibitions, athletic and cultural events, show and public gatherings,

racing facilities, parks and recreation facilities, art galleries, museums, and art centers."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 528
Finance Committee Substitute Adopted 8/4/05

Short Title: Tax Increment Financing Changes. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW A MUNICIPALITY TO USE PROJECT DEVELOPMENT FINANCING FOR TOURISM-RELATED DEVELOPMENT PROJECTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 158-7.3(a)(1) reads as rewritten:

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

(1) Development project. – A capital project that includes capital expenditures by both private persons and one or more units of local government and that increases net employment opportunities for residents of the development district or within a two-mile radius of the project, whichever is larger, and increases the local government tax base.

If the district in which such a project will occur is outside a city's central business district (as that district is defined by resolution of the city council, which definition is binding and conclusive), then, of the private development forecast for a development project by the development financing plan for the district in which the project will occur, a maximum of twenty percent (20%) of the plan's estimated square footage of floor space may be proposed for use in retail sales, hotels, banking, and financial services offered directly to consumers, and other commercial uses other than office space. The twenty percent (20%) limitation in the preceding sentence does not apply to development financing districts created primarily for tourism-related economic development, such as developments featuring facilities for exhibitions, athletic and cultural events, show and public gatherings, racing facilities, parks and recreation facilities, art galleries, museums, and art centers."

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

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

SB 528 A BILL TO BE ENTITLED AN ACT TO ALLOW A MUNICIPALITY TO USE PROJECT DEVELOPMENT FINANCING FOR TOURISM-RELATED DEVELOPMENT PROJECTS.

☒ With a favorable report as to the House committee substitute bill, which changes the title, unfavorable as to the Senate committee substitute bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

SENATE BILL 528:
Tax Increment Financing Changes

BILL ANALYSIS

Committee:	House Finance	**Date:**	August 22, 2005
Introduced by:	Sen. Clodfelter	**Summary by:**	Cindy Avrette
Version:	Second Edition		Committee Counsel
	S528-CSLA-29		

SUMMARY: Senate Bill 528[1] would allow a municipality to use project development financing for a tourism-related development project located outside of its central business district if the project is located in an enterprise tier one area. The bill becomes effective when it becomes law.

CURRENT LAW: In November 2004, the voters approved a constitutional amendment that has enabled counties, cities, and towns to use project development financing for the public portion of certain economic development projects within a defined territorial area. Project development financing, also known as tax increment financing, allows a local government to issue bonds secured by the incremental property tax increase generated by the development financed. This financing mechanism can be used for airports, auditoriums and arenas, hospitals, museums, parking facilities, sewer systems, storm sewers and flood control facilities, water systems, street improvements, public transportation facilities, railroads, affordable housing, land development for industrial or commercial purposes, utilities, and redevelopment.

Current law restricts the amount of retail development that may be considered as a 'development project' if the project is located outside of a municipality's central business district. Under that restriction, no more than 20% of a project's square footage may be proposed for use in retail sales, hotels, and other commercial uses other than office space.

BACKGROUND: The City of Roanoke Rapids has the opportunity to develop a music theater and entertainment district that could become a nationally recognized travel destination in North Carolina. The district would encompass over 700 acres, represent an investment of an estimated $129,000,000, and create over 2,595 new jobs. The district would consist of music theatres, shopping, hotels, motels, restaurants, and family recreational activities. The City believes project development financing would be a desirable vehicle for it to use to finance certain improvements in the district it has agreed to provide for the development. However, because the project will be located on I-95, outside of the City's central business district, the 20% limitation on commercial prevents the City from using this financing tool.

BILL ANALYSIS: Senate Bill 528 would enable the City of Roanoke Rapids, as well as other municipalities, to use project development financing for tourism related development in an enterprise tier one area. The bill accomplishes this change by eliminating the 20% limitation on commercial uses for tourism-related economic development featuring facilities for exhibitions, athletic and cultural events, show and public gatherings, racing facilities, parks and recreation facilities, art galleries, museums, and art centers.

S0528e2-SMLA

[1] The original change proposed by Senate Bill 528 was included in the public financing changes made by House Bill 1117, S.L. 2005-238.

North Carolina General Assembly

House Committee on Finance

Minutes

~

August 23, 2005 – 1:00 p.m.

The House Committee on Finance met on Tuesday, August 23, 2005 at 1:00 pm in Room 1228 of the Legislative Building. The following members were present: Chairpersons Alexander, Gibson, Howard, Luebke, McComas, and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Bordsen, Carney, Dockham, Fisher, Folwell, Hackney, Holliman, Jones, Lewis, Lucas, McGee, Rayfield, Underhill, Vinson, Walend, and Wiley. Also present were Sergeant-at-Arms Bill Freeman, Fred Hines, Dusty Rhodes, and Walter Spell. Staff persons present included Cindy Avrette, Rodney Bizzell, David Crotts, Canaan Huie, Linda Millsaps, and Martha Walston. The Visitor Registration Sheets are attached and incorporated into these minutes as **attachment 1**.

Chairwoman Howard called the meeting to order at 1:01 pm and recognized the two (2) pages present: (1) Justin Ward of Richmond County and (2) Daniel Alonzo of Sampson County, both of which were sponsored by Speaker Black.

The first bill considered by the Committee was **HB 1281 – SHP RETIREE PLATE MODIFICATIONS** (see **attachment 2**). Representative Gibson moved for the adoption of the Proposed Committee Substitute (PCS) for discussion purposes, and the motion carried. Representative Steen, the bill sponsor, was then recognized by the Chair to explain the bill. He stated that the bill came at the request of the Retired State Highway Patrolmen's Association and permits unmarried spouses of deceased retired highway patrolmen to obtain Retired Highway Patrol Special Registration Plates. Following this explanation, Representative Holliman moved that the PCS for HB 1231 be given a favorable report, with an unfavorable report as to the original bill. Seeing no further discussion on the bill, Chairwoman Howard then called the motion to a vote, and it carried with no known objection.

The next bill under consideration by the Committee was **SB 1013 – GEN. CONTRACTORS/FEES/COST RECOVERY** (see **attachment 3**). Representative Gibson, on behalf of the bill sponsor Senator Hoyle, was then recognized to explain the bill. He explained that the bill would authorize the State Licensing Board for General Contractors to increase its licensing fees and to recover its reasonable administrative costs associated with the investigation and prosecution of certain violations of the general contractors' licensing laws. Following this explanation, Chairwoman Howard recognized Representative Rayfield who asked if there were any contractors who were not licensed by the Board. Representative Gibson responded in the negative. Representative Jones was then recognized and moved that SB 1013 be given a favorable report. As there was no further discussion, the Chair then called the motion to a vote. The motion carried without objection.

SB 356 – FUEL TAX REFUND FOR PUMPERS AND SWEEPERS (see **attachment** 4) was the next bill considered by the Committee. Representative Lucy Allen, on behalf of the bill sponsor Senator Hoyle, was then recognized to explain the bill. She stated that the bill allows an annual motor fuel tax refund for a commercial vehicle that uses a power takeoff to remove and dispose of septage. She also noted that the 2nd edition of the bill incorporates SB 101, sponsored by Senator Albertson, which authorizes a similar refund for sweepers. Chairwoman Howard then recognized Representative Underhill, who moved that SB 356 be given a favorable report. Seeing no further discussion on the bill, the Chair the called the motion to a vote, and it carried without objection.

The final bill considered by the Committee was **HB 1413 – ENHANCE LOCAL GOVT. ADM. OF ENV. PRGMS.** (see **attachment 5**). Chairwoman Howard again recognized Representative Lucy Allen to explain the bill. She explained that the bill simply enhances local government's administration of environmental programs and referred the members to the bill summary (see attachment 5) for further detail. She further stated that the bill had been negotiated for some time but was now one of consensus for all concerned parties. Seeing no discussion, the Chair recognized Representative Weiss who moved that HB 1413 be given a favorable report. The motion was then called to a vote, and it carried with no known opposition.

As there was no further business before the Committee at that time, Chairwoman Howard then adjourned the meeting at 1:22 pm.

Respectfully submitted,

Representative Julia Howard
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Visitor Registration Sheets
2. House Bill 1231 (and related materials)
3. Senate Bill 1013 (and related materials)
4. Senate Bill 356 (and related materials)
5. House Bill 1413 (and related materials)

ATTACHMENT 1

VISITOR REGISTRATION SHEET

House Finance — 8/23/05 1:00pm

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Butch Gunnells	NC SDA
[illegible] Hodgeson	Hazy Dev't Council / Infam Inc.
BPMHL	Cam Cure
Jim Dyer	SBE / DPI
Kathleen Edwards	UNC-CH Institute of Gov't
Jane Ramquist	Friends Dorothea Dix Park
Bill Wilson	AARP
Ed [illegible]	BPMHL
K. [illegible]	Smith Anderson
Stephanie Simpson	NCAR
John Mathys	GOVOFFICE
Erin Kinsey	NC Conservation Network
Alastair Macaulay	NCHBA
Kathy Hawkins	Progress Energy

VISITOR REGISTRATION SHEET

Hoare Finance — 8/23/05 1:00 pm

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Helena Glenn White	North Carolina Board of Electrolysis Examiners
Alice Saintsing	Greater Piedmont Electrolysis Assoc.
Lesa Hurley	Greater Piedmont Electrolysis Assoc.
Theresa Eagle	1000 Portland St. Greensboro, NC 27403
Don Vaughan	Attorney - Greensboro
Trudy Broan	NC Board of Electrolysis Examiners Greensboro
Barbara Hoot	NCRTL
Charlene Carey	NCRTL
Paula A. Hoff	Planned Parenthood Health Systems
Crissy Perdue	NCMS
Anne Dixon	ASA
John Tillett	JCTabor
Peter A. Jones	ACLU / APPCNC
Carroll Carmichael Mark Ralph	Licensing Bd for Gen Contractors

VISITOR REGISTRATION SHEET

House Finance — 4/23/05 — 1:00 pm

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Elizabeth Self	Sierra Club
Jon Carr	Jordan Price

VISITOR REGISTRATION SHEET

House Finance — 8/23/05 1:00 pm

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
PAUL STOCK	NCBA
Andy Romanet	NCLM
DAVID BARNES	Poyner + Spruill
Eddie Caldwell	NC Sheriffs Assn.
JOHN GOODMAN	ALLEY ASSOCIATES
BILL SCOGGIN	KCLL
Leslie Bedingfield Cone	Capstrat
	GSK
Robin Payne	Edwards & Webb
Gary Harris	NCPMA
Bob White	Covey, Inc.
Jane Ryall	NC Family Policy Council
Beth Froehling	NCCADV
	NCRA · NCWA

VISITOR REGISTRATION SHEET

31 House Finance
Name of Committee

8/23/05 1:00 pm
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lisa Martin	NC Home Builders

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1231
PROPOSED COMMITTEE SUBSTITUTE H1231-CSLA-31 [v.3]

8/23/2005 12:44:20 PM

Short Title: SHP Retiree Plate Modifications. (Public)

Sponsors:

Referred to:

April 14, 2005

A BILL TO BE ENTITLED

AN ACT TO PERMIT UNMARRIED SPOUSES OF DECEASED RETIRED HIGHWAY PATROLMEN TO OBTAIN RETIRED HIGHWAY PATROL SPECIAL REGISTRATION PLATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-79.4(b)(36a) reads as rewritten:

"(b) Types. – The Division shall issue the following types of special registration plates:

...

(36a) Retired Highway Patrol. – The plate authorized by this subdivision shall bear the phrase "SHP, Retired." The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate. The plate is issuable to ~~one~~ any of the following:

a. An individual who has retired from the North Carolina Highway Patrol.

b. ~~The surviving spouse of a person who had a retired highway patrol plate at the time of death so long as the surviving spouse continues to renew the plate and does not remarry.~~ The surviving spouse of a person who was retired from the North Carolina Highway Patrol at the time of death so long as the surviving spouse does not remarry."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1231

Short Title:	SHP Retiree Plate Modifications.	(Public)
Sponsors:	Representatives Steen, Williams (Primary Sponsors); Barnhart, Carney, Coates, Goodwin, Hilton, Johnson, Ed Jones, Lewis, McGee, Moore, Pate, Ray, Saunders, Setzer, Starnes, and Stiller.	
Referred to:	Finance.	

April 14, 2005

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a. An individual who has retired from the North Carolina Highway Patrol.

b. The surviving spouse of a person who retired from the North Carolina Highway Patrol had a retired highway patrol plate at the time of death so long as the surviving spouse ~~continues to renew the plate and~~ does not remarry.

c. The surviving spouse of a person who retired from the North Carolina Highway Patrol so long as the surviving spouse does not remarry."

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

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 1231 A BILL TO BE ENTITLED AN ACT TO PERMIT UNMARRIED SPOUSES OF DECEASED RETIRED HIGHWAY PATROLMEN TO OBTAIN RETIRED HIGHWAY PATROL SPECIAL REGISTRATION PLATES.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 2

SENATE BILL 1013
Judiciary I Committee Substitute Adopted 6/22/05

Short Title: Gen. Contractors/Fees/Cost Recovery. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE STATE LICENSING BOARD FOR GENERAL CONTRACTORS TO INCREASE FEES AND AMENDING CERTAIN PROVISIONS RELATING TO COST RECOVERY UNDER THE LAWS REGULATING GENERAL CONTRACTORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-10(a) reads as rewritten:

"(a) Anyone seeking to be licensed as a general contractor in this State shall file an application for an examination on a form provided by the Board, at least 30 days before any regular or special meeting of the ~~Board accompanied by~~Board. The Board may require the applicant to pay the Board or a provider contracted by the Board an examination fee ~~of fifty dollars ($50.00)~~not to exceed one hundred dollars ($100.00) and ~~by the sum of one hundred dollars ($100.00)~~pay to the Board a license fee not to exceed one hundred twenty-five dollars ($125.00) if the application is for an unlimited license, ~~the sum of seventy-five dollars ($75.00)~~one hundred dollars ($100.00) if the application is for an intermediate ~~license or the sum of fifty dollars ($50.00)~~license, or seventy-five dollars ($75.00) if the application is for a limited ~~license; the fees and sum~~ license. The fees accompanying any application or examination shall be nonrefundable. The holder of an unlimited license shall be entitled to act as general contractor without restriction as to value of any single project; the holder of an intermediate license shall be entitled to act as general contractor for any single project with a value of up to seven hundred thousand dollars ($700,000); the holder of a limited license shall be entitled to act as general contractor for any single project with a value of up to three hundred fifty thousand dollars ($350,000); and the license certificate shall be classified in accordance with this section. Before being entitled to an examination an applicant must show to the satisfaction of the Board from the application and proofs furnished that the applicant is possessed of a good character and is otherwise qualified as to competency, ability, integrity, and financial responsibility, and that the applicant has not committed or done any act, which, if committed or done by any licensed contractor would be grounds under

the provisions hereinafter set forth for the suspension or revocation of contractor's license, or that the applicant has not committed or done any act involving dishonesty, fraud, or deceit, or that the applicant has never been refused a license as a general contractor nor had such license revoked, either in this State or in another state, for reasons that should preclude the granting of the license applied for, and that the applicant has never been convicted of a felony involving moral turpitude, relating to building or contracting, or involving embezzlement or misappropriation of funds or property entrusted to the applicant: Provided, no applicant shall be refused the right to an examination, except in accordance with the provisions of Chapter 150B of the General Statutes."

SECTION 2. G.S. 87-10(d) reads as rewritten:

"(d) Anyone failing to pass this examination may be reexamined at any regular meeting of the Board upon payment of an examination ~~fee of fifty dollars ($50.00).~~fee. Anyone requesting to take the examination a third or subsequent time shall submit a new application with the appropriate examination and license fees."

SECTION 3. G.S. 87-10(e) reads as rewritten:

"(e) A certificate of license shall expire on the thirty-first day of December following its issuance or renewal and shall become invalid 60 days from that date unless renewed, subject to the approval of the Board. Renewals may be effected any time during the month of January without reexamination, by the payment of a fee to the secretary of the Board. The fee shall not exceed ~~one hundred dollars ($100.00)~~one hundred twenty-five dollars ($125.00) for an unlimited license, ~~seventy-five dollars ($75.00)~~one hundred dollars ($100.00) for an intermediate ~~license~~ license, and ~~fifty dollars ($50.00)~~seventy-five dollars ($75.00) for a limited license. No later than November 30 of each year, the Board shall mail written notice of the amount of the renewal fees for the upcoming year to the last address of record for each general contractor licensed pursuant to this Article. Renewal applications shall be accompanied by evidence of continued financial responsibility satisfactory to the Board. Renewal applications received by the Board after January shall be accompanied by a late payment of ten dollars ($10.00) for each month or part after January. After a lapse of two years no renewal shall be effected and the applicant shall fulfill all requirements of a new applicant as set forth in this section."

SECTION 4. G.S. 87-11 is amended by adding the following new subsection to read:

"(e) The Board shall be entitled to recover its reasonable administrative costs associated with the investigation and prosecution of a violation of this Article or rules or regulations of the Board up to a maximum of five thousand dollars ($5,000) for any licensee or qualifying party found to have committed any of the following:

(1) Fraud or deceit in obtaining a license.

(2) Gross negligence, incompetency, or misconduct in the practice of general contracting.

(3) Willful violation of any provision of this Article."

SECTION 5. G.S. 87-13.1 reads as rewritten:

"**§ 87-13.1. Board may seek injunctive relief.**

Whenever the Board determines that any person, firm or corporation has violated or is violating any of the provisions of this Article or rules and regulations of the Board promulgated under this Article, the Board may apply to the superior court for a restraining order and injunction to restrain the violation; and the superior courts have jurisdiction to grant the requested relief, irrespective of whether or not criminal prosecution has been instituted or administrative sanctions imposed by reason of the violation. The court may award the Board its reasonable costs associated with the investigation and prosecution of the violation."

SECTION 6. Sections 1, 2, 3, and 6 of this act are effective when it becomes law. Sections 4 and 5 become effective October 1, 2005, and apply to violations that occur on or after that date.

SENATE BILL 1013:
Gen. Contractors/Fees/Cost Recovery

BILL ANALYSIS

Committee:	House Finance	**Date:**	August 22, 2005
Introduced by:	Sen. Hoyle	**Summary by:**	Cindy Avrette
Version:	Second Edition		Committee Counsel

SUMMARY: SUMMARY: Senate Bill 1013 would authorize the State Licensing Board for General Contractors to increase its licensing fees and to recover its reasonable administrative costs associated with the investigation and prosecution of certain violations of the general contractors' licensing laws.

As introduced, this bill was identical to HB 1376, sponsored by Rep. Culpepper.

CURRENT LAW: Currently the State Licensing Board for General Contractors is authorized to charge an examination fee of $50.00 and $100.00 for an unlimited license, $75.00 for an intermediate license and $50.00 for a limited license. An unlimited licensee can construct any price building. An intermediate licensee can construct a building of up to $700,000 in value and a limited licensee can construct a building of up to $350,000 in value. There is currently no authority for the Board to recover its cost for prosecuting violations of the licensing law.

BILL ANALYSIS:

Sections 1, 2 and 3 of the bill authorize the Board to increase its charges for examinations and licensing fees to the following:

- Examination fee – not to exceed $100.
- Unlimited license fee – not to exceed $125.
- Intermediate license fee – not to exceed $100
- Limited license fee – not to exceed $75.

Sections 4 and 5 would authorize the Board to recover reasonable administrative costs associated with the investigation and prosecution of a violation of the law or rules governing general contractor licensing, up to a maximum of $5,000 for any person found to have committed any of the following:

- Fraud or deceit in obtaining a license.
- Gross negligence, incompetency, or misconduct in the practice of general contracting.
- Willful violation of any provision of the licensing law.

EFFECTIVE DATE: Sections 1, 2 and 3 authorizing fee increases would become effective when the bill becomes law. Sections 4 and 5 authorizing cost recovery would become effective October 1, 2005.

Walker Reagan, counsel to the Senate Judiciary I Committee, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: August 10, 2005

TO: Senator Hoyle

FROM: Rodney Bizzell
Fiscal Research Division

RE: Senate Bill 1013 (Second Edition)

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund	* No General Fund Impact *				
General Contractors Licensing Board	**$1,080,000**	**$1,080,000**	**$1,080,000**	**$1,080,000**	**$1,080,000**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Licensing Board for General Contractors

EFFECTIVE DATE: Sections 1, 2, 3, and 6 of this act are effective when it becomes law. Sections 4 and 5 become effective October 1, 2005, and apply to violations that occur on or after that date.

BILL SUMMARY:

Senate Bill 1013 would authorize the State Licensing Board for General Contractors to increase its licensing fees and to recover its reasonable administrative costs associated with the investigation and prosecution of certain violations of the general contractors' licensing laws.

ASSUMPTIONS AND METHODOLOGY:

The NC Licensing Board for General Contractors has over 31,000 licensed general contractors. Fees for the board have not been increased since 1993. The audited financial statements for the board showed a deficit of $229,000 for FY04.

The proposed legislation increases license fees, examination fees and application fees by $25. In addition, the bill allows the board to recover costs associated with prosecuting disciplinary cases and investigation and prosecution of unlicensed contractor complaints, up to $5,000.

NC Licensing Board for General Contractors	Additional Revenue
License Fees	$775,000
Examination Fees	$80,000
Application Fees	$100,000
Cost Recovery for Disciplinary Cases/Prosecution	$125,000
Total	**$1,080,000**

SOURCES OF DATA: NC Licensing Board for General Contractors

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

SB 1013 A BILL TO BE ENTITLED AN ACT AUTHORIZING THE STATE LICENSING BOARD FOR GENERAL CONTRACTORS TO INCREASE FEES AND AMENDING CERTAIN PROVISIONS RELATING TO COST RECOVERY UNDER THE LAWS REGULATING GENERAL CONTRACTORS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 2

SENATE BILL 356
Finance Committee Substitute Adopted 4/20/05

Short Title: Fuel Tax Refund for Pumpers and Sweepers. (Public)

Sponsors:

Referred to:

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW A FUEL TAX REFUND FOR OFF-ROAD FUEL USE BY PUMPER TRUCKS AND SWEEPERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-449.107(b) reads as rewritten:

"(b) Certain Vehicles. – A person who purchases and uses motor fuel in one of the vehicles listed below may receive an annual refund for the amount of fuel consumed by the vehicle:

(1) A concrete mixing vehicle.
(2) A solid waste compacting vehicle.
(3) A bulk feed vehicle that delivers feed to poultry or livestock and uses a power takeoff to unload the feed.
(4) A vehicle that delivers lime or fertilizer in bulk to farms and uses a power takeoff to unload the lime or fertilizer.
(5) A tank wagon that delivers alternative fuel, as defined in G.S. 105-449.130, or motor fuel or another type of liquid fuel into storage tanks and uses a power takeoff to make the delivery.
(6) A commercial vehicle that delivers and spreads mulch, soils, composts, sand, sawdust, and similar materials and that uses a power takeoff to unload, blow, and spread the materials.
(7) A commercial vehicle that uses a power takeoff to remove and dispose of septage and for which an annual fee is required to be paid to the Department of Environment and Natural Resources under G.S. 130A-291.1.
(8) A sweeper.

The amount of refund allowed is thirty-three and one-third percent (33 1/3%) of the following: the sum of the flat cents-per-gallon rate in effect during the year for which the refund is claimed and the average of the two variable cents-per-gallon rates in effect during that year, less the amount of sales and use tax due on the fuel under this Chapter.

An application for a refund allowed under this section must be made in accordance with this Part. This refund is allowed for the amount of fuel consumed by the vehicle in its mixing, compacting, or unloading operations, as distinguished from propelling the vehicle, which amount is considered to be one-third of the amount of fuel consumed by the vehicle."

SECTION 2. This act is effective when it becomes law and applies to motor fuel and alternative fuel consumed on or after January 1, 2006.

SENATE BILL 356:
Fuel Tax Refund for Pumpers and Sweepers

BILL ANALYSIS

Committee:	House Finance	**Date:**	August 22, 2005
Introduced by:	Sen. Hoyle	**Summary by:**	Martha Walston
Version:	Second Edition		Committee Counsel

SUMMARY: Senate Bill 356 would allow an annual motor fuel tax refund for a commercial vehicle that uses a power takeoff to remove and dispose of septage. The 2nd edition incorporates SB 101, sponsored by Sen. Albertson, which authorizes a similar refund for sweepers. It also changes the effective date from January 1, 2005 to January 1, 2006.

As introduced, this bill was identical to HB 504, sponsored by Rep. Wainwright, L. Allen, and Barnhart.

CURRENT LAW: G.S. 105-449.107 of the Revenue Laws allows annual refunds of motor fuel and alternative fuel taxes for off-highway use and for certain vehicles with power attachments. Subsection (b) of this statute lists the following vehicles that are allowed an annual refund of the motor fuel and alternative fuel taxes paid on fuel consumed by the vehicles:

1. A concrete mixing vehicle.
2. A solid waste compacting vehicle.
3. A bulk feed vehicle that delivers feed to poultry or livestock and uses a power takeoff to unload the lime or fertilizer.
4. A vehicle that delivers lime or fertilizer in bulk to farms and uses a power takeoff to unload the lime or fertilizers.
5. A tank wagon that delivers alternative fuel or motor fuel or another type of liquid fuel into storage tanks and uses a power takeoff to make the delivery.
6. A commercial vehicle that delivers and spreads mulch, soils, composts, sand, sawdust, and similar materials and that uses a power takeoff to unload, blow, and spread the materials.

The annual refund of the fuel taxes is based on 33 1/3% of fuel consumed by the vehicle. This is the amount of fuel that is considered to be consumed by the vehicle in its mixing, compacting, or unloading operations, as distinguished from propelling the vehicle on the roads. The amount of sales tax due on the fuel is deducted from the tax refund.

BILL ANALYSIS: Senate Bill 356 would add the following to the list of vehicles eligible for a motor fuel tax refund:

- commercial vehicles that use a power takeoff to remove and dispose of septage and for which an annual fee is required to be paid to the Department of Environment and Natural Resources (DENR) under G.S. 130A-291.1. DENR is responsible for administering a septage management program, including establishing standards for the transportation, storage, treatment, and disposal of septage; operator registration and training; the issuance, suspension, and revocation of permits, and procedures for the payment of annual fees. A septage management firm that operates one pumper truck pays an annual fee of $550.00 and a firm that operates two or more pumper trucks pays an annual fee of $800.00. In order to issue the refund, the Department of Revenue is not required to verify the payment of the permit fee required by G.S. 130A-291.1. However, if the Department discovers through its auditing or investigatory procedures that those permit fees have not been paid, it may refuse to issue a refund or seek a return of the refund.

- sweepers. Sweepers are vehicles that vacuum up and haul away litter in parking lots. A sweeper vehicle has an auxiliary engine that runs only when the vehicle is performing its sweeping function, and a factory-installed meter gauges how much fuel is being used for that function.

The 2nd edition of the bill also changes the effective date from January 1, 2005 to January 1, 2006 so as to avoid the administrative burden associated with making the refund retroactive.

S0356e2-SMLA

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

SB 356 A BILL TO BE ENTITLED AN ACT TO ALLOW A FUEL TAX REFUND FOR OFF-ROAD FUEL USE BY PUMPER TRUCKS AND SWEEPERS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1413*
Committee Substitute Favorable 8/11/05

Short Title: Enhance Local Govt. Adm. of Env. Prgms. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE ADDITIONAL AUTHORITY FOR LOCAL GOVERNMENTS THAT ADMINISTER APPROVED LOCAL ENVIRONMENTAL PROGRAMS AND TO PROVIDE ADDITIONAL INCENTIVES FOR LOCAL GOVERNMENTS TO REQUEST THE AUTHORITY TO ADMINISTER ALL OR A PORTION OF CERTAIN ENVIRONMENTAL PROGRAMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-54.1 is amended by adding a new subsection to read:

"(e) An approved erosion and sedimentation control plan shall contain a schedule for the inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. 113A-57(2). The landowner, the financially responsible party, or their agent shall perform each inspection. The person who performs each inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall indicate whether the erosion control measures required by the plan have been installed in the correct sequence and whether the measures are being maintained in substantial accordance with the plan. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1."

SECTION 2. G.S. 113A-56 reads as rewritten:

"**§ 113A-56. Jurisdiction of the Commission.**

(a) The Commission shall have jurisdiction, to the exclusion of local governments, to adopt rules concerning land-disturbing activities that are:

(1) Conducted by the ~~State;~~State.

(2) Conducted by the United ~~States;~~States.
(3) Conducted by persons having the power of eminent ~~domain;~~domain other than a local government.
(4) Conducted by ~~local governments; or~~a local government.
(5) Funded in whole or in part by the State or the United States.

(b) The Commission may delegate the jurisdiction conferred by G.S. 113A-56(a), in whole or in part, to any other State agency that has submitted an erosion and sedimentation control program to be administered by it, if the program has been approved by the Commission as being in conformity with the general State program.

(c) The Commission shall have concurrent jurisdiction with local governments that administer a delegated erosion and sedimentation control program over all other land-disturbing activities. In addition to the authority granted to the Commission in G.S. 113A-60(c), the Commission has the following authority with respect to a delegated erosion and sedimentation control program:

(1) To review erosion and sedimentation control plan approvals made by a delegated erosion and sedimentation control program and to require a revised plan if the Commission determines that a plan does not comply with the requirements of this Article or the rules adopted pursuant to this Article.
(2) To review the compliance activities of a delegated erosion and sedimentation control program and to take appropriate compliance action if the Commission determines that the local government has failed to take appropriate compliance action."

SECTION 3. G.S. 113A-60 reads as rewritten:

"**§ 113A-60. Local erosion and sedimentation control programs.**

(a) A local government may submit to the Commission for its approval an erosion and sedimentation control program for its jurisdiction, and to this end local governments are authorized to adopt ordinances and regulations necessary to establish and enforce erosion and sedimentation control programs. An ordinance adopted by a local government may establish a fee for the review of an erosion and sedimentation control plan and related activities. Local governments are authorized to create or designate agencies or subdivisions of local government to administer and enforce the programs. An ordinance adopted by a local government shall at least meet and may exceed the minimum requirements of this Article and the rules adopted pursuant to this Article. Two or more units of local government are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program. The resolutions establishing any joint program must be duly recorded in the minutes of the governing body of each unit of local government participating in the program, and a certified copy of each resolution must be filed with the Commission.

(b) The Commission shall review each program submitted and within 90 days of receipt thereof shall notify the local government submitting the program that it has been approved, approved with modifications, or disapproved. The Commission shall only

approve a program upon determining that its standards equal or exceed those of this Article and rules adopted pursuant to this Article.

(c) If the Commission determines that any local government is failing to administer or enforce an approved erosion and sedimentation control program, it shall notify the local government in writing and shall specify the deficiencies of administration and enforcement. If the local government has not taken corrective action within 30 days of receipt of notification from the Commission, the Commission shall assume administration and enforcement of the program until such time as the local government indicates its willingness and ability to resume administration and enforcement of the program.

(d) A local government may submit to the Commission for its approval a limited erosion and sedimentation control program for its jurisdiction that grants the local government the responsibility only for the assessment and collection of fees and for the inspection of land-disturbing activities within the jurisdiction of the local government. The Commission shall be responsible for the administration and enforcement of all other components of the erosion and sedimentation control program and the requirements of this Article. The local government may adopt ordinances and regulations necessary to establish a limited erosion and sedimentation control program. An ordinance adopted by a local government that establishes a limited program shall conform to the minimum requirements regarding the inspection of land-disturbing activities of this Article and the rules adopted pursuant to this Article regarding the inspection of land-disturbing activities. The local government shall establish and collect a fee to be paid by each person who submits an erosion and sedimentation control plan to the local government. The amount of the fee shall be an amount equal to eighty percent (80%) of the amount established by the Commission pursuant to G.S. 113A-54.2(a) plus any amount that the local government requires to cover the cost of inspection and program administration activities by the local government. The total fee shall not exceed one hundred dollars ($100.00) per acre. A local government that administers a limited erosion and sedimentation control program shall pay to the Commission the portion of the fee that equals eighty percent (80%) of the fee established pursuant to G.S. 113A-54.2(a) to cover the cost to the Commission for the administration and enforcement of other components of the erosion and sedimentation control program. Fees paid to the Commission by a local government shall be deposited in the Sedimentation Account established by G.S. 113A-54.2(b). A local government that administers a limited erosion and sedimentation control program and that receives an erosion control plan and fee under this subsection shall immediately transmit the plan to the Commission for review. A local government may create or designate agencies or subdivisions of the local government to administer the limited program. Two or more units of local government may establish a joint limited program and enter into any agreements necessary for the proper administration of the limited program. The resolutions establishing any joint limited program must be duly recorded in the minutes of the governing body of each unit of local government participating in the limited program, and a certified copy of each resolution must be filed with the Commission.

Subsections (b) and (c) of this section apply to the approval and oversight of limited programs.

(e) Notwithstanding G.S. 113A-61.1, a local government with a limited erosion and sedimentation control program shall not issue a notice of violation if inspection indicates that the person engaged in land-disturbing activity has failed to comply with this Article, rules adopted pursuant to this Article, or an approved erosion and sedimentation control plan. The local government shall notify the Commission if any person has initiated land-disturbing activity for which an erosion and sedimentation control plan is required in the absence of an approved plan. If a local government with a limited program determines that a person engaged in a land-disturbing activity has failed to comply with an approved erosion and sedimentation control plan, the local government shall refer the matter to the Commission for inspection and enforcement pursuant to G.S. 113A-61.1."

SECTION 4. G.S. 143-215.3D is amended by adding a new subsection to read:

"(f) Local Government Fee Authority Not Impaired. – This section shall not be construed to limit any authority that a unit of local government may have pursuant to any other provision of law to assess or collect a fee for the review of an application for a permit, the review of a mitigation plan, or the inspection of a site or a facility under any local program that is approved by the Commission under this Article."

SECTION 5. G.S. 143-215.1(f) reads as rewritten:

"(f) Local Permit Programs for Sewer ~~Extension.~~Extension and Reclaimed Water Utilization. – Municipalities, counties, local boards or commissions, water and sewer authorities, or groups of municipalities and counties may establish and administer within their utility service areas their own general permit programs in lieu of State permit required in G.S. 143-215.1(a)(2), (3), and (8) above, for construction, operation, alteration, extension, change of proposed or existing sewer system, subject to the prior certification of the Commission. For purposes of this subsection, the service area of a municipality shall include only that area within the corporate limits of the municipality and that area outside a municipality in its extraterritorial jurisdiction where sewer service or a reclaimed water utilization system is already being provided by the municipality to the permit applicant or connection to the municipal sewer system or a reclaimed water utilization system is immediately available to the applicant; the service areas of counties and the other entities or groups shall include only those areas where sewer service or a reclaimed water utilization system is already being provided to the applicant by the permitting authority or connection to the permitting authority's system is immediately available. No later than the 180th day after the receipt of a program and statement submitted by any local government, commission, authority, or board the Commission shall certify any local program ~~that:~~does all of the following:

(1) Provides by ordinance or local law for requirements compatible with those imposed by this Part and the rules implementing this ~~Part;~~Part.

(2) Provides that the Department receives notice and a copy of each application for a permit and that it receives copies of approved permits and plans upon request by the ~~Commission;~~Commission.

(3) Provides that plans and specifications for all construction, extensions, alterations, and changes be prepared by or under the direct supervision of an engineer licensed to practice in this ~~State;~~State.

(4) Provides for the adequate enforcement of the program requirements by appropriate administrative and judicial ~~process;~~process.

(5) Provides for the adequate administrative organization, engineering staff, financial and other resources necessary to effectively carry out its plan review ~~program;~~program.

(6) Provides that the system is capable of interconnection at an appropriate time with an expanding municipal, county, or regional ~~system;~~system.

(7) Provides for the adequate arrangement for the continued operation, service, and maintenance of the sewer ~~system; and~~system or a reclaimed water utilization system.

(8) Is approved by the Commission as adequate to meet the requirements of this Part and the rules implementing this Part.

(f1) The Commission may deny, suspend, or revoke certification of a local program upon a finding that a violation of the provisions in subsection (f) of this section has occurred. A denial, suspension, or revocation of a certification of a local program shall be made only after notice and a public hearing. If the failure of a local program to carry out this subsection creates an imminent hazard, the Commission may summarily revoke the certification of the local program. Chapter 150B of the General Statutes does not apply to proceedings under this subsection.

(f2) Notwithstanding any other provision of ~~this subsection,~~ subsections (f) and (f1) of this section, if the Commission determines that a sewer system, treatment works, or disposal system is operating in violation of the provisions of this Article and that the appropriate local authorities have not acted to enforce those provisions, the Commission may, after written notice to the appropriate local government, take enforcement action in accordance with the provisions of this Article."

SECTION 6. G.S. 143-215.6A(j) reads as rewritten:

"(j) Local governments certified and approved by the Commission to administer and enforce pretreatment programs ~~by the Commission~~ pursuant to ~~G.S. 143-215.3(a)(14)~~ G.S. 143-215.3(a)(14), stormwater programs pursuant to G.S. 143-214.7, or riparian buffer protection programs pursuant to G.S. 143-214.23 may assess civil penalties for violations of their respective programs in accordance with the powers conferred upon the Commission and the Secretary in this section, except that actions for collection of unpaid civil penalties shall be referred to the attorney representing the assessing local government. The total of the civil penalty assessed by a local government and the civil penalty assessed by the Secretary for any violation may not exceed the maximum civil penalty for such violation under this section."

SECTION 7. This act becomes effective 1 September 2005.

HOUSE BILL 1413:
Enhance Local Govt. Adm. of Env. Prgms

BILL ANALYSIS

Committee:	House Finance	**Date:**	August 23, 2005
Introduced by:	Reps. L. Allen, Hackney, Justice, Weiss	**Summary by:**	Tim Dodge
Version:	Second Edition		Legislative Analyst

SUMMARY: House Bill 1413 would: require the self-inspection of an area covered by an approved erosion and sedimentation control plan; clarify the jurisdiction of the North Carolina Sedimentation Control Commission over local erosion and sedimentation control programs; authorize a local government to establish an erosion and sedimentation control program that is limited to the inspection of land-disturbing activities within the jurisdiction; clarify that the statute which provides the fee structure for water quality permits should not be construed to limit local government fee authority for certain activities; authorize local permit programs for reclaimed water utilization systems; and provide that local governments certified and approved by the Environmental Management Commission (EMC) to enforce stormwater or riparian buffer protection programs may assess civil penalties for violations of the respective programs.

As introduced, this bill was identical to S1114, as introduced by Sen. Albertson, which is currently in Senate Finance.

CURRENT LAW: The General Assembly enacted the Sedimentation Pollution Control Act of 1973 (Act) to establish a program to allow development while minimizing the detrimental effects from pollution by sedimentation. The Act provides that certain land-disturbing activity is subject to mandatory requirements and the Act is enforceable by means of civil penalties, criminal penalties, stop-work orders, injunctive relief, and civil relief. The Act requires a person conducting a land-disturbing activity involving the uncovering of more than one acre to have an erosion and sedimentation control plan (plan) approved by the North Carolina Sedimentation Control Commission (Commission), which has delegated this authority to the Division of Land Resources in the Department of Environment and Natural Resources, prior to initiating the activity. In addition, the Act requires the utilization of sedimentation and erosion control devices and practices that are sufficient to retain the sediment generated by the construction within the boundaries of the tract during construction and provides for permanent ground cover after completion of construction. A local government may establish its own erosion and sedimentation control program (program) to approve plans and enforce the Act upon a determination by the Commission that the local program has standards that equal or exceed those of the Act. A local government that establishes its own program may also set its own fees.

BILL ANALYSIS:

Self-Inspection: The bill would require that a plan include a schedule for the self-inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary groundcover. The landowner, financially responsible party, or their agent would be required to perform each inspection and maintain and make available a record of the inspection at the site. The record must indicate whether the erosion control measures required by the plan were installed in the correct sequence and whether the measures are being maintained in accordance with the plan. The report must also indicate if there was any deviation from the approved plan, measures required to correct the deviation, and document the completion of those measures.

Jurisdiction of Commission: The bill would clarify that the Commission has concurrent jurisdiction with local governments that administer a delegated program. In addition, the Commission would be given the authority to: (i) review plan approvals made by a delegated program and to require a revised plan if the Commission determines that the plan does not comply with the Act and the associated rules; and (ii) review the compliance activities of a delegated program and take appropriate action upon determination that the delegated program has failed to take appropriate compliance action.

Authorization of Limited Local Programs: The bill would authorize a local government to request that the Commission approve and delegate a limited program that allows the local government to only inspect land-disturbing activities, and assess and collect appropriate fees. Local governments would be authorized to adopt ordinances and regulations necessary to establish a limited program, which shall at least meet and may exceed the minimum requirements regarding the inspection of land-disturbing activities under the Act and the associated rules. If the Commission approves a limited local program, the Commission would retain responsibility for administering all components of the program, other than the inspection of land-disturbing activities. The local government would be required to establish a fee for the review of a plan and related compliance activities, not to exceed $100.00, and submit a portion of the fee to the Commission to compensate the Commission for the costs associated with the administration and enforcement of other parts of the program.

Local Government Fee Authority Not Impaired: The bill would clarify that G.S. 143-215.3D, which provides the fee schedule for water quality permits, would not be construed to limit the authority of a local government to collect a fee for the review of a permit application or mitigation plan, or inspection of a site.

Local Permit Programs for Reclaimed Water Utilization Systems: The bill would authorize local governments to establish and administer their own permit program, in lieu of required State permits, for construction, operation, alteration extension, or change of a reclaimed water utilization system. The statute already authorizes local government permit programs for these activities with regard to sewer systems.

Civil Penalties for Violations: The bill would provide that local governments certified and approved by the EMC to enforce stormwater or riparian buffer protection programs may assess civil penalties for violations of the respective programs.

EFFECTIVE DATE: The bill would become effective September 1, 2005.

Jennifer McGinnis, counsel to the House Committee on Environment and Natural Resources, substantially contributed to this summary.

H1413e2-SMSY

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 1413 (Second Edition)

SHORT TITLE: Enhance Local Govt. Adm. of Env. Prgms.

SPONSOR(S): Representatives Hackney, Weiss, Justice, and L. Allen

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
Sedimentation Account	No estimate available. See Assumptions and Methodology				
Local Governments	No estimate available. See Assumptions and Methodology				
EXPENDITURES:					
Sedimentation Account	No estimate available. See Assumptions and Methodology				
Local Governments	No estimate available. See Assumptions and Methodology				
Correction	Exact amount cannot be determined				
Judicial Branch	Exact amount cannot be determined				
ADDITIONAL PRISON BEDS*	No impact anticipated				
POSITIONS: (cumulative)					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Local governments, Department of Environment and Natural Resources, Sedimentation Control Commission, Department of Correction; Judicial Branch

EFFECTIVE DATE: September 1, 2005

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY:

The second edition of House Bill 1413 would: require the self-inspection of an area covered by an approved erosion and sedimentation control plan; clarify the jurisdiction of the North Carolina Sedimentation Control Commission ("the Commission") over local erosion and sedimentation control programs; authorize a local government to establish an erosion and sedimentation control

program that is limited to the inspection of land-disturbing activities within the jurisdiction; clarify that the statute which provides the fee structure for water quality permits should not be construed to limit local government fee authority for certain activities; authorize local permit programs for reclaimed water utilization systems; and provide that local governments certified and approved by the Environmental Management Commission (EMC) to enforce stormwater or riparian buffer protection programs may assess civil penalties for violations of the respective programs. The penalties in this case are paid to the local government. As such, it has no impact on state revenues.

ASSUMPTIONS AND METHODOLOGY:

Revenues: This bill allows a local government to submit to the Commission for its approval a limited erosion and sedimentation control program for its jurisdiction that grants the local government the responsibility only for the assessment and collection of fees and for the inspection of land-disturbing activities within the jurisdiction of the local government. The Commission would still be responsible for the administration and enforcement of all other components of the program, including review and approval of the plans. Local governments operating a limited local program shall charge a fee made up of two components: 1) an amount equal to 80% of the amount established by the Commission pursuant to G.S. 113A-54.2(a) plus 2) any amount that the local government requires to cover the cost of inspection and administration activities by the local government. The total fee shall not exceed $100/acre.

The bill directs the local government operating a limited local program to pay the first component of the fee to the Commission for the administration and enforcement of other components of the program. These payments shall be deposited into the Sedimentation Account established by G.S. 113A-54.2(b). ***Under this bill, the Sedimentation Account will receive 20% less in fee revenue for each sedimentation and erosion control plan submitted under a limited local program.*** Currently, the sedimentation fee is set at $50/acre; therefore under a limited local program, the Sedimentation Account would receive only 80% of that or $40/acre. Currently, there is no estimate of how many plans would be submitted under a limited local program. Consequently, no estimate is available regarding the exact impact on the Sedimentation Account.

The second component of the fee will result in a revenue gain by local governments operating limited local programs. At this time, there is no estimate available regarding the number of local governments that would choose this option. Also the amount of this component of the fee will likely vary by local government. For these reasons, a specific estimate of the impact on local government revenues is not available.

Expenditures: Under a limited local program, inspection of land-disturbing activities is delegated to the participating local government. ***Consequently, the expenditures related to these inspections will be shifted from the Department of Environment and Natural Resources (DENR) to the participating local government.*** Because the extent to which local governments will choose the limited local program option is unknown, no estimate is available regarding the resources saved by DENR and expended by the local governments. Note that inspections conducted by local rather than state inspectors, especially in rural areas, will likely require less in travel expenditures.

Criminal Penalties: General

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitate effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

This second edition makes various changes to Article 4 (Sedimentation Pollution Control Act of 1973), Chapter 113A of the General Statutes, including self-inspections by landowners and authorization for local governments to establish and administer their own permit program. Current G.S. 113A-64(b) states that any person who knowingly or willfully violates any provision of Article 4 or any ordinance, rule, regulation, or order duly adopted or issued by the Commission or a local government shall be guilty of a Class 2 misdemeanor that may include a fine not to exceed five thousand dollars ($5,000). Because this second edition would expand an existing offense, the number of charges and convictions cannot be projected.

Department of Correction & County Jails

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

- In FY 2003-04, 15 percent of Class 2 misdemeanors resulted in active sentences and the average active sentence length was 23 days. Offenders with active sentences of less than thirty days are housed in county jails at county expense.
- The remaining 85 percent of Class 2 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Correction (DCC) would incur costs of $1.87 per offender per day. Offenders sentenced to community service would cost $0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

Because Class 2 misdemeanants serving active time as a result of this bill would be housed in county jails, this legislation would not impact prison population.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Based on the costs of time in court, attorney preparation time, and indigent defense, the average estimated cost to process one Class 2 misdemeanor is $2,314 per trial and $271 per guilty plea. The trial cost includes an estimated $1,365 in jury fees, costs of time in court, and attorney costs

and an additional $949 in indigent defense. Based on prior-year data, the majority of any new Class 2 misdemeanor charges that are not dismissed are likely to be settled by plea.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission, Department of Environment and Natural Resources

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Jennifer Haygood and Chloe Gossage

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: August 23, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

HB 1413 A BILL TO BE ENTITLED AN ACT TO PROVIDE ADDITIONAL AUTHORITY FOR LOCAL GOVERNMENTS THAT ADMINISTER APPROVED LOCAL ENVIRONMENTAL PROGRAMS, AND TO PROVIDE ADDITIONAL INCENTIVES FOR LOCAL GOVERNMENTS TO REQUEST THE AUTHORITY TO ADMINISTER ALL OR A PORTION OF CERTAIN ENVIRONMENTAL PROGRAMS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

North Carolina General Assembly

House Committee on Finance

Minutes

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August 23, 2005 – 6:45 p.m.

The House Committee on Finance met on Tuesday, August 23, 2005 at 6:45 p.m. around the desk of Chairwoman Howard on the floor of the House Chamber. The following members were present: Chairpersons Alexander, Gibson, Howard, Luebke, McComas, and Wainwright; Vice-Chair Ross; and Representatives Blackwood, Bordsen, Carney, England, Faison, Folwell, Glazier, Hackney, Holliman, Insko, Jones, Lewis, Lucas, McGee, Rayfield, and Underhill. Staff persons present included Cindy Avrette, Brenna Erford, and Martha Walston.

Chairwoman Howard called the meeting to order at 6:48 pm.

The first bill considered by the Committee was **HB 1330 – AMEND ELECTROLYSIS PRACTICE ACT/FEES** (see **attachment 1**). Representative Jeffus was recognized to explain the bill. She informed the members that the bill authorizes the North Carolina Board of Electrolyisis Examiners to license laser clinicians and laser clinician instructors, and to certify Board-approved schools of laser, light source, or pulsed-light treatments that meet requirements established by the Board. She noted that the bill had been heard successfully in the House Health Committee earlier in the day but was before the Finance Committee because it authorized fees for these new licensures.

The Chair recognized Representative Faison following this explanation and he stated his concern over the language in the bill on page 1, lines 23-25. He then sent forth an amendment clarifying the language in this section (see **attachment 2**) and moved its adoption. Representative Luebke, however, was recognized and stated his belief that the amendment did not help clarify the bill as intended and was unneeded. Representative England and Jeffus agreed with Representative Luebke and voiced their opposition to the amendment as well. As there was no further discussion on the amendment, Chairwoman Howard called it to a vote, and the amendment failed.

Representative Wainwright was then recognized by the Chair and stated his concern that insufficient time was being allowed to properly debate the bill. Representative Holliman then moved that HB 1330 be given a favorable report. Representative Insko inquired as to who was charged with establishing the rules for the profession. Representative Jeffus responded that the North Carolina Board of Electrolysis Examiners was responsible for rulemaking. Seeing no further discussion, Chairwoman Howard then called the Holliman motion to a vote, and it carried by a majority.

SB 208 – AMEND OCCUPATIONAL THERAPY LAWS/FEE (see **attachment 3**) was the next bill considered by the Committee. Representative Nye, on behalf of the bill sponsor Senator Lucas, was recognized to explain the bill. He stated that the bill amends the North Carolina

Occupational Therapy Practice Act by creating statutory revisions and modifications to the provisions regulating the practice of occupational therapy. He further stated that the bill raises the ceiling on the fee for a limited permit from $35 to $50, with the fee expiring October 1, 2007. Seeing no debate, Chairwoman Howard recognized Representative Luebke for a motion. He moved that SB 208 be given a favorable report. The Chair called the motion to a vote, and it carried without objection.

As there was no further business before the Committee at that time, Chairwoman Howard then adjourned the meeting at 7:15 pm.

Respectfully submitted,

Representative Julia Howard
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. House Bill 1330 (and related materials)
2. Faison Amendment on HB 1330 (**FAILED**)
3. Senate Bill 208 (and related materials)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1330
Committee Substitute Favorable 8/23/05

Short Title: Amend Electrolysis Practice Act/Fees. (Public)

Sponsors:

Referred to:

April 20, 2005

A BILL TO BE ENTITLED

AN ACT ALLOWING THE NORTH CAROLINA BOARD OF ELECTROLYSIS EXAMINERS TO PROVIDE FOR THE LICENSURE OF LASER CLINICIANS AND LASER CLINICIAN INSTRUCTORS UPON MEETING CERTAIN REQUIREMENTS ESTABLISHED BY THE BOARD AND AUTHORIZING THE BOARD TO CHARGE FEES RELATED TO THOSE LICENSURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 88A-2 reads as rewritten:

"**§ 88A-2. Purpose.**

The purpose of this Chapter is to ensure minimum standards of competency, to protect the public from misrepresentation of status by persons who hold themselves out to be ~~"certified electrologists",~~"licensed electrologists" or "licensed laser clinicians" and to provide the public with safe care by the mandatory licensing of ~~electrologists.~~electrologists and laser clinicians."

SECTION 2. G.S. 88A-4 reads as rewritten:

"**§ 88A-4. Unlawful practice.**

(a) ~~Effective January 31, 1994, it~~It shall be unlawful to engage in the practice of electrolysis or laser, light source, or pulsed-light treatments in this State without a license.

(b) Any person practicing laser, light source, or pulsed-light treatments in this State without being licensed by the Board shall be guilty of a Class I felony and may be assessed a civil penalty of five thousand dollars ($5,000) per offense. Any other violation of this Chapter shall be a Class 2 misdemeanor. Nothing in this subsection shall limit or prevent any licensed physician from performing or delegating to a qualified person any acts otherwise permitted by law or established by custom."

SECTION 3. G.S. 88A-3 is amended by adding the following new subdivisions to read:

"**§ 88A-3. Definitions.**

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

...

(5) 'Laser clinician' means a person who engages in laser, light source, or pulsed-light treatments of skin or hair.

(6) 'Laser, light source, or pulsed-light treatments' means the use of laser or pulsed-light devices for nonablative procedures for the removal of hair.

(7) 'Laser, light source, or pulsed-light devices' means a device used in the nonablative procedure for the removal of hair."

SECTION 4. G.S. 88A-9(b) reads as rewritten:

"(b) All fees may be calculated by the Board in amounts sufficient to pay the costs of administration of this act, but in no event may they exceed the following:

(1)	Application for licensure as an electrologist	$150.00
(1a)	Initial license	150.00
(1b)	Examination or reexamination	125.00
(2)	Licensure of electrology renewal	200.00
(3)	Application for ~~certification~~ licensure as an electrology instructor	150.00
(4)	~~Certificate~~ Licensure of electrology instructor renewal	75.00
(5)	Application for certification as a ~~Board approved~~Board-approved school of electrology	500.00
(5a)	Application for licensure as a laser clinician	150.00
(5b)	Licensure as laser clinician renewal	200.00
(5b)	Application for licensure as laser clinician instructor	150.00
(5c)	Licensure of laser clinician instructor renewal	75.00
(5d)	Application for certification as a Board-approved school of laser, light source, or pulsed-light treatments	500.00
(5e)	Certificate of Board-approved school of laser, light source, or pulsed-light renewal	250.00
(6)	Certificate of ~~Board approved~~Board-approved school of electrology renewal	250.00
(6a)	Certification of out-of-state schools	100.00
(6b)	Certification of out-of-state schools renewal	75.00
(6c)	Office inspection or reinspection	100.00
(6d)	License by reciprocity	150.00
(7)	Late renewal charge	75.00
(8)	Reinstatement of expired license or certification	300.00
(9)	Reactivation of license	200.00
(10)	Duplicate license or certification	25.00."

SECTION 5. G.S. 88A-10 reads as rewritten:

"**§ 88A-10. Requirements for licensure as an ~~electrologist.~~electrologist or a laser clinician.**

(a) Any person who desires to be licensed as an "electrologist" pursuant to this Chapter shall:

(1) Submit an application on a form approved by the Board.

(2) Be a resident of North Carolina.
(3) Be ~~18~~ 21 years of age or older.
(4) Meet the requirements of subsection (a1) of this section.
(5) Pass an examination given by the Board.
(6) Submit the application and examination fees required in G.S. 88A-9(b).

(a1) An applicant for licensure under this section shall provide:
(1) Proof of graduation from a school certified by the Board pursuant to G.S. 88A-19; or
(2) Proof satisfactory to the Board that, for at least one year prior to the date of application or the date of initial residence in this State, whichever is earlier, the applicant was engaged in the practice of electrology in a state that does not license electrologists.

Subdivision (2) of this subsection applies only to applicants whose residence in this State began on or after January 31, 1994, who do not meet the qualifications of subdivision (1) of this subsection or G.S. 88A-12.

(b) At least twice each year, the Board shall give an examination to applicants for licensure to determine the applicants' knowledge of the basic and clinical sciences relating to the theory and practice of electrology. The Board shall give applicants notice of the date, time, and place of the examination at least 60 days in advance.

(c) When the Board determines that an applicant has met all the requirements for licensure, and has submitted the initial license fee required in G.S. 88A-9(b), the Board shall issue a license to the applicant.

(d) An applicant otherwise qualified for licensure who is not a resident of this State may nevertheless submit a statement of intent to begin practicing electrology in this State and receive a license. The applicant must provide to the Board within six months of receiving a license evidence satisfactory to the Board that the applicant has actually begun to practice electrology in this State. The Board may revoke the license of an applicant who fails to submit this proof or whose proof fails to satisfy the Board.

(e) A person seeking licensure by the Board as a laser clinician shall have met the following requirements at the time the license is requested:
(1) Be a licensed electrologist.
(2) Completed a 30-hour laser, light source, or pulsed-light treatment certification course approved by the Board and in accordance with rules adopted by the Board.
(3) Is currently using or anticipates using laser, light source, or pulsed-light devices that the person has been certified to operate."

SECTION 6. G.S. 88A-12 reads as rewritten:

"**§ 88A-12. License renewal.**

(a) Every electrologist license or laser clinician license issued pursuant to this Chapter must be renewed annually. On or before the date the current license expires, a person who desires to continue to practice electrology or as a laser clinician shall apply for license renewal to the Board on forms approved by the Board, provide evidence of the successful completion of a long-term educational program approved by the Board,

meet the criteria for renewal established by the Board, and pay the required fee. The Board may provide for the late renewal of licensure upon payment of a late fee as set by the Board, but late renewal may not be granted more than 90 days after expiration of the license.

(b) Any person who has failed to renew his or her license for more than 90 days after expiration may have it reinstated by applying to the Board for reinstatement on a form approved by the Board, furnishing a statement of the reason for failure to apply for renewal prior to the deadline, and paying the required fee. The Board may require evidence of competency to resume practice before reinstating the applicant's license."

SECTION 7. G.S. 88A-13 is amended by adding the following new subsection to read:

"(d) Laser clinicians are required to complete 10 hours of continuing education annually to maintain their licensure."

SECTION 8. Chapter 88A of the General Statutes is amended by adding the following new section to read:

"**§ 88A-17.1. Requirements for licensure as a laser clinician instructor.**

(a) Any person who desires licensure as a 'laser clinician instructor' pursuant to this Chapter shall meet the following requirements:

(1) Submit an application on a form approved by the Board.

(2) Be a licensed electrologist.

(3) Be a licensed electrology instructor.

(4) Have practiced laser and light-based treatments actively for at least one year immediately before the application.

(5) Have at least 100 hours of training in laser and light-based treatments.

(b) When the Board determines that an applicant has met all qualifications for certification as a laser clinician instructor and has submitted the required fee, the Board shall issue an instructor's license to the applicant."

SECTION 9. G.S. 88A-18 reads as rewritten:

"**§ 88A-18. Renewal of instructor's ~~certificate.~~license.**

An electrology or laser clinician instructor's ~~certificate~~ license shall be renewed annually. On or before the date the current ~~certificate~~ license expires, the applicant must submit an application for renewal of ~~certification~~ licensure on a form approved by the Board, meet criteria for renewal established by the Board, and pay the required fee. Any person whose instructor's ~~certificate~~ license has expired for a period of five years or more shall be required to take and pass the instructor's examination before the ~~certificate~~ license can be renewed."

SECTION 10. Chapter 88A of the General Statutes is amended by adding the following new section to read:

"**§ 88A-19.1. Requirements for certification as a Board-approved school of laser, light source, or pulsed-light treatments.**

(a) Any school in this State or another state that desires to be certified as a Board-approved school of laser, light source, or pulsed-light treatments shall:

(1) Submit an application on a form approved by the Board;

(2) Submit a detailed projected floor plan of the institutional area demonstrating adequate school facilities to accommodate students for purposes of lectures, classroom instruction, and practical demonstration;
(3) Submit a detailed list of the equipment to be used by the students in the practical course of their studies;
(4) Submit a copy of the planned laser, light source, or pulsed-light curriculum consisting of the number of hours and subject matter determined by the Board, provided that the number of hours required shall not be less than 30 hours and not more than 600 hours;
(5) Submit a certified copy of the school manual of instruction;
(6) Submit the names and qualifications of the licensed instructors; and
(7) Any additional information the Board may require.

(b) When the Board determines that an applicant has met all the qualifications for certification as a Board-approved school of laser, light source, or pulsed-light treatments and has submitted the required fee, the Board shall issue a certificate to the applicant.

(c) A school's certification is only valid for the location named in the application. When a school desires to change locations, an application shall be submitted to the Board on a form furnished by the Board, and the fee shall be paid for certificate renewal.

(d) A school's certification is not transferrable. Schools must immediately notify the Board in writing of any sale, transfer, or change in ownership or management.

(e) Every school shall display its certification in a manner prescribed by the Board.

(f) All laser, light source, or pulsed-light devices used in the school must be approved by the federal Food and Drug Administration."

SECTION 11. G.S. 88A-20 reads as rewritten:

"**§ 88A-20. Certification renewal.**

Every certificate issued pursuant to G.S. 88A-19 or G.S. 88A-19.1 shall be renewed annually. On or before the date the current certificate expires, the applicant must submit an application for renewal of certification on a form approved by the Board, meet criteria for renewal established by the Board, and pay the required fee. Failure to renew the certificate within 90 days after the expiration date shall result in automatic forfeiture of any certification issued pursuant to this Chapter."

SECTION 12. Section 2 of this act becomes effective December 1, 2005, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 1330:
Amend Electrolysis Practice Act/Fees

BILL ANALYSIS

Committee:	House Finance	**Date:**	August 23, 2005
Introduced by:	Rep. Jeffus	**Summary by:**	Sara Kamprath
Version:	PCS to First Edition		Analyst

SUMMARY: The Proposed Committee Substitute for House Bill 1330 authorizes the North Carolina Board of Electrolysis Examiners to license laser clinicians and laser clinician instructors, and to certify Board-approved schools of laser, light source, or pulsed-light treatments that meet requirements established by the Board. House Bill 1330 also establishes the following new fees:

Application for licensure as laser clinician	*$150 (same for electrologist)*
Renewal (annual)	*$200 (same for electrologist)*
Application for licensure as laser clinician instructor	*$150 (same for electrology instructor)*
Renewal (annual)	*$ 75 (same for electrology instructor)*
Application for certification as Board-approved school of laser, light source, or pulsed-light treatment	*$500 (same for school of electrology)*
Renewal (annual)	*$250 (same for school of electrology)*

The Proposed Committee Substitute also provides that any person practicing laser, light source, or pulsed-light treatments without a license by the Board shall be guilty of a Class I felony and may be assessed a civil penalty of $5,000 per violation.

CURRENT LAW: Chapter 88A of the General Statutes creates the North Carolina Board of Electrolysis Examiners and requires the mandatory licensing of electrologists. A violation of practicing electrolysis without a license is a Class 2 misdemeanor. Electrolysis is defined as the permanent removal of hair by the application of an electric current to the dermal papilla by a filament to cause decomposition, coagulation, or dehydration within the hair follicle as approved by the Food and Drug Administration of the United States Government.

The Board is composed of five members:

- three electrologists who have practiced for at least five years. One is appointed by the Speaker of the House of Representatives, one is appointed by the President Pro Tem of the Senate, and one is appointed by the Governor.
- a physician licensed in North Carolina, who is nominated by the North Carolina Medical Board and appointed by the Governor.
- a public member, appointed by the Governor.

Chapter 88A sets out the requirements for licensure as an electrologist, certification as an electrology instructor, and certification as a Board-approved school of electrology.

BILL ANALYSIS: The proposed Committee Substitute for House Bill 1330 authorizes the licensure of a laser clinician and laser clinician instructor. A laser clinician is defined as a person who engages in laser, light source, or pulsed light treatments of skin or hair. "Laser, light source, or pulsed-light treatments" are defined as the use of laser or pulsed-light devices for nonablative procedures for the removal of hair.

To be licensed as a laser clinician, a person must first meet the following requirements:

- be a licensed electrologist.
- complete a 30-hour laser, light source, or pulsed-light treatment course approved by the Board.
- currently using or anticipate using laser, light source, or pulsed-light devices.
- Submit the $150 licensure application fee.

A laser clinician is also required to complete 10 hours of continuing education annually to maintain licensure.

To be licensed as a laser clinician instructor, a person must meet the following requirements:

- Submit a Board-approved application
- Be a licensed electrologist
- Be a licensed electrology instructor
- Have practiced laser and light-based treatments actively for at least one year immediately before the application
- Have at least 100 hours of training in laser and light-based treatments.
- Submit the $150 licensure application fee.

Any person practicing laser, light source, or pulsed-light treatments without a license by the Board shall be guilty of a Class I felony and may be assessed a civil penalty of $5,000 per violation. The bill does not limit or prevent any licensed physician from performing or delegating to a qualified person any acts that are otherwise permitted by law or established by custom.

To be certified as a Board-approved school of laser, light source, or pulsed-light treatments, the school must submit the following:

- Board-approved application
- Detailed floor plan that demonstrates adequate school facilities
- Detailed list of equipment to be used by students
- Copy of the curriculum consisting of the number of hours and subject matter determined by the Board. The number of required hours shall not be less than 30 and not more than 600.
- Certified copy of the school manual of instruction
- Names and qualifications of the licensed instructors
- $500 certification fee.

A school's certification is only valid for the location named in the application. If a school desires to change location, it must apply to the Board and pay a certificate renewal fee of $250. A school's certification is not transferable, and the school must notify the Board in writing of any sale, transfer, or change in ownership or management.

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

H1330e1-SMRJ

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 1330 (Second Edition)

SHORT TITLE: Amend Electrolysis Practice Act/Fees.

SPONSOR(S): Representative Jeffus

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund	**No Impact to General Fund**				
Board of Electrolysis Examiners	**$ 2,375**	**$ 2,800**	**$ 3,300**	**$ 3,750**	**$ 4,250**
EXPENDITURES					
General Fund					
Corrections	Exact amount cannot be determined; no substantial impact anticipated.				
Judicial	Exact amount cannot be determined; no substantial impact anticipated.				
ADDITIONAL PRISON BEDS	Exact amount cannot be determined; no substantial impact anticipated.				
POSITIONS (cumulative):	Exact amount cannot be determined; no additional positions anticipated.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Board of Electrolysis Examiners, Department Of Correction, Judicial Department

EFFECTIVE DATE: Section 1, when law; Section 2, December 1, 2005

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY: House Bill 1330 authorizes the North Carolina Board of Electrolysis Examiners to license laser clinicians, electrology instructors and laser clinician instructors and to certify Board-approved schools of laser, light source, or pulsed-light treatments that meet requirements established by the Board. The bill contains new fees for the application, licensure, and renewal of licensure for laser clinicians, electrology instructors and laser clinician instructors as well as application and certification fees for Board-approved schools of laser, light source, and pulsed-light treatments.

The second addition makes the practice of electrology or pulsed-light treatment without a license punishable as a Class I felony, with all other violations of the act punishable as Class 2 misdemeanors.

ASSUMPTIONS AND METHODOLOGY: The North Carolina Board of Electrolysis Examiners has licensed 30 laser clinicians currently practicing in the state and one laser clinician instructor. There will be one Board-approved school of laser treatments opening in North Carolina pending the passage of this legislation.

The new fees created in this bill for laser clinicians, laser clinician instructors, and Board-approved schools of laser treatments will not initially be set at the statutory maximum, but instead at the levels indicated in the "actual fee" column of the chart below.

Schedule of Proposed Fees		
Application for licensure:	Maximum fee	Actual fee
Laser clinician	$150	$50
Laser clinician instructor	$150	$50
Electrology instructor	$150	$50
Board-approved school of laser, light-source, or pulsed-light treatments	$500	$50
Certificate		
Board-approved school of laser, light-source, or pulsed-light treatments	$250	$100
Renewal		
Laser clinician	$200	$50
Laser clinician instructor	$75	$75
Electrology instructor	$75	$75

The following chart shows projected fee revenues for the Board of Electrolysis Examiners based on the actual fee amounts listed above. The projection assumes 6 new laser clinicians will come to work in North Carolina each year, and that one new laser clinician instructor will come to the state every other year. These growth rates are based on discussions with members of the Board of Electrolysis Examiners.

Projected Fee Revenues					
Application for licensure	2005-06	2006-07	2007-08	2008-09	2009-10
Laser clinician	$ 1,500	$ 300	$ 300	$ 300	$ 300
Laser clinician instructor	50	-	50	-	50
Electrology instructor	300	300	300	300	300
Board-approved school of laser, light-source, or pulsed-light treatments	50	-	-	-	-
Certificate					
Board-approved school of laser, light-source, or pulsed-light treatments	100	-	-	-	-
Renewal					
Laser clinician	-	1,550	1,850	2,200	2,500
Laser clinician instructor		75	75	75	75
Electrology instructor	**375**	575	725	875	1025
Total fee revenues	**$ 2,375**	**$ 2,800**	**$ 3,300**	**$ 3,750**	**$ 4,250**

Incarceration Note

This bill expands Article 88A of the General Statutes (Electrolysis Practices Act) to include laser clinicians, instructors, and schools. G.S. 88A-4 currently makes it a Class 2 misdemeanor to practice electrolysis in North Carolina without a license. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of Article 88A. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. This bill also makes it a Class I felony to practice laser, light source, or pulsed-light treatments in North Carolina without a license.

Department of Corrections

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced under this bill. If, for example, there were ten Class I convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year. The average annual operating cost for one prison bed in FY 2006-07 will be an estimated $24,740.

In FY 2003-04, 81 percent of Class 2 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Corrections (DCC) would incur costs of $1.87 per offender per day. Offenders sentenced to community service would cost $0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

Judicial Department

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Because the bill provides for new Class 2 misdemeanor and Class I felony offenses, AOC is unable to estimate the number of new charges that may result from this bill. For any misdemeanor charge due to this bill, there would be additional court and preparation time needed to process the charge, thus increasing superior court workload. AOC estimates the cost per charge based on offense class as shown in the table below.

Data regarding the number of charges for practicing electrology or pulsed-light treatments without a license is unavailable because AOC does not maintain a specific offense code for this violation. As a result, they cannot estimate the number of additional charges that the Court system would handle due to this bill. Based on the costs of time in court, attorney preparation time, and indigent defense, the average estimated cost to process one Class 2 misdemeanor via trial is $2,322. This cost includes an estimated $1,373 in jury fees, costs of time in court, and attorney costs and an additional $949 in indigent defense. However, based on prior-year data, the majority of any new Class 2 charges that are not dismissed are likely to be settled by guilty plea at an estimated cost of $272.

Offense Class	Settled via Trial			Settled via Guilty Plea
	Court/Attorney Costs	*Indigent Defense*	*Total*	-
Class I Felony	$3,904	$1,931	**$5,835**	**$330**
Class 2 Misdemeanor	$1,373	$939	**$2,322**	**$272**

SOURCES OF DATA: NC Board of Electrolysis Examiners; Sentencing & Policy Advisory Commission; Administrative Office of the Courts

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brenna Erford and Jim Mills

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: August 23, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

HB 1330 A BILL TO BE ENTITLED AN ACT ALLOWING THE NORTH CAROLINA BOARD OF ELECTROLYSIS EXAMINERS TO PROVIDE FOR THE LICENSURE OF LASER CLINICIANS AND LASER CLINICIAN INSTRUCTORS UPON MEETING CERTAIN REQUIREMENTS ESTABLISHED BY THE BOARD AND AUTHORIZING THE BOARD TO CHARGE FEES RELATED TO THOSE LICENSURES.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

ATTACHMENT 2

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1330 DATE 8/23/05

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

COMMITTEE SUBSTITUTE PCS50503-LAF-18

(Rep.) Sen.) Faison

1 moves to amend the bill on page 1, line S 24 & 25

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting those lines to read:

4

5 "shall apply to any physician licensed

6 by the North Carolina Medical Board or

7 to any person acting under the supervision

8 or control of the licensed physician."

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SIGNED _____

ADOPTED _____ FAILED ✓ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 3

SENATE BILL 208*

Health Care Committee Substitute Adopted 5/3/05
Finance Committee Substitute Adopted 8/10/05

Short Title: Amend Occupational Therapy Laws/Fee. (Public)

Sponsors:

Referred to:

February 24, 2005

A BILL TO BE ENTITLED

AN ACT AMENDING CERTAIN LAWS RELATING TO THE NORTH CAROLINA OCCUPATIONAL THERAPY PRACTICE ACT AND AUTHORIZING THE NORTH CAROLINA BOARD OF OCCUPATIONAL THERAPY TO RAISE THE FEE FOR A LIMITED PERMIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-270.66 reads as rewritten:

"**§ 90-270.66. Declaration of purpose.**

The North Carolina Occupational Therapy Practice Act is enacted to safeguard the public health, safety and welfare, to protect the public from being harmed by unqualified persons, to assure the highest degree of professional ~~care~~ services and conduct on the part of occupational therapists and occupational ~~therapist~~ therapy assistants, to provide for the establishment of ~~standards of education,~~ licensure requirements, and to insure the availability of occupational therapy services of high quality to persons in need of such services. It is the purpose of this Article to provide for the regulation of persons offering occupational therapy services to the public."

SECTION 2. G.S. 90-270.67 reads as rewritten:

"**§ 90-270.67. Definitions.**

As used in this Article, unless the context clearly requires a different meaning:

(1) Accrediting body. – The Accrediting Council for Occupational Therapy Education.

~~(1)~~(1a) ~~"Board" means the~~Board. – The North Carolina Board of Occupational Therapy.

(1b) Examining body. – The National Board for Certification in Occupational Therapy.

(2) ~~"Occupational therapist" means an~~Occupational therapist. – An individual licensed in good standing to practice occupational therapy as defined in this Article.

(3) ~~"Occupational therapist assistant" means an~~Occupational therapy assistant. – An individual licensed in good standing to assist in the practice of occupational therapy under this Article, who performs activities commensurate with his or her education and training under the supervision of a licensed occupational therapist.

(4) "Occupational therapy" means a health care profession providing evaluation, treatment and consultation to help individuals achieve a maximum level of independence by developing skills and abilities interfered with by disease, emotional disorder, physical injury, the aging process, or impaired development. Occupational therapists use purposeful activities and specially designed orthotic and prosthetic devices to reduce specific impairments and to help individuals achieve independence at home and in the work place.

(5) ~~"Person" means any~~Person. – Any individual, partnership, unincorporated organization, or corporate body, except that only an individual may be licensed under this Article."

SECTION 3. G.S. 90-270.68 reads as rewritten:

"**§ 90-270.68. Establishment of Board, ~~terms of members,~~terms, vacancies, removal, meetings, compensation.**

(a) Establishment of Board. – The North Carolina Board of Occupational Therapy is created. The Board shall ~~have six members. All members shall be~~consist of seven members who are appointed by the Governor and ~~shall be~~are residents of this State at the time of and during their ~~appointment.~~appointment, as follows:

(1) Three members shall be occupational therapists and one member shall be an occupational ~~therapist assistant; each~~therapy assistant. Each of these members shall be licensed to practice in North Carolina and have practiced, taught, or engaged in research in occupational therapy for at least three of the five years immediately preceding appointment to the Board.

(2) ~~The fifth board~~One member shall be a physician in good standing with the North Carolina Medical Board and licensed by and registered with the North Carolina Medical Board to practice ~~medicine; and~~medicine in this State.

(3) ~~the sixth board~~One member shall represent the public at large and shall be a person who is not a health care provider licensed under this ~~Chapter.~~Chapter or the spouse of a licensed health care provider.

(4) One member shall be a counselor, educator, or school-based professional certified or licensed under North Carolina law who is employed in the North Carolina public school system and is not an occupational therapist or an occupational therapy assistant.

The ~~medical doctor, occupational therapists, and occupational therapist assistant~~occupational therapist members and the occupational therapy assistant member shall be ~~appointed by the Governor from a list compiled~~nominated by the North Carolina Occupational Therapy Association, Inc., following the use of a ~~nomination~~

procedure made available to all occupational therapists and occupational ~~therapist~~ therapy assistants licensed and residing in North Carolina. In soliciting nominations and compiling its list, the Association shall give consideration to geographic distribution, clinical specialty, and other factors that will promote representation of all aspects of occupational therapy practice. The records of the nomination procedures shall be filed with the Board and made available for a period of six months following nomination for reasonable inspection by any licensed practitioner of occupational therapy.

The physician member shall be nominated by the North Carolina Occupational Therapy Association, Inc., after consultation with the North Carolina Medical Society. The counselor, educator, or school-based professional member shall be nominated by the North Carolina Occupational Therapy Association, Inc., after consultation with the North Carolina School Counselors Association.

(b) Terms. – Members of the Board shall serve four-year staggered terms. No member shall serve more than two consecutive four-year terms, unless a member is appointed to fill a vacancy for an unexpired term, then that member may complete the unexpired term and serve one additional four-year term.

(c) Vacancies. – In the event ~~that~~ a member of the Board cannot complete a term of office, the vacancy shall be filled by appointment by the Governor, in accordance with the procedures set forth in this section, for the remainder of the unexpired term. Vacancies shall be filled by the Governor within 45 days of receipt of the nominations from the North Carolina Occupational Therapy Association, Inc., or, in the case of public members, within 45 days of the receipt of notice of vacancy.

(d) Removal. – The Board may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings shall be disqualified from participating in Board business until the charges are resolved.

(e) Meetings. – Each year the Board shall meet and designate a ~~chairman~~ chairperson, a vice-chairperson, and a secretary-treasurer from among its members. The Board may hold additional meetings upon call of the ~~chairman~~ chairperson or any two board members. A majority of the Board membership shall constitute a quorum.

(f) Compensation. – Members of the Board shall receive no compensation for their services, but shall be entitled to travel, per diem, and other expenses authorized by G.S. 93B-5."

SECTION 4. G.S. 90-270.69 reads as rewritten:

"**§ 90-270.69. Powers and duties of the Board.**

The Board shall have the following powers and duties:

(1) ~~Examine~~ Establish and determine the qualifications and fitness of applicants for licensure to practice occupational therapy in this ~~State;~~State.

(2) Conduct investigations, subpoena individuals and records, and do all other things necessary and proper to discipline persons licensed under this Article and to enforce this ~~Article;~~Article.

(2a) Communicate disciplinary actions to relevant State and federal authorities and to other state occupational therapy licensing authorities.

(3) Issue and renew, and deny, suspend, revoke or refuse to issue or renew any license under this ~~Article;~~Article.

(4) Adopt, amend, or repeal any reasonable rules or regulations necessary to carry out the purposes of this Article, including but not limited to rules establishing ethical standards of ~~practice;~~practice.

(5) Employ professional, clerical, investigative or special personnel necessary to carry out the provisions of this Article, and purchase or rent office space, equipment and ~~supplies;~~supplies.

(6) Adopt a seal by which it shall authenticate its proceedings, official records, and ~~licenses;~~licenses.

(7) Conduct administrative hearings in accordance with Chapter 150B of the General Statutes when a "contested case" as defined in G.S. 150B-2(2) arises under this ~~Article;~~Article.

(8) Establish reasonable fees for ~~applications for examination; initial, provisional;~~applications, limited permits, initial and renewal ~~licenses;~~licenses, and other services provided by the ~~Board;~~Board.

(9) Submit an annual report to the Governor and General Assembly of all its official actions during the preceding year, together with any recommendations and findings regarding improvement of the profession of occupational ~~therapy;~~therapy.

(10) Publish and make available upon request the licensure standards prescribed under this Article and all rules and regulations established by the ~~Board;~~Board.

(11) ~~Approve educational curricula and field work experience accredited by the American Medical Association and American Occupational Therapy Association for persons seeking licensure under this Article.~~Conduct a training program as needed for new Board members designed to familiarize new members with their duties."

SECTION 5. G.S. 90-270.70 reads as rewritten:

"**§ 90-270.70. Requirements for licensure.**

(a) Any individual who desires to be licensed as an occupational therapist or occupational ~~therapist~~ therapy assistant shall file a written application with the Board on forms provided by the Board, showing to the satisfaction of the Board that the applicant:

(1) Is of good moral character; and

(2) Has passed an examination approved by the Board as provided in this Article.

Applicants for licensure as an occupational therapist must also have successfully completed an accredited occupational therapy educational curriculum and the required supervised ~~field work experience of at least six months' duration.~~fieldwork as determined by the Board. Applicants for licensure as an occupational ~~therapist~~ therapy assistant must also have successfully completed an accredited occupational therapy assistant educational curriculum and the required supervised ~~field work experience of at least two months' duration.~~fieldwork as determined by the Board.

(b) Occupational therapists who are trained outside of the United States and its territories shall satisfy the examination and educational requirements as stated in subsection (a) of this section. The Board shall require these applicants to meet examination eligibility requirements as established by the credentialing body recognized by the Board before taking the examination."

SECTION 6. G.S. 90-270.71 is repealed.

SECTION 7. G.S. 90-270.72 reads as rewritten:

"**§ 90-270.72. Exemption from requirements.**

~~(a) The Board shall waive the examination, education, and field work requirements of G.S. 90-270.70 and shall grant a license to any applicant who presents evidence satisfactory to the Board that he or she has been engaged in the practice of occupational therapy as an occupational therapist or occupational therapist assistant before September 1, 1984. Proof of such actual practice shall be presented to the Board as established by regulation. To qualify for exemption under this section, the applicant shall file an application for licensure no later than September 1, 1985.~~

~~(b)~~ The Board may ~~grant a license without examination to any applicant who~~ exempt an applicant from certain licensure requirements if the applicant presents proof satisfactory to the Board of current licensure as an occupational therapist or occupational ~~therapist~~ therapy assistant in another state or the District of Columbia, Puerto Rico, or Guam, provided the other jurisdiction's licensure standards are considered by the Board to be substantially equivalent to or higher than those prescribed in this Article."

SECTION 8. G.S. 90-270.73 reads as rewritten:

"**§ 90-270.73. Issuance of license.**

(a) The Board shall issue a license to any individual who meets the requirements of this Article upon payment of the license fee prescribed in G.S. 90-270.77.

(b) Any individual licensed as an occupational therapist under this Article may use the words "occupational therapist" and may use the letters "O.T." or ~~"O.T.R./L."~~ "O.T./L." in connection with his or her name or place of business.

(c) Any individual licensed as an occupational ~~therapist~~ therapy assistant under this Article may use the words "occupational ~~therapist~~ therapy assistant" and may use the ~~letter~~ letters "O.T.A." or ~~"C.O.T.A./L."~~ "O.T.A./L." in connection with his or her name or place of business.

(d) Any individual possessing a limited permit to practice occupational therapy may use the words "occupational therapy limited permittee" or "occupational therapy assistant limited permittee" and may use the letters "O.T./L.P." or "O.T.A./L.P." in connection with his or her name or place of business."

SECTION 9. G.S. 90-270.74 reads as rewritten:

"**§ 90-270.74. ~~Provisional licenses.~~Limited permits.**

The Board may grant a ~~provisional license for a period not exceeding nine months to any~~limited permit to an individual who has successfully completed the educational and ~~field work~~ fieldwork ~~experience~~ requirements ~~and has made application to take the examination~~ for examination but has not yet taken or received the results of the examination required under G.S. 90-270.70. A ~~provisional license~~limited permit shall

allow the individual to practice as an occupational therapist or occupational ~~therapist~~ therapy assistant under the supervision of an occupational therapist licensed in this ~~State and shall be valid until revoked by the Board. A provisional license~~State. A limited permit shall expire after 120 days, when the individual is issued a license under G.S. 90-270.73, or if the individual is notified that he or she did not pass the examination, whichever occurs ~~shall not be issued to applicant who has failed the examination in this State or another jurisdiction.~~first. The provisions of this section shall expire October 1, 2007."

SECTION 10. G.S. 90-270.75(a) reads as rewritten:

"(a) Licenses issued under this Article shall be subject to annual renewal upon completion of ~~such~~ continuing education and competency requirements as may be required by the Board, upon the payment of a renewal fee specified under G.S. 90-270.77 and in compliance with this Article, and shall expire unless renewed in the manner prescribed by the Board. The Board may provide for the late renewal of a license upon the payment of a late fee in accordance with G.S. 90-270.77, but no such late renewal may be granted more than five years after a license expires."

SECTION 11. G.S. 90-270.76 reads as rewritten:

"**§ 90-270.76. Suspension, revocation and refusal to renew license.**

(a) The Board may deny or refuse to renew a license, may suspend or revoke a license, or may impose probationary conditions on a license if the licensee or applicant for licensure has engaged in any of the following conduct:

(1) ~~Employment of fraud, deceit or misrepresentation in obtaining or attempting to obtain a license, or the renewal thereof;~~Obtaining a license by means of fraud, misrepresentation, or concealment of material facts.

(2) ~~Conviction of or a plea of guilty or nolo contendere to any crime involving moral turpitude;~~Engaging in unprofessional conduct pursuant to rules established by the Board or violating the Code of Ethics adopted and published by the Board.

(3) ~~Adjudication of insanity or incompetency, until proof of recovery from the condition can be established;~~Having been convicted of or pleaded guilty or nolo contendere to a crime involving moral turpitude or any crime which indicates that the occupational therapist or occupational therapy assistant is unfit or incompetent to practice occupational therapy or that the occupational therapist or occupational therapy assistant has deceived or defrauded the public.

(4) Engaging in any act or practice violative of any of the provisions of this Article or any rule or regulation adopted by the Board ~~hereunder,~~ or aiding, abetting or assisting any person in such a ~~violation;~~violation.

(5) Committing an act or acts of malpractice, gross negligence or incompetence in the practice of occupational ~~therapy;~~therapy.

(6) Practicing as a licensed occupational therapist or occupational ~~therapist~~ therapy assistant without a current ~~license;~~license.

(7) Engaging in conduct that could result in harm or injury to the public.

(8) Having an occupational therapy license revoked or suspended or other disciplinary action taken whether in this State or another jurisdiction.

(9) Being unfit or incompetent to practice occupational therapy by reason of deliberate or negligent acts or omissions regardless of whether actual injury to a patient is established.

(b) ~~Such~~ The denial, refusal to renew, suspension, revocation or imposition of probationary conditions upon a license may be ordered by the Board after a hearing held in accordance with G.S. Chapter 150B and rules adopted by the Board. An application may be made to the Board for reinstatement of a revoked license if the revocation has been in effect for at least one year."

SECTION 12. G.S. 90-270.77 reads as rewritten:

"**§ 90-270.77. Fees.**

The Board shall adopt and publish, in the manner established by its rules and regulations, fees reasonably necessary to cover the cost of services rendered for the following purposes:

(1) For an initial application, a fee not to exceed ten dollars ~~($10.00);~~($10.00).

(2) For ~~examination, reexamination, or~~ issuance of ~~a license~~ an initial license, a fee not to exceed one hundred dollars ~~($100.00);~~($100.00).

(3) For the renewal of a license, a fee not to exceed fifty dollars ~~($50.00);~~($50.00).

(4) For the late renewal of a license, a fee not to exceed fifty dollars ~~($50.00);~~($50.00).

(5) For a ~~provisional license,~~limited permit, a fee not to exceed ~~thirty-five dollars ($35.00); and~~fifty dollars ($50.00). This fee shall expire October 1, 2007.

(6) For copies of Board rules and licensure standards, charges not ~~exceeding~~ to exceed the actual cost of printing and mailing."

SECTION 13. G.S. 90-270.78 reads as rewritten:

"**§ 90-270.78. False representation of license prohibited.**

(a) It is unlawful for any person who is not licensed in accordance with this Article or whose license has been suspended, revoked or not renewed by the Board to:

(1) Engage in the practice of occupational ~~therapy;~~therapy.

(2) Orally, in writing, in print or by sign, or in any other manner, directly or by implication, represent that he or she is engaging in occupational ~~therapy; or~~therapy.

(3) Use in connection with his or her name or place of business the words ~~"occupational therapist" or "occupational therapist assistant";~~"occupational therapist", "occupational therapy assistant", "occupational therapist limited permittee", or "occupational therapy assistant limited permittee", or the letters "O.T.", ~~"O.T.R./L.",~~ "O.T./L.", "O.T.A.", ~~or "C.O.T.A./L."~~ "O.T.A./L.", "O.T./L.P.", or 'O.T.A./L.P.' or any other words, letters, abbreviations or insignia indicating or implying that the person is an occupational ~~therapist~~

~~or~~therapist, occupational ~~therapist assistant.~~therapy assistant, occupational therapist limited permittee, or occupational therapy assistant limited permittee.

(b) Any person who resides in another state or foreign country and who, by use of electronic or other medium, performs any of the acts described as the practice of occupational therapy pursuant to this Article, but is not licensed pursuant to this Article, shall be regarded as practicing occupational therapy without a North Carolina license and is subject to the provisions of this Article and appropriate regulation by the Board."

SECTION 14. Article 18D of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-270.80A. Civil penalties, disciplinary costs.**

(a) Authority to Assess Civil Penalties. – The Board may assess a civil penalty not in excess of one thousand dollars ($1,000) for the violation of any section of this Article or the violation of any rules adopted by the Board. The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Consideration Factors. – Before imposing and assessing a civil penalty, the Board shall consider the following factors:

(1) The nature, gravity, and persistence of the particular violation.

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.

(3) Whether the violation was willful and malicious.

(4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

(c) Schedule of Civil Penalties. – The Board shall establish a schedule of civil penalties for violations of this Article and rules adopted by the Board.

(d) Costs. – The Board may assess the costs of disciplinary actions against any person found to be in violation of this Article or rules adopted by the Board."

SECTION 15. G.S. 90-270.81 reads as rewritten:

"**§ 90-270.81. Persons and practices not affected.**

Nothing in this Article shall be construed to prevent or restrict:

(1) Any person registered, certified, credentialed, or licensed to engage in another profession or occupation or any person working under the supervision of a person registered, certified, credentialed, or licensed to engage in another profession or occupation in this State from performing work incidental to the practice of that profession or occupation as long as the person does not represent himself or herself as an occupational therapist or occupational ~~therapist assistant;~~therapy assistant.

(2) Any person employed as an occupational therapist or occupational ~~therapist~~ therapy assistant by the government of the United States, if he or she provides occupational therapy solely under the direction or control of the organization by which he or she is ~~employed;~~employed.

(3) Any person pursuing a course of study leading to a degree or certificate in occupational therapy at an accredited or approved educational program if ~~such~~ the activities and services constitute a part of a supervised course of study and if the person is designated by a title which clearly indicates his or her status as a student or ~~trainee;~~trainee.

(4) Any person fulfilling the supervised ~~field work~~fieldwork experience required for licensure under this Article if the person is designated by a ~~title which~~title, which clearly indicates his or her status as a student or ~~trainee;~~trainee.

(5) Occupational therapists or occupational ~~therapist~~ therapy assistants licensed in other jurisdictions who are ~~teaching~~ consulting, teaching, or participating in special occupational therapy education projects, demonstrations or courses in this State, provided their evaluation and treatment of patients is minimal.

(6) The practice of occupational therapy by an occupational therapist or occupational therapy assistant licensed in another jurisdiction who comes into this State, whether in person or by use of any electronic or other medium, on an irregular basis, to consult with a North Carolina licensed occupational therapist or occupational therapy assistant or to consult with faculty at an academic facility about education and training. This shall not apply to occupational therapists or occupational therapy assistants residing in a neighboring state and regularly practicing in this State."

SECTION 16. All members serving on the North Carolina Board of Occupational Therapy on the effective date of this act shall complete their current terms. Upon completion of their current terms, the occupational therapist members shall serve one additional term of either three or four years as follows: the occupational therapist member who served the longest may serve an additional three-year term; the other two occupational therapist members, the occupational therapy assistant member, and the physician member shall be eligible to serve one additional four-year term. The Governor shall appoint a new public member to serve a four-year term. The Governor shall also appoint the counselor, educator, or school-based professional member for a four-year term pursuant to G.S. 90-270.68(a)(4), as enacted in Section 4 of this act, to begin October 1, 2005. Members appointed thereafter shall serve four-year terms.

SECTION 17. This act is effective when it becomes law.

SENATE BILL 208:
Amend Occupational Therapy Laws/Fee

BILL ANALYSIS

Committee:	House Finance	**Date:**	August 23, 2005
Introduced by:	Sen. Lucas	**Summary by:**	Cindy Avrette
Version:	Third Edition		Committee Counsel

SUMMARY: ***Senate Bill 208 amends the North Carolina Occupational Therapy Practice Act by creating statutory revisions and modifications to the provisions regulating the practice of occupational therapy. The bill would raise the ceiling on the fee for a limited permit from $35 to $50; the bill provides that this fee will expire October 1, 2007.***

CURRENT LAW: Article 18D of Chapter 90 of the General Statutes regulates the practice of occupational therapy. Under current law, "occupational therapy" is defined as a health care profession providing evaluation, treatment, and consultation to help individuals achieve a maximum level of independence by developing skills and activities interfered with by disease, emotional disorder, physical injury, the aging process, or impaired development. Occupational therapists use purposeful activities and specially designed orthotic and prosthetic devices to reduce specific impairments and to help individuals achieve independence at home and in the work place.

BILL ANALYSIS:

Section 1 makes changes to the declaration of purpose by substituting the term "services" for "care" and substituting the term "licensure requirements" for "standards of education."

Section 2 makes definitional changes. It adds two new definitions: (1) the "Accrediting Council for Occupational Therapy Education" as the accrediting body used in the Article, and (2) the "National Board of Certification in Occupational Therapy" as the examining body used in the Article.[1]

Section 3 increases the number of members on the North Carolina Board of Occupational Therapy from six to seven, establishes staggered terms of four years for members, and requires one member to be a counselor, educator, or school-based professional certified or licensed under North Carolina law employed in a public school system and is not an occupational therapy assistant or an occupational therapist. The section makes additional changes to the requirements for other board positions, and concerning removal of board members.[2]

Section 4 provides that the Board must communicate disciplinary actions to relevant government authorities including State, federal and other state occupational therapy licensing authorities. The section also directs the Board to conduct a training program to familiarize new board members with their duties.

Section 5 provides that the licensure examination must be approved by the Board, instead of created by the board, substitutes the licensure requirement of the successful completion of at least six months supervised field work with the completion of supervised field work for a duration as determined by the Board, and establishes education and examination requirements for occupational therapist trained outside the United States.

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[1] The 3rd edition of the bill maintains the current law definition of 'occupational therapy'. Earlier versions of the bill modified this definition.

[2] In earlier versions of the bill, Section 3 set out in detail the scope of practice of occupational therapy. These provisions were removed from the bill in Senate Finance.

Section 6 repeals G.S. 90-270.71, which is the provision on licensure examination. This provision is addressed in Section 2 and Section 6 of this bill.

Section 7 allows exemption from certain licensure requirements for applicants who are currently licensed as occupational therapist or occupational therapy assistants in other states or the District of Columbia and includes the United States territories of Guam and Puerto Rico.

Sections 8 and 9 create a limited permit that allows an individual to practice as an occupational therapist or occupational therapy assistant for up to 120 days or until notification of a failed examination. The provisions of this section will expire October 1, 2007.

Section 10 adds competency requirements to the renewal provisions of the Article.

Section 11 adds the following as grounds for suspension, revocation, or refusal to renew a license:

- Obtaining a license by means of fraud, misrepresentation, or concealment of material fact.
- Engaging in unprofessional conduct pursuant to rules established by the Board or violating the Code of Ethics adopted and published by the Board.
- Conviction of, or entering a plea of no contest to any crime that indicates the occupational therapist or assistant is unfit or incompetent to practice or has deceived or defrauded the public.
- Having an occupational therapy license revoked or suspended or other disciplinary action taken in North Carolina or another jurisdiction.
- Being unfit or incompetent to practice occupational therapy because of deliberate or negligent acts or omissions regardless of whether actual injury to a patient is established.

Section 12 increases the ceiling on the fee for limited permits from $35 to $50. This fee will expire on October 1, 2007.

Section 13 provides that any person who resides in another state or country, is unlicensed in North Carolina, and is performing any act described as the practice of occupational therapy pursuant to the provisions of this Article is regarded as practicing without a license.

Section 14 authorizes the Board to assess a civil penalty not to exceed $1000 for a violation of any provision of the act after considering the following:

- The nature, gravity and persistence of the particular violation.
- The appropriateness of the imposition of a civil penalty.
- Whether the violation was willful and malicious.
- Other factors that would mitigate or aggravate the violations found to exist.

Section 15 provides that the practice of occupational therapy by an occupational therapist or assistant licensed in another jurisdiction who comes to North Carolina on an irregular basis to consult about education and training with a North Carolina licensed therapist, occupational therapy assistant, or faculty at an academic facility is not restricted by the provisions of this Article.

Section 16 provides in uncodified language exceptions to term limits for current Board members in order to establish staggered terms.

Section 17 makes the act effective when it becomes law.

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

BACKGROUND: The North Carolina Board of Occupational Therapy created a task force with representatives from the North Carolina Occupational Therapy Association, universities, community colleges, rehabilitation facilities, hospital-based practice, home health, school based practice, and independent practice to review the North Carolina Occupational Therapy Practice Act established in 1983. The task force made efforts to achieve consistency with the model standard established by the American Occupational Therapy Association.

Shawn Parker, Research Assistant, and Trina Griffin, counsel to the Senate Finance Committee, substantially contributed to this summary.

S0208e3-SMRB

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 208 (Third Edition)

SHORT TITLE: Amend Occupational Therapy Laws/Fee.

SPONSOR(S): Senator Lucas

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
General Fund	No Impact – See Assumptions and Methodology				
NC Occupational Therapy	1,125	1,125	1,125	1,125	1,125
EXPENDITURES (General Fund):					
Judicial Branch	No estimate available				
Correction	No estimate available				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Board of Occupational Therapy; Department of Correction; Administrative Office of the Courts

EFFECTIVE DATE: When law.

BILL SUMMARY: Senate Bill 208 amends the North Carolina Occupational Therapy Practice Act by creating statutory revisions and modifications to the provisions regulating the practice of occupational therapy. It also amends the NC Board of Occupational Therapy's fee schedule.

ASSUMPTIONS AND METHODOLOGY:

North Carolina Board of Occupational Therapy

The North Carolina Board of Occupational Therapy was created in 1985. Since its inception, the Board has licensed more than 6,000 occupational therapists to practice in North Carolina. There are currently about 2,200 occupational therapists working in North Carolina.

Currently a recent graduate can obtain a provisional license from the board. This provisional license applies after an applicant has completed the required course of study and necessary fieldwork, but before they take the examination. The provisional license can remain in effect for up to nine months. Sections 8 and 9 of the bill creates a new type of permit – a limited permit –

that allows an individual to practice as an occupational therapist assistant for up to 120 days or until notified of a failed examination. This replaces the provisional license.

University officials indicate that approximately 150 students each year graduate from the UNC system with a degree in occupational therapy. Some smaller portion of this amount, approximately 50-75 individuals, applies for a provisional license. The legislation sets a new fee of $50, which will replace the old provisional license fee of $35. Applying the $15 increase to 75 graduates suggests potential increased revenue to the Board of $1,125 annually.

Judicial Branch, Department of Correction, & County Jails

Practice of occupational therapy in North Carolina without a license, or in violation of Article 18D, Chapter 90 of the General Statutes, is a Class 1 misdemeanor. Because this bill changes the acts for which someone could be considered to be practicing without a license, it has the potential to increase Class 1 misdemeanor charges and convictions. However, we cannot determine whether any offenses would actually occur as a result of the changes. This bill:

(1) Makes changes to the reasons for which a license can be revoked or refused, and
(2) Expands the definition of practicing in North Carolina without a license to include, with certain exemptions, persons who reside in another state or foreign country and who, by use of electronic or other medium, perform any of the acts described as the practice of occupational therapy.

For any new charges and convictions under this bill, the courts, the Department of Correction (DOC), and county jails could incur additional costs. Each new Class 1 misdemeanor charge will cost the court system $3,224 if settled by trial or $284 if settled by plea. The majority of Class 1 misdemeanants (81 percent in FY 2003-04) receive non-active sentences; many of these offenders are supervised by the Division of Community Corrections (DCC) in the Department of Correction. On average, for each Class 1 conviction, DCC will incur annual costs of $164. Offenders sentenced to less than 90 days of active time serve that time in county jails; DOC reimburses counties for offenders who serve 30 to 90 days at a rate of $18 per day. (In 2003-04, 19 percent of Class 1 misdemeanants served active time, with an average sentence of 43 days.)

SOURCES OF DATA: North Carolina Board of Occupational Therapy, North Carolina Sentencing and Policy Advisory Commission, Administrative Office of the Courts

TECHNICAL CONSIDERATIONS: None
FISCAL RESEARCH DIVISION: (919) 733-4910
PREPARED BY: Linda Millsaps, Rodney Bizzell, and Chloe Gossage

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

Official
Fiscal Research Division
Publication

DATE: August 11, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

SB 208 – Amend Occupational Therapy Statutes

August 22, 2005

NC Occupational Therapy Association Briefing Points

- **SB 208** makes primarily technical changes to the Occupational Therapy Statutes as they relate to the operations of the Licensure Board. You will see changes in nomenclature – for example, references to the Accrediting Council for Occupational Therapy Education and National Board of Certification in Occupational Therapy, which did not exist in those forms 20 years ago when the current statute was enacted. Also, NC Board of Occupational Therapy's enforcement tools would be strengthened and certain sections that have become obsolete would be removed.

- **SB 208** would reestablish staggering of terms and term limits for the NC Board of Occupational Therapy members.

- **Key to this bill is the addition of a school systems representative to the Licensure Board.** Children frequently are receiving such therapy services – like speech, hearing and physical therapies -- through the school systems. The NC Board of Occupational Therapy wanted to be certain to have the interests of the fastest growing population served by practitioners – that is, children -- reflected on the licensure board.

- **SB 208 would rename and eventually phase out one type of temporary license.** Sections 8 and 9 deal with limited permits – currently, temporary licenses -- which enable recent graduates of OT programs to practice temporarily while they wait to take their licensure exams and report those results to the licensure board. Those exams are given more frequently and the results are available almost immediately. Consequently, the NC Board of Occupational Therapy would like to eliminate them by 2007. **The fee for these types of permits is raised from $35 to $50 until this type of permit expires in 2007**. This is to encourage OT graduates in the next couple of years to simply wait to enter the field until they take their exams and obtain the results.

- **Please support SB 208 with your "yes" votes.**

For More Information, please contact
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2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute # 2 for

SB 208 A BILL TO BE ENTITLED AN ACT AMENDING CERTAIN LAWS RELATING TO THE NORTH CAROLINA OCCUPATIONAL THERAPY PRACTICE ACT AND AUTHORIZING THE NORTH CAROLINA BOARD OF OCCUPATIONAL THERAPY TO RAISE THE FEE FOR A LIMITED PERMIT.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

North Carolina General Assembly

House Committee on Finance

Minutes

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August 23, 2005 – 11:45 p.m.

The House Committee on Finance met on Tuesday, August 23, 2005 at 11:45 p.m. around the desk of Chairwoman Howard on the floor of the House Chamber. The following members were present: Chairpersons Alexander, Howard, Luebke, and Wainwright; Vice-Chairs Daughtridge and Hill; and Representatives Bordsen, Carney, Dockham, Faison, Folwell, Holliman, Lewis, Rayfield, Underhill, and Wiley. Staff persons present included Cindy Avrette, Canaan Huie, and Martha Walston.

Chairwoman Howard called the meeting to order at 11:46 pm.

The sole bill considered by the Committee was **SB 868 – BILL LEE – MULTI-JURISDICTION INDUS. PARK** (see **attachment 1**). Representative Hill moved that the PCS for SB 868 be before the Committee for the purposes of discussion. The motion carried. Representative Brubaker was then recognized to explain the bill. He stated that the bill had been heard at the 8:30 am meeting of the Committee, however, an addition to the bill was needed, and, therefore, it was referred back to Committee for another hearing. He stated that the addition to the bill allows for a refund of excise tax on unsalable cigars, such as those that are stale or defective. He further stated that this refund was already provided for unsalable cigarettes, but cigars were inadvertently excluded in a bill passed during the 2004 session. Representative Luebke was then recognized and asked if there was a fiscal note on the bill. Representative Brubaker stated that he had requested a note from the fiscal staff, but that he was informed that the revenue loss was so small a note was not needed. Seeing no further discussion, the Chair recognized Representative Hill who moved that the PCS for SB 868 be given a favorable report, with an unfavorable report to the original committee substitute passed earlier in the day. The motion was then called to a vote, and it carried with no known objection.

As there was no further business before the Committee, Chairwoman Howard then adjourned the meeting at 11:49 pm.

Respectfully submitted,

Representative Julia Howard
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Senate Bill 868 (and related materials)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 868
Finance Committee Substitute Adopted 8/12/05
House Committee Substitute Favorable 8/23/05

PROPOSED HOUSE COMMITTEE SUBSTITUTE S868-CSLY-66 [v.1]

8/23/2005 8:13:10 PM

Short Title: Bill Lee / Excise Tax Refund. (Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE ENTERPRISE TIER STRUCTURE UNDER THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT AND TO ALLOW FOR A REFUND OF EXCISE TAX ON UNSALABLE CIGARS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-129.3 is amended by adding a new subsection to read:

"(d1) Exception for Certain Multi-Jurisdictional Industrial Park. – For the purpose of this Article, an eligible industrial park created by interlocal agreement under G.S. 158-7.4 has the lowest enterprise tier designation of the designations of the counties in which it is located if all of the following conditions are satisfied:

(1) The industrial park is located, at one or more sites, in four or more contiguous counties.

(2) At least two of the counties in which the industrial park is located are enterprise tier one areas.

(3) The industrial park is owned by four or more units of local government or a nonprofit corporation owned or controlled by four or more units of local government.

(4) In each county in which the industrial park is located, the park has at least 300 developable acres. For the purposes of this subdivision, 'developable acres' includes acreage that is owned directly by the industrial park or its owners or that is the subject of a development agreement between the industrial park or its owners and a third-party owner.

(5) The total population of all of the counties in which the industrial park is located is less than 200,000.

(6) In each county in which the industrial park is located, at least sixteen and eight-tenths percent (16.8%) of the population was Medicaid eligible for the 2003-2004 fiscal year based on 2003 population estimates."

SECTION 2. G.S. 105-113.39 reads as rewritten:

"**§ 105-113.39. ~~Discount.~~Discount; refund.**

(a) Discount. – A wholesale dealer or a retail dealer who is primarily liable under G.S. 105-113.35(b) for the excise taxes imposed by this Part, who files a timely report under G.S. 105-113.37, and who sends a timely payment may deduct from the amount due with the report a discount of two percent (2%). This discount covers losses due to damage to tobacco products, expenses incurred in preparing the records and reports required by this Part, and the expense of furnishing a bond.

(b) Refund. – A wholesale dealer or retail dealer who is primarily liable under G.S. 150-113.35(b) for the excise taxes imposed by this Part and is in possession of stale or otherwise unsalable cigars upon which the tax has been paid may return the cigars to the manufacturer and apply to the Secretary for refund of the tax. The application shall be in the form prescribed by the Secretary and shall be accompanied by an affidavit from the manufacturer stating the number of cigars returned to the manufacturer by the applicant. The Secretary shall refund the tax paid, less the discount allowed, on the unsalable cigars."

SECTION 3. Section 1 of this act is effective for taxable years beginning on or after January 1, 2005. Section 2 of this act becomes effective September 1, 2005. The remainder of this act is effective when it becomes law.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒ House Committee Substitute for

SB 868 A BILL TO BE ENTITLED AN ACT TO AMEND THE ENTERPRISE TIER STRUCTURE UNDER THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT.

☒ With a favorable report as to House committee substitute bill #2, which changes the title, unfavorable as to House committee substitute bill #1.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

North Carolina General Assembly

House Committee on Finance

Minutes

~

August 24, 2005

The House Committee on Finance met on Wednesday, August 24, 2005, 10 minutes after the adjournment of the House in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Gibson, Howard, Luebke, McComas, and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blust, Bordsen, Carney, Dockham, England, Faison, Folwell, Glazier, Goforth, Hackney, Holliman, Jones, Lewis, McGee, Underhill, Walend, and Wiley. Also present were Sergeant-at-Arms Bill Freeman, Fred Hines, Dusty Rhodes, and Walter Spell. Staff persons present included Cindy Avrette, Rodney Bizzell, Ashley Huffstetler, Canaan Huie, and Martha Walston. The Visitor Registration Sheets are attached and incorporated into these minutes as **attachment 1**.

Chairman Luebke called the meeting to order at 5:45 pm.

The first bill considered by the Committee was SB 774 – SEAT BELT USE ENHANCEMENTS (see **attachment 2**). Martha Walston from staff was recognized to explain the bill. She informed the members that the bill was part of a federal regulation requiring all occupants of a motor vehicle manufactured with seat belts to wear a seat belt when the vehicle is in forward motion. She noted that the bill would extend to commercial vehicle drivers and back seat passengers 16 years or older, who are currently not required to wear a seat belt, but not for drivers of property-carrying vehicles licensed for agricultural use. She also noted that failure of the State to enact the bill before October 1, 2007 could result in an annual loss of $5 million in federal transportation funding. Following this explanation, the Chair recognized Representative Howard who moved that SB 774 be given a favorable report.

Representative Lewis was then recognized and commented that the federal regulation required seat belts for commercial vehicle drivers but not back seat passengers as SB 774 does. He also stated that since the State did not have to be in compliance with the federal regulation prior to October 1, 2007, he did not understand the sense of urgency in passing the bill. Seeing no further discussion, Chairman Luebke then called Representative Howard's motion for a favorable report to a vote, and the motion carried.

The next bill under consideration by the Committee was HB 918 – FILM INDUSTRY JOBS INCENTIVES (see **attachment 3**). However, Representative Gibson was immediately recognized and moved that the Proposed Committee Substitute for HB 918 be before the Committee for discussion purposes. The motion carried. The PCS for HB 918 changed the title to: **STATE PORTS OPERATIONS**. Chairman Luebke then announced that the bill was before the Committee for discussion only and that no votes on the bill would be taken. Representative

McComas, the bill sponsor, was then recognized to explain the PCS. He explained that the bill provides that the State Ports Authority should avoid competition with private enterprise or the duplication of services available through private enterprise. He further stated that the bill provides that acquisitions and dispositions of real property by the State Ports Authority shall be subject to the provisions of Chapter 146 of the General Statutes. Representative McComas stated that the bill was one he would likely pursue in the 2006 short session and wanted to bring it to the members' attention. Following some general discussion on the PCS, Representative McComas thanked the members for their attention to the bill

HB 947 – LOCAL TAX FOR PUBLIC SCHOOLS/COMMUNITY COLLEGES-II (see **attachment** 4) was the last bill considered by the Committee. Representative Hill moved for the adoption of the PCS for the purposes of discussion, and the motion carried. The Chair then recognized Representatives Gibson and Daughtridge to explain the bill. Representative Daughtridge noted that the PCS for HB 947 was another bill allowing counties to enact an additional half-cent sales tax, if approved by referendum, to be used for public school capital outlay and community college plant fund purposes. Following this explanation, Representative Gibson was recognized to send forth an amendment (see **attachment 5**) removing Macon and Brunswick Counties from the bill and adding the following counties: Bladen, Carteret, Edgecombe, Wayne, and Wilson. Representative Gibson moved for the adoption of the amendment. Seeing no further discussion, Chairman Luebke then called the Gibson amendment to a vote, and it was adopted.

The Chair then recognized Representative Jones to send forth and move the adoption of an amendment adding the County of Guilford to the bill (see **attachment 6**). Prior to acting on the motion, however, the Chair recognized Representative Blust who asked Representative Jones what support from local Guilford County officials he had received on the bill. Representative Jones replied that he had spoken with the Chairman of the Guilford County Board of Commissioners immediately before the meeting and received a request that Guilford County be added to the bill. He also noted that a majority of the Guilford County delegation supported the addition of Guilford to the bill. Representative Blust then stated that the Committee should not be considering this large of a policy issue this late in the session.

Representative Underhill was then recognized and reminded the members that just because this bill allows counties to consider raising the sales tax an additional half-cent, does not mean that they necessarily will. Seeing no further discussion on the Jones amendment, Chairman Luebke then called it to a vote, and the amendment was adopted.

Representative Folwell was then recognized by the Chair to send forth an amendment (see **attachment** 7). He explained that the amendment removed Forsyth County from the list of counties in the bill. He informed the members that a majority of the Forsyth County delegation opposed Forsyth County being listed in the bill. He also stated that he had conferred with the Forsyth County Board of Commissioners who stated that they did not request and do not wish to be included in the bill. He then moved adoption of the amendment. Representative Womble, however, was recognized to speak against the amendment. He stated that he had spoken with the County Manager in Forsyth County as well as School Board members and a County Commissioner who all expressed the need for the additional half-cent tax for Forsyth County's schools and community colleges. The Chair recognized Representative McGee next who supported the amendment echoing Representative Folwell's earlier comments. As there was no further discussion, Chairman Luebke then called the Folwell motion to a vote. Division having been requested, the amendment failed by a vote of 9 ayes to 11 nays.

Chairman Luebke then recognized Representative Daughtridge who offered another amendment (see **attachment 8**). He explained that the amendment added the Counties of Alexander and Catawba to the bill and stated that the amendment came at the request of the members for those counties, Representatives Setzer and Hilton. As there was no discussion, the Chair called the amendment to a vote, and it was adopted.

Representative Womble then moved that a new PCS for HB 947 , incorporating the adopted amendments, be given a favorable report, with an unfavorable report as to the original bill. Before acting on the motion however, the Chairman Luebke recognized Representative Stam to speak on the bill. Representative Stam, although not a Committee member, expressed his concern with the inclusion of Wake County in the bill. He stated that the Wake delegation had been split on this issue, the first division among the delegation in a number of years. Representatives Ross and Allen, however, countered Representative Stam's comments by informing the Committee that the School Board and County Commissioners of Wake County were in support of this issue.

Following this discussion, Representative Wainwright was recognized to send forth a final amendment (see **attachment 9**). He stated simply that the amendment added Jones County to the list counties contained in the bill, and then moved for its adoption. Seeing no debate, the Chair then brought the amendment to a vote, and it was adopted.

Representative Womble then reiterated his earlier motion for a favorable report as to a new PCS incorporating all of the adopted amendments. Seeing no further discussion, Chairman Luebke then called the motion to a vote, and it carried by a majority.

Having no further business before the Committee, Chairman Luebke then adjourned the meeting at 6:30 pm.

Respectfully submitted,

Paul Luebke

Representative Paul Luebke
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Visitor Registration Sheet
2. Senate Bill 774 (and related materials)
3. House Bill 918 (and related materials)
4. House Bill 947 (and related materials)
5. Gibson Amendment on HB 947 (**ADOPTED**)
6. Jones Amendment on HB 947 (**ADOPTED**)
7. Folwell Amendment on HB 947 (**FAILED**)
8. Daughtridge Amendment on HB 947 (**ADOPTED**)
9. Wainwright Amendment on HB 947 (**ADOPTED**)

ATTACHMENT 1

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — August 24, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilms	NCMBA
Rick Techin	NLAR
Dave Sebba	JHU
Ellie Caldwell	NC Sheriffs Assn
Al Ripley	NC Justice Ctr
John Mobbs	GOV OFFICE
Molly Ryan	NCSBA
Katherine Joyce	NCASA
John Bordlish	Astra Zeneca
Cam Cover	BPMHC
Stephanie Simpson	NCAR

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — August 24, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	ACCS
Johanna Reese	DENR
Michael Houser	NCAE
Chris Fitzsimon	NC Policy Watch
	NCRA NCWA
	NCCBI
	Bode & Assoc.
	Bode & Assoc.
Kathy Hawkins	Progress Energy
Lisa Piercy	Duke Energy
Lisa Martin	NC Home Builders Assoc.

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — August 24, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mary Womble	Paynes Bonsall
Andy Allen	NCLMA
Bill Scoggin	Friend of Andy
Marilyn Moore	MCM
[illegible]	FOP
Mary Thomson	RCBIC
Carin Savel	Rep Glazier
Tina Ayer	SBE / DPI
Bear Mills	NCLM
Ken Melton	N.C. DOR.
Joanne Stevens	nursing

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — August 24, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dave Lane	SAB DTI
Elizabeth Sell	Sierra Club
Raymond G. Bartlett	Wake County Board of Commissioners

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 3

SENATE BILL 774

Judiciary II Committee Substitute Adopted 5/10/05
Finance Committee Substitute Adopted 8/10/05

Short Title: Seat Belt Use Enhancements. (Public)

Sponsors:

Referred to:

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE SEAT BELT USE STATUTES TO ENHANCE THE USE OF SEAT BELTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-135.2A reads as rewritten:

"**§ 20-135.2A. Seat belt use mandatory.**

(a) ~~Each front seat occupant who is 16 years of age or older and each driver of a passenger~~ Except as otherwise provided in G.S. 20-137.1, each occupant of a motor vehicle manufactured with seat belts shall have a seat belt properly fastened about his or her body at all times when the vehicle is in forward motion on a street or highway in this State.

~~(b) "Passenger Motor Vehicle," as used in this section, means a motor vehicle with motive power designed for carrying 10 passengers or fewer, but does not include a motorcycle, a motorized pedacycle or a trailer.~~

(c) This section shall not apply to any of the following:

(1) A driver or occupant with a medical or physical condition that prevents appropriate restraint by a safety belt or with a professionally certified mental phobia against the wearing of vehicle restraints;

(2) A motor vehicle operated by a rural letter carrier of the United States Postal Service while performing duties as a rural letter carrier and a motor vehicle operated by a newspaper delivery person while actually engaged in delivery of newspapers along the person's specified route;

(3) A driver or passenger frequently stopping and leaving the vehicle or delivering property from the vehicle if the speed of the vehicle between stops does not exceed 20 miles per hour;

(4) Any vehicle registered and licensed as a property carrying vehicle in accordance with G.S. 20-88 while being used for agricultural ~~or commercial~~ purposes; or

(5) A motor vehicle not required to be equipped with seat safety belts under federal law.

(d) Evidence of failure to wear a seat belt shall not be admissible in any criminal or civil trial, action, or proceeding except in an action based on a violation of this section or as justification for the stop of a vehicle or detention of a vehicle operator and passengers.

(e) Any driver or passenger who fails to wear a seat belt as required by this section shall have committed an infraction and shall pay a penalty of twenty-five dollars ($25.00) plus court costs in the sum of fifty dollars ($50.00). Court costs assessed under this section are for the support of the General Court of Justice and shall be remitted to the State Treasurer. Conviction of an infraction under this section has no other consequence.

(f) No drivers license points or insurance surcharge shall be assessed on account of violation of this section.

(g) The Commissioner of ~~the Division of~~ Motor Vehicles and the Department of Public Instruction shall incorporate in driver education programs and driver licensing programs instructions designed to encourage compliance with this section as an important means of reducing the severity of injury to the users of restraint devices and on the requirements and penalties specified in this law.

(h) Repealed by Session Laws 1999-183, s. 3, effective October 1, 1999."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

SENATE BILL 774:
Seat Belt Use Enhancements

BILL ANALYSIS

Committee:	Rules, Calendar, and Operations of the House	**Date:**	August 24, 2005
Introduced by:	Sen. Purcell	**Summary by:**	Martha Walston
Version:	Third Edition		Committee Counsel

SUMMARY: Senate Bill 774, a recommendation of the Executive Committee for Highway Safety, would require all vehicle occupants to wear a seatbelt while the vehicle is in forward motion.

CURRENT LAW: G.S. 20-135.2A requires front seat passengers who are at least 16 years old and drivers of passenger motor vehicles to wear a seat belt when the vehicle is moving forward on a street or highway. Certain vehicles, including commercial vehicles and licensed property-carrying vehicles being used for farm or agricultural purposes, are exempt from this requirement. Violation is an infraction, punishable by a penalty of $25.00 plus court costs of $50.00.[1] No insurance surcharges or drivers license points may be assessed.

In addition, G.S. 20-137.1 requires drivers who are transporting passengers under 16 years old to have those passengers secured in a child restraint system or seat belt that meets federal standards. This law does not apply (i) to emergency vehicles, (ii) when attending to a child's personal needs, (iii) if all seating positions equipped with restraint systems or seat belts are occupied, or (iv) to vehicles that are not required by federal law or regulation to be equipped with seat belts. A driver who violates this law may be fined up to $25.00. Two drivers license points and no insurance points will be assessed.

The Division of Motor Vehicles may suspend a drivers license when a person accumulates 12 or more drivers license points within a three-year period or 8 or more of these points during a three-year period immediately following the reinstatement of a license that has been suspended or revoked.

BILL ANALYSIS: Senate Bill 774 would require all occupants of a motor vehicle manufactured with seat belts to wear a seat belt when the vehicle is in forward motion. This would extend to commercial vehicle drivers and back seat passengers 16 years or older, who are currently not required to wear a seat belt, but not to drivers of property-carrying vehicles licensed for agricultural use.

EFFECTIVE DATE: This act would become effective December 1, 2005, and would apply to offenses occurring on or after that date.

BACKGROUND: Federal regulations require that drivers of commercial motor vehicles wear seat belts. States with incompatible laws or regulations are not eligible for Basic Program Funds or Incentive Funds. Therefore, if North Carolina does not change its law to comply with this federal regulation by October 1, 2007, it stands to lose approximately $5 million in federal motor carrier funds.

S0774e3-SMLA

[1] Effective September 1, 2005, the court costs for failure to wear a seat belt will be $75.00. (Section 43.1(g) of S.L. 2005-276)

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 774 (Third Edition)

SHORT TITLE: Seat Belt Use Enhancements.

SPONSOR(S): Senator Purcell

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES					
State Highway Patrol Motor Carrier Enforcement	**Potential loss of federal funds without bill:**		**($5,000,000)**	**($5,000,000)**	**($5,000,000)**
EXPENDITURES	**(No significant expenditures expected)**				
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: State Highway Patrol Motor Carrier Enforcement; Administrative Office of the Courts

EFFECTIVE DATE: December 1, 2005

BILL SUMMARY: Senate Bill 774 would require all occupants of a motor vehicle manufactured with seat belts to wear a seat belt when the vehicle is in forward motion. This would extend to commercial vehicle drivers and to back seat passengers 16 years or older, who are currently not required to wear a seat belt, but not to drivers of property-carrying vehicles licensed for agricultural use.
Source: Research Division Bill Analysis, August 9, 2005

ASSUMPTIONS AND METHODOLOGY: The major fiscal impact of SB 774 is the potential loss of an estimated $5 million per year in federal Motor Carrier Safety Administration funding if the State does not require the use of seat belts by the driver in commercial vehicles. The loss of funding would begin in fiscal year 2007-08.

There may also be an increase in the number of seat belt infractions as the seat belt requirement is expanded, but no estimate is available on the size of the increase. The Administrative Office of the Courts reports that in 2004 there were approximately 160,000 defendant-drivers and 2,600 defendant-passengers charged under G.S. 20-135.2A with infractions for failure to wear a seat belt.

SOURCES OF DATA: Administrative Office of the Courts, State Highway Patrol, US Department of Transportation Federal Motor Carrier Safety Administration.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Bob Weiss

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: August 17, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

FEDERAL REQUIREMENT CERTIFICATION

Authorized by G.S. 120-36.8

Session 2005

SB 774

Seat Belt Use Enhancements

Bill Primary Sponsor(s):	Senator Purcell
Relevant Federal Law:	*49 CFR §392.16 and 49 CFR §350.331*
☐ Required by or Necessary for Compliance with Federal Law	☐ Exceeds Federal Law
☒ Federal Funds Conditioned upon Passage of Law	☒ Implements Federal Law

SUMMARY OF BILL PROVISIONS ALLEGEDLY REQUIRED BY FEDERAL LEGISLATION

Section 1 of Senate Bill 774 require all vehicle occupants to wear a seat belt while the vehicle is in forward motion. Under current North Carolina law, drivers of commercial vehicles are exempt from the mandatory seat belt law. (G.S. 20-135.2A(c)). In October 2004, the State was notified by the federal Motor Carrier Safety Division Administrator that it was not in compliance with the federal regulation regarding seat belts for commercial drivers. If the State is not in compliance with this federal regulation by September 31, 2007, it will lose approximately five million dollars ($5,000,000) in federal motor carrier funds, which provide about 80% of the funding for the State Highway Patrol Division of Crime Control and Public Safety.

COMPLIANCE CONSIDERATIONS

49 CFR §392.16 states the following:

"A commercial motor vehicle which has a seat belt assembly installed at the driver's seat shall not be driven unless the driver has properly restrained himself/herself/ with the seat belt assembly."

49 CFR §350.331(d) requires that as soon as practical after the effective date of any newly enacted regulation or amendment to the federal motor carrier safety regulation, but no later than three years after that date, the State must amend it s laws or regulations to make them compatible with the FMCSRs. 49 CFR §350.335(b) states that fails to adopt any new regulation or amendment to comply with the FMCSRs within three years of its effective date will be deemed to have incompatible regulations and will not be eligible for Basic Program Funds or Incentive Funds.

TECHNICAL OR MECHANICAL CONSIDERATIONS

REVIEW AND APPROVAL

Prepared By: Trina Griffin, Staff Attorney
Name of Preparer

Date: _____

PRINTING

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute # 2 for

SB 774 A BILL TO BE ENTITLED AN ACT TO MODIFY THE SEAT BELT USE STATUTES TO ENHANCE THE USE OF SEAT BELTS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 918*
PROPOSED COMMITTEE SUBSTITUTE H918-CSRB-45 [v.1]

8/24/2005 4:40:04 PM

Short Title: State Ports Operations. (Public)

Sponsors:

Referred to:

March 28, 2005

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT THE STATE PORTS AUTHORITY SHOULD AVOID COMPETITION WITH PRIVATE ENTERPRISE OR THE DUPLICATION OF SERVICES AVAILABLE THROUGH PRIVATE ENTERPRISE AND TO PROVIDE THAT ACQUISITIONS AND DISPOSITIONS OF REAL PROPERTY BY THE STATE PORTS AUTHORITY SHALL BE SUBJECT TO THE PROVISIONS OF CHAPTER 146 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. It is the policy of the State of North Carolina that the North Carolina State Ports Authority shall carry out its authority under Part 10 of Article 10 of Chapter 143B of the General Statutes, and accomplish the purposes for which it was created under that Part, without engaging in direct competition with private enterprise or duplicating services available through private enterprise.

SECTION 2. G.S. 143B-454(a)(3) reads as rewritten:

"(a) In order to enable it to carry out the purposes of this Part, the said Authority shall:

...

(3) ~~Be authorized and empowered to~~ Subject to the provisions of Chapter 146 of the General Statutes, lease, buy, own, acquire, mortgage, otherwise encumber, and dispose of such property, real or personal, as said Authority may deem proper to carry out the purposes and provisions of this Part, all or any of them;

..."

SECTION 3. G.S. 146-65 reads as rewritten:

"**§ 146-65. Exemptions from Chapter.**

None of the provisions of Chapter 146 shall apply ~~to:~~ to

~~(1) The~~ the acquisition of highway rights-of-way, borrow pits, or other interests or estates in land acquired for the same or similar purposes, or to the disposition thereof, by the Board of ~~Transportation; or~~

~~(2) The North Carolina State Ports Authority, the authority and powers thereof set forth or provided for by G.S. 143B-452 through G.S. 143B-467 or to the exercise of all or any of such authority and powers,~~

~~Nor~~ Transportation, nor shall the provisions of Chapter 146 abrogate or alter any otherwise valid contract or agreement heretofore made and entered into by the State of North Carolina or by any of its subdivisions or agencies during the term or period of such contract or agreement."

SECTION 4. Sections 2 and 3 of this act become effective September 1, 2005, and apply to contracts for the acquisition or disposition of real property entered into on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 947

Committee Substitute Favorable 5/2/05

PROPOSED COMMITTEE SUBSTITUTE H947-PCS70566-MBx-50

Short Title: Local Tax for Public Schools/Comm Colleges-II. (Public)

Sponsors:

Referred to:

March 29, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CERTAIN COUNTIES TO LEVY ONE-HALF CENT LOCAL SALES AND USE TAXES FOR PUBLIC SCHOOL CAPITAL OUTLAY PURPOSES AND COMMUNITY COLLEGE PLANT FUND PURPOSES, IF APPROVED BY THE VOTERS OF THE COUNTIES.

The General Assembly of North Carolina enacts:

SECTION 1. This act applies to Beaufort, Brunswick, Camden, Columbus, Craven, Currituck, Forsyth, Granville, Halifax, Jackson, Johnston, Lenoir, Macon, Mecklenburg, Montgomery, Nash, Pamlico, Pasquotank, Pender, Richmond, Sampson, Stanley, Swain, Tyrell and Wake counties only.

SECTION 2. Subchapter VIII of Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 46.

"Fourth One-Half Cent (1/2¢) Local Government Sales and Use Tax.

"**§ 105-535. Short title.**

This Article is the Fourth One-Half Cent (1/2¢) Local Government Sales and Use Tax Act.

"**§ 105-536. Limitations.**

This Article applies only to counties that levy the first one-cent (1¢) local sales and use tax under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws, the first one-half cent (1/2¢) local sales and use tax under Article 40 of this Chapter, the second one-half cent (1/2¢) local sales and use tax under Article 42 of this Chapter, and the third one-half cent (1/2¢) local sales and use tax under Article 44 of this Chapter.

"**§ 105-537. Levy.**

(a) Authority. – If the majority of those voting in a referendum held pursuant to this Article vote for the levy of the taxes, the board of commissioners of the county

may, by resolution, levy one-half percent (1/2%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law.

(b) Vote. – The board of commissioners of a county may direct the county board of elections to conduct an advisory referendum on the question of whether to levy local one-half percent (1/2%) sales and use taxes in the county as provided in this Article. The election shall be held on a date jointly agreed upon by the two boards and shall be held in accordance with the procedures of G.S. 163-287.

(c) Ballot Question. – The form of the question to be presented on a ballot for a special election concerning the levy of the taxes authorized by this Article shall be:

'[ ] FOR [ ] AGAINST

One-half percent (1/2%) local sales and use taxes, in addition to the current local sales and use taxes, to be used only for public school capital outlay purposes or community college plant fund purposes.'

"**§ 105-538. Administration.**

Except as provided in this Article, the adoption, levy, collection, administration, and repeal of the additional taxes authorized by this Article shall be in accordance with Article 39 of this Chapter. A tax levied under this Article does not apply to the sales price of food that is exempt from tax pursuant to G.S. 105-164.13B.

"**§ 105-539. Distribution and use.**

(a) Distribution. – The Secretary shall, on a monthly basis, distribute to each taxing county the net proceeds of the tax collected in that county under this Article. If the Secretary collects taxes under this Article in a month and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary shall allocate these taxes among the taxing counties in proportion to the amount of taxes collected in each county under this Article in that month and shall include them in the monthly distribution.

(b) Use. – Counties may use the proceeds of a tax levied under this Article only for public school capital outlay purposes as defined in G.S. 115C-426(f) or for community college plant fund purposes as defined in G.S. 115D-32 and to retire indebtedness incurred by the counties for these purposes.

(c) Nonsupplant Restriction. – It is the purpose of this Article for counties to appropriate funds generated under this Article to increase the level of county spending for public school capital outlay purposes and community college plant fund purposes above the level of spending before the levy of the tax authorized in this Article. A county that levies a tax under this Article must continue to spend for public school capital outlay and community college plant fund purposes the same amount of money it would have spent for those purposes if it had not levied the tax."

SECTION 3. A tax levied under Article 46 of Chapter 105 of the General Statutes, as enacted by this act, does not apply to construction materials purchased to fulfill a lump-sum or unit-price contract entered into or awarded before the effective date of the levy or entered into or awarded pursuant to a bid made before the effective date of the levy when the construction materials would otherwise be subject to the tax levied under Article 46 of Chapter 105 of the General Statutes.

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

HOUSE BILL 947:
Local Taxes for Public Schools/Comm Colleges-II

BILL ANALYSIS

Committee:	House Finance	**Date:**	August 24, 2005
Introduced by:	Reps. Owens, Gibson, and Daughtridge	**Summary by:**	Ashley Huffstetler
Version:	PCS to 2nd edition		Committee Counsel

SUMMARY: ***The PCS to House Bill 1050 authorizes Beaufort, Brunswick, Camden, Columbus, Craven, Currituck, Forsyth, Granville, Halifax, Jackson, Johnston, Lenoir, Macon, Mecklenburg, Montgomery, Nash, Pamlico, Pasquotank, Pender, Richmond, Sampson, Stanley, Swain, Tyrell and Wake counties to levy one-half cent local sales and use taxes, if approved by a referendum of the voters of the counties. The proceeds of the tax are to be used only for public school capital outlay purposes and for community college plant fund purposes.***

CURRENT LAW: The General Assembly has previously authorized the levy of three one-half cent local sales and use taxes, in addition to a one-cent local sales and use tax authorized in 1971. Previous local sales taxes have given the local governments two options for levying the tax: (1) by vote of the people in a special election, and (2) by vote of the county commissioners, by resolution and after ten days' public notice and a public hearing.

All counties in North Carolina currently levy local sales taxes at a rate of at least 2.5% (the maximum allowed under current law for all counties other than Mecklenburg and Dare).

BILL ANALYSIS: The PCS to House Bill 947 authorizes Beaufort, Brunswick, Camden, Columbus, Craven, Currituck, Forsyth, Granville, Halifax, Jackson, Johnston, Lenoir, Macon, Mecklenburg, Montgomery, Nash, Pamlico, Pasquotank, Pender, Richmond, Sampson, Stanley, Swain, Tyrell and Wake counties to hold referendums on the issue of whether to levy additional one-half cent local sales taxes to be used only for public school capital outlay and community college plant fund purposes. The taxes will be administered as is the current first one-half cent local sales tax in Article 39 of the General Statutes. The fourth one-half cent local sales tax does not apply to the sales price of food that is currently exempt from tax.

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

Sales Tax - Full and Half Cent
2006-07

		2006-07	2006-07
		Full Cent	Half Cent
County	Municipalities	Estimate	Estimate
Alamance		9.2	4.6
Alamance	Alamance	0.0	0.0
Alamance	Burlington	3.2	1.6
Alamance	Elon College	0.5	0.2
Alamance	Graham	0.9	0.5
Alamance	Greenlevel	0.1	0.1
Alamance	Haw River	0.1	0.1
Alamance	Mebane	0.5	0.3
Alamance	Ossipee	0.0	0.0
Alamance	Swepsonville	0.1	0.0
Alexander		2.6	1.3
Alexander	Taylorsville	0.1	0.1
Alleghany		0.8	0.4
Alleghany	Sparta	0.1	0.1
Anson		1.6	0.8
Anson	Ansonville	0.0	0.0
Anson	Lilesville	0.0	0.0
Anson	McFarlen	0.0	0.0
Anson	Morven	0.0	0.0
Anson	Peachland	0.0	0.0
Anson	Polkton	0.1	0.1
Anson	Wadesboro	0.3	0.2
Ashe		2.2	1.1
Ashe	Jefferson	0.1	0.1
Ashe	Lansing	0.0	0.0
Ashe	West Jefferson	0.1	0.0
Avery		1.8	0.9
Avery	Banner Elk	0.1	0.0
Avery	Crossnore	0.0	0.0
Avery	Elk Park	0.0	0.0
Avery	Granfather Village	0.0	0.0
Avery	Newland	0.1	0.0
Avery	Sugar Mountain	0.0	0.0
Beaufort		3.7	1.9
Beaufort	Aurora	0.0	0.0
Beaufort	Bath	0.0	0.0
Beaufort	Belhaven	0.2	0.1
Beaufort	Chocowinity	0.1	0.0
Beaufort	Pantego	0.0	0.0
Beaufort	Washington	0.8	0.4
Beaufort	Washington Park	0.0	0.0
Bertie		1.1	0.5
Bertie	Askewville	0.0	0.0
Bertie	Aulander	0.0	0.0
Bertie	Colerain	0.0	0.0
Bertie	Kelford	0.0	0.0
Bertie	Lewiston Woodville	0.0	0.0
Bertie	Powellsville	0.0	0.0
Bertie	Roxobel	0.0	0.0

		2006-07	2006-07
		Full Cent	Half Cent
County	Municipalities	Estimate	Estimate
Bertie	Windsor	0.1	0.1
Bladen		2.4	1.2
Bladen	Bladenboro	0.1	0.0
Bladen	Clarkton	0.0	0.0
Bladen	Dublin	0.0	0.0
Bladen	East Arcadia	0.0	0.0
Bladen	Elizabethtown	0.2	0.1
Bladen	Tar Heel	0.0	0.0
Bladen	White Lake	0.1	0.0
Brunswick		7.2	3.6
Brunswick	Bald Head Island	0.0	0.0
Brunswick	Belville	0.0	0.0
Brunswick	Boiling Spring Lakes	0.3	0.1
Brunswick	Bolivia	0.0	0.0
Brunswick	Calabash	0.1	0.1
Brunswick	Carolina Shores	0.1	0.1
Brunswick	Caswell Beach	0.0	0.0
Brunswick	Holden Beach	0.1	0.0
Brunswick	Leland	0.4	0.2
Brunswick	Navassa	0.1	0.1
Brunswick	Northwest	0.1	0.0
Brunswick	Oak Island	0.6	0.3
Brunswick	Ocean Isle Beach	0.0	0.0
Brunswick	St. James	0.1	0.0
Brunswick	Sandy Creek	0.0	0.0
Brunswick	Shallotte	0.1	0.1
Brunswick	Southport	0.2	0.1
Brunswick	Sunset Beach	0.2	0.1
Brunswick	Varnamtown	0.0	0.0
Buncombe		20.5	10.2
Buncombe	Asheville	5.9	3.0
Buncombe	Biltmore Forest	0.2	0.1
Buncombe	Black Mountain	0.4	0.2
Buncombe	Montreat	0.1	0.0
Buncombe	Weaverville	0.2	0.1
Buncombe	Woodfin	0.1	0.1
Burke		6.1	3.0
Burke	Connelly Springs	0.1	0.1
Burke	Drexel	0.1	0.1
Burke	Glen Alpine	0.1	0.0
Burke	Hildebran	0.1	0.1
Burke	Morganton	1.2	0.6
Burke	Rutherford College	0.1	0.0
Burke	Valdese	0.3	0.2
Cabarrus		11.2	5.6
Cabarrus	Concord	4.5	2.2
Cabarrus	Harrisburg	0.1	0.1
Cabarrus	Kannapolis	2.0	1.0
Cabarrus	Midland	0.0	0.0

Sales Tax - Full and Half Cent
2006-07

		2006-07	2006-07
		Full Cent	Half Cent
County	Municipalities	Estimate	Estimate
Cabarrus	Mount Pleasant	0.1	0.0
Caldwell		4.9	2.4
Caldwell	Cajah Mountain	0.2	0.1
Caldwell	Cedar Rock	0.0	0.0
Caldwell	Gamewell	0.2	0.1
Caldwell	Granite Falls	0.3	0.1
Caldwell	Hudson	0.2	0.1
Caldwell	Lenoir	1.1	0.6
Caldwell	Rhodhiss	0.0	0.0
Caldwell	Sawmills	0.3	0.2
Camden		0.6	0.3
Carteret		6.1	3.1
Carteret	Atlantic Beach	0.3	0.2
Carteret	Beaufort	0.2	0.1
Carteret	Bogue	0.0	0.0
Carteret	Cape Carteret	0.1	0.0
Carteret	Cedar Point	0.0	0.0
Carteret	Emerald Isle	0.4	0.2
Carteret	Indian Beach	0.1	0.1
Carteret	Morehead City	0.6	0.3
Carteret	Newport	0.1	0.1
Carteret	Peletier	0.0	0.0
Carteret	Pine Knoll Shores	0.2	0.1
Caswell		1.5	0.7
Caswell	Milton	0.0	0.0
Caswell	Yanceyville	0.0	0.0
Catawba		12.1	6.1
Catawba	Brookford	0.0	0.0
Catawba	Catawba	0.1	0.0
Catawba	Claremont	0.1	0.0
Catawba	Conover	0.6	0.3
Catawba	Hickory	3.2	1.6
Catawba	Long View	0.4	0.2
Catawba	Maiden	0.3	0.1
Catawba	Newton	1.1	0.5
Chatham		3.9	1.9
Chatham	Goldston	0.0	0.0
Chatham	Pittsboro	0.2	0.1
Chatham	Siler City	0.6	0.3
Cherokee		2.5	1.2
Cherokee	Andrews	0.2	0.1
Cherokee	Murphy	0.2	0.1
Chowan		1.2	0.6
Chowan	Edenton	0.2	0.1
Clay		0.8	0.4
Clay	Hayesville	0.0	0.0
Cleveland		8.0	4.0
Cleveland	Belwood	-	-
Cleveland	Boiling Springs	0.1	0.0

Sales Tax - Full and Half Cent
2006-07

		2006-07	2006-07
		Full Cent	Half Cent
County	Municipalities	Estimate	Estimate
Cleveland	Casar	0.0	0.0
Cleveland	Earl	0.0	0.0
Cleveland	Fallston	0.0	0.0
Cleveland	Grover	0.0	0.0
Cleveland	Kings Mountain	0.4	0.2
Cleveland	Kingstown	0.0	0.0
Cleveland	Lattimore	0.0	0.0
Cleveland	Lawndale	0.0	0.0
Cleveland	Mooresboro	-	-
Cleveland	Patterson Springs	-	-
Cleveland	Polkville	0.0	0.0
Cleveland	Shelby	1.1	0.5
Cleveland	Waco	0.0	0.0
Columbus		3.4	1.7
Columbus	Boardman	0.0	0.0
Columbus	Bolton	0.0	0.0
Columbus	Brunswick	0.1	0.0
Columbus	Cerro Gordo	0.0	0.0
Columbus	Chadbourn	0.1	0.1
Columbus	Fair Bluff	0.1	0.0
Columbus	Lake Waccamaw	0.1	0.0
Columbus	Sandyfield	0.0	0.0
Columbus	Tabor City	0.2	0.1
Columbus	Whiteville	0.3	0.2
Craven		7.2	3.6
Craven	Bridgeton	0.0	0.0
Craven	Cove City	0.0	0.0
Craven	Dover	0.0	0.0
Craven	Havelock	0.5	0.2
Craven	New Bern	1.7	0.8
Craven	River Bend	0.1	0.0
Craven	Trent Woods	0.1	0.0
Craven	Vanceboro	0.0	0.0
Cumberland		20.7	10.4
Cumberland	Falcon	0.0	0.0
Cumberland	Fayetteville	8.6	4.3
Cumberland	Godwin	0.0	0.0
Cumberland	Hope Mills	0.8	0.4
Cumberland	Linden	0.0	0.0
Cumberland	Spring Lake	0.6	0.3
Cumberland	Stedman	0.0	0.0
Cumberland	Wade	0.0	0.0
Currituck		2.8	1.4
Dare		6.7	3.4
Dare	Duck	-	-
Dare	Kill Devil Hills	0.7	0.3
Dare	Kitty Hawk	0.3	0.2
Dare	Manteo	0.2	0.1
Dare	Nags Head	0.6	0.3

Sales Tax - Full and Half Cent
2006-07

		2006-07	2006-07
		Full Cent	Half Cent
County	Municipalities	Estimate	Estimate
Dare	Southern Shores	0.2	0.1
Davidson		10.3	5.2
Davidson	Denton	0.1	0.1
Davidson	Lexington	1.4	0.7
Davidson	Thomasville	1.6	0.8
Davie		2.5	1.2
Davie	Bermuda Run	0.1	0.1
Davie	Cooleemee	0.1	0.0
Davie	Mocksville	0.3	0.1
Duplin		3.4	1.7
Duplin	Beulaville	0.1	0.0
Duplin	Calypso	0.0	0.0
Duplin	Faison	0.1	0.0
Duplin	Greenevers	0.0	0.0
Duplin	Kenansville	0.1	0.0
Duplin	Magnolia	0.1	0.0
Duplin	Rose Hill	0.1	0.0
Duplin	Teachey	0.0	0.0
Duplin	Wallace	0.2	0.1
Duplin	Warsaw	0.2	0.1
Durham		18.5	9.3
Durham	Durham	15.5	7.8
Edgecombe		3.3	1.6
Edgecombe	Conetoe	0.0	0.0
Edgecombe	Leggett	0.0	0.0
Edgecombe	Macclesfield	0.0	0.0
Edgecombe	Pinetops	0.1	0.0
Edgecombe	Princeville	0.1	0.0
Edgecombe	Speed	0.0	0.0
Edgecombe	Tarboro	0.7	0.3
Forysth		25.8	12.9
Forysth	Bethania	0.0	0.0
Forysth	Clemmons	0.2	0.1
Forysth	Kernersville	1.3	0.6
Forysth	Lewisville	0.1	0.1
Forysth	Rural Hall	0.1	0.1
Forysth	Tobaccoville	0.0	0.0
Forysth	Walkertown	0.1	0.0
Forysth	Winston-Salem	11.0	5.5
Franklin		3.6	1.8
Franklin	Bunn	0.0	0.0
Franklin	Centerville	-	-
Franklin	Franklinton	0.1	0.0
Franklin	Louisburg	0.1	0.1
Franklin	Youngsville	0.1	0.0
Gaston		12.3	6.2
Gaston	Belmont	0.6	0.3
Gaston	Bessemer City	0.3	0.2
Gaston	Cherryville	0.4	0.2

County	Municipalities	2006-07 Full Cent Estimate	2006-07 Half Cent Estimate
Gaston	Cramerton	0.2	0.1
Gaston	Dallas	0.2	0.1
Gaston	Gastonia	4.4	2.2
Gaston	High Shoals	0.0	0.0
Gaston	Lowell	0.2	0.1
Gaston	McAdenville	0.0	0.0
Gaston	Mount Holly	0.6	0.3
Gaston	Ranlo	0.1	0.1
Gaston	Spencer Mountain	0.0	0.0
Gaston	Stanley	0.2	0.1
Gates		0.7	0.3
Gates	Gatesville	0.0	0.0
Graham		0.6	0.3
Graham	Robbinsville	0.0	0.0
Graham	Lake Santeetlah	0.1	0.0
Granville		3.5	1.7
Granville	Creedmoor	0.2	0.1
Granville	Oxford	0.6	0.3
Granville	Stem	0.0	0.0
Granville	Stovall	0.0	0.0
Greene		1.2	0.6
Greene	Hookerton	0.0	0.0
Greene	Snow Hill	0.1	0.0
Greene	Walstonburg	0.0	0.0
Guilford		29.6	14.8
Guilford	Gibsonville	0.3	0.2
Guilford	Greensboro	15.7	7.9
Guilford	High Point	6.0	3.0
Guilford	Jamestown	0.2	0.1
Guilford	Oak Ridge	0.3	0.1
Guilford	Pleasant Garden	0.3	0.2
Guilford	Sedalia	0.0	0.0
Guilford	Stokesdale	0.2	0.1
Guilford	Summerfield	0.5	0.2
Guilford	Whitsett	0.0	0.0
Halifax		4.1	2.0
Halifax	Enfield	0.1	0.0
Halifax	Halifax	0.0	0.0
Halifax	Hobgood	0.0	0.0
Halifax	Littleton	0.0	0.0
Halifax	Roanoke Rapids	1.0	0.5
Halifax	Scotland Neck	0.1	0.0
Halifax	Weldon	0.1	0.0
Harnett		6.7	3.4
Harnett	Angier	0.2	0.1
Harnett	Coats	0.1	0.0
Harnett	Dunn	0.5	0.2
Harnett	Erwin	0.2	0.1
Harnett	Lillington	0.2	0.1

Sales Tax - Full and Half Cent
2006-07

		2006-07	2006-07
		Full Cent	Half Cent
County	Municipalities	Estimate	Estimate
Haywood		4.7	2.4
Haywood	Canton	0.4	0.2
Haywood	Clyde	0.1	0.1
Haywood	Maggie Valley	0.1	0.0
Haywood	Waynesville	0.8	0.4
Henderson		8.3	4.2
Henderson	Flat Rock	0.2	0.1
Henderson	Fletcher	0.4	0.2
Henderson	Hendersonville	1.0	0.5
Henderson	Laurel Park	0.2	0.1
Hertford		1.9	0.9
Hertford	Ahoskie	0.3	0.1
Hertford	Cofield	0.0	0.0
Hertford	Como	0.0	0.0
Hertford	Harrellsville	0.0	0.0
Hertford	Murfreesboro	0.1	0.1
Hertford	Winton	0.0	0.0
Hoke		2.2	1.1
Hoke	Raeford	0.2	0.1
Hyde		0.6	0.3
Iredell		11.0	5.5
Iredell	Harmony	0.0	0.0
Iredell	Love Valley	0.0	0.0
Iredell	Mooresville	1.7	0.8
Iredell	Statesville	2.1	1.0
Iredell	Troutman	0.1	0.1
Jackson		3.6	1.8
Jackson	Dillsboro	0.0	0.0
Jackson	Forest Hills	0.0	0.0
Jackson	Sylva	0.2	0.1
Jackson	Webster	0.0	0.0
Johnston		10.7	5.4
Johnston	Benson	0.2	0.1
Johnston	Clayton	0.6	0.3
Johnston	Four Oaks	0.0	0.0
Johnston	Kenly	0.1	0.0
Johnston	Micro	0.0	0.0
Johnston	Pine Level	0.0	0.0
Johnston	Princeton	0.0	0.0
Johnston	Selma	0.2	0.1
Johnston	Smithfield	0.7	0.4
Johnston	Wilson's Mills	0.0	0.0
Jones		0.6	0.3
Jones	Maysville	0.0	0.0
Jones	Pollocksville	0.0	0.0
Jones	Trenton	0.0	0.0
Lee		3.6	1.8
Lee	Broadway	0.1	0.0
Lee	Sanford	1.7	0.9

Sales Tax - Full and Half Cent
2006-07

County	Municipalities	2006-07 Full Cent Estimate	2006-07 Half Cent Estimate
Lenoir		4.2	2.1
Lenoir	Kinston	1.2	0.6
Lenoir	La Grange	0.1	0.0
Lenoir	Pink Hill	0.0	0.0
Lincoln		5.2	2.6
Lincoln	Lincolnton	0.8	0.4
McDowell		3.5	1.7
McDowell	Marion	0.4	0.2
McDowell	Old Fort	0.1	0.0
Macon		3.4	1.7
Macon	Franklin	0.2	0.1
Macon	Highlands	0.2	0.1
Madison		1.3	0.6
Madison	Hot Springs	0.0	0.0
Madison	Marshall	0.1	0.0
Madison	Mars Hill	0.1	0.1
Martin		2.0	1.0
Martin	Bear Grass	0.0	0.0
Martin	Everetts	0.0	0.0
Martin	Hamilton	0.0	0.0
Martin	Hassell	0.0	0.0
Martin	Jamesville	0.0	0.0
Martin	Oak City	0.0	0.0
Martin	Parmele	0.0	0.0
Martin	Robersonville	0.1	0.0
Martin	Williamston	0.3	0.2
Mecklenburg		67.3	33.6
Mecklenburg	Charlotte	27.8	13.9
Mecklenburg	Cornelius	0.7	0.4
Mecklenburg	Davidson	0.3	0.1
Mecklenburg	Huntersville	0.8	0.4
Mecklenburg	Matthews	0.7	0.3
Mecklenburg	Mint Hill	0.3	0.2
Mecklenburg	Pineville	0.2	0.1
Mitchell		1.4	0.7
Mitchell	Bakersville	0.0	0.0
Mitchell	Spruce Pine	0.2	0.1
Montgomery		1.7	0.8
Montgomery	Biscoe	0.1	0.1
Montgomery	Candor	0.1	0.0
Montgomery	Mount Gilead	0.1	0.0
Montgomery	Star	0.1	0.0
Montgomery	Troy	0.3	0.1
Moore		6.3	3.1
Moore	Aberdeen	0.3	0.1
Moore	Cameron	0.0	0.0
Moore	Carthage	0.2	0.1
Moore	Foxfire Village	0.0	0.0
Moore	Pinebluff	0.1	0.0

Sales Tax - Full and Half Cent
2006-07

		2006-07	2006-07
		Full Cent	Half Cent
County	Municipalities	Estimate	Estimate
Moore	Pinehurst	0.8	0.4
Moore	Robbins	0.1	0.1
Moore	Southern Pines	0.9	0.5
Moore	Taylortown	0.1	0.0
Moore	Vass	0.1	0.0
Moore	Whispering Pines	0.2	0.1
Nash		6.1	3.1
Nash	Bailey	0.0	0.0
Nash	Castalia	0.0	0.0
Nash	Dortches	0.1	0.0
Nash	Middlesex	0.1	0.0
Nash	Momeyer	0.0	0.0
Nash	Nashville	0.3	0.2
Nash	Red Oak	0.2	0.1
Nash	Rocky Mount	3.7	1.9
Nash	Sharpsburg	0.1	0.1
Nash	Spring Hope	0.1	0.0
Nash	Whitakers	0.1	0.0
New Hanover		16.9	8.5
New Hanover	Carolina Beach	0.4	0.2
New Hanover	Kure Beach	0.1	0.1
New Hanover	Wilmington	6.2	3.1
New Hanover	Wrightsville Beach	0.3	0.1
Northhampton		1.2	0.6
Northhampton	Conway	0.0	0.0
Northhampton	Garysburg	0.1	0.0
Northhampton	Gaston	0.1	0.0
Northhampton	Jackson	0.0	0.0
Northhampton	Lasker	0.0	0.0
Northhampton	Rich Square	0.1	0.0
Northhampton	Seaboard	0.0	0.0
Northhampton	Severn	0.0	0.0
Northhampton	Woodland	0.0	0.0
Onslow		10.1	5.0
Onslow	Holly Ridge	0.1	0.0
Onslow	Jacksonville	4.5	2.2
Onslow	North Topsail Beach	0.1	0.0
Onslow	Richlands	0.1	0.0
Onslow	Swansboro	0.1	0.0
Orange		8.1	4.0
Orange	Carrboro	1.1	0.6
Orange	Chapel Hill	3.5	1.8
Orange	Hillsborough	0.4	0.2
Pamlico		1.0	0.5
Pamlico	Alliance	-	-
Pamlico	Arapahoe	0.0	0.0
Pamlico	Bayboro	0.0	0.0
Pamlico	Grantsboro	0.0	0.0
Pamlico	Mesic	0.0	0.0

		2006-07	2006-07
		Full Cent	Half Cent
County	Municipalities	Estimate	Estimate
Pamlico	Minnesott Beach	0.0	0.0
Pamlico	Oriental	0.0	0.0
Pamlico	Stonewall	0.0	0.0
Pamlico	Vandemere	0.0	0.0
Pasquotank		3.0	1.5
Pasquotank	Elizabeth City	1.0	0.5
Pender		3.0	1.5
Pender	Atkinson	0.0	0.0
Pender	Burgaw	0.2	0.1
Pender	St. Helena	0.0	0.0
Pender	Surf City	0.1	0.1
Pender	Topsail Beach	0.0	0.0
Pender	Watha	0.0	0.0
Perquimans		0.7	0.4
Perquimans	Hertford	0.1	0.1
Perquimans	Winfall	0.0	0.0
Person		2.9	1.5
Person	Roxboro	0.5	0.3
Pitt		9.9	5.0
Pitt	Ayden	0.3	0.2
Pitt	Bethel	0.1	0.1
Pitt	Falkland	0.0	0.0
Pitt	Farmville	0.3	0.2
Pitt	Fountain	0.0	0.0
Pitt	Greenville	4.5	2.3
Pitt	Grifton	0.2	0.1
Pitt	Grimesland	0.0	0.0
Pitt	Simpson	0.0	0.0
Pitt	Winterville	0.4	0.2
Polk		1.3	0.6
Polk	Columbus	0.1	0.0
Polk	Saluda	0.0	0.0
Polk	Tryon	0.1	0.1
Randolph		8.8	4.4
Randolph	Archdale	0.6	0.3
Randolph	Asheboro	1.5	0.7
Randolph	Franklinville	0.1	0.0
Randolph	Liberty	0.2	0.1
Randolph	Ramseur	0.1	0.1
Randolph	Randleman	0.2	0.1
Randolph	Seagrove	0.0	0.0
Randolph	Staley	0.0	0.0
Randolph	Trinity	0.4	0.2
Richmond		3.3	1.6
Richmond	Dobbins Heights	0.1	0.0
Richmond	Ellerbe	0.1	0.0
Richmond	Hamlet	0.4	0.2
Richmond	Hoffman	0.0	0.0
Richmond	Norman	0.0	0.0

Sales Tax - Full and Half Cent
2006-07

		2006-07	2006-07
		Full Cent	Half Cent
County	Municipalities	Estimate	Estimate
Richmond	Rockingham	0.7	0.3
Robeson		8.7	4.4
Robeson	Fairmont	0.2	0.1
Robeson	Lumber Bridge	0.0	0.0
Robeson	Lumberton	1.5	0.7
Robeson	McDonald	0.0	0.0
Robeson	Marietta	0.0	0.0
Robeson	Maxton	0.2	0.1
Robeson	Orrum	0.0	0.0
Robeson	Parkton	0.0	0.0
Robeson	Pembroke	0.2	0.1
Robeson	Proctorville	0.0	0.0
Robeson	Raynham	0.0	0.0
Robeson	Red Springs	0.2	0.1
Robeson	Rennert	0.0	0.0
Robeson	Rowland	0.1	0.0
Robeson	St. Pauls	0.2	0.1
Rockingham		5.9	2.9
Rockingham	Eden	1.0	0.5
Rockingham	Madison	0.1	0.1
Rockingham	Mayodan	0.2	0.1
Rockingham	Reidsville	0.9	0.5
Rockingham	Stoneville	0.1	0.0
Rockingham	Wentworth	0.2	0.1
Rowan		8.5	4.3
Rowan	China Grove	0.2	0.1
Rowan	Cleveland	0.1	0.0
Rowan	East Spencer	0.1	0.1
Rowan	Faith	0.0	0.0
Rowan	Granite Quarry	0.1	0.1
Rowan	Landis	0.2	0.1
Rowan	Rockwell	0.1	0.1
Rowan	Salisbury	1.7	0.9
Rowan	Spencer	0.2	0.1
Rutherford		4.9	2.5
Rutherford	Bostic	0.0	0.0
Rutherford	Chimney Rock	0.0	0.0
Rutherford	Ellenboro	0.0	0.0
Rutherford	Forest City	0.2	0.1
Rutherford	Lake Lure	0.2	0.1
Rutherford	Ruth	0.0	0.0
Rutherford	Rutherfordton	0.3	0.1
Rutherford	Spindale	0.2	0.1
Sampson		4.3	2.2
Sampson	Autryville	0.0	0.0
Sampson	Clinton	0.6	0.3
Sampson	Garland	0.1	0.0
Sampson	Harrells	0.0	0.0
Sampson	Newton Grove	0.0	0.0

		2006-07	2006-07
		Full Cent	Half Cent
County	Municipalities	Estimate	Estimate
Sampson	Roseboro	0.1	0.0
Sampson	Salemburg	0.0	0.0
Sampson	Turkey	0.0	0.0
Scotland		3.0	1.5
Scotland	East Laurinburg	-	-
Scotland	Gibson	0.0	0.0
Scotland	Laurinburg	0.5	0.2
Scotland	Wagram	0.0	0.0
Stanly		4.0	2.0
Stanly	Albemarle	1.1	0.5
Stanly	Badin	0.1	0.0
Stanly	Locust	0.2	0.1
Stanly	New London	0.0	0.0
Stanly	Norwood	0.2	0.1
Stanly	Oakboro	0.1	0.0
Stanly	Red Cross	0.0	0.0
Stanly	Richfield	0.0	0.0
Stanly	Stanfield	0.1	0.0
Stokes		3.2	1.6
Stokes	Danbury	0.0	0.0
Stokes	King	0.3	0.1
Stokes	Walnut Cove	0.1	0.0
Surry		6.5	3.2
Surry	Dobson	0.1	0.1
Surry	Elkin	0.4	0.2
Surry	Mount Airy	0.8	0.4
Surry	Pilot Mountain	0.1	0.1
Swain		1.0	0.5
Swain	Bryson City	0.1	0.1
Transylvania		2.9	1.5
Transylvania	Brevard	0.4	0.2
Transylvania	Rosman	0.0	0.0
Tyrrell		0.3	0.2
Tyrrell	Columbia	0.0	0.0
Union		10.6	5.3
Union	Fairview	-	-
Union	Hemby Bridge	0.0	0.0
Union	Indian Trail	0.2	0.1
Union	Lake Park	0.1	0.0
Union	Marshville	0.1	0.1
Union	Marvin	0.0	0.0
Union	Mineral Springs	0.0	0.0
Union	Monroe	2.1	1.0
Union	Stallings	0.1	0.1
Union	Unionville	0.0	0.0
Union	Waxhaw	0.1	0.1
Union	Weddington	0.0	0.0
Union	Wesley Chapel	0.0	0.0
Union	Wingate	0.1	0.0

Sales Tax - Full and Half Cent
2006-07

		2006-07	2006-07
		Full Cent	Half Cent
County	Municipalities	Estimate	Estimate
Vance		3.8	1.9
Vance	Henderson	0.9	0.5
Vance	Kittrell	0.0	0.0
Vance	Middleburg	0.0	0.0
Wake		49.1	24.6
Wake	Apex	1.6	0.8
Wake	Cary	7.5	3.7
Wake	Fuquay-Varina	0.6	0.3
Wake	Garner	1.4	0.7
Wake	Holly Springs	0.8	0.4
Wake	Knightdale	0.5	0.2
Wake	Morrisville	0.4	0.2
Wake	Raleigh	21.7	10.8
Wake	Rolesville	0.1	0.0
Wake	Wake Forest	1.0	0.5
Wake	Wendell	0.3	0.2
Wake	Zebulon	0.3	0.2
Warren		1.3	0.7
Warren	Macon	0.0	0.0
Warren	Norlina	0.1	0.0
Warren	Warrenton	0.1	0.0
Washington		0.9	0.4
Washington	Creswell	0.0	0.0
Washington	Plymouth	0.3	0.1
Washington	Roper	0.0	0.0
Watauga		4.5	2.2
Watauga	Beech Mountain	0.0	0.0
Watauga	Blowing Rock	0.1	0.1
Watauga	Boone	1.4	0.7
Watauga	Seven Devils	0.0	0.0
Wayne		8.2	4.1
Wayne	Eureka	0.0	0.0
Wayne	Fremont	0.1	0.0
Wayne	Goldsboro	2.5	1.3
Wayne	Mount Olive	0.3	0.1
Wayne	Pikeville	0.0	0.0
Wayne	Seven Springs	0.0	0.0
Wayne	Walnut Creek	0.1	0.1
Wilkes		6.0	3.0
Wilkes	North Wilkesboro	0.4	0.2
Wilkes	Ronda	0.0	0.0
Wilkes	Wilkesboro	0.3	0.1
Wilson		5.7	2.8
Wilson	Black Creek	0.0	0.0
Wilson	Elm City	0.1	0.0
Wilson	Lucama	0.0	0.0
Wilson	Saratoga	0.0	0.0
Wilson	Sims	0.0	0.0
Wilson	Stantonsburg	0.0	0.0

		2006-07	2006-07
		Full Cent	Half Cent
County	Municipalities	Estimate	Estimate
Wilson	Wilson	2.2	1.1
Yadkin		2.7	1.4
Yadkin	Boonville	0.0	0.0
Yadkin	East Bend	0.0	0.0
Yadkin	Jonesville	0.1	0.1
Yadkin	Yadkinville	0.1	0.1
Yancey		1.5	0.7
Yancey	Burnsville	0.1	0.1
TOTAL		917.4	458.7

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

HB 947 A BILL TO BE ENTITLED AN ACT TO REPLACE THE TAX CREDITS GENERALLY AVAILABLE UNDER THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT WITH MORE NARROWLY FOCUSED CREDITS FOR JOB CREATION AND BUSINESS INVESTMENT; AND TO EXTEND THE JOB DEVELOPMENT INVESTMENT GRANT PROGRAM.

☒ With a favorable report as to Committee Substitute Bill #2, which changes the title, unfavorable as to Committee Substitute Bill #1.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

ATTACHMENT 5

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 947

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

H947-ARBx-53 [v.2]

Date August 24 ,2005

Comm. Sub. [NO]
Amends Title [NO]
H947-CSMBx-50

Representative(s) Gibson + Daughtridge

moves to amend the bill on page 1, lines 7 through 10, by rewriting the lines to read:

"**SECTION 1.** This act applies to Beaufort, Bladen, Camden, Carteret, Columbus, Craven, Currituck, Edgecombe, Forsyth, Granville, Halifax, Jackson, Johnston, Lenoir, Mecklenburg, Montgomery, Nash, Pamlico, Pasquotank, Pender, Richmond, Sampson, Stanly, Swain, Tyrrell, Wake, Wayne, and Wilson counties only."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 6

EDITION No. PCS

H. B. No. 947 DATE 8/24/05

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

COMMITTEE SUBSTITUTE _____

Rep.) Jones
Sen.)

1 moves to amend the bill on page 1, line 8
2 ( ) WHICH CHANGES THE TITLE
3 by adding the word "Guilford," after
4 the word "Granville."
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19

SIGNED Earl Jones

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 7

EDITION No. PCS

H. B. No. 947 DATE 8/24/05

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

COMMITTEE SUBSTITUTE _____

(Rep.) Sen.) Folwell

1 moves to amend the bill on page 1, line 8

2 ( ) WHICH CHANGES THE TITLE

3 by removing the word "Forsyth."

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SIGNED Dale T. Folwell

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

ATTACHMENT 8

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 947-PCS

DATE 8/24/05

S. B. No. _____

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

COMMITTEE SUBSTITUTE _____

(Rep.)) Daughtridge
Sen.)

1 moves to amend the bill on page 1, line 7

2 ( ) WHICH CHANGES THE TITLE

3 by adding "Alexander," before "Beaufort,"

4 and adding "Catawba," before "Columbus,"

5 ~~and one~~

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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 9

EDITION No. _____

H. B. No. 947 PCS DATE 8/24/05

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

COMMITTEE SUBSTITUTE _____

Rep.)
) Wainwright
Sen.)

1 moves to amend the bill on page 1, line 8
2 ( ) WHICH CHANGES THE TITLE
3 by inserting the word "Jones," after the
4 word "Johnston".
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SIGNED Thomas D. Wainwright

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)