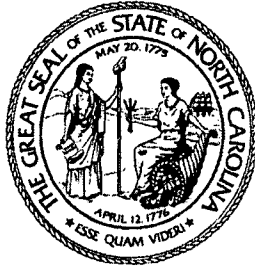


2005-2006

**HOUSE
COMMERCE**

**COMMITTEE
MINUTES**



HOUSE COMMERCE COMMITTEE

2005 Session

Book 1 of 1

Chairs

**Representative Bill Daughtridge
Representative Bruce Goforth
Representative Steven LaRoque
Representative Ray Rapp**

Committee Assistants

**Rachel Dupree
Ann Jordan
Patricia Freijes/Lisa Kennedy
Dot Barber**

Staff Counsel

**Karen Cochrane-Brown
Walker Reagan**

NORTH CAROLINA GENERAL ASSEMBLY

COMMERCE COMMITTEE

2005 – 2006 SESSION



**Rep. Daughtridge
Chair**



**Rep. Goforth
Chair**



**Rep. LaRoque
Chair**



**Rep. Rapp
Chair**



**Rep. Owens
Vice chair**



**Rep. Rayfield
Vice chair**



Rep. L. Allen



Rep. Almond



Rep. Barnhart



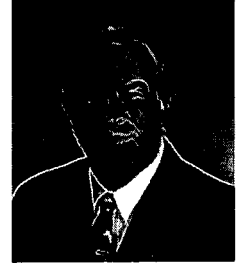
Rep. Bordsen



Rep. Brown



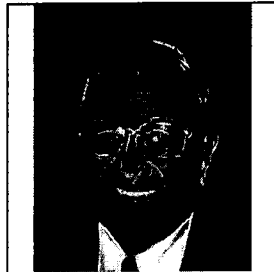
Rep. Carney



Rep. Cole



Rep. Coleman



Rep. Current



Rep. Dickson



Rep. England



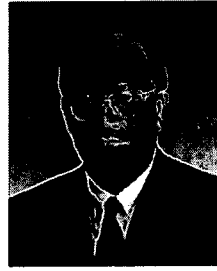
Rep. Faison



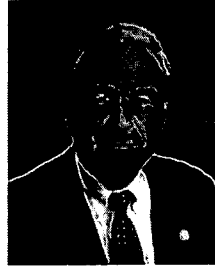
Rep. Frye



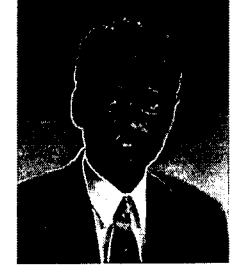
Rep. Gibson



Rep. Gillespie



Rep. Haire



Rep. Hunter

NORTH CAROLINA GENERAL ASSEMBLY

COMMERCE COMMITTEE

2005 – 2006 SESSION



Rep. Jeffus



Rep. Jones



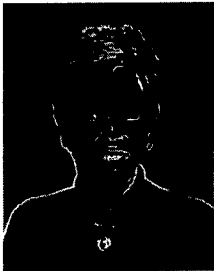
Rep. McGee



Rep. McLawhorn



Rep. Pierce



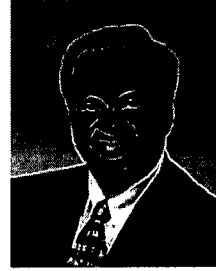
Rep. Ray



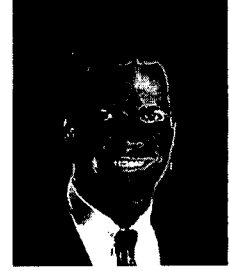
Rep. Sauls



Rep. Stam



Rep. Tucker



Rep. Vinson



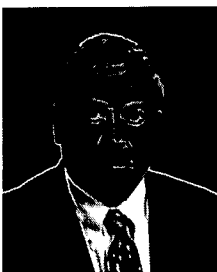
Rep. Walend



Rep. Wiley



Rep. Wray



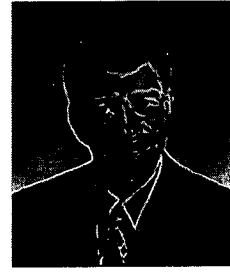
Rep. Culpepper



Rep. Cunningham



Rep. Eddins



Rep. Hackney

COMMERCE

MEMBER	ASSISTANT	PHONE	OFFICE	SEAT
Rep. Bill Daughtridge - Chair	Rachel Dupree	733-5802	304B	87
Rep. Bruce Goforth - Chair	Ann Jordan	733-5746	1220	21
Rep. Stephen LaRoque - Chair	Patricia Freije	715-3017	304A	25
Rep. Ray Rapp - Chair	Dot Barber	733-5732	2213	77
Rep. Bill Owens - Vice-Chair	Linda A. Johnson	733-0010	635	9
Rep. John Rayfield - Vice-Chair	Brenda Olls	733-5868	510	73
Rep. Lucy Allen	Melissa Riddle	733-5860	1307	41
Rep. David Almond	Alice Falcone	733-5908	1315	107
Rep. Jeff Barnhart	Pamela Ahlin	715-2009	608	76
Rep. Alice Bordsen	Erin Wynia	733-5820	530	29
Rep. Larry Brown	Delores Ledford	733-5607	609	105
Rep. Becky Carney	Joyce Langdon	733-5827	1221	54
Rep. Nelson Cole	Suzanne Smith	733-5779	1218	45
Rep. Linda Coleman	Teresa Saunders	733-5934	1013	92
Rep. Bill Current	Wendy Miller	733-5809	418A	108
Rep. Margaret Dickson	Sue Buehlmann	733-5776	1219	42
Rep. Bob England	Lisa Brown	733-5749	2219	78
Rep. Bill Faison	Kate Jackelen	715-3019	537	93
Rep. Phillip Frye	Mary Hayes	733-5661	1019	62
Rep. Pryor Gibson	Shirlyn MacPherson	715-3007	419A	96
Rep. Mitch Gillespie	Cindy Hobbs	733-5862	1008	74
Rep. Phillip Haire	Sara Jane Morris	715-3005	419B	47
Rep. Howard Hunter	Barbara Phillips	733-2962	613	68
Rep. Maggie Jeffus	Mary Lee Robinson	733-5191	2204	6
Rep. Earl Jones	Mia Bailey	733-5825	536	80
Rep. William McGee	Jayne Nelson	733-5747	531	103
Rep. Marion McLawhorn	Susan Burleson	733-5757	1217	34
Rep. Garland Pierce	Mildred Alston	733-5803	1313	83
Rep. Karen Ray	Mary Ann Norwood	733-5741	1025	75
Rep. John Sauls	Shara Graham	715-3012	418C	37
Rep. Paul Stam	Jana Stam	733-5780	502	117
Rep. Russell Tucker	Sally Gillis	715-3021	416B	18
Rep. Douglas Vinson	Darden Trotter	733-5886	1010	89
Rep. Trudi Walend	Ken Walend	715-4466	1015	115
Rep. Laura Wiley	Susan Brothers	733-5877	513	88
Rep. Michael Wray	Mary Capps	733-5662	533	94

COMMERCE

EX OFFICIO MEMBERS	ASSISTANT	PHONE	OFFICE	SEAT
Rep. Bill Culpepper	Dot Crocker	715-3028	404	36
Rep. Pete Cunningham	Valerie Rustin	733-5778	541	7
Rep. Rick Eddins	Susan Phillips	733-5828	1002	26
Rep. Joe Hackney	Emily Reynolds	733-5752	2207	69

ATTENDANCE

HOUSE COMMITTEE ON COMMERCE

(Name of Committee)

DATES	3/9/05	3/23/05	3/30/05	4/13/05	4/20/05	4/27/05	5/4/05	5/11/05	5/18/05	5/23/05	6/1/05 (1)	6/1/05 (2)	6/8/05	7/06/05	7/13/05
DAUGHTRIDGE, Bill Co-Chair	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
GOFORTH, Bruce Co-Chair		X	X	X	X	X	X	X	X	X	X	X	X	X	X
LaROQUE, Stephen Co-Chair	X	X	X	X	X		X	X	X	X	X	X	X	X	X
RAPP, Ray Co-Chair		X	X	X	X	X	X	X	X	X	X	X	X	X	X
OWENS, Bill Vice-Chair	X			X		X	X	X	X				X	X	X
RAYFIELD, John Vice-Chair	X	X	X	X	X	E	X	X	X	X	X	X	X	X	E
ALLEN, Lucy	X	X	X	X	X	X			X	X	X	X	X	X	X
ALMOND, David	X		X	X	X		X		X	X	X	X	X	X	X
BARNHART, Jeff		X	X	X		X	X				X	X	X	X	X
BORDSEN, Alice	X	X	X	X		X	X	X	X	X	X	X	X	X	X
BROWN, Larry		X	X	X	X	X	X	X	X	X	X		X	X	X
CARNEY, Becky	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
COLE, Nelson		X	X	X	X	X	X	X	X	X	X	X	X		X
COLEMAN, Linda	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
CURRENT, William	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
DICKSON, Margaret	X	X	X	X	X	X	X	X		X	X	X	X	X	X
ENGLAND, Bob		X	X			X	X	X		X			X	X	X
FAISON, Bill	X		X	X	X	X	X	X	X	X	X	X	X		X
FRYE, Phillip	X	X	X	X	X	X	X		X	X	X	X	X	X	
GIBSON, Pryor			X	X	X	X	X	X	X		X	X	X	X	
GILLESPIE, Mitch		X	X	X	X						X	X	X	X	
HAIRE, Phil		X	X		X	X	X	X	E	E	X	X	X	X	X
HUNTER, Howard				X				X		X	X	X			
JEFFUS, Maggie	X	X	X	X	X	X	X	X	X		X	X	X	X	X
JONES, Earl	X	X	X	X		X	X	X	X	X	X	X	X	X	X
McGEE, Bill		X	X	X	X	X	X	X		X	X	X	X	X	X

North Carolina General Assembly
Through House Committee on
Commerce

Date: 09/27/2005
Time: 10:29
Page: 001 of 002
Leg. Day: H-125/S-126

2005-2006 Biennium

Bill	Introducer	Short Title	Latest Action	In Date	Out Date
H0027	Glazier	ESC HEARINGS ACCOMMODATE BUSINESS ACTIVITIES.	HR Ch. SL 2005-122	02-02-05	03-10-05
65	Lucas	CONSUMER PROPANE TANKS/CONTAINERS.	H Ref To Com On Commerce	02-17-05	
H0330	Adams	LIVING WAGE ACT.	*HF Failed 2nd Reading	02-22-05	06-01-05
H0392	LaRoque	AMEND DEFINITION OF MALT BEVERAGE IN ABC LAW.	*HR Ch. SL 2005-277	03-23-05	04-18-05
H0507=	Weiss	ECONOMIC DEVELOPMENT - PUBLIC RECORDS.	H Ref To Com On Commerce	03-07-05	
H0533	McLawhorn	AMEND EASTERN REGION BOARD.	H Ref To Com On Commerce	03-09-05	
H0630	Goforth	MANUFACTURED HOMES ESCROW ACCOUNTS.	*H Pres. To Gov. 8/ 24/2005	03-15-05	05-04-05
H0892=	Alexander	REGULATE SALE OF MALT BEVERAGE KEGS.	*H Re-ref Com On Rules, Calendar, and Operations of the House	03-24-05	05-25-05
H0947	Owens	LOCAL TAX FOR PUBLIC SCHOOLS/COMM COLLEGES- II	*H Passed 3rd Reading	03-29-05	05-02-05
H1208	Tolson	EXTEND BILL LEE ACT - CERTAIN MANUFACTURERS.	H Re-ref Com On Commerce	04-25-05	
H1240	Culpepper	VACATION RENTAL ACT AMENDMENTS.	*HR Ch. SL 2005-292	04-20-05	05-25-05
H1273=	Brubaker	MOTOR FUEL MARKETING ACT.	H Ref To Com On Commerce	04-19-05	
H1315	Luebke	ECONOMIC DEVELOPMENT - CONFLICT OF INTEREST.	H Ref To Com On Commerce	04-20-05	
335	Rapp	EXTEND AND EXPAND BILL LEE ACT.	H Ref To Com On Commerce	04-20-05	
365	Daughtridge	ECONOMIC DEVELOPMENT OVERSIGHT COMMITTEE.	H Re-ref Com On Rules, Calendar, and Operations of the House	04-21-05	05-04-05
H1388	Gibson	EXCLUDE INTERNET SALES/AUCTION ACTIVITIES.	*H Ref To Com On Commerce	04-21-05	06-01-05
H1408	Barnhart	UNSOLICITED CHECKS AND UNSOLICITED SERVICES.	H Ref To Com On Commerce	04-21-05	
H1473	Coates	CLAWBACK FAILED INCENTIVES.	H Ref To Com On Finance	04-21-05	06-01-05
H1522	McComas	AMEND STATE PORTS ENABLING LEGISLATION.	H Ref To Com On Commerce	04-21-05	06-01-05
H1539	Daughtridge	UNC/AMEND UMSTEAD ACT.	*HR Ch. SL 2005-397	04-21-05	05-25-05
S0247	John Snow	REGULATION OF HELIPORTS.	*H Re-ref Com On Judiciary III	06-02-05	07-25-05
S0393=	David W. Hoyle	ECONOMIC DEVELOPMENT - PUBLIC RECORDS.	*HR Ch. SL 2005-429	06-02-05	08-11-05
S0606=	Clark Jenkins	AMEND EASTERN REGION BOARD.	*HR Ch. SL 2005-364	03-29-05	07-28-05
S0629=	John Snow	MANUFACTURING REDEVELOPMENT DISTRICTS.	*H Pres. To Gov. 8/ 24/2005	06-07-05	06-14-05

'\$' indicates the bill is an appropriation bill.

A bold line indicates the bill is an appropriation bill.

'*' indicates that the text of the original bill was changed by some action.

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

North Carolina General Assembly
 Through House Committee on
 Commerce

Date: 09/27/2005
 Time: 10:29
 Page: 002 of 002
 Leg. Day: H-125/S-126

2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
S0729=	David W. Hoyle	CLARIFY USED MV INTEREST CHARGES UNDER RISA.	H	Ref To Com On Commerce	06-02-05	
56	Martin L. Nesbit	REVISE BUILDING COMMISSION MEMBERSHIP.	*H	Ref To Com On Commerce	06-02-05	
S0757	Martin L. Nesbit	ESC OMNIBUS ACT.	*HR	Ch. SL 2005-410	06-02-05	07-25-05
S0951	David W. Hoyle	PUBLIC-PRIVATE SOLID WASTE COLLECTION.	*H	Ref To Com On Commerce	06-02-05	

'\$' indicates the bill is an appropriation bill.

A bold line indicates the bill is an appropriation bill.

'*' indicates that the text of the original bill was changed by some action.

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

MINUTES

HOUSE COMMITTEE ON COMMERCE

March 9, 2005

The HOUSE COMMITTEE ON COMMERCE met on Wednesday, March 9, 2005, in Room 1228 of the Legislative Building at 1:00 P. M. The following were present: Representative Daughtridge, presiding Chair, Representative LaRoque, Co-Chair, Representatives Owens and Rayfield Vice-Chairs and Representatives Bordsen, Carney, Coleman, Current, Dickson, Faison, Frye, Jeffus, Jones, McLawhorn, Ray, Sauls, Stam, Vinson, Walend, Wiley, and Wray. Assisting with the meeting were Karen Cochran-Brown and Regan Walker, Staff Counsel, Dot Barber, Rachel Dupree, Patricia Freijes and Ann Jordan, Committee Assistants. Also assisting were Paul Curry and Bill Freeman House Sergeants-at-Arms and Jessica Barber, sponsored by Representative Preston, Carteret County, and Trey Faile, Sponsored by Representative Moore Cleveland County serving as Pages.


Representative Daughtridge called the meeting to order, introduced the House Sergeants-at Arms, the Committee Assistants, and the House Pages assisting with the meeting. He then asked the Co-Chair, Vice-Chairs, and members of the Committee to introduce themselves and tell their interest in being on the Committee.

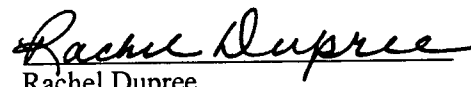
The order of business was **H.B. 27 – AN ACT REQUIRING THE EMPLOYMENT SECURITY COMMISSION TO CONSIDER THE ORDINARY BUSINESS ACTIVITIES OF EMPLOYERS WHEN SCHEDULING HEARINGS.** – sponsored by Representatives Glazier, Gibson, Justice and Carney. Representative Glazier explained that the bill would allow employers of small businesses to schedule the hearings at a time convenient to the operation of the business. He also explained that if the employer and employee were at an impasse, the Employment Security Commission would make the decision for scheduling.

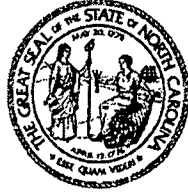
Discussion followed by Committee Members and Representative Owens motioned to give the bill a favorable report and the motion passed.

The Committee adjourned at 1:40 P.M.

Respectfully submitted,


Representative Bill Daughtridge
Presiding Chairman


Rachel Dupree
Committee Assistant



AGENDA

HOUSE COMMITTEE ON COMMERCE

March 9, 2005

1:00 A. M.

Room 1228 Legislative Building

OPENING REMARKS

Representative Bill Daughtridge, Chair

INTRODUCTION OF COMMITTEE

INTRODUCTION OF STAFF

BILL FOR CONSIDERATION

HB 0027 – ESC Hearings Accommodate Business Activities
Representative Glazier, Bill Sponsor

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

1

HOUSE BILL 27

Short Title: ESC Hearings Accommodate Business Activities. (Public)

Sponsors: Representatives Glazier, Gibson, Justice, Carney (Primary Sponsors);
Alexander, Brown, Daughtridge, Farmer-Butterfield, Goforth, Harrison,
LaRoque, McGee, Pate, Preston, Stiller, and Underhill.

Referred to: Commerce.

February 2, 2005

A BILL TO BE ENTITLED

1 AN ACT REQUIRING THE EMPLOYMENT SECURITY COMMISSION TO
2 CONSIDER THE ORDINARY BUSINESS ACTIVITIES OF EMPLOYERS
3 WHEN SCHEDULING HEARINGS.
4

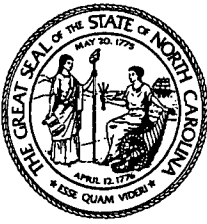
5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 96-15(c) reads as rewritten:

7 "(c) Appeals. – Unless an appeal from the adjudicator is withdrawn, an appeals
8 referee shall set a hearing in which the parties are given reasonable opportunity to be
9 heard. The conduct of hearings shall be governed by suitable regulations established by
10 the Commission. ~~Such~~ The regulations need not conform to common law or statutory
11 rules of evidence or technical or formal rules of procedure but shall provide for the
12 conduct of hearings in such manner as to ascertain the substantial rights of the parties.
13 The hearings may be conducted by conference telephone call or other similar means
14 provided that if any party files with the Commission prior written objection to the
15 telephone procedure, that party will be afforded an opportunity for an in-person hearing
16 at such place in the State as the Commission by regulation shall provide. The hearing
17 shall be scheduled for a time that, as much as practicable, least intrudes on and
18 reasonably accommodates the ordinary business activities of an employer and the return
19 to employment of a claimant. The appeals referee may affirm or modify the conclusion
20 of the adjudicator or issue a new decision in which findings of fact and conclusions of
21 law will be set out or dismiss an appeal when the appellant fails to appear at the appeals
22 hearing to prosecute the appeal after having been duly notified of the appeals hearing.
23 The evidence taken at the hearings before the appeals referee shall be recorded and the
24 decision of the appeals referee shall be deemed to be the final decision of the
25 Commission unless within 10 days after the date of notification or mailing of the
26 decision, whichever is earlier a written appeal is filed pursuant to such regulations as the
27 Commission may adopt. No person may be appointed as an appeals referee unless he or

1 she possesses the minimum qualifications necessary to be a staff attorney eligible for
2 designation by the Commission as a hearing officer under G.S. 96-4(m). No appeals
3 referee in full-time permanent status may engage in the private practice of law as
4 defined in G.S. 84-2.1 while serving in office as appeals referee; violation of this
5 prohibition shall be grounds for removal. Whenever an appeal is taken from a decision
6 of the appeals referee, the appealing party shall submit a clear written statement
7 containing the grounds for the appeal within the time allowed by law for taking the
8 appeal, and if such timely statement is not submitted, the Commission may dismiss the
9 appeal."

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



HOUSE BILL 27: ESC Hearings Accommodate Business Activities.

BILL ANALYSIS

Committee: House Commerce
Date: March 9, 2005
Version: First Edition

Introduced by: Rep. Glazier
Summary by: Karen Cochrane Brown
Committee Co-Counsel

SUMMARY: *House Bill 27 adds a requirement that the Employment Security Commission consider the ordinary business activities of employers when scheduling hearings for appeals from adjudicated determinations in unemployment benefit claims cases.*

CURRENT LAW:

Under current law, when certain issues are raised in connection with an unemployment benefits claim, such as the claimant's last bona fide employment or eligibility, adjudication is required to determine the issue. Adjudication is an informal investigation in which the adjudicator contacts the relevant parties to obtain information on the specific issue. After the conclusion of an investigative procedure, a determination is issued. A party aggrieved by the adjudicator's determination may file a written appeal.

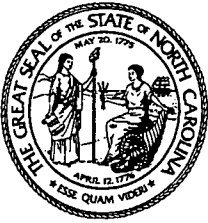
The appeal is heard by an Appeals Referee who has broad authority over the scheduling and conduct of the hearing. Under current regulations, the Appeals Referee is required to schedule a hearing as soon as possible after receipt of the appeal and file from the adjudicator. The law also authorizes the Appeals Referee to schedule telephone hearings when the local office is at least 40 miles from the employer's business, or upon agreement or request of the parties, or to meet standards for appeals promptness or efficient administration of the Employment Security Law. In addition, the Appeals Referee has authority to grant a continuance if a party, necessary witness, or legal representative has a prior commitment that conflicts with the hearing date or time and which cannot reasonably be rescheduled.

BILL ANALYSIS:

This bill would add a requirement that appeals "be scheduled for a time that, as much as practicable, least intrudes on and reasonably accommodates the ordinary business activities of an employer and the return to employment of a claimant."

This bill would become effective when it becomes law.

H27-SMRO-001



HOUSE BILL 27: ESC Hearings Accommodate Business Activities.

BILL ANALYSIS

Committee: House Commerce
Date: March 9, 2005
Version: First Edition

Introduced by: Rep. Glazier
Summary by: Karen Cochran Brown
Committee Co-Counsel

SUMMARY: *House Bill 27 adds a requirement that the Employment Security Commission consider the ordinary business activities of employers when scheduling hearings for appeals from adjudicated determinations in unemployment benefit claims cases.*

CURRENT LAW:

Under current law, when certain issues are raised in connection with an unemployment benefits claim, such as the claimant's last bona fide employment or eligibility, adjudication is required to determine the issue. Adjudication is an informal investigation in which the adjudicator contacts the relevant parties to obtain information on the specific issue. After the conclusion of an investigative procedure, a determination is issued. A party aggrieved by the adjudicator's determination may file a written appeal.

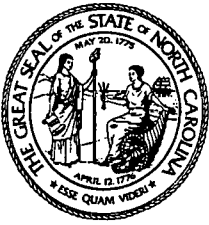
The appeal is heard by an Appeals Referee who has broad authority over the scheduling and conduct of the hearing. Under current regulations, the Appeals Referee is required to schedule a hearing as soon as possible after receipt of the appeal and file from the adjudicator. The law also authorizes the Appeals Referee to schedule telephone hearings when the local office is at least 40 miles from the employer's business, or upon agreement or request of the parties, or to meet standards for appeals promptness or efficient administration of the Employment Security Law. In addition, the Appeals Referee has authority to grant a continuance if a party, necessary witness, or legal representative has a prior commitment that conflicts with the hearing date or time and which cannot reasonably be rescheduled.

BILL ANALYSIS:

This bill would add a requirement that appeals "be scheduled for a time that, as much as practicable, least intrudes on and reasonably accommodates the ordinary business activities of an employer and the return to employment of a claimant."

This bill would become effective when it becomes law.

H27-SMRO-001



HOUSE BILL 27: ESC Hearings Accommodate Business Activities.

BILL ANALYSIS

Committee: House Commerce
Date: March 9, 2005
Version: First Edition

Introduced by: Rep. Glazier
Summary by: Karen Cochrane Brown
Committee Co-Counsel

SUMMARY: *House Bill 27 adds a requirement that the Employment Security Commission consider the ordinary business activities of employers when scheduling hearings for appeals from adjudicated determinations in unemployment benefit claims cases.*

CURRENT LAW:

Under current law, when certain issues are raised in connection with an unemployment benefits claim, such as the claimant's last bona fide employment or eligibility, adjudication is required to determine the issue. Adjudication is an informal investigation in which the adjudicator contacts the relevant parties to obtain information on the specific issue. After the conclusion of an investigative procedure, a determination is issued. A party aggrieved by the adjudicator's determination may file a written appeal.

The appeal is heard by an Appeals Referee who has broad authority over the scheduling and conduct of the hearing. Under current regulations, the Appeals Referee is required to schedule a hearing as soon as possible after receipt of the appeal and file from the adjudicator. The law also authorizes the Appeals Referee to schedule telephone hearings when the local office is at least 40 miles from the employer's business, or upon agreement or request of the parties, or to meet standards for appeals promptness or efficient administration of the Employment Security Law. In addition, the Appeals Referee has authority to grant a continuance if a party, necessary witness, or legal representative has a prior commitment that conflicts with the hearing date or time and which cannot reasonably be rescheduled.

BILL ANALYSIS:

This bill would add a requirement that appeals "be scheduled for a time that, as much as practicable, least intrudes on and reasonably accommodates the ordinary business activities of an employer and the return to employment of a claimant."

This bill would become effective when it becomes law.

H27-SMRO-001

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representatives **Daughtridge, Goforth, LaRoque, Rapp** (Chairs) for the Committee on
Commerce.

Committee Substitute for

H.B. 27 A BILL TO BE ENTITLED AN ACT REQUIRING THE EMPLOYMENT
SECURITY COMMISSION TO CONSIDER THE ORDINARY BUSINESS ACTIVITIES
OF EMPLOYERS WHEN SCHEDULING HEARINGS.

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

House Pages

Name Of Committee: Commerce Date: 3-9-05

1. Name: Jessica A Barber

County: Carteret

Sponsor: Preston

2. Name: Trey Faile

County: Cleveland

Sponsor: Tim Moore

3. Name: _____

County: _____

Sponsor: _____

4. Name: _____

County: _____

Sponsor: _____

5. Name: _____

County: _____

Sponsor: _____

Sgt-At-Arms

1. Name: Bill Freeman

2. Name: Paul Curry

3. Name: _____

4. Name: _____

5. Name: _____

MINUTES

HOUSE COMMITTEE ON COMMERCE

March 23, 2005 – 1:00 p.m.

Room 1228 LB

The HOUSE COMMITTEE ON COMMERCE met at 1:00 p.m. on Wednesday, March 23, 2005 in Room 1228 of the Legislative Building. The following members were present: Representatives Daughtridge, Goforth, LaRoque and Rapp, Chairs; Representatives Rayfield. Vice-Chair; and Representatives Allen, Barnhart, Bordsen, Brown, Carney, Cole, Coleman, Current, Dickson, England, Frye, Gillespie, Haire, Jeffus, Jones, McGee, Pierce, Sauls, Stam, Tucker, Vinson, Walend, and Wray. Assisting the meeting were Karen Cochrane-Brown and Walker Regan, Staff Counsel.

Chairman Goforth recognized Secretary James T. Fain, III from the NC Department of Commerce for his presentation. Secretary Fain said the Mission Statement for the Department of Commerce was “to improve the economic well-being and quality of life for all North Carolinians. He also discussed the Vision of the Department which included: 1) a state of well-educated people, 2) a state that invests in infrastructure, 3) a state that differentiates itself in a global economy, 4) a state with an exception business climate and 5) a state with an economy to create sustainable new jobs. He went on to discuss the Key Challenges and the Long Term Strategies and lastly, the roles of the NC Economic Development Board and the Department of Commerce.

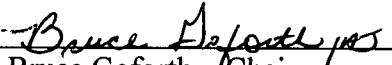
The mission of The NC Economic Development Board is to serve as the state’s top economic development policy advisory body and is responsible for recommending economic development policy to the Governor. The Board organized committees to focus on seven major areas of economic development: Community Readiness and Urban Development; Infrastructure, Transportation and the Environment; Recruitment and Retention; Rural Development Issues; Science, Technology and University Outreach; Tourism, Film, Sports, Arts and Cultural Resources; and Workforce Development and Education. (Attachment 1A)

Secretary Fain also discussed their Legislative Priorities which included Program and Policy Recommendations and Preliminary Budget Recommendations. (Attachment 1B)

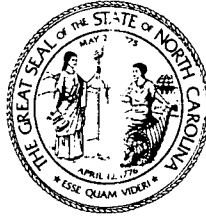
Chairman Goforth recognized President H. Martin Lancaster with the NC Community College System for his presentation. President Lancaster briefly summarized their Economic & Workforce Development Mission which included supporting North Carolina’s community colleges to provide high quality, accessible training and services; enabling North Carolinians to acquire knowledge and skills to obtain and maintain prosperous careers, and enhance their quality of life; providing North Carolina businesses and industries with a world-class workforce and creating a competitive advantage as a result of their presence in North Carolina. (Attachment 2)

President Lancaster began his discussion of Economic & Workforce Development Solution/Opportunities but due to time constraints, he was asked to return to finish his presentation at the next meeting.

Meeting adjourned at 1:55 p.m.


Rep. Bruce Goforth – Chairman


Ann Jordan – Committee Assistant



HOUSE COMMITTEE ON COMMERCE

Wednesday, March 23, 2005

1:00 p.m. –Room 1228
Legislative Building

I. Opening Remarks – Chairman Bruce Goforth

II. Program

Secretary James T. Fain, III
NC Department of Commerce

President H. Martin Lancaster
NC Community College System

III. Adjournment

North Carolina Department of Commerce

Vision

- A state of well-educated people, trained to do the work of the 21st Century and to think critically – to solve problems and to innovate – to create the new ideas to drive productivity and reduced costs, new product creation and hence new entrepreneurial enterprises---and new jobs.
- A state where wise, consistent investment in infrastructure, the germination of new science and practical technology and the quality of life will sustain our reputation and tradition as the state of innovation.
- A state which differentiates itself in a global economy as the state of knowledge workers – where business succeeds because we have better, more creative workers and because we're the state of new ideas and approaches – always on the cutting edge – a true state of minds
- An exceptional business climate characterized by low business costs, high value services and a peerless quality of life.
- An economy which creates sustainable new jobs -- based on innovation, commercialization of research and a skilled, continuously trained workforce – and which creates new jobs at a pace that will always exceed the loss of jobs no longer competitive in a globally open and dynamic marketplace.

Mission Statement

To improve the economic well-being and quality of life for all North Carolinians.

Key Challenges

- How do we nurture the transformation of our economy from a predominantly labor-intensive manufacturing base to one which features nimble, knowledge-driven enterprises and sustainable jobs in a fiercely competitive global economy?
- How do we promote widely shared prosperity in all parts of our state? How do we create One North Carolina?

Long Term Strategies

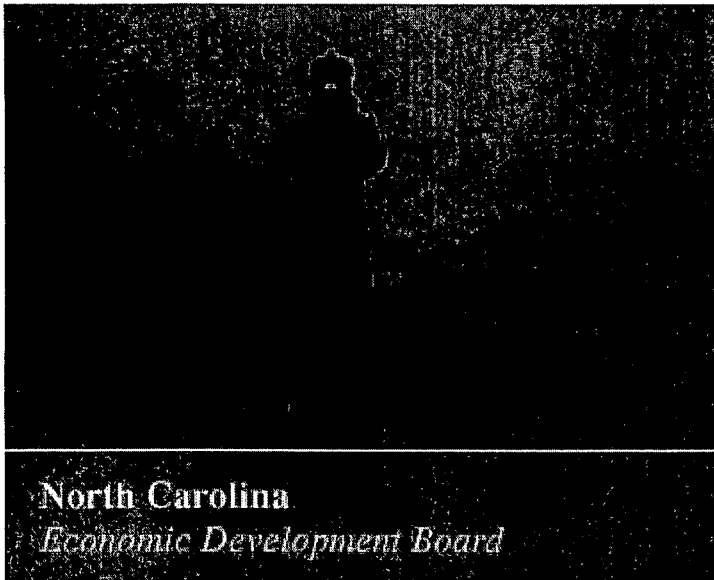
- Invest in education and train a globally competitive workforce.
- Develop communities prepared for economic success and well-connected with a comprehensive, contemporary infrastructure.
- Nurture innovation and the commercialization of ideas through investment in science, technology and university outreach –to bring the innovations of the lab and classroom into the marketplace.
- Maintain an exceptional business climate with affordable costs, which attracts new companies to North Carolina, supports the growth and success of existing businesses – large and small – and encourages entrepreneurial startups.

(OVER)

Roles of N.C. Economic Development Board and Department of Commerce

The Board's Comprehensive Economic Development Strategic Plan and the Commerce Department's programs, advocacy and collaborations are organized around these long-term strategies

- The Board's Plan, revised in Fall 2004, is available at the Board's website: www.ncedb.com.
- Examples of activities by Commerce Department divisions to address strategic objectives:
 - The Division of Community Assistance provides planning and technical assistance and HUD-funded grants for community development to local governments.
 - The Division of Employment and Training re grants federal Workforce Investment Act funds to the area workforce boards to pay for worker training programs.
 - The Office of Science and Technology works to identify technologies of the future and to design programs to ensure N.C. is positioned to become a world leader in developing and commercializing those technologies.



Board Members & Profiles • Meetings • Strategic Plan • Duties, Task & Responsibilities

2005 Priorities

Strategic Plans

- [2004 Overview](#)
- [Printable version of 2004 Plan](#)
- [2002 Strategic Plan](#)
- [1999 Strategic Plan](#)

Our Mission

The North Carolina Economic Development Board serves as the state's top economic development policy advisory body and is responsible for recommending economic development policy to the Governor.

News

Click [here](#) to view some recent industry reports and North Carolina State agency publications

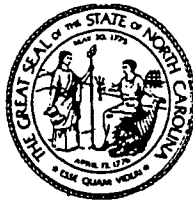
In November 2001, Governor Easley charged the North Carolina Economic Development Board with developing a comprehensive development plan for the state that will take innovative and strategic approaches to such issues as incentives, recruitment and workforce development, development of future technologies, coordination of state agencies, rural development and market access. The plan was completed in October 2002 and will continue to play a key role in its implementation through advocacy and ongoing coordination with the state's economic development agencies. The strategic plan was updated again in fall 2004. Please see [2004 Strategic Plan Overview](#)

To formulate this plan, the Board's seven committees examined issues in their designated policy focus areas and made recommendations to the Board for final action. The Board has organized the committees to focus on seven major areas of economic development in

- Community Readiness and Urban Development
- Infrastructure, Transportation and the Environment
- Recruitment and Retention
- Rural Development Issues
- Science, Technology and University Outreach
- Tourism, Film, Sports, Arts and Cultural Resources
- Workforce Development and Education

Each committee was aided by staff of a corresponding Department of Commerce division and by advisors from other state agencies, companies and non-profit organizations.

For information about the North Carolina Economic Development Board and North Carolina's state strategic plan for economic development, contact the Department of Commerce Policy, Research and Strategic Planning Division at 919 715-5995.



Michael F. Easley, Governor

James T. Fain III, Secretary

North Carolina Department of Commerce

LEGISLATIVE PRIORITIES 2005 General Assembly Short Session

Department of Commerce

Program and Policy Recommendations

- Replace the William S. Lee Act with a new series of tax credits for new and expanding industry.
 - Create new stand-alone credits for activities such as job creation and investment in machinery and equipment and real property.
 - Credits should be simple, accountable, and provide incentive for rural investment.
- Extend sunset date for the Job Development Investment Grant (JDIG) program to December 31, 2007.
- Provide additional funding as needed to the One NC Fund for continued recruitment of competitive projects.
 - Continue to authorize portion of funds for administration of incentive programs.
- Establish a workable schedule for corporate income tax relief to North Carolina's businesses through, e.g., appropriate reductions in the tax rate or exemptions from the tax.
- Permit the sunset of the 8.25% upper income tax bracket to increase competitiveness.
- Develop and fund effective programs to provide angel, pre-seed and seed capital for entrepreneurial businesses and to speed technology transfer from universities to N.C. entrepreneurs.
 - Treasurer has recommended use of Escheats Fund as a vehicle for such investments.
- Establish incentives to secure new film productions to North Carolina.

Preliminary Budget Recommendations


- Authorize and fund two new economic developer positions at DOC dedicated to working directly with the motorsports and biotechnology industries.
- Provide funding and positions needed to make the DOC IT and MIS systems competitive with other states:
 - Upgrade the state's Commerce website and computer network – N.C.'s "front door" to businesses considering relocation and state services.
 - Upgrade the website and computer system for the DOC Business ServiCenter and Business License Information Office to increase services to small businesses.

- Secure continued funding to build a world class, web-based Economic Development Intelligence System (EDIS) to help state, regional and local economic teams gather critical data needed to recruit business, identify clusters, and strategically plan for state and regional economic development.
- Provide funding for DOC to “brand” and market the State of North Carolina as a whole, nationally and internationally, as a location for business
- Provide funding to enable N.C. Board of Science & Technology to coordinate development of policies to foster growth of science and technology-oriented businesses.
- Provide funding to support regional community planners for the popular 21st Century Communities Program to help disadvantaged counties plan for economic development.

Education, Workforce Development and Innovation

- Support the Department of Community Colleges’ requests for funding and authorization to enhance N.C.’s workforce training programs, including:
 - Funding and authorization for a Customized Industrial Training program to provide training to businesses and incumbent workers that do not qualify under FIT and NEIT program requirements.
 - A 100% funding formula for non-degree continuing education programs that teach job skills to workers.
 - Funding for needed training equipment to reduce waiting lists for classes.
- Support the University of North Carolina’s efforts to expand its role in economic development, including:
 - Funding for the UNC economic development portal.
 - Funding for NC partnership with the Defense Department to foster bio-defense research and industries.
 - Funding for the UNC business accelerator program.
- Support UNC’s request for increased funding to the Small Business and Technology Development Center (SBTDC) to boost services to small businesses and meet federal matching fund requirements.

**Economic & Workforce Development
House Commerce Committee
H. Martin Lancaster, President**



ECONOMIC & WORKFORCE DEVELOPMENT

**NORTH CAROLINA
COMMUNITY COLLEGE SYSTEM**

NCCCS, March 2005

**Economic & Workforce Development
Mission**

Support North Carolina's community colleges to provide high quality, accessible training and services

Enable North Carolinians to acquire knowledge and skills to obtain and maintain prosperous careers, enhance their quality of life

Provide North Carolina businesses and industries with a world-class workforce

Create a competitive advantage as a result of their presence in North Carolina.

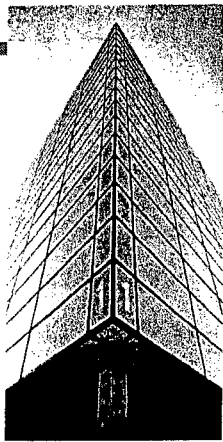
NCCCS, March 2005

Economic & Workforce Development Solutions/Opportunities

- **New & Expanding Industry Training**
- **Workforce Continuing Education**
- **Small Business Center Network**
- **Human Resources Development**
- **Focused Industrial Training**
- **Workforce Initiatives**
- **BioNetwork**

NCCCS, March 2005

Economic Development Issues and Opportunities



Rapid changes in the economic structures and business cycles worldwide effects the workforce

Workforce that is multi-skilled, motivated, creative and innovative is the key

Information economy requires a workforce that constantly upgrades itself to accommodate new technologies, procedures and opportunities

Speed of change, churn in the economy and the impact on the workforce is faster: the new normal in our world

NCCCS, March 2005

**ECONOMIC DEVELOPMENT
OPPORTUNITIES**

**Accommodate business/industry growth,
retention and stabilization via new programs**

**Stimulate new entrepreneurial creation and
expansions to small business enterprises
statewide**

**Provide for newer, higher technology/higher
skilled programs for economic structures**

Ensure the continuation of the BioNetwork

NCCCS, March 2005

Customized Industry Training: HB 552 (S700)

•Maintains the local tax base

•Augments NEIT & FIT

•Retains jobs in local NC areas

•Provides for faster recovery of
local economies and creates
reemployment sooner

•New capital/technologies,
higher wages, annual report

•\$4,000,000 FY05-06 & 06-07



NCCCS, March 2005

HB 553 (S378)
**Increase Funding for Small Business Center
Network**

**Stimulates enhancements of training, counseling, workshops
and seminars designed to start and nurture new business**

**Available for "all" areas of the state and creates stronger tax
base for the local communities**

Enhances contact with entrepreneurs in local economies...

Expand instructional offerings in wider variety of offering

Systemic professional development

\$1,000,000 FY 05-06 and \$1,000,000 FY 06-07

NCCCS, March 2005

HB 554 (S378)
**Increase Community College Equipment
Funds**

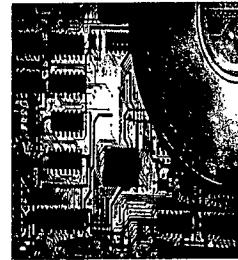
**Provide the tools to educate and train the existing
workforce and the new workforce for growth
industries**

**Automated and advanced manufacturing requires
sophisticated skills...**

Allied Health requires technological skills...

**Growth industries (biotech, aviation, automotive,
logistics/warehousing, etc.) requires new tools...**

\$10,000,000 FY 05-06 and \$10,000,000 FY 06-07



NCCCS, March 2005

HB 573 (S613)

Fund High Cost Community College Programs

~~Not all educational/training~~ programs are created equal...some are more expensive to operate

Equipment, staff, facilities and ongoing connection to the healthcare industry is demanded...

Desperate need for additional personnel to fill vacant positions in many healthcare operations statewide

Employment opportunities abound!

\$21,000,000 FY 05-06 and \$21,000,000 FY 06-07

NCCCS, March 2005

HB 588 (S676)

Funds for Community College Biotechnology Centers

~~Significant job~~ growth opportunities

•Statewide effort: “genuine progress”

•Golden Leaf “seed money clearly stated”

•From 8 to 48 colleges now engaged and from a few counties to 80 now involved/growing

•\$7,000,000 FY05-06 and \$7,000,000 FY06-07

NCCCS, March 2005

HB 577 (=S565)
Amend Umstead Act/Comm. Coll. Facilities

Section 1. G.S. 666-58 © is amended by adding a new subdivision to read:



“(c) The provisions of subsection (a) shall not prohibit:

(3c) The use of community college facilities by a private business enterprise that has loaned or donated instructional equipment to the college to demonstrate that equipment to customers. This use of college facilities shall be in accordance with policies adopted by the board of trustees of the college.”

NCCCS, March 2005

HB 582
In-State Community College Tuition for NC Workers

AN ACT TO MAKE ADDITIONAL EMPLOYEES WORKING IN THE STATE AND ADDITIONAL FAMILY MEMBERS OF EMPLOYEES TRANSFERRED INTO THE STATE ELIGIBLE FOR IN-STATE COMMUNITY COLLEGE TUITION.

SECTION 1. G.S. 115D-39(a) reads as rewritten:

“...The legal resident limitation with respect to tuition, set forth in G.S. 116-143.1 and G.S.116-143.3, shall apply to students attending institutions operating pursuant to this Chapter, except that the following shall be charged the in-State tuition rate:

- (1) An employee domiciled outside the State who is employed at a North Carolina business location;
- (2) A dependent relative of a person transferred by a company into the State, while sharing the domicile of that person;
- (3) A refugee who lawfully entered the United States and who is living in this State; and
- (4) A nonresident of the United States who has resided in North Carolina for a 12-month qualifying period and has filed an immigrant petition.”

NCCCS, March 2005

HB 583

Community College/Lead Agency for Job Training

~~AN ACT DESIGNATING~~ **THE COMMUNITY COLLEGE SYSTEM AS THE PRIMARY LEAD AGENCY FOR DELIVERING WORKFORCE DEVELOPMENT TRAINING, LITERACY, AND ADULT EDUCATION IN THE STATE.**

“...The North Carolina Community College System is designated as the primary lead agency for delivering workforce development training, literacy, and adult education programs in the State.”

The delivery network is well established and effective

Our focus is service to the local populations in service areas

NCCCS, March 2005

HB 622

Community College Massage Therapy Programs

~~AN ACT TO EXEMPT~~ **COMMUNITY COLLEGE MASSAGE AND BODYWORK THERAPY FROM LICENSURE BY THE NORTH CAROLINA BOARD OF MASSAGE AND BODYWORK THERAPY.**

Section 1. G.S. 90-631 as rewritten:

“...The Board shall maintain a list of approved schools and a list of community college programs operating pursuant to subsection (b) of this section.

(b) A massage and bodywork therapy program operated by a North Carolina community college that is accredited by the Southern Association of Colleges and Schools is exempt from the approval process, licensure process, or both, established by the board.

NCCCS, March 2005

HB 622

Community College Massage Therapy Programs

~~Students who complete~~ the program shall qualify for licenses from the Board as if the program were approved, licensed, or both, by the Board.”

The accountability, type of training programs for which the SACs accreditation requirements are set forth will allow us to ensure quality and comply with the standards necessary by the State Board of Community Colleges in serving the needs of the local markets in the State.

NCCCS, March 2005

Economic and Workforce Development

Economic Development equals Workforce Development because of the foundations and the people required to fuel the economic engines in North Carolina.



Our commitment is to provide the resources, expertise and attention to the needs of the Industrial Sectors and the people who must staff them.

Your leadership, confidence and trust in our abilities accompanied with the funding and authority to fulfill these needs will allow us to continue the services to these Industry Sectors.

NCCCS, March 2005

NCCCS and Economic Development



Our State and local communities are suffering from the some of the most notable economic changes in our history that impact our collective economic prosperity and future.

If we have the tools to accommodate the changes we can continue to contribute significantly to the solutions required for success. If not, we will suffer the consequences in each of our communities and collectively at the State level.

We look forward to working with members of the House, Senate and the Governor to meet the challenges that face us and to embrace the opportunities the economy has presented.

NCCCS, March 2005

NCCCS and Economic Development

Thank You!

For Your Work

For Your Confidence in Our System Statewide

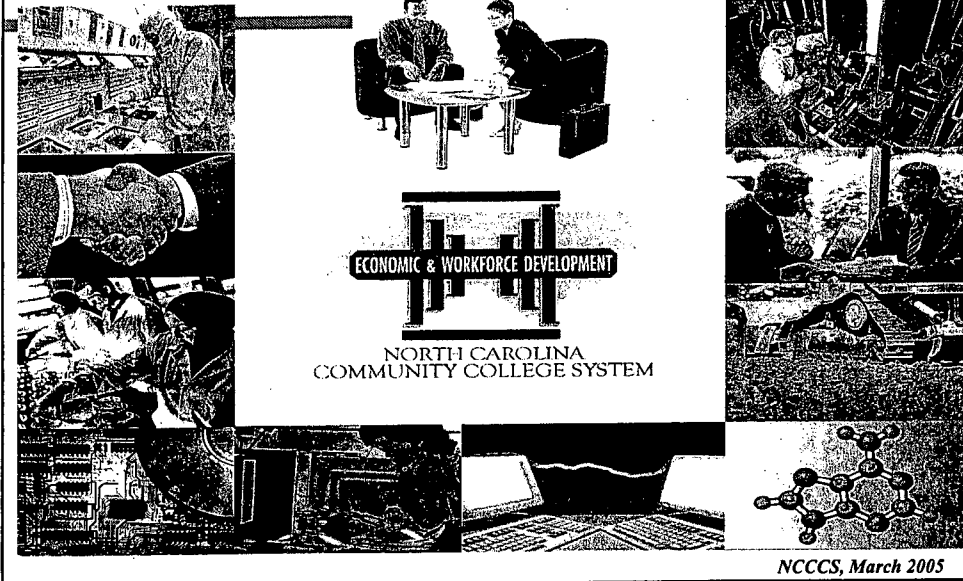
For Your Trust in Our Commitment to the Citizens

For Your Support of Our Efforts to Serve the Industrial Sectors



NCCCS, March 2005

**Economic & Workforce Development
House Commerce Committee
H. Martin Lancaster, President**



NCCCS, March 2005

COMMERCE COMMITTEE

March 23, 2005

Sgt-At-Arms

Bill Freeman

Thomas Wilder

Pages and Sponsor

Will Fanning / house Page Sponsor - Rep. Frye

Hudson Goldsmith / house page Sponsor - Rep. Weiss

Lorenzo Johnson / House Page Sponsor - Speaker Black

Ann Jordan - May Day. Assistant

VISITOR REGISTRATION SHEET

COMMERCE

March 23, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rebecca Kay	Rep. Pryor Gibson - intern
Hal Miller	NCACECT
Denise A. Sesano	Dept. of Commerce
Alice Garland	NC DOC
Tony C. Lail	NC DOC
Caroline Kozniowski	NC Tech. Association
Lisa Martin	NC Home Builders
Mary Thomson	REBIC
DAVID BARRETT	Poyner Spruell
SANDY JORDAN	NC DEPT. OF COMMERCE
DOIN HOBART	NC DOC

VISITOR REGISTRATION SHEET

COMMERCE

March 23, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
Michael Nelson	CONSERVATION COUNCIL OF NC
John McAlister	Duke Energy
Kathy Hawkins	Progress Energy
K Bolta	AC-T
Sra Piercey	Duke Energy
Martin Lancaster	NCCCS
Lee Hodge	KCUH

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
2005-2006 SESSION**

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

DAY & DATE: Wednesday, March 23, 2005

TIME: 1:00 p.m.

LOCATION: Room 1228

The Committee will hear presentations by:

Secretary James T. Fain, III – NC Department of Commerce

President H. Martin Lancaster – NC Community College System

Respectfully,

Representatives Daughtridge, Goforth, LaRoque
and Rapp - Chairmen

I hereby certify this notice was filed by the committee assistant at the following offices at 1:30 p.m. on March 17, 2005.

___ Principal Clerk
___ Reading Clerk - House Chamber

Ann Jordan (Committee Assistant)

MINUTES

HOUSE COMMITTEE ON COMMERCE

March 30, 2005

The HOUSE COMMITTEE ON COMMERCE met on Wednesday, March 30, 2005, in Room 643 LOB at 1:00 p.m. The following members were present: Representatives Daughtridge, Goforth, LaRoque and Rapp, Chairs; Representatives Owen and Rayfield, Vice Chairs; Representatives Allen, Almond, Barnhart, Bordsen, Brown, Carney, Cole, Coleman, Current, Dickson, England, Faison, Frye, Gillespie, Haire, Jeffus, Jones, McGee, McLawhorn, Pierce, Ray, Sauls, Stam, Vinson, Walend, Wiley, Wray. Assisting with the meeting were Karen Cochran-Brown and Walker Reagan, Staff Counsel; Dot Barber, Rachel Dupree, Patricia Freijes and Ann Jordan, Committee Assistants; Linda Fuller, Bill Freeman and Earl Coker, House Sgt.-at-Arms; House Pages Benjamin LaRoque of Carteret County, sponsored by his father, Rep. LaRoque and Harris Walker of Nash County, sponsored by Rep. Daughtridge. Representative Rapp introduced Michael Goss with the Legislative Bill Drafting Division, who will assist Staff Counsels on House Bill 392.

Representative Ray Rapp called the meeting to order and welcomed all persons in attendance. Representative Rapp recognized Mr. Martin Lancaster, President of the North Carolina Community College System, who was invited back to complete his presentation from the previous meeting on the Community College System. He spoke on economic and workforce development in North Carolina and the critical role played by the Community Colleges (Attachment I). President Lancaster mentioned several bills that are before the General Assembly that he and the System are interested in during this session. President Lancaster answered several questions from the membership. A copy of his handout to the members is attached.

Chairman Rapp stated that House Bill 533 (Amend Eastern Region Board) sponsored by Representatives McLawhorn, LaRoque, Warren and Tolson, would not be discussed or considered at this meeting.

Chairman Rapp also stated that at the request of the Introducer, Representative Goforth, House Bill 630 (Manufactured Homes Escrow Accounts) will be carried over until the next scheduled meeting.

Representative Stephen LaRoque was recognized by Chairman Rapp to explain House Bill 392 (Amend Definition of Malt Beverage in ABC Law). Representative LaRoque offered a proposed committee substitute for this bill and moved that the Proposed Committee Substitute for H.B. 392 be adopted. Motion carried. Representative LaRoque explained the Proposed Committee Substitute for H.B. 392 to the members. Representative LaRoque recognized Ms. Julie J. Bradford who spoke in support of the PCS for H.B. 392. Ms. Bradford is a beer writer and the editor and co-owner of "All About Beer Magazine" located in Durham, N. C. She is also the co-creator of "Pop the


Cap". She stated that North Carolina is one of only six states in the U.S. who have a limit on the alcohol content of beer. Chairman Rapp recognized Mr. Brad Wynn, Brew Master at Edenton Brewing Company in Raleigh who also spoke in support of this bill.

Chairman Rapp recognized the Reverend Mark Creech, Executive Director of the Christian Action League of North Carolina, and Ms. Becki Gray with Mutual Distributing Company, who both spoke in opposition to this proposed legislation.


Representative Rapp announced that the Committee would not be voting on this Proposed Committee Substitute for H.B. 392 at this meeting.

There being no further business, the meeting was adjourned at 2:00 pm.

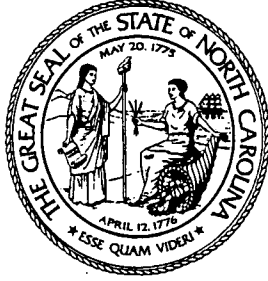
Respectfully submitted,



Representative Ray Rapp
Presiding Chairman



Dot H. Barber
Committee Assistant



HOUSE COMMITTEE ON COMMERCE

March 30, 2005

LOB 643

1:00 PM

Presiding Chair – Representative Stephen LaRoque

I. Call to Order

II. Program

**H. Martin Lancaster, President
NC Community College System**

**HB 533- Amend Eastern Region Board (Representatives McLawhorn,
LaRoque, Warren, and Tolson)**

**HB 392- Amend Definition of Malt Beverage in ABC Law (Representatives
LaRoque, Earle, Holliman, and Daughtridge)**

HB 630- Manufactured Homes Escrow Accounts (Representative Goforth)

III. Adjournment



BILL ANALYSIS

HOUSE BILL 392: Amend Definition of Malt Beverage in the Alcoholic Beverage Control Law.

Committee: House Commerce
Date: March 30, 2005
Version: Proposed Committee Substitute
H392-CSMA-2 [v.1]

Introduced by: Rep. LaRoque
Summary by: O. Walker Reagan,
Committee Co-Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 392 would remove the current maximum limit on alcoholic content of malt beverages of six percent. The bill would also make conforming technical changes to the revenue laws to refer to define ABC terms by cross reference to the Alcoholic Beverage Control Law.*

CURRENT LAW: Current law defines malt beverages as "beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage containing at least one-half of one percent (0.5%), and not more than six percent (6.0%), alcohol by volume." Sales of malt beverages with alcohol content in excess of 6.0% are illegal in the State.

BILL ANALYSIS: Section 1 of the bill would remove the maximum cap of 6.0% and would allow these malt beverages to be sold in the State regardless of their alcoholic content.

Section 2 of the bill amends the definition section of Article 20 of Chapter 105 - Revenue Laws that deals with alcoholic beverage license and excise taxes. These changes conform the definition in the revenue statutes to the definitions in the alcoholic beverage control statutes by cross-reference to Chapter 18B – Alcoholic Beverage Control Act.

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

H392-SMRU-001

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

D

HOUSE BILL 392
PROPOSED COMMITTEE SUBSTITUTE H392-CSMA-2 [v.1]

3/24/2005 1:44:32 PM

Short Title: Amend Definition of Malt Beverage in ABC Law.

(Public)

Sponsors:

Referred to:

February 28, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DEFINITION OF A MALT BEVERAGE UNDER THE
ALCOHOLIC BEVERAGE CONTROL LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-101(9) reads as rewritten:

"(9) 'Malt beverage' means beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage containing at least one-half of one percent (0.5%), and not more than six percent (6%), one-half of one percent (0.5%) alcohol by volume."

SECTION 2. G.S. 105-113.68(a) reads as rewritten:

"(a) Definitions. – As used in this Article, unless the context clearly requires otherwise:

- (1) ~~"ABC Commission" means ABC Commission. – the~~ The North Carolina Alcoholic Beverage Control Commission established under G.S. 18B-200.
- (2) Repealed by Session Laws 2004-170, s. 6, effective August 2, 2004.
- (3) ~~"ABC permit" means a written or printed authorization issued by the ABC Commission pursuant to Chapter 18B, other than a purchase transportation permit. Unless the context clearly requires otherwise, "ABC permit" means a presently valid permit.~~ ABC permit. – Defined in G.S. 18B-101.
- (4) ~~"Alcoholic beverage" means a beverage containing at least one half of one percent (0.5%) alcohol by volume, including malt beverages, unfortified wine, fortified wine, spirituous liquor, and mixed beverages.~~ Alcoholic beverage. – Defined in G.S. 18B-101.
- (5) ~~"Fortified wine" means any wine, of more than sixteen percent (16%) and no more than twenty four percent (24%) alcohol by volume, made by fermentation from grapes, fruits, berries, rice, or honey; or by the~~

1 ~~addition of pure cane, beet, or dextrose sugar; or by the addition of~~
2 ~~pure brandy from the same type of grape, fruit, berry, rice, or honey~~
3 ~~that is contained in the base wine and produced in accordance with the~~
4 ~~regulations of the United States.~~Fortified wine. – Defined in
5 ~~G.S. 18B-101.~~

- 6 (6) ~~"License" means a License. – A certificate, issued pursuant to this~~
7 ~~Article by a city or county, that authorizes a person to engage in a~~
8 ~~phase of the alcoholic beverage industry.~~
- 9 (7) ~~"Malt beverage" means beer, lager, malt liquor, ale, porter, and any~~
10 ~~other brewed or fermented beverage containing at least one-half of one~~
11 ~~percent (0.5%) and not more than six percent (6%) alcohol by~~
12 ~~volume.~~Malt beverage. – Defined in G.S. 18B-101.
- 13 (8) ~~"Person" has the same meaning as in G.S. 105-228.90.~~Person. –
14 ~~Defined in G.S. 105-228.90.~~
- 15 (9) ~~"Sale" means a transfer, trade, exchange, or barter, in any manner or~~
16 ~~by any means, for consideration.~~Sale. – Defined in G.S. 18B-101.
- 17 (10) ~~"Secretary" means the Secretary. – The Secretary of Revenue.~~
- 18 (11) ~~"Spirituous liquor" or "liquor" means distilled spirits or ethyl alcohol,~~
19 ~~including spirits of wine, whiskey, rum, brandy, gin, and all other~~
20 ~~distilled spirits and mixtures of cordials, liqueurs, and premixed~~
21 ~~cocktails in closed containers for beverage use regardless of the~~
22 ~~dilution.~~Spirituous liquor or liquor. – Defined in G.S. 18B-101.
- 23 (12) ~~"Unfortified wine" means any wine of sixteen percent (16%) or less~~
24 ~~alcohol by volume made by fermentation from grapes, fruits, berries,~~
25 ~~rice, or honey; or by the addition of pure cane, beet, or dextrose sugar;~~
26 ~~or by the addition of pure brandy from the same type of grape, fruit,~~
27 ~~berry, rice, or honey that is contained in the base wine, and produced~~
28 ~~in accordance with the regulations of the United States.~~Unfortified
29 ~~wine. – Defined in G.S. 18B-101.~~
- 30 (13) ~~"Wholesaler or importer" when~~Wholesaler or importer. – When used
31 ~~with reference to wholesalers or importers of wine or malt beverages~~
32 ~~includes resident wineries that sell their wines at retail and resident~~
33 ~~breweries that produce fewer than 310,000 gallons of malt beverages~~
34 ~~per year.~~
- 35 (14) ~~"Wine" means unfortified~~Wine. – Unfortified and fortified wine.
- 36 (15) ~~"Wine shipper permittee" means a~~Wine shipper permittee. – A winery
37 ~~that holds a wine shipper permit issued by the ABC Commission under~~
38 ~~G.S. 18B-1001.1."~~

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 392

Short Title: Amend Definition of Malt Beverage in ABC Law. (Public)

Sponsors: Representatives LaRoque, Earle, Holliman, Daughtride (Primary Sponsors); L. Allen, Carney, Fisher, Glazier, Harrison, Johnson, Luebke, Owens, and Ross.

Referred to: Alcoholic Beverage Control.

February 28, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DEFINITION OF A MALT BEVERAGE UNDER THE ALCOHOLIC BEVERAGE CONTROL LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-101(9) reads as rewritten:

"(9) 'Malt beverage' means beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage containing at least ~~one-half of one percent (0.5%), and not more than six percent (6%),~~ one-half of one percent (0.5%) alcohol by volume."

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

**Economic & Workforce Development
House Commerce Committee
H. Martin Lancaster, President**



NCCCS, March 2005

**Economic & Workforce Development
Mission**

Support North Carolina's community colleges to provide high quality, accessible training and services

Enable North Carolinians to acquire knowledge and skills to obtain and maintain prosperous careers, enhance their quality of life

Provide North Carolina businesses and industries with a world-class workforce

Create a competitive advantage as a result of their presence in North Carolina.

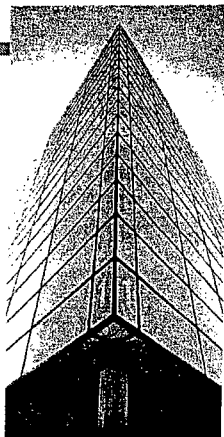
NCCCS, March 2005

Economic & Workforce Development Solutions/Opportunities

- **New & Expanding Industry Training**
- **Workforce Continuing Education**
- **Small Business Center Network**
- **Human Resources Development**
- **Focused Industrial Training**
- **Workforce Initiatives**
- **BioNetwork**

NCCCS, March 2005

Economic Development Issues and Opportunities



Rapid changes in the economic structures and business cycles worldwide effects the workforce

Workforce that is multi-skilled, motivated, creative and innovative is the key

Information economy requires a workforce that constantly upgrades itself to accommodate new technologies, procedures and opportunities

Speed of change, churn in the economy and the impact on the workforce is faster: the new normal in our world

NCCCS, March 2005

**ECONOMIC DEVELOPMENT
OPPORTUNITIES**

**Accommodate business/industry growth,
retention and stabilization via new programs**

**Stimulate new entrepreneurial creation and
expansions to small business enterprises
statewide**

**Provide for newer, higher technology/higher
skilled programs for economic structures**

Ensure the continuation of the BioNetwork

NCCCS, March 2005

Customized Industry Training: HB 552 (S700)

•Maintains the local tax base

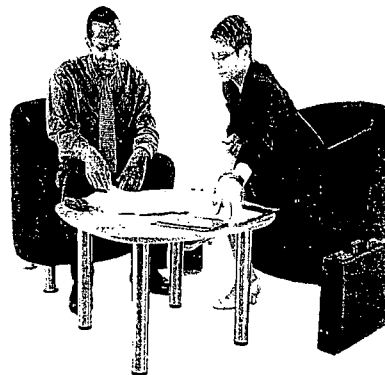
•Augments NEIT & FIT

•Retains jobs in local NC areas

•Provides for faster recovery of
local economies and creates
reemployment sooner

•New capital/technologies,
higher wages, annual report

•\$4,000,000 FY05-06 & 06-07



NCCCS, March 2005

HB 553 (S378)
**Increase Funding for Small Business Center
Network**

Stimulates enhancements of training, counseling, workshops
and seminars designed to start and nurture new business

Available for "all" areas of the state and creates stronger tax
base for the local communities

Enhances contact with entrepreneurs in local economies...

Expand instructional offerings in wider variety of offering

Systemic professional development

\$1,000,000 FY 05-06 and \$1,000,000 FY 06-07

NCCCS, March 2005

HB 554 (S378)
**Increase Community College Equipment
Funds**

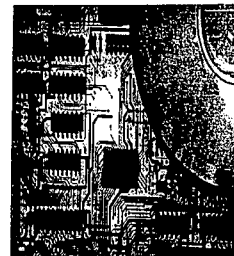
Provide the tools to educate and train the existing
workforce and the new workforce for growth
industries

Automated and advanced manufacturing requires
sophisticated skills...

Allied Health requires technological skills...

Growth industries (biotech, aviation, automotive,
logistics/warehousing, etc.) requires new tools...

\$10,000,000 FY 05-06 and \$10,000,000 FY 06-07



NCCCS, March 2005

HB 573 (S613)

Fund High Cost Community College Programs

~~Not all educational/training~~ programs are created equal...some are more expensive to operate

Equipment, staff, facilities and ongoing connection to the healthcare industry is demanded...

Desperate need for additional personnel to fill vacant positions in many healthcare operations statewide

Employment opportunities abound!

\$21,000,000 FY 05-06 and \$21,000,000 FY 06-07

NCCCS, March 2005

HB 588 (S676)

Funds for Community College Biotechnology Centers

~~•Significant job-growth~~ opportunities

•Statewide effort: “genuine progress”

•Golden Leaf “seed money clearly stated”

•From 8 to 48 colleges now engaged and from a few counties to 80 now involved/growing

•\$7,000,000 FY05-06 and \$7,000,000 FY06-07

NCCCS, March 2005

HB 577 (=S565)
Amend Umstead Act/Comm. Coll. Facilities

Section 1. G.S. 666-58 © is amended by adding a new subdivision to read:



“(c) The provisions of subsection (a) shall not prohibit:

(3c) The use of community college facilities by a private business enterprise that has loaned or donated instructional equipment to the college to demonstrate that equipment to customers. This use of college facilities shall be in accordance with policies adopted by the board of trustees of the college.”

NCCCS, March 2005

HB 582
In-State Community College Tuition for NC Workers

AN ACT TO MAKE ADDITIONAL EMPLOYEES WORKING IN THE STATE AND ADDITIONAL FAMILY MEMBERS OF EMPLOYEES TRANSFERRED INTO THE STATE ELIGIBLE FOR IN-STATE COMMUNITY COLLEGE TUITION.

SECTION 1. G.S. 115D-39(a) reads as rewritten:

“...The legal resident limitation with respect to tuition, set forth in G.S. 116-143.1 and G.S.116-143.3, shall apply to students attending institutions operating pursuant to this Chapter, except that the following shall be charged the in-State tuition rate:

- (1) An employee domiciled outside the State who is employed at a North Carolina business location;
- (2) A dependent relative of a person transferred by a company into the State, while sharing the domicile of that person;
- (3) A refugee who lawfully entered the United States and who is living in this State; and
- (4) A nonresident of the United States who has resided in North Carolina for a 12-month qualifying period and has filed an immigrant petition.”

NCCCS, March 2005

HB 583

Community College/Lead Agency for Job Training

~~AN ACT DESIGNATING THE COMMUNITY COLLEGE~~
**SYSTEM AS THE PRIMARY LEAD AGENCY FOR
DELIVERING WORKFORCE DEVELOPMENT
TRAINING, LITERACY, AND ADULT EDUCATION IN
THE STATE.**

“...The North Carolina Community College System is designated as the primary lead agency for delivering workforce development training, literacy, and adult education programs in the State.”

The delivery network is well established and effective

Our focus is service to the local populations in service areas

NCCCS, March 2005

HB 622

Community College Massage Therapy Programs

~~AN ACT TO EXEMPT COMMUNITY COLLEGE~~
**MASSAGE AND BODYWORK THERAPY FROM
LICENSURE BY THE NORTH CAROLINA
BOARD OF MASSAGE AND BODYWORK
THERAPY.**

Section 1. G.S. 90-631 as rewritten:

“...The Board shall maintain a list of approved schools and a list of community college programs operating pursuant to subsection (b) of this section.

(b) A massage and bodywork therapy program operated by a North Carolina community college that is accredited by the Southern Association of Colleges and Schools is exempt from the approval process, licensure process, or both, established by the board.

NCCCS, March 2005

HB 622

Community College Massage Therapy Programs

~~Students who complete~~ the program shall qualify for licenses from the Board as if the program were approved, licensed, or both, by the Board.”

The accountability, type of training programs for which the SACs accreditation requirements are set forth will allow us to ensure quality and comply with the standards necessary by the State Board of Community Colleges in serving the needs of the local markets in the State.

NCCCS, March 2005

Economic and Workforce Development

Economic Development equals Workforce Development because
~~of the foundations and the~~ people required to fuel the economic engines in North Carolina.

Our commitment is to provide the resources, expertise and attention to the needs of the Industrial Sectors and the people who must staff them.

Your leadership, confidence and trust in our abilities accompanied with the funding and authority to fulfill these needs will allow us to continue the services to these Industry Sectors.



NCCCS, March 2005

NCCCS and Economic Development



Our State and local communities are suffering from some of the most notable economic changes in our history that impact our collective economic prosperity and future.

If we have the tools to accommodate the changes we can continue to contribute significantly to the solutions required for success. If not, we will suffer the consequences in each of our communities and collectively at the State level.

We look forward to working with members of the House, Senate and the Governor to meet the challenges that face us and to embrace the opportunities the economy has presented.

NCCCS, March 2005

NCCCS and Economic Development

Thank You!

For Your Work

**For Your Confidence in Our System Statewide
For Your Trust in Our Commitment to the Citizens
For Your Support of Our Efforts to Serve the Industrial Sectors**



NCCCS, March 2005

**Economic & Workforce Development
House Commerce Committee
H. Martin Lancaster, President**



NCCCS, March 2005

COST COMPARISON

	Everclear (grain alcohol)	Wild Irish Rose (fortified wine)	Budweiser	Sierra Nevada Celebration Ale	Rocheport 10 Trappist Ale
Quantity	25 oz bottle	25 oz bottle	Six-pack	Six-pack	11 oz bottle
Alcohol content	95.0%	18.0%	4.7%	6.8%	11.3%
Retail price	\$15	\$3.50	\$5	\$9	\$6
Cost per oz. alcohol	\$0.63	\$0.77	\$1.33	\$1.84	\$4.75

Specialty beers cost from 40 to 880% more than alcohol already available in North Carolina

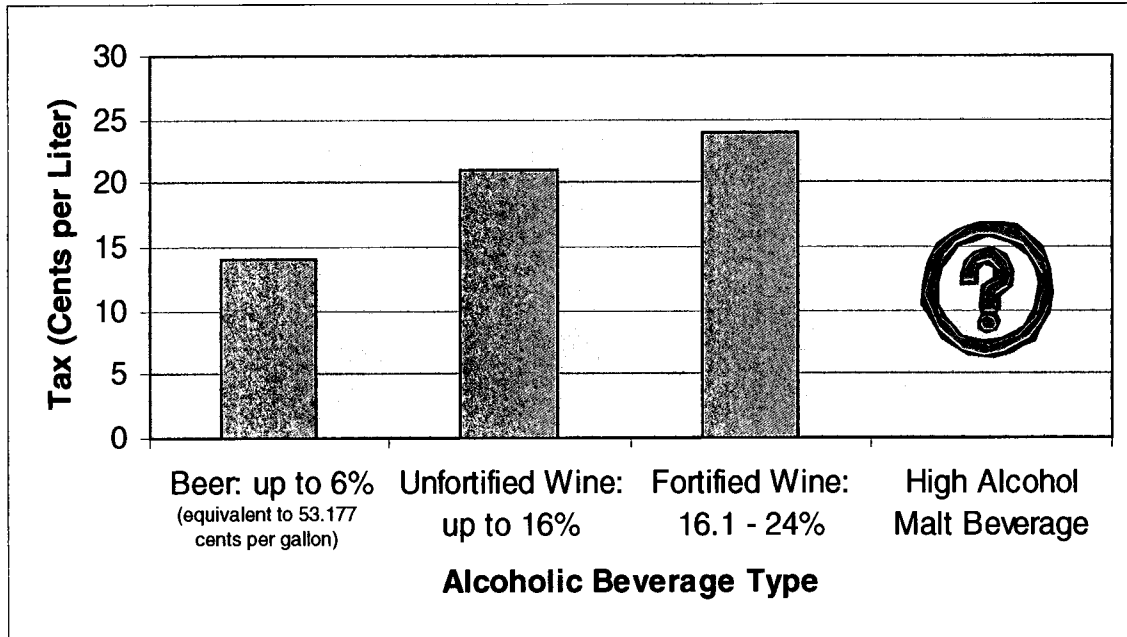
Available in North Carolina
Not available in North Carolina

From: Julie Bradford

***North Carolina joins Arkansas, Alabama, Mississippi,
South Carolina and West Virginia as the only states
forcing a 6% ABV limit on beer.***



From Julie Bradford



99% of the products in the 6% and below are malt based. You don't find many wine products in this category because they can't compete due to the low tax rate.

What they have done in some other states:

Idaho: Heavy beer is taxed as wine

Montana: Heavy Beer is taxed as spirituous liquor

Utah: Beer is taxed at 5%; Heavy beer is taxed at 6.6%

Vermont: Beer is taxed at 10%; Heavy beer is taxed at 25%

Becki Gray
Mutual Distributing Company
919-828-3842

MINUTES

HOUSE COMMITTEE ON COMMERCE

April 13, 2005

The HOUSE COMMITTEE ON COMMERCE met on Wednesday, April 13, 2005, in Room 643 LOB at 1:00 p.m. The following members were present: Representatives Daughtridge, Goforth, LaRoque, Rapp, Chairs; Representative Rayfield, Vice Chair; Representatives Allen, Almond, Barnhart, Bordsen, Brown, Carney, Cole, Coleman, Current, Dickson, Faison, Frye, Gibson, Gillespie, Hunter, Jeffus, Jones, McGee, McLawhorn, Pierce, Ray, Sauls, Stam, Tucker, Walend, Wiley and Wray.

Chairman Rapp called the meeting to order and introduced the following persons working with the committee meeting: Sgt-at-Arms Martha Parrish, Earl Coker, Leslie Oakley and Frank Prevo; House Pages: Erin Woodlief and Sara Flowers both of Nash County sponsored by Rep. Susan Fisher. Chairman Rapp stated that the Committee would spend about 15 minutes on House Bill 630 and then move on to the other bill on the agenda.

Chairman Rapp recognized Representative Bruce Goforth to explain **House Bill 630 (MANUFACTURED HOMES ESCROW ACCOUNTS)**. Rep. Goforth offered the following amendment to H.B. 630 and moved for its adoption : "Amendment #1 amends the bill on page 1, line 25, by deleting the word "seller" and substituting the word "dealer" (Copy attached). Staff Attorney Karen Cochrane-Brown stated that this is just a technical amendment. The motion carried and the amendment was adopted. Discussion and questions followed. Rep. Stam stated that he probably would have another amendment to this bill. Mr. Al Ripley, Attorney for the N. C. Justice Center, spoke in favor of this legislation. After 15 minutes the Chairman stated that H.B. 630 as amended would be carried over until the next meeting.

Chairman Rapp recognized Representative Stephen LaRoque to explain a new Proposed Committee Substitute for **House Bill 392 (AMEND DEFINITION OF MALT BEVERAGE IN ABC LAW)**. Rep. LaRoque moved for the adoption of this new Proposed Committee Substitute for H.B. 392 for consideration. Motion carried. Rep. LaRoque recognized Mr. Michael Goss with the General Assembly's Bill Drafting Division, who explained the federal guidelines to the members. Rep. McGee offered an amendment to the Proposed Committee Substitute for H.B. 392 (copy attached) and moved for its adoption for consideration. Motion carried. Rep. McGee explained this amendment to the members. Rep. LeRoque stated that he was OPPOSED to this amendment offered by Rep. McGee. He stated that this amendment doesn't belong in this type of bill and stated that he thought this was a "catfish amendment". Rep. McGee stated that he did not offer this amendment as a catfish amendment to kill the bill. Rep. Daughtridge stated that he felt that Rep. McGee's amendment needs to be a separate issue. Rep. Bordsen stated that she disagreed with what Rep. Daughtridge said. She stated that she supports this amendment.

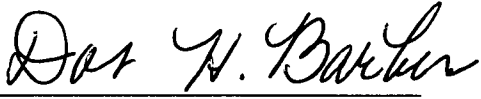
Rep. McGee stated that he would offer another amendment that would change the title of the proposed committee substitute. This amendment was displaced temporarily to discuss the bill. Rep. McGee said that he would like for the amendment to pass. Rep. Faison encouraged the members to support this change. A vote was taken on the amendment offered by Rep. McGee with 12 voting "For" the amendment and 15 voting "Against" the amendment. The amendment failed.

Rep. Carney moved that the Proposed Committee Substitute for H.B. 392 be given a FAVORABLE REPORT and that the original H.B. 392 be reported out with an unfavorable report and that the PCS for H.B. 392 be re-referred to the Alcoholic Beverage Control Committee. Rep. Faison stated that he was opposed to this proposed committee substitute. A vote was taken on the motion for a **Favorable Report to the Proposed Committee Substitute for H.B. 392 to be re-referred to the Alcoholic Beverage Control Committee; Unfavorable Report to the original bill.** The motion carried by a vote of 18 to 11.

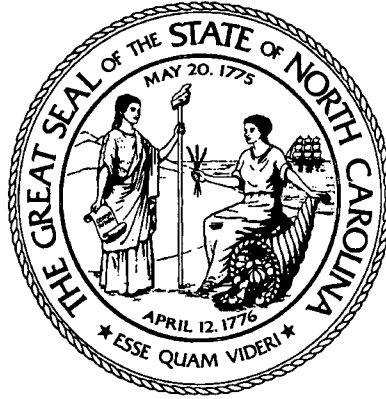
There being no further business, the meeting was adjourned at 2:00 pm.

Respectfully submitted,

Representative Ray Rapp
Presiding Chairman



Dot H. Barber
Committee Assistant



HOUSE COMMITTEE ON COMMERCE

April 13, 2005
Room #643 LOB 1:00 p.m.

Presiding Chair – Representative Ray Rapp

I. Call to Order

II. Introduction of Sgt.-at-Arms and Pages

III. Program:

H. B. 630 – Manufactured Homes Escrow Accounts (Representative Goforth)

H. B. 392 - Amend Definition of Malt Beverage in ABC Law (Representatives LaRoque, Earle, Holliman and Daughtridge)

IV. Adjournment

Dot Barber (Rep. Rapp)

From: Dot Barber (Rep. Rapp)
Sent: Friday, April 08, 2005 9:55 AM
To: Rep. Beverly Earle; Rep. Hugh Holliman
Subject: House Commerce Committee Meeting

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

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

DAY & DATE: **Wednesday, April 13, 2005**

TIME: **1:00 p.m.**

LOCATION: **# 643 LOB**

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

H.B. 392 - Amend Definition of Malt Beverages in ABC Law - (Representatives LaRoque, Earle, Holliman, and Daughtridge)

H.B. 630 - Manufactured Homes Escrow Accounts (Representative Goforth)

Respectfully,
Representatives Daughtridge, Goforth, LaRoque, and
Rapp, Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **10:00 am** on **April 8, 2005**.

Principal Clerk
 Reading Clerk - House Chamber

Dot Barber (Committee Assistant)



#1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 630

AMENDMENT NO. #1
(to be filled in by
Principal Clerk)

H630-ARO-1 [v.1]

Page 1 of 1

Date April 13, 2005

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

Representative Dagfort

- 1 moves to amend the bill on page 1, line 25, by deleting the word "seller" and
- 2 substituting the word "dealer".
- 3

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

A

Original Bill

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 630

Short Title: Manufactured Homes Escrow Accounts.

(Public)

Sponsors: Representatives Goforth; Harrell, LaRoque, and Wilkins.

Referred to: Commerce.

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE MANUFACTURED HOMES ESCROW ACCOUNTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-143.21A(d) reads as rewritten:

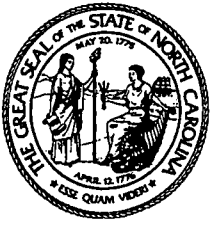
"(d) The dealer shall return the deposit or other payment toward or payment for the purchase price to the buyer if the buyer cancels the purchase before midnight of the third business day after the date the buyer signed the purchase agreement or if any of the material terms of the purchase agreement are changed by the dealer. To make the cancellation effective, the buyer shall give the dealer written notice of the buyer's cancellation of the purchase. The dealer shall return the deposit or other payment toward or payment for the purchase price to the buyer within 15 business days after receipt of the notice of cancellation or within three business days of any change by the dealer of the purchase agreement. For purposes of this section, "business day" means any day except Sunday and legal holidays. Each time the dealer gives the buyer a new set of financing terms, ~~unless the financing terms are more favorable to the buyer, terms,~~ the buyer shall be given another three-day cancellation period. The dealer shall not commence setup procedures until after the final three-day cancellation period has expired."

SECTION 2. G.S. 143-143.21A(f) reads as rewritten:

"(f) ~~The Board shall adopt rules concerning the terms of any deposit paid by a buyer to a dealer. The rules may exempt deposits of less than two thousand dollars (\$2,000).~~ The dealer shall place all deposits made by the buyer in an escrow account to be held until delivery and acceptance of the manufactured home by the buyer. To the extent practicable, the rules shall protect allowable under federal bankruptcy laws, the deposits held by the seller in the escrow account required by this subsection shall be free from the claims of the creditors of a dealer that may thereafter be in bankruptcy. The rules shall further provide for funds held in the escrow account shall be subject to the same requirements of subsection (d) of this section requiring the prompt return of a buyer's deposit if the buyer is entitled to its return."

1

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



HOUSE BILL 630: Manufactured Homes Escrow Accounts.

BILL ANALYSIS

Committee: House Commerce
Date: March 30, 2005
Version: First Edition

Introduced by: Rep. Goforth
Summary by: Karen Cochrane Brown
Committee Co-Counsel

SUMMARY: *House Bill 630 amends the law related to manufactured homes to require that buyers be given a three-day cancellation period whenever the dealer changes the financing terms, and to require that dealers place any money received from the buyer in an escrow account until delivery and acceptance of the manufactured home.*

CURRENT LAW:

In 2003, the Manufactured Homes law was amended to increase consumer protections for owners of manufactured homes. Among the changes added in 2003 was a provision that required dealers to give buyers a new three-day cancellation period every time the dealer changed the financing terms, unless the terms were more favorable to the buyer. Also, that law directed the Manufactured Housing Board to adopt rules concerning deposits and allowed the rules to exempt deposits of less than \$2000.00. The rules were also to protect the deposits from the claims of creditors to the extent possible if the dealer should go into bankruptcy.

BILL ANALYSIS:

House Bill 630 amends the provision relating to returns of deposits when the buyer cancels the purchase agreement to make unconditional the requirement that dealers give buyers a new three-day cancellation period every time financing terms are changed. This bill deletes the provision that exempts the requirement if the terms are more favorable to the buyer.

In addition, the bill requires dealers to place buyer deposits in an escrow account to be held until delivery and acceptance of the manufactured home by the buyer. To the extent allowable by federal bankruptcy law, the deposits are to be free from the claims of the creditors of the dealer. Funds held in escrow are subject to return to the buyer if the buyer is entitled to its return.

This act would become effective when it becomes law.

H630-SMRO-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

D

HOUSE BILL 392
PROPOSED COMMITTEE SUBSTITUTE H392-CSMA-2 [v.1]

3/24/2005 1:44:32 PM

Short Title: Amend Definition of Malt Beverage in ABC Law.

(Public)

Sponsors:

Referred to:

February 28, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE DEFINITION OF A MALT BEVERAGE UNDER THE
3 ALCOHOLIC BEVERAGE CONTROL LAWS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 18B-101(9) reads as rewritten:

6 "(9) 'Malt beverage' means beer, lager, malt liquor, ale, porter, and any
7 other brewed or fermented beverage containing at least one-half of one
8 percent (0.5%), and not more than six percent (6%), one-half of one
9 percent (0.5%) alcohol by volume."

10 SECTION 2. G.S. 105-113.68(a) reads as rewritten:

11 "(a) Definitions. – As used in this Article, unless the context clearly requires
12 otherwise:

13 (1) ~~"ABC Commission" means ABC Commission. – the The North~~
14 ~~Carolina Alcoholic Beverage Control Commission established under~~
15 ~~G.S. 18B-200.~~

16 (2) Repealed by Session Laws 2004-170, s. 6, effective August 2, 2004.

17 (3) ~~"ABC permit" means a written or printed authorization issued by the~~
18 ~~ABC Commission pursuant to Chapter 18B, other than a~~
19 ~~purchase-transportation permit. Unless the context clearly requires~~
20 ~~otherwise, "ABC permit" means a presently valid permit.~~ ABC permit.
21 – Defined in G.S. 18B-101.

22 (4) ~~"Alcoholic beverage" means a beverage containing at least one half of~~
23 ~~one percent (0.5%) alcohol by volume, including malt beverages,~~
24 ~~unfortified wine, fortified wine, spirituous liquor, and mixed~~
25 ~~beverages.~~ Alcoholic beverage. – Defined in G.S. 18B-101.

26 (5) ~~"Fortified wine" means any wine, of more than sixteen percent (16%)~~
27 ~~and no more than twenty four percent (24%) alcohol by volume, made~~
28 ~~by fermentation from grapes, fruits, berries, rice, or honey; or by the~~

1 ~~addition of pure cane, beet, or dextrose sugar; or by the addition of~~
2 ~~pure brandy from the same type of grape, fruit, berry, rice, or honey~~
3 ~~that is contained in the base wine and produced in accordance with the~~
4 ~~regulations of the United States.~~ Fortified wine. – Defined in
5 ~~G.S. 18B-101.~~

- 6 (6) ~~"License" means a~~ License. – A certificate, issued pursuant to this
7 Article by a city or county, that authorizes a person to engage in a
8 phase of the alcoholic beverage industry.
- 9 (7) ~~"Malt beverage" means beer, lager, malt liquor, ale, porter, and any~~
10 ~~other brewed or fermented beverage containing at least one half of one~~
11 ~~percent (0.5%) and not more than six percent (6%) alcohol by~~
12 ~~volume.~~ Malt beverage. – Defined in G.S. 18B-101.
- 13 (8) ~~"Person" has the same meaning as in G.S. 105-228.90.~~ Person. –
14 ~~Defined in G.S. 105-228.90.~~
- 15 (9) ~~"Sale" means a transfer, trade, exchange, or barter, in any manner or~~
16 ~~by any means, for consideration.~~ Sale. – Defined in G.S. 18B-101.
- 17 (10) ~~"Secretary" means the~~ Secretary. – The Secretary of Revenue.
- 18 (11) ~~"Spirituous liquor" or "liquor" means distilled spirits or ethyl alcohol,~~
19 ~~including spirits of wine, whiskey, rum, brandy, gin, and all other~~
20 ~~distilled spirits and mixtures of cordials, liqueurs, and premixed~~
21 ~~cocktails in closed containers for beverage use regardless of the~~
22 ~~dilution.~~ Spirituous liquor or liquor. – Defined in G.S. 18B-101.
- 23 (12) ~~"Unfortified wine" means any wine of sixteen percent (16%) or less~~
24 ~~alcohol by volume made by fermentation from grapes, fruits, berries,~~
25 ~~rice, or honey; or by the addition of pure cane, beet, or dextrose sugar;~~
26 ~~or by the addition of pure brandy from the same type of grape, fruit,~~
27 ~~berry, rice, or honey that is contained in the base wine, and produced~~
28 ~~in accordance with the regulations of the United States.~~ Unfortified
29 ~~wine. – Defined in G.S. 18B-101.~~
- 30 (13) ~~"Wholesaler or importer" when~~ Wholesaler or importer. – When used
31 with reference to wholesalers or importers of wine or malt beverages
32 includes resident wineries that sell their wines at retail and resident
33 breweries that produce fewer than 310,000 gallons of malt beverages
34 per year.
- 35 (14) ~~"Wine" means unfortified~~ Wine. – Unfortified and fortified wine.
- 36 (15) ~~"Wine shipper permittee" means a~~ Wine shipper permittee. – A winery
37 that holds a wine shipper permit issued by the ABC Commission under
38 G.S. 18B-1001.1."

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



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 392

AMENDMENT NO. #1
(to be filled in by
Principal Clerk)

H392-AMAx-3 [v.2]

Page 1 of 1

Date April 13, 2005

Comm. Sub. [YES]
Amends Title [NO]
PCS H392-CSMA-2

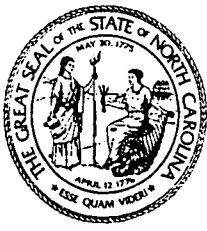
Representative McGee

- 1 moves to amend the proposed committee substitute on page 2, line 39, by rewriting the
- 2 live to read"
- 3 "SECTION 3. G.S. 105-113.80(a) reads as rewritten:
- 4 '(a) ~~Beer~~ Malt Beverages. – In order to levy excise taxes on malt beverages at
- 5 an equitable rate for beverages with the same or similar alcoholic beverage content,
- 6 ~~An~~ excise tax of fifty-three and one hundred seventy-seven one thousandths cents
- 7 (53.177¢) per gallon is levied on the sale of malt ~~beverages~~ beverages that have an
- 8 alcohol by volume content of not more than nine percent (9%). An excise tax of
- 9 seventy-nine and four hundred eighty-five one thousandths cents (79.485¢) per gallon is
- 10 levied on the sale of malt beverages that have an alcohol by volume content of more
- 11 than nine percent (9%) and up to and including sixteen percent (16%). An excise tax of
- 12 ninety and eighty-four hundredths cents (90.84¢) per gallon is levied on the sale of malt
- 13 beverages that have an alcohol by volume content greater than sixteen percent (16%).'
- 14 SECTION 4. This act is effective when it becomes law."
- 15

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



BILL ANALYSIS

HOUSE BILL 392: Amend Definition of Malt Beverage in the Alcoholic Beverage Control Law.

Committee: House Commerce
Date: March 30, 2005
Version: Proposed Committee Substitute
H392-CSMA-2 [v.1]

Introduced by: Rep. LaRoque
Summary by: O. Walker Reagan,
Committee Co-Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 392 would remove the current maximum limit on alcoholic content of malt beverages of six percent. The bill would also make conforming technical changes to the revenue laws to refer to define ABC terms by cross reference to the Alcoholic Beverage Control Law.*

CURRENT LAW: Current law defines malt beverages as "beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage containing at least one-half of one percent (0.5%), and not more than six percent (6.0%), alcohol by volume." Sales of malt beverages with alcohol content in excess of 6.0% are illegal in the State.

BILL ANALYSIS: Section 1 of the bill would remove the maximum cap of 6.0% and would allow these malt beverages to be sold in the State regardless of their alcoholic content.

Section 2 of the bill amends the definition section of Article 20 of Chapter 105 - Revenue Laws that deals with alcoholic beverage license and excise taxes. These changes conform the definition in the revenue statutes to the definitions in the alcoholic beverage control statutes by cross-reference to Chapter 18B – Alcoholic Beverage Control Act.

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

H392-SMRU-001

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 392

Short Title: Amend Definition of Malt Beverage in ABC Law. (Public)

Sponsors: Representatives LaRoque, Earle, Holliman, Daughtridge (Primary Sponsors); L. Allen, Carney, Fisher, Glazier, Harrison, Johnson, Luebke, Owens, and Ross.

Referred to: Alcoholic Beverage Control.

February 28, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DEFINITION OF A MALT BEVERAGE UNDER THE ALCOHOLIC BEVERAGE CONTROL LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-101(9) reads as rewritten:

"(9) 'Malt beverage' means beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage containing at least ~~one-half of one percent (0.5%), and not more than six percent (6%),~~ one-half of one percent (0.5%) alcohol by volume."

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

1
2
3
4
5
6
7
8
9
10

COST COMPARISON

	Everclear (grain alcohol)	Wild Irish Rose (fortified wine)	Budweiser	Sierra Nevada Celebration Ale	Rochefort 10 Trappist Ale
Quantity	25 oz bottle	25 oz bottle	Six-pack	Six-pack	11 oz bottle
Alcohol content	95.0%	18.0%	4.7%	6.8%	11.3%
Retail price	\$15	\$3.50	\$5	\$9	\$6
Cost per oz. alcohol	\$0.63	\$0.77	\$1.33	\$1.84	\$4.75

Specialty beers cost from 40 to 880% more than alcohol already available in North Carolina

Available in North Carolina

Not available in North Carolina

***North Carolina joins Arkansas, Alabama, Mississippi,
South Carolina and West Virginia as the only states
forcing a 6% ABV limit on beer.***



VISITOR REGISTRATION SHEET

COMMERCE COMMITTEE

April 13, 2005
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

Dean Plunkett	NCBWWA
Lee Hodge	KCLH
Frank W. Edgmon	NC DOT
Gary Harris	NCPMA
Bud Fyfe	NCBDA
Tom Southern	NC Senior Citizens Assoc.
Virginia Arrington	retired teacher
Anne W. ...	Attorney
Jon Carr	NC Assoc. ABC Boards
Tim Fetzner	Beer Boys
John McKey	Comptroller
Neta Shady	NCA
Kevin Leonard	WCSR
Orin Carlton	attorney
Steve Davis	CAROLINA BEER CO.
Jessica Sague	NCFPC
Bill Hester	Allied Democracy

VISITOR REGISTRATION SHEET

COMMERCE COMMITTEE

April 13, 2005

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
<i>[Signature]</i>	NC Family Policy Council
Kevin Mills	Senator Purcell's Office
PGP	NCFB
Brent McCann	Pop the Cap
Eric Galamb	Pop the Cap
Julie Johnson Bradford	Pop the Cap
Tim BRADLEY	INSURANCE DEPT
Bill Rowe	NC Justice Center
A L Ripley	" " "
<i>[Signature]</i>	CAL
Becki Gray	Mutual Distributery Co.
Dave Poisson	intern
<i>[Signature]</i>	NCRA
Mark Brown	Capital Group
Frank Gray	NCMHI
Bruce Lovin	NCMHI
John McMillan	NCFTS

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representatives **Daughtridge, Goforth, LaRoque and Rapp** (Chairs) for the Committee on **Commerce**.

- Committee Substitute for
H.B. 392 A BILL TO BE ENTITLED AN ACT TO AMEND THE DEFINITION OF A
MALT BEVERAGE UNDER THE ALCOHOLIC BEVERAGE CONTROL LAWS.
- With a favorable report.
- With a favorable report and recommendation that the bill be re-referred to the Committee on
Appropriations Finance .
- With a favorable report, as amended.
- With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on Appropriations Finance .
- With a favorable report as to the committee substitute bill, unfavorable as to (the original
bill), and recommendation that the committee substitute bill be re-referred to the Committee
on ALCOHOLIC BEVERAGE CONTROL.)
- 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

Minutes

HOUSE COMMITTEE ON COMMERCE

April 20, 2005

The HOUSE COMMITTEE ON COMMERCE met on Wednesday, April 5, 2005, in Room 643 LOB at 1:00 p.m. The following members were present: Representatives Daughtridge, Goforth, LaRoque, and Rapp, Chairs; Representatives Rayfield, Vice Chair; Representatives Allen, Almond, Brown, Carney, Cole, Coleman, Current, Dickson, England, Faison, Frye, Gibson, Haire, Jeffus, Jones, McGee, McLawhorn, Pierce, Salus, Stam, Tucker, Vinson, Walend, Wiley, Wray. Assisting the meeting were Karen Cochran-Brown and Walker Reagan, Staff Counsel; Dot Barber, Rachel Dupree, Patricia Freije, and Ann Jordan, Committee Assistants; Martha Parrish, Earl Coker, Leslie Oakley, Fred Hines, and Frank Prevo, House Sgt.-at-Arms; House Pages Katie Easter of Davidson County, sponsored by Rep. Holliman, and Christi Thompson of Wake County, sponsored by Rep. Capps.

Chairman LaRoque called the meeting to order and welcomed all persons in attendance. Rep. LaRoque recognized Ms. Joan Myers, President & CEO of North Carolina Technology Association who gave a ten-minute presentation on the Defense Technology Innovation Center (Attachment I). Ms. Myers also handed out information to the Members; a copy is attached.

Chairman LaRoque recognized Rep. Stam, who made a motion that the Proposed Committee Substitute of House Bill 630 (Manufactured Homes Escrow Accounts, sponsored by Rep. Goforth) be taken up for discussion purposes only. Motion passed.

Rep. Goforth was recognized to speak on the bill and he explained the language of the bill. Rep. Goforth introduced Al Ripley, an attorney with the NC Justice Center. Mr. Ripley spoke on behalf of the bill and discussed why such measures were needed.

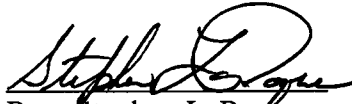
Frank Fogler from the Department of Insurance was also recognized to speak, and William Brewer, a bankruptcy lawyer from Raleigh fielded questions regarding how bankruptcy affected the purchase of mobile homes.

Brad Lovin of the North Carolina Manufactured Housing Institute voiced opposition on the bill, indicating that the legislation was an unnecessary measure.

Chairman LaRoque decided to refer HB 630 to a subcommittee for further study and changes. He appointed the following members to serve: Faison, Gibson (chair), Sauls, Stam, and Vinson.

There being no further business, the meeting was adjourned at 1:50pm.

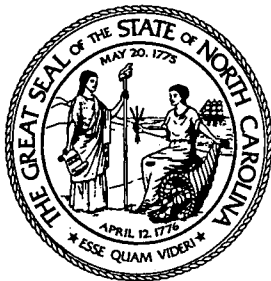
Respectfully submitted,



Rep. Stephen LaRoque
Presiding Chairman



Patricia B. Freije
Committee Assistant



HOUSE COMMITTEE ON COMMERCE

April 20, 2005

LOB 643

1:00 PM

Presiding Chair – Representative Stephen LaRoque

I. Call to Order

II. Program

Presentation- Joan Myers, President & CEO of North Carolina Technology Association

HB 630- Manufactured Homes Escrow Accounts (Representative Goforth)

III. Adjournment

Rep LAROGNE
DM
304A

House Pages

Name Of Committee: Commerce Date: 4-20-05

1. Name: Katie Easter
County: Davidson
Sponsor: Holliman
2. Name: Christi Thompson
County: Wake
Sponsor: Russell Capps
3. Name: _____
County: _____
Sponsor: _____
4. Name: _____
County: _____
Sponsor: _____
5. Name: _____
County: _____
Sponsor: _____

Sgt-At-Arms

1. Name: MARTHA PARRISH
2. Name: EARL COKER
3. Name: LESLIE OAKLEY
4. Name: FRED HINES
5. Name: FRANK PREVIO

VISITOR REGISTRATION SHEET

House Commerce

4-20-05

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Al Riphys	NC Inst'r Ltr
Billy Brewer	Attorney - Private Practice
Bill Rowel	NC Inst'ed Center
Jack Gray	N.C.M.H.I
Bred Lovin	"
Country Crowder	NC DOL
Frank Edger	NC DOL
Stephanie Simpson	NC Assoc. of REALTORS

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

D

HOUSE BILL 630
PROPOSED COMMITTEE SUBSTITUTE H630-CSRO-7 [v.1]

4/20/2005 11:20:40 AM

Short Title: Manufactured Homes Escrow Accounts.

(Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE MANUFACTURED HOMES ESCROW ACCOUNTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-143.21A(d) reads as rewritten:

"(d) The dealer shall return the deposit or other payment toward or payment for the purchase price to the buyer if the buyer cancels the purchase before midnight of the third business day after the date the buyer signed the purchase agreement or if any of the material terms of the purchase agreement are changed by the dealer. To make the cancellation effective, the buyer shall give the dealer written notice of the buyer's cancellation of the purchase. The dealer shall return the deposit or other payment toward or payment for the purchase price to the buyer within 15 business days after receipt of the notice of cancellation or within three business days of any change by the dealer of the purchase agreement. For purposes of this section, "business day" means any day except Sunday and legal holidays. Each time the dealer gives the buyer a new set of financing terms, ~~unless the financing terms are more favorable to the buyer, terms,~~ the buyer shall be given another three-day cancellation period. The dealer shall not commence setup procedures until after the final three-day cancellation period has expired."

SECTION 2. G.S. 143-143.21A(f) reads as rewritten:

"(f) ~~The Board shall adopt rules concerning the terms of any deposit paid by a buyer to a dealer. The rules may exempt deposits of less than two thousand dollars (\$2,000). The dealer shall place all deposits made by the buyer in an escrow account to be held until delivery and acceptance of the manufactured home by the buyer. To the extent practicable, the rules shall protect the~~ The deposits held by the dealer in the escrow account required by this subsection shall be free from the claims of the creditors of a dealer that may thereafter be in bankruptcy. ~~dealer. The rules shall further provide for funds held in the escrow account shall be subject to the same requirements of~~

1 subsection (d) of this section requiring the prompt return of a buyer's deposit if the
2 buyer is entitled to its return."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

D

HOUSE BILL 630
PROPOSED COMMITTEE SUBSTITUTE H630-CSRO-7 [v.1]

4/20/2005 11:20:40 AM

Short Title: Manufactured Homes Escrow Accounts.

(Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE MANUFACTURED HOMES ESCROW ACCOUNTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-143.21A(d) reads as rewritten:

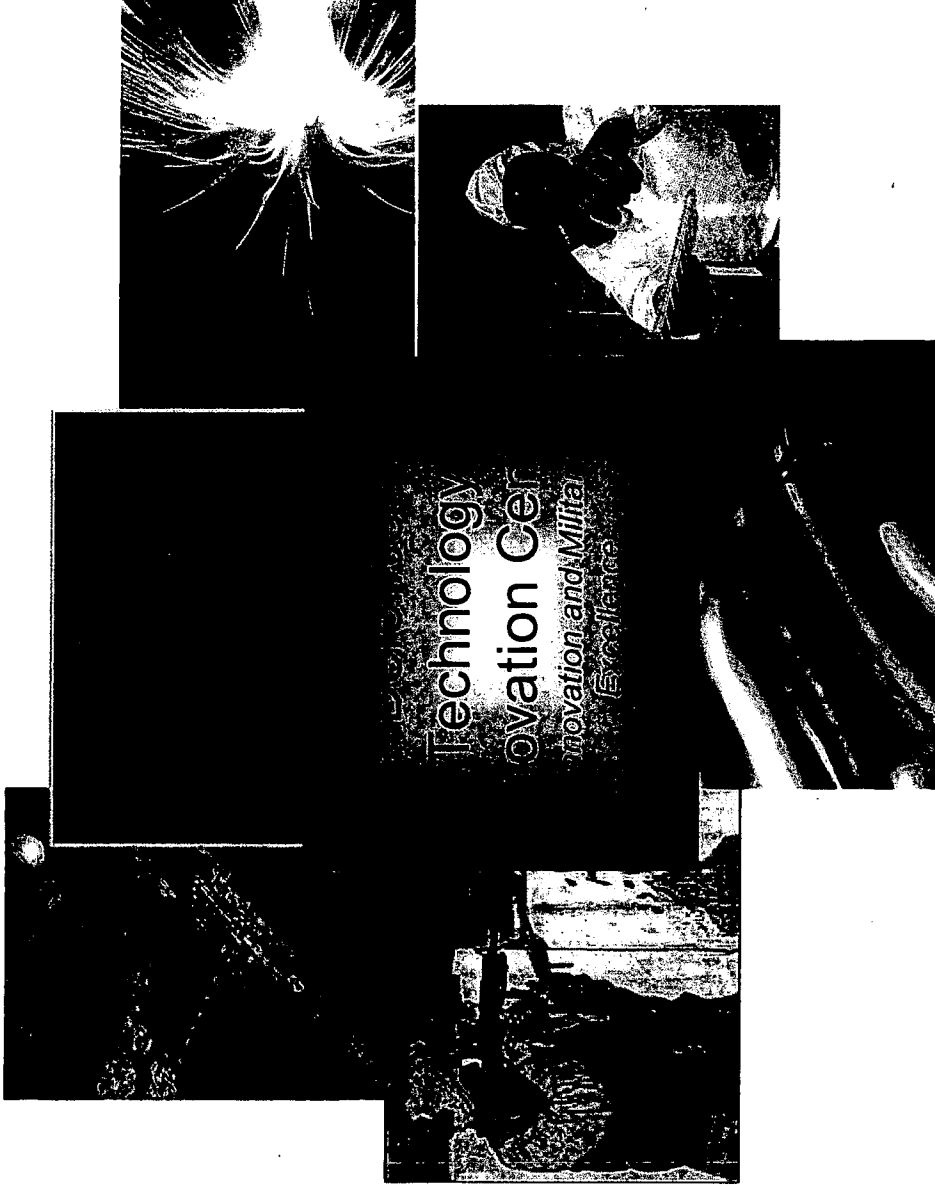
"(d) The dealer shall return the deposit or other payment toward or payment for the purchase price to the buyer if the buyer cancels the purchase before midnight of the third business day after the date the buyer signed the purchase agreement or if any of the material terms of the purchase agreement are changed by the dealer. To make the cancellation effective, the buyer shall give the dealer written notice of the buyer's cancellation of the purchase. The dealer shall return the deposit or other payment toward or payment for the purchase price to the buyer within 15 business days after receipt of the notice of cancellation or within three business days of any change by the dealer of the purchase agreement. For purposes of this section, "business day" means any day except Sunday and legal holidays. Each time the dealer gives the buyer a new set of financing terms, ~~unless the financing terms are more favorable to the buyer, terms,~~ the buyer shall be given another three-day cancellation period. The dealer shall not commence setup procedures until after the final three-day cancellation period has expired."

SECTION 2. G.S. 143-143.21A(f) reads as rewritten:

"(f) ~~The Board shall adopt rules concerning the terms of any deposit paid by a buyer to a dealer. The rules may exempt deposits of less than two thousand dollars (\$2,000). The dealer shall place all deposits made by the buyer in an escrow account to be held until delivery and acceptance of the manufactured home by the buyer. To the extent practicable, the rules shall protect the~~ The deposits held by the dealer in the escrow account required by this subsection shall be free from the claims of the creditors of a dealer that may thereafter be in bankruptcy. ~~dealer. The rules shall further provide for funds held in the escrow account shall be subject to the same requirements of~~

1 subsection (d) of this section requiring the prompt return of a buyer's deposit if the
2 buyer is entitled to its return."

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



The North Carolina Technology Association (NCTA)
and
The Cumberland County Business Council (CCBC)

March 29, 2005



North Carolina Technology Association

Mission

*The intersection of technology and leadership fueling
the growth of North Carolina through Executive
Engagement, Public Affairs and a Knowledge
Workforce*



Leadership
Statewide Board of Directors - Leaders in
the Technology Industry representing
entrepreneurial to global national
corporations

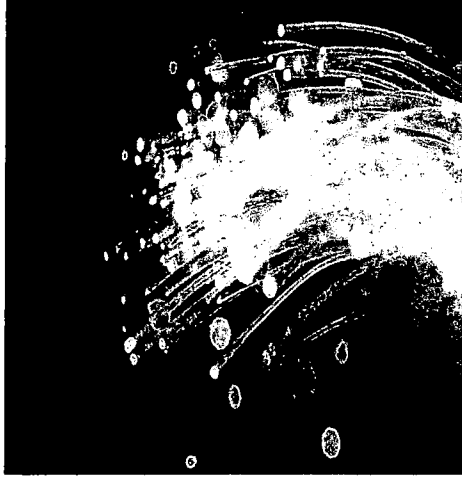
Joan Myers – President & CEO
Dave Rizzo – President & CEO, MCNC

2004

- Presented the North Carolina Jobs Agenda & Investment Strategy
 - Recommended investments in incubation & partnering military assets with innovation assets in the state for job growth.*
- NC Legislature tasks NCTA and MCNC to draft a plan for a statewide Homeland Security Incubator

NCTA Security & Defense

- 5 year collaborative with the FBI
- Focused on cyber security
- Focused on market opportunities as the federal government puts increasing resources into Security & Defense technologies





NCTA establishes Homeland Security Committee

NCTA's role in security is to work collaboratively with our U.S. Congressional delegation, law enforcement, and public sector leaders in order to share information on threats and innovation opportunities.

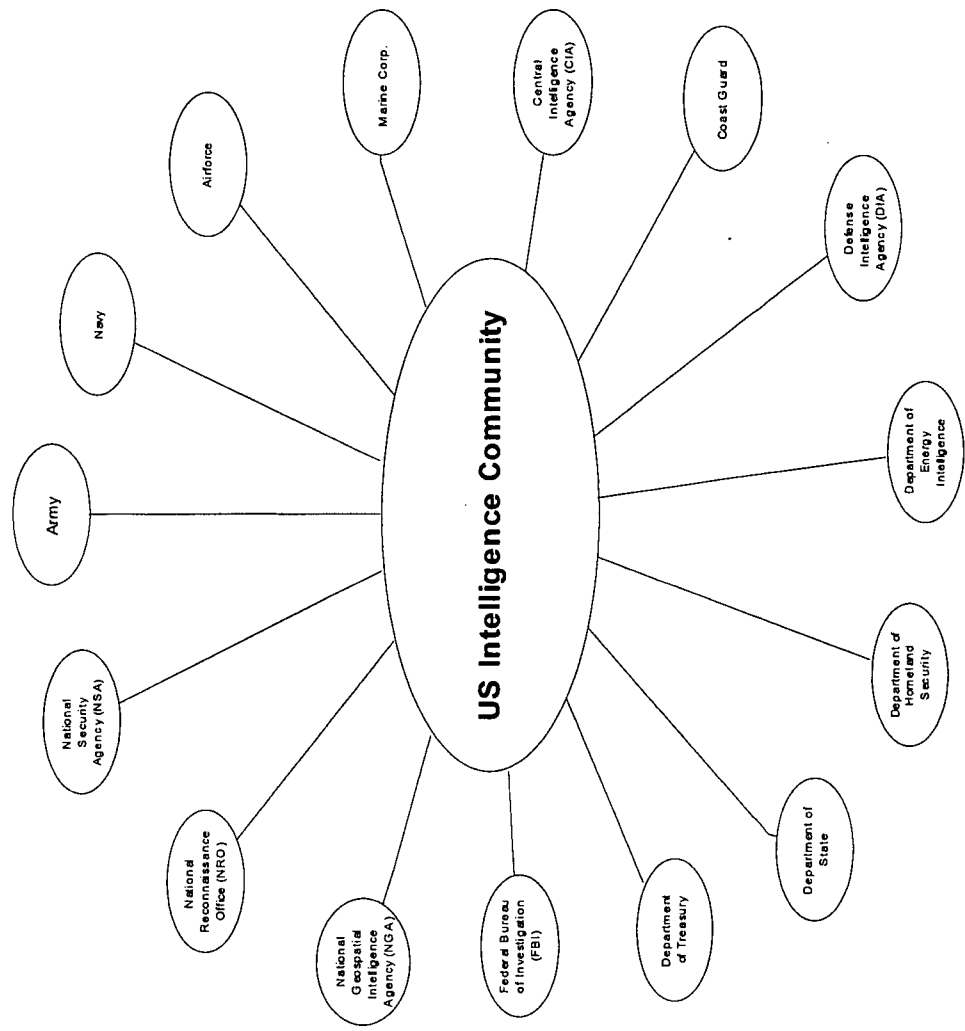
- Leveraging NC's military presence and knowledge to enhance economic development
- Building a bridge to military community
- Accelerating NC's innovation and R&D assets into companies and jobs

Market on Security Technologies

- “The Intelligence Community budget is estimated at \$40 billion.”
- “Whatever the precise numbers, there is no doubt the Intelligence Community is creating many billions of dollars in new procurement opportunities.”

The Private Sector’s Role in Building the Intelligence Community of the 21st Century: Increased Partnering with Industry to Maintain America’s Edge

U.S. Intelligence Enterprise

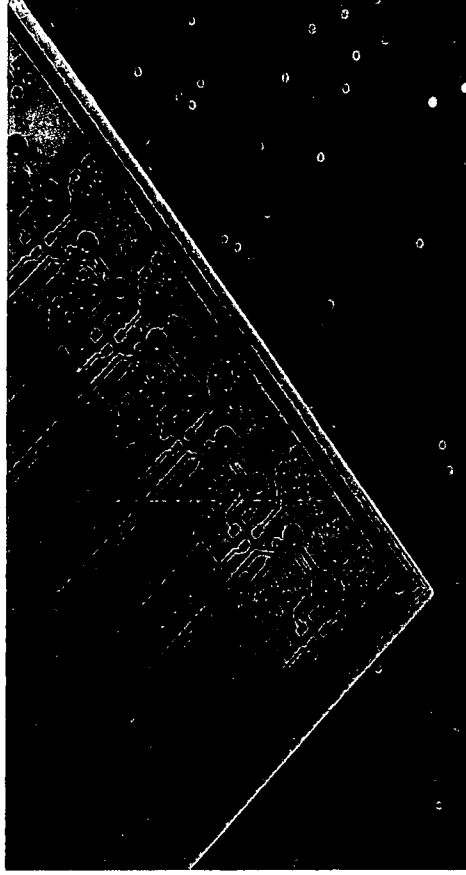


Technology

“Connecting the dots’ is considered key to preventing terrorism, defeating America’s enemies in the Global War on Terrorism and achieving other vital national security objectives”

The Private Sector’s Role in Building the Intelligence Community of the 21st Century: Increased Partnering with Industry to Maintain America’s Edge

NC Landscape



- Innovation assets all across North Carolina
- small companies working on security technologies/need help to scale
- Many large companies have their security work based in North Carolina

NC Landscape

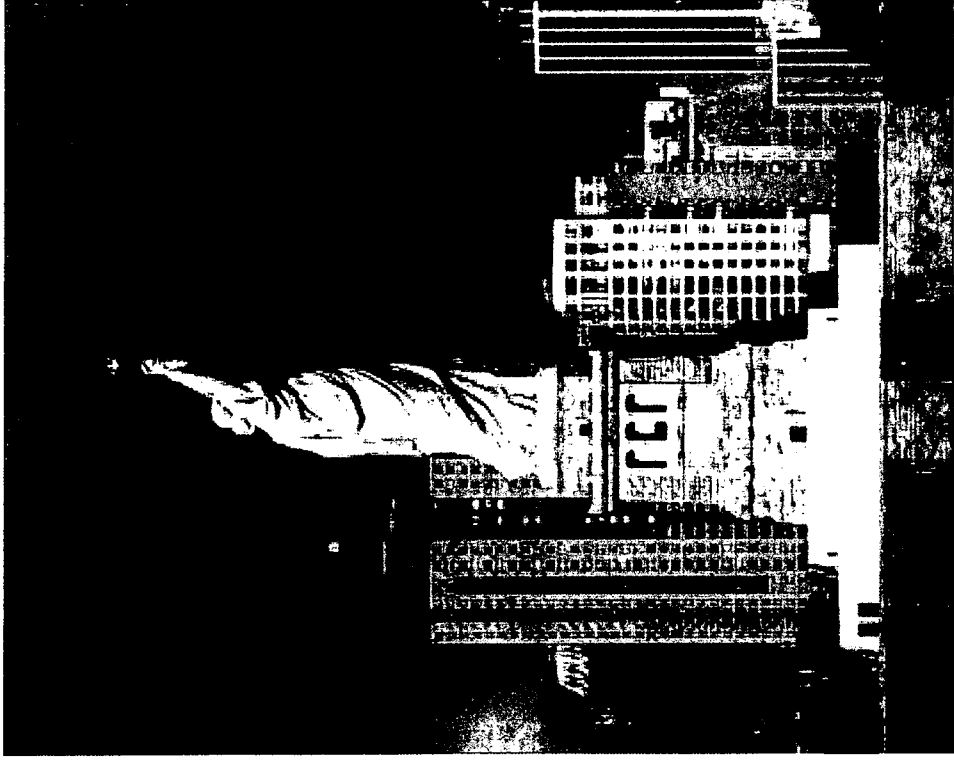
- 5 military bases in North Carolina
- 3 “First Strike” military bases
- World class warfighter capabilities based in North Carolina



“Best of the Best are Here”

Global Landscape

- September 11, 2001
- United States is attacked by Terrorists
- Global War on Terror

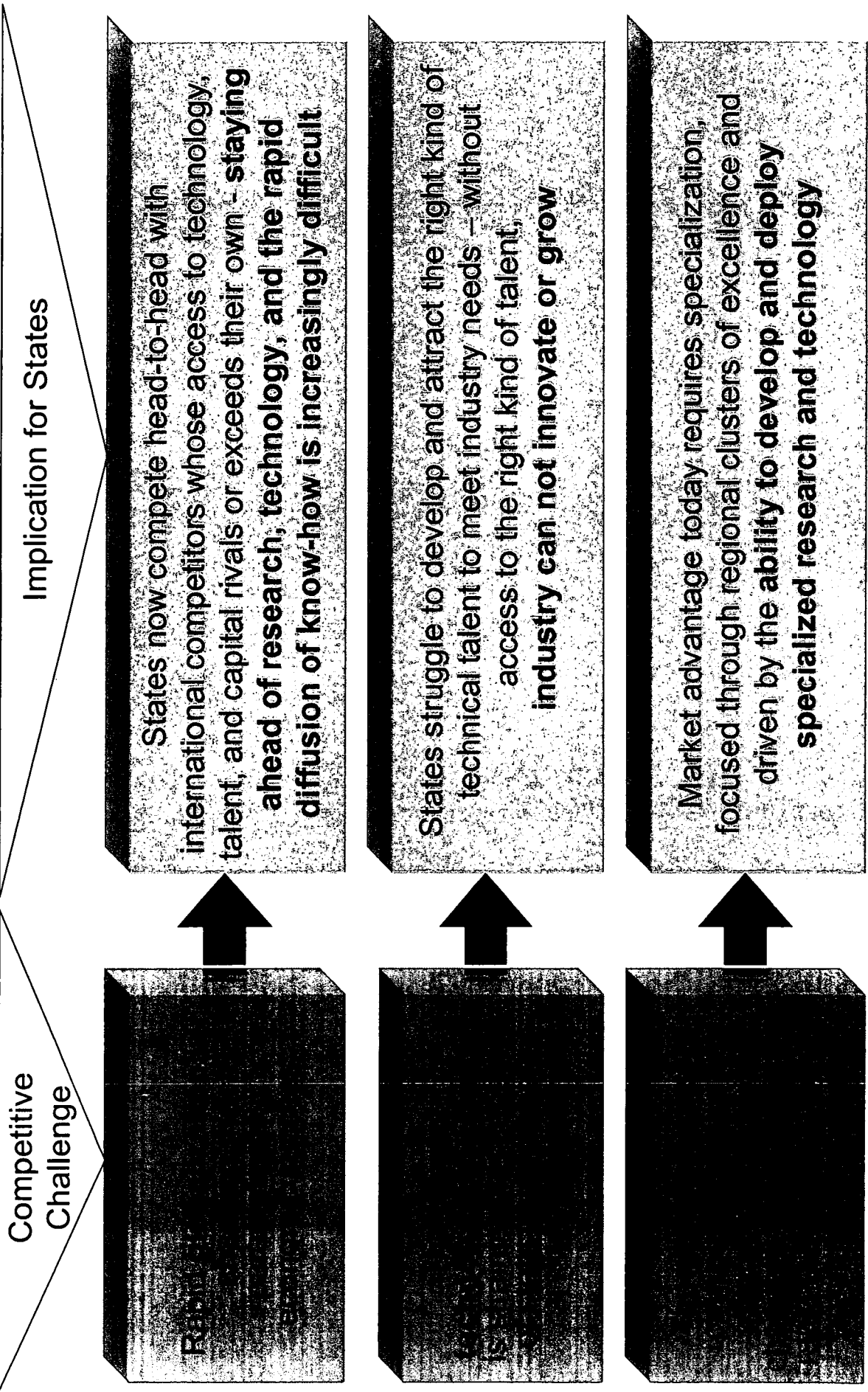


Economic Landscape



- **Competition is Global**
- **Markets are Global**
- **R&D and Innovation are the sustaining elements**
- **US has had a 8-10 year edge on Innovation**

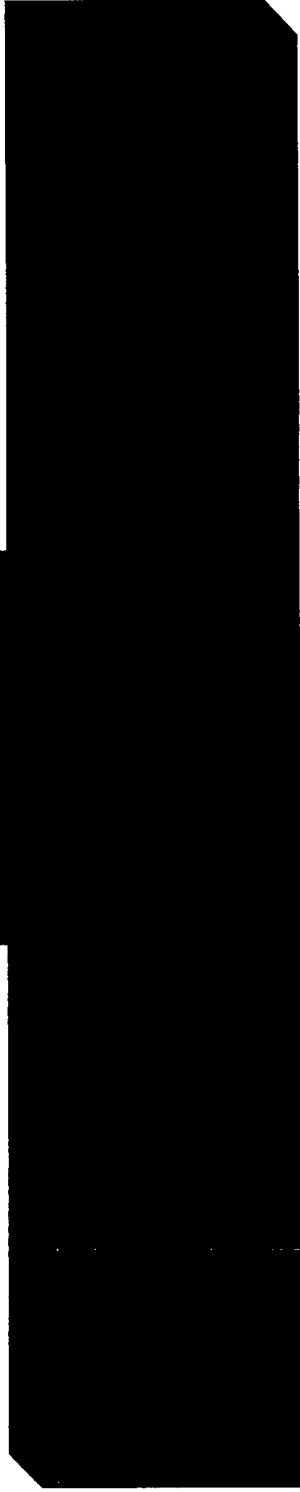
THE ECONOMIC LANDSCAPE HAS SHIFTED, CHANGING THE GAME FOR STATES...



**THIS COMPETITIVE PARADIGM CREATES NEW CHALLENGES
FOR STATE ECONOMIC DEVELOPMENT LEADERS...**



and



THE CHALLENGE OF SECURITY & DEFENSE TODAY

Old model:

- Large states
- Large armies
- Much at risk



New model:

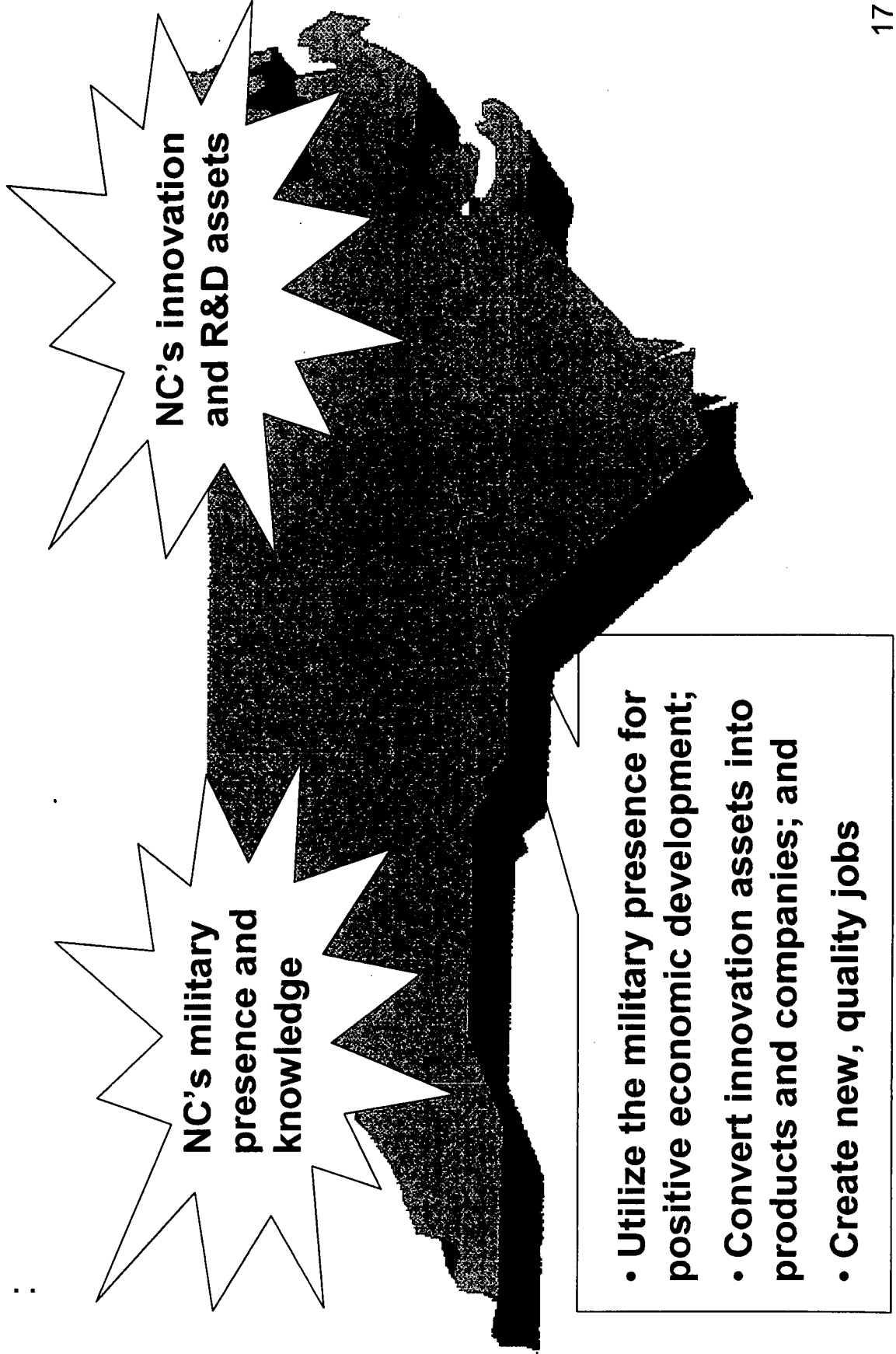
- Dispersed networks
- Emerge quickly
- Borderless
- Little to lose



- Nation is committing enormous resources
- Increased reliance and demand for technology
- Military is an important market for technology development and commercialization
- Commercial applications for security technologies open the door to much larger markets



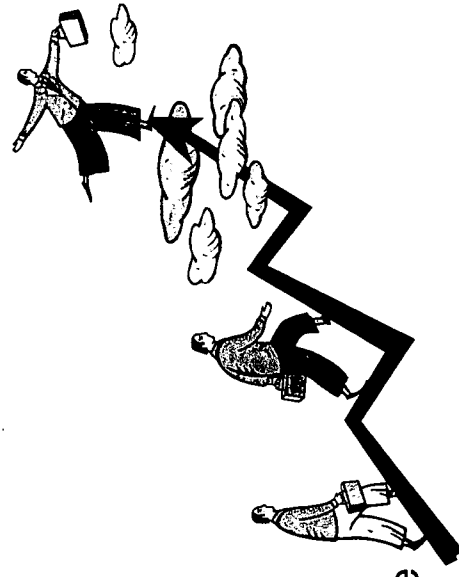
BUILDING THE BRIDGE



THE PLAN



PLAN TIME LINE



- ⇒ August '04 NCEITAMCNC receives funding
- ⇒ September '04 Engaged incubator experts
 - Business Cluster Development
- ⇒ September – December '04 Conducted over 50 interviews
 - Fayetteville, RTP, and Charlotte
- ⇒ November '04 Visited best practices incubator
 - CIC in Annapolis, has a strategic partnership with NSA
- ⇒ December – January '05 Draft Report
 - reviewed by NCEITA Board Members, MCNC, CCBC, FTCC, and Military representatives
- ⇒ February '05 Supplement report (Lab, Fund)
 - Finalizing financials
- ⇒ February '05 Conduct briefings and seek key endorsements
- ⇒ February '05 Submit report
- ⇒ March '05 Present to General Assembly Committee

INTERVIEWS CONDUCTED

- Roy Adams, CEO, 818 Inc.
- Mark Armstrong, CEO, Intepoint
- COL Al Aycock, Garrison Commander, Fort Bragg
- Bill Badger, President/CEO, Anne Arundel Economic Development Corp.
- Clarence Briggs, CEO, AIT
- Olin Broadway, Director eBusiness, UNCC
- Mike Buffa, President & CEO, Milcom Technologies
- Tony Chavonne, Chair, Cumberland County Business Council
- Bei-Tseng (Bill) Chu, Chairman Software & Information Systems, UNCC
- Deborah Clayton, Executive Director, Charlotte Research Institute UNCC
- Jerome (Jerry) Cuomo, Distinguished Research Professor, NC State
- Wayne Daddetto, President, Tactical Support Equipment
- David Dausch, PhD, Principal Engineer, MCNC
- Roger Debo, Director, HiTEC, NC State
- Ron DiFelice, Alpha V Inc.
- Kirk deViere, Senior Vice President, AIT
- Ed diGirolamo, CEO Applied Sciences International
- Scott Dorney, North Carolina Military Business Center
- Monica Doss, President, Council for Entrepreneurial Development
- John Elstner, CEO, Chesapeake Innovation Center
- Bob Ervin, Associate Vice President, Fayetteville Technical Community College
- Randy Fraser, VP Government Affairs NC, Time Warner Cable
- Joe Freddoso, Director, Site Operations, Cisco
- Chris Gilbert, Associate Director, Charlotte Research Institute UNCC
- Col. Jim Granger, USASOC
- Jon Hamm, Regional Public Affairs Manager, Sprint
- Robert (Bob) Hocken, Director, Center for Metrology, UNCC
- Rich Holcomb, entrepreneur
- Brian Kent, Program Manager C41, Joint Special Operations Command - J6 Technology
- Gen. William F. "Buck" Kernan (Retired), Former Commander, U.S. Joint Forces Command
- Brij Khorana, COO, Rose Hulman Ventures
- Gen. James J. Lindsay (Retired), Former Commander of the 82nd Airborne Division, XVIII Airborne Corps and the U.S. Special Operations Command



- Larry Mays, Future Director of the Center for Bioinformatics, UNCC
- Bill Martin, President & CEO, Cumberland County Business Council
- James Martin, Cumberland County Manager
- Warren McDonald, Special Assistant to the Chancellor, Fayetteville State University
- Bob McMahan, Sr. Advisor to the Governor for Science & Technology and Executive Director of the NC Board of Science & Technology
- Randy Moore, CEO, RLM Communications
- Mitch Mumma, Partner, Intersouth Partners
- Maj. Gen. Virgil L. Packett II, Deputy Commanding General of the XVIII Airborne Corps and Fort Bragg
- Steve Parrott, State Executive, Sprint
- Scott Perry, Director, SYTEX
- Jeff Reid, Kenan-Flagler Center for Entrepreneurship and Technology Venturing
- Dave Rizzo, President & CEO, MCNC
- Chris Sanders, Senior Account Executive, MCNC
- Roger Sanwald, Senior Researcher, NC State
- Mark Sauter, COO, Chesapeake Innovation Center
- Gen. Hugh Shelton (Retired), 14th Chairman of the Joint Chiefs of Staff
- Roger Stancil, City Manager, City of Fayetteville
- Wick Smith, President, BizToolsOne,
- Ronald Smeiser, Associate Dean, College of Engineering, UNCC
- Brian Stoner, Principal Scientist, MCNC
- John Strenkowski, Assistant Dean for Research, NC State
- Laura Thiel, President, MediPak Energy Systems
- John Tuohey, Senior C41 Analyst, Joint Special Operations Command - J6
- Larry Walsh, President and CEO, Logistics Co.
- Col. Ron Watkins, Chief of Staff, Pope Air Force Base
- Erik Wells, CEO, SchoolLink,
- Ken Williams, Vice President Materials & Electronic Technologies, MCNC
- Jay Windmon, Deputy Director, SYTEX
- Barbara Wolcott, Chief, Family Support Flight, Pope Air Force Base
- Kelly Wright, Director Business Development, HueMetric
- Oliver Wyrthlu, Installation Technology Business Center, Fort Bragg

A NEW MODEL – BUILDING FROM OUR STRENGTHS



- Sector focused to leverage the unique competitive advantage of the region;
- Proximity to a strategic partner to help overcome significant start-up barriers;
- Focus on services (vs. space) as critical for successful acceleration of start-up companies.
- Model of Incubation based on *Relationships*

WHY NORTH CAROLINA?



4th Largest Military Presence in the World

- Fort Bragg and Pope Air Force Base: Home of the XVIII Airborne Corps, the 82nd Airborne Division, the U.S. Army Special Operations Command, and is one of the largest military complexes in the world

➤ Global Leader in Technology Development and Business

- Research Triangle Park (RTP), recognized as home to world-class innovation and achievement in the areas of advanced materials, imaging, information technology hardware, software, microelectronics, optics/photonics, sensors and telecommunications.
- Innovation assets focused on security technologies in Charlotte, Asheville, the Piedmont... all across the state.
- World class technology companies – over 2,000 in the state.

The Defense Technology Innovation Center



- Bridge NC's innovation and military assets
- Develop technology solutions to security and defense problems Identified by the military
- Foster collaborations with the military, entrepreneurs, universities and technology companies to share ideas, understand needs, and commercialize technologies;
- Create a network of expertise to scout technologies and companies
- Collaborate on prototype and testing of technologies

The Defense Technology Innovation Center

- Accelerate the formation and growth of early technology ventures
- Early stage funding
- Create dual use applications in the security and homeland defense sectors;
- Establish successful, new technology businesses in Fayetteville;
- Create jobs for transitioning military and spouses and others in Fayetteville; and
- Serve as a model of business incubation

The Defense Technology Innovation Center



Incubator – A 12,000 to 15,000 square foot facility for 12 to 15 startup companies and up to 10 affiliate companies.

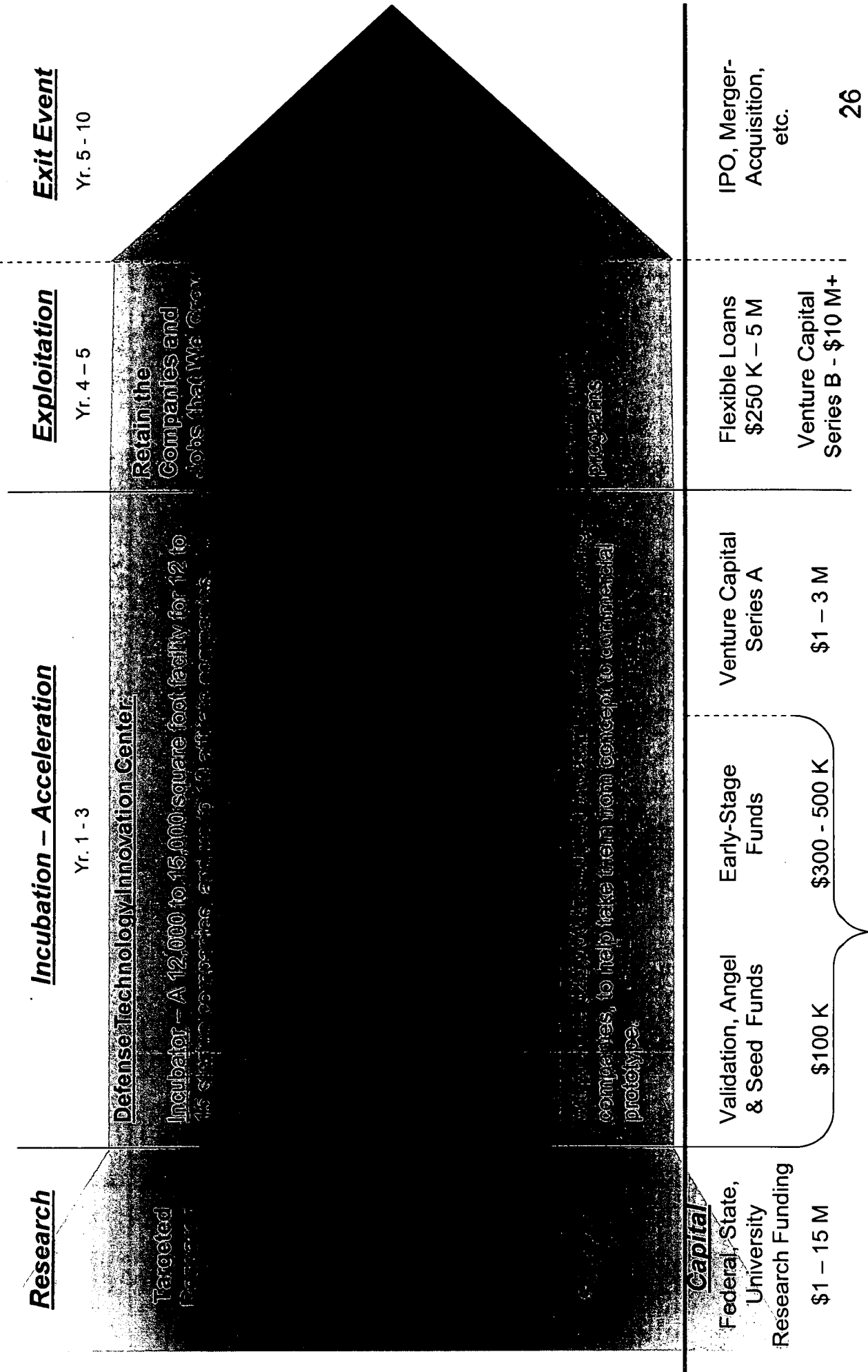
Security Clearances – one or two key staff will hold appropriate clearances

Prototype and Testing Laboratory – A space equipped with the tools & engineering expertise and workbenches to assist with prototype development, testing and evaluation.

Forums and Networks of Expertise – Regular briefings, seminars & events to create an exchange of information on military and market needs, & to build a network of relationships with the military, universities, & technology companies.

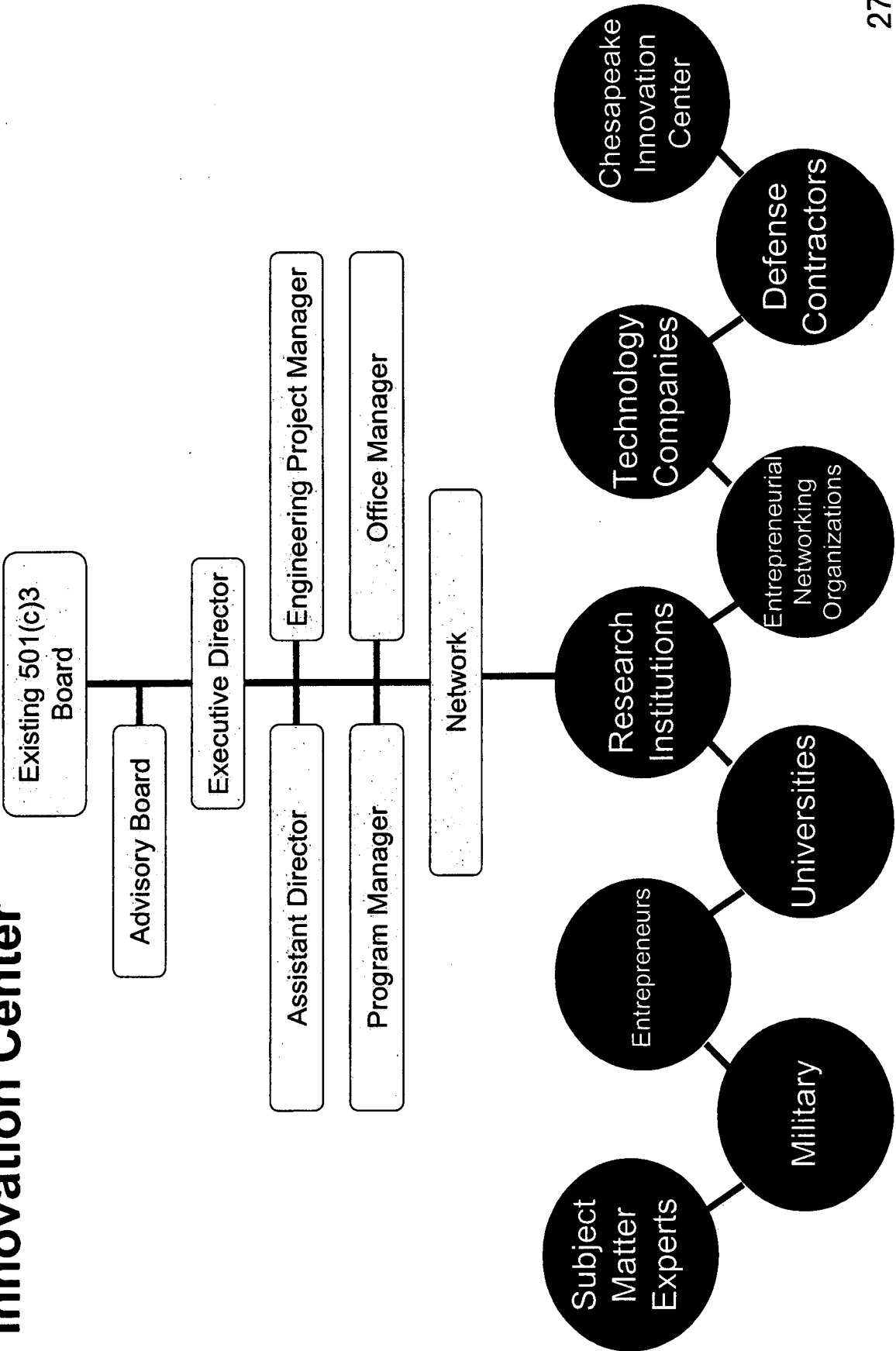
Seed Funding – Grants of \$25,000 - \$50,000 will be available to client companies for proof-of-concept, market analysis, prototype development, & other validation work.

AN EXAMPLE OF THE DTIC IN THE LIFE OF A START-UP

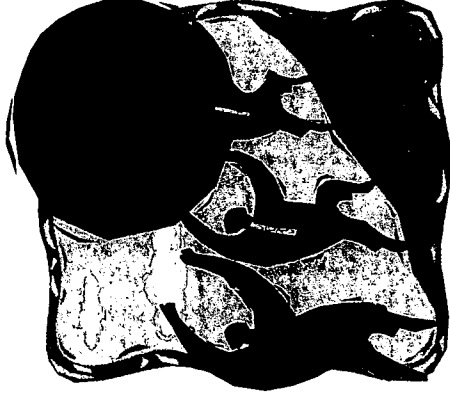


Including MCNC Funds

The Defense Technology Innovation Center



The Defense Technology Innovation Center



LEVERAGING LOCAL ASSETS

- The DTIC will leverage the military presence & grow the defense and security sector.
 - The NC Military Business Center
 - Cumberland County Business Council
 - Fayetteville Technical Community College
 - Fayetteville State University
- DTIC will build upon local efforts including:
 - FSU's courses, training, & applied research in defense, intelligence, and military procurement;
 - Internships with tenant companies
 - Programs that expose students to entrepreneurship & careers in technology
 - Workforce development efforts at FTCC.

The Defense Technology Innovation Center



- Will continue a strategic partnership with NCTA
- Will work with NCTA to look at replication models with other strategic channel partners

The Defense Technology Innovation Center

FUNDING

- \$3.5 million over two years to start
 - Most incubators take 5 -10 years to reach a self-sustaining level
 - public funding required in initial phase
 - Return on Investment justifies public support
 - Sustainability will requires funding from multiple sources over time:
- Equity participation, sponsorships, grants



WHAT WE HAVE LEARNED

- ✓ Cluster-based incubation has proven to be a highly effective model for achieving economic development goals.
- ✓ There is an growing Security and Defense Cluster in North Carolina that has no cohesion.
- ✓ Business incubation programs accelerate the successful development of entrepreneurial companies.
- ✓ Graduates have 80% of businesses which participate in an incubator program succeed.
- ✓ 84% of the businesses locate within 5 miles of the incubator site after graduating from the incubator program.[1]
- ✓ Proximity to a strategic partner (such as the military) helps overcome significant start-up barriers.
- ✓ Services are critical for successful acceleration of start-up companies.

[1]Molinar, Lawrence, *Business Incubation Works*, (NBIA Publications, 1997).

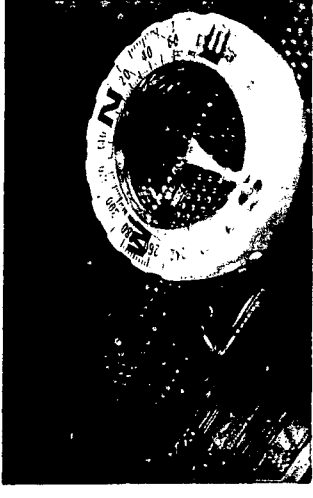
BOTTOM LINE...



By supporting soldiers with advanced technologies, the U.S. Army will lead in its ability to see first, understand first, decide and act first, finish decisively, and survive and endure.

Richard Stouder retired colonel, US Army and senior program manager in the National Security Directorate at Oak Ridge National Laboratory in Oak Ridge, Tennessee.

SUMMARY



- The technology needs of the Intelligence Enterprise is significant
- NC has one of the largest and most technologically advanced military presence in the world
- NC is a global leader in technology development, business, & know-how
- There is an growing Security and Defense Cluster in NC
- Business incubation programs accelerate the successful development of entrepreneurial companies
- Cluster-based incubation has proven to be a highly effective model for achieving economic goals
- Proximity to a strategic partner (such as the military) helps overcome significant start-up barriers
- The Defense Technology Innovation Center will address these opportunities.

“There is no security on this earth;
there is only opportunity.”

General Douglas MacArthur

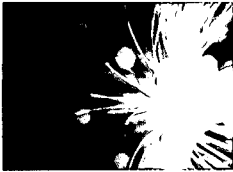


Defense Technology Innovation Center

INNOVATION AND MILITARY EXCELLENCE FOR SECURITY AND DEFENSE



>The Nation is facing a new spectrum of threats. Military and homeland security will leverage revolutionary technologies to address these challenges...1



>North Carolina is a global leader in communications, information technologies, imaging, software, sensors, nanotechnology, and advanced manufacturing...2



>Connecting the technology and scientific expertise in North Carolina, with military knowledge and relationships at our military bases will create powerful opportunities for new business...4

History

The North Carolina Technology Association (NCTA), a state-wide organization which represents the technology business community in North Carolina, has taken a leadership role in leveraging NC's military presence with the State's innovation and R&D assets, in an effort to convert these resources into products, companies, and jobs. To accomplish its goal's, NCTA conceived of the idea for a security and defense-focused business accelerator and then championed it before the General Assembly and the community.

The New Threat¹

National security used to be considered by studying foreign frontiers, weighing opposing groups of states, and measuring industrial might. To be dangerous, an enemy had to muster large armies. Threats emerged slowly, often visibly, as weapons were forged, armies conscripted, and units trained and moved into place. Because large states were more powerful, they also had more to lose. They could be deterred.

Now threats can emerge quickly. An organization like al Qaeda, headquartered in a country on the other side of the earth, in a region so poor that electricity or telephones were scarce, could nonetheless scheme to wield weapons of unprecedented destructive power in the largest cities of the United States.

The nation has committed enormous resources to national security and to countering terrorism. Between fiscal year 2001, the last budget adopted before 9/11, and the present fiscal year 2004, total federal spending on defense, homeland security, and international affairs rose more than 50 percent, from \$354 billion to about \$547 billion.

With its increased reliance and demand for technology, the military is an important market for technology development and commercialization. Equally important, commercial applications for security technologies open the door to much larger markets and growth opportunities for early stage technology companies developing technology and products to meet these demands.

¹ Excerpts from *The 9/11 Report*, the National Commission on Terrorist Attacks Upon the United States.

Technology and the Military

With its increased reliance and demand for technology, the military is an important market for technology development and commercialization. Homeland security needs also drive demand for similar technologies and products. In fact, *Forbes* magazine predicts, "...the money flowing into military and homeland infrastructure security will leverage revolutionary technologies and materials of the new digital age. This will fuel entrepreneurs and capitalists to combat terrorist threats, collaterally spurring a new round of basic innovation."²

The business opportunities in the fast-growing security and defense sectors are significant and North Carolina is well positioned to serve these markets.

By supporting soldiers with advanced technologies, the U.S. Army will lead in its ability to see first, understand first, decide and act first, finish decisively, and survive and endure.

North Carolina - 4th Largest Military Presence in the World

The Fayetteville/Cumberland County area is the home of Fort Bragg and Pope Air Force Base, which each have unique capabilities. Fort Bragg hosts the XVIII Airborne Corps (America's only airborne corps), the 82nd Airborne Division, the U.S. Army Special Operations Command, and is one of the largest military complexes in the world with more than 45,000 active duty personnel. Pope AFB is adjacent to Fort Bragg and serves as the forward deployment platform for the XVIII Airborne Corps, and the home of the 43d Airlift Wing. The total economic impact³ of Fort Bragg to the local community is \$5.84 Billion. Pope AFB's economic impact on the local economy is approximately \$400 Million.⁴



In particular, the U.S. Army Special Operations Command (USASOC) is an important and distinctive asset. USASOC is the most technologically skilled unit in the military. Having its own budget and contracting vehicles, USASOC continually scouts for technologies that can be developed rapidly to meet their immediate needs (6 to 18 month timeframe). Once identified, USASOC can utilize special contracting vehicles to purchase the technology and fund its development. In addition to USASOC's presence in the Fayetteville/Cumberland County area, the area is home to a number of transitioning Special Operations Forces personnel who have started their own businesses selling products made from off-the-shelf technology, as well as services, to USASOC. It is a unique market opportunity that the Center can tap to grow technology businesses in North Carolina, and will be an important first step for partnering with the military.

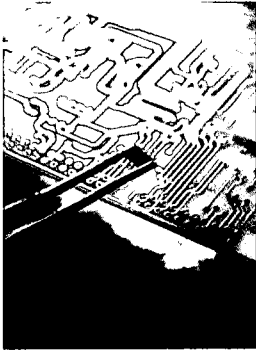
These important, and largely untapped, opportunities can become the drivers for new knowledge-based business and job creation.

² Mills, Mark P., "The Security-Industry Complex", *Forbes Magazine*, November 15, 2004.

³ Includes payroll, annual expenditures, estimated jobs-created value.

⁴ Fayetteville Area Economic Development Corp., <http://www.faedcnc.com>, Metrovisions 2004.

North Carolina – Global Leader in Technology Development and Business



Within approximately an hour's driving distance of Fayetteville is Research Triangle Park (RTP), recognized as home to world-class innovation and achievement. RTP's primary strengths are superior research and training institutions, and a large pool of scientists and skilled workers. A number of the areas of technology strength in RTP, including academic, government and corporate research and development, have important applications for security and defense. These include advanced materials, imaging, information technology hardware, software, microelectronics, optics/photonics, sensors and telecommunications. In addition, RTP is home to many leading technology companies, including Cisco Systems, Cree, EMC, Lockheed Martin Information Technology, SAS Institute, SciQuest, Red Hat, IBM, and Xerox.

Connecting the technology and scientific expertise present in the RTP area, and other regions of the state, with the military knowledge and relationships already located here will create powerful opportunities for new business.

A New Model – Building From Our Strengths

A new model for business incubation was identified that had the potential to bridge NC's innovation and military communities and provide business start-up services and flexible facilities to accelerate the formation and growth of early stage technology ventures.

The new model was identified based on a similar concept in Annapolis, Maryland. The Chesapeake Innovation Center (CIC) – the first Homeland Security Incubator in the country was launched by Business Cluster Development (BCD), a consulting group that has launched more than 25 incubator projects around the country – several of which have won industry recognition as best practice incubators.

BCD was retained to assist NCTA with the creation of a plan for a homeland security incubator. BCD creates successful incubators for its clients based upon a proven model of sector-focused incubation. The BCD Model has been replicated in universities, corporations, cities and communities. On each project, BCD works closely with the community to identify unique assets and partnerships that will contribute to a unique sector focused competitive advantage for the client.

Distinguishing Factors:

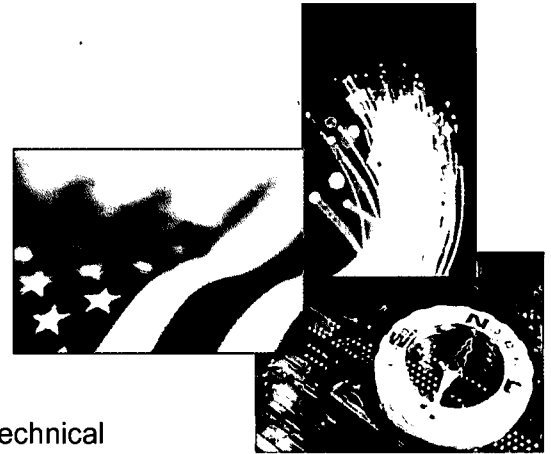
- Sector focused to leverage the unique competitive advantage of the region;
- Proximity to a strategic partner to help overcome significant start-up barriers;
- Focus on services (vs. space) as critical for successful acceleration of start-up companies.

Sector-focused incubation has proven to be a highly effective model for achieving economic development goals. By targeting growth opportunities in specific sectors where a region has strengths, sector-focused initiatives have helped to diversifying local economies and create jobs and wealth.

Defense Technology Innovation Center

The Defense Technology Innovation Center will create collaborations with the military, entrepreneurs and innovators that will drive technology solutions, business development, commercialization, and job creation in the Fayetteville/Cumberland County region.

By providing specialized expertise, technology business assistance, technical resources, and a network of valuable relationships, the Center will assist entrepreneurs and innovators with developing new businesses and dual use technologies focused on both military and commercial needs in the areas of security and defense.



Goals

- Generate successful, new technology businesses in Fayetteville;
- Develop technology solutions to security and defense problems identified by the military;
- Foster collaborations among the military, entrepreneurs, universities and technology companies to share ideas, understand needs, and commercialize technologies;
- Create dual use applications in the security and homeland defense sectors;
- Provide early stage funding to technology companies at the Center to foster their growth;
- Create jobs for transitioning military and spouses and others in Fayetteville; and
- Serve as a model of business incubation for North Carolina.

Key Components

Incubator – A 12,000 to 15,000 square foot facility for 12 to 15 startup companies and up to 10 affiliate companies.

Collaborative Workbench – A space within the facility equipped with the tools and engineering expertise to assist entrepreneurs with prototype development, testing and evaluation by the military that will enable the rapid creation of new technology.

Forum – To build collaborations, the Center will conduct regular briefings, seminars and events to both create an exchange of information on

military and market needs, and to build a network of relationships among the military, universities, large technology companies and entrepreneurs.

Validation Fund – An early stage grant program will provide \$25,000 to \$50,000 investments in participating companies, to help take them from concept to commercial prototype and will help leverage other investments.

Security Clearances – one or two key staff will hold appropriate clearances.

The Center will assist entrepreneurs with generating new, just-in-time security and defense technology solutions to meet the military's technology needs, as well as business demands. As part of its operations, the Center will build a strong relationship with the military, developing a clear understanding of its technology needs and requirements.

Best Practices Lead to Results

Business incubation programs accelerate the successful development of entrepreneurial companies*:

- 80% of businesses which participate in an incubator program succeed;
- 84% of the businesses locate within five miles of the incubator site after graduating from the incubator program.

* Molinar, Lawrence, *Business Incubation Works*, (NBIA Publications, 1997).

The Center will seek and find technologies and companies that will meet specific requirements, and then assist in the successful incubation of these technologies and companies. In addition, by collaborating with researchers and innovators in RTP and throughout the state, commercialization of technology will result. Other important outcomes, or measures of success, include the creation of business opportunities and knowledge-based jobs, including jobs for transitioning military and military spouses in the Fayetteville/Cumberland County area. Affiliate companies who participate actively in Center programs but reside remotely, spin-off jobs into other regions in the state.

The Center will help to strengthen the security and defense technology industries in North Carolina, and create new business opportunities.

Security and Defense business incubation combined with regional strengths in business attraction, trained workforce, and quality of life have the potential to create quality jobs as "graduate" companies produce products and grow their operations.

Champions for the Center

The Defense Technology Innovation Center will be locally driven, with the strong participation of local community members. The Cumberland County Business Council will take a leadership role in the Center. The Center will operate under the not-for-profit umbrella of an existing, or "host", 501(c)3 organization in the Fayetteville/Cumberland County area. The Center will create an Advisory Board to provide oversight and expertise specific to the Center's mission and operations. Its small professional staff will combine military, business and technology expertise and experience.



NCTA and MCNC continue to work with the project, especially during its critical start-up phase, and serve as important champions. NCTA and MCNC would collaborate with the host organization to share the expertise developed over the course of the project and the unique resources of both organizations.

Funding and Sustainability

Most incubators take 5 to 10 years to reach a self-sustaining level. In its initial phases, funding the Center, as for all incubators, will require public funding. It is estimated that the Center will require a subsidy of approximately \$5 million for the first three years (\$2 million-Year One, \$1.5 million-Year Two and Year Three). To create a sustainable model for the Center, a number of different sources would be combined over time. Small shares of equity participation in client companies; a sponsorship program to generate contributions from the business community; partnerships with the military, universities, corporations, and organizations; program grants and funding from government and private sources; and real estate arrangements with developers or landlords are among the options to fund the Center over time and put it on a path to sustainability. This sustainable business model has been created and utilized by Business Cluster Development to assist over 20 other business incubators throughout the United States.

Next Steps

The Business Plan for the Defense Technology Innovation Center describes a course of action for the creation of the incubator. At this point, the General Assembly should make a decision about whether to proceed with the next steps for an incubator and the implementation of the business plan. If the General Assembly approves the plan and decides to move forward with the creation of the Center, the Cumberland County Business Council, with the support of NCTA and MCNC, will seek funding of approximately \$5 million for a three year period to subsidize the Center's development and early operations.

The incubation model developed for the Center has the potential to be replicated with North Carolina's other military base communities. If successful, the model developed for Fayetteville and Fort Bragg, could be explored as an incubation model for the communities that house Seymour Johnson Air Force Base and MCB Camp Lejeune.

**“Science and technology have never been
more essential to the defense of the nation
and health of our economy.”**

PRESIDENT GEORGE W. BUSH

Contact

Joan P.H. Myers, President & CEO
NCTA
225 Hillsborough Street
Suite 160
Raleigh, NC 27603
919.856.0393
www.NCEITA.org

MINUTES

HOUSE COMMITTEE ON COMMERCE

April 27, 2005

The HOUSE COMMITTEE ON COMMERCE met on Wednesday, April 27, 2005, in Room 543 of the Legislative Office Building at 1:00 P. M. The following were present: Representative Daughtridge, presiding Chair, Representatives Goforth and Rapp, Co-Chairs, Representative Owens, Vice-Chair, Representative Rayfield was excused, and Representatives L. Allen, Barnhart, Bordsen, Brown, Carney, Cole, Coleman, Current, Dickson, England, Faison, Frye, Gibson, Haire, Jeffus, Jones, McGee, Pierce, Ray, Sauls, Stam, Vinson, Walend, Wiley, Wray and Representative Cunningham, Ex-Officio. Assisting with the meeting were Karen Cochran-Brown and Regan Walker, Staff Counsel, Dot Barber, Rachel Dupree, and Ann Jordan, Committee Assistants. Also assisting were Frank Prevo, Linda Fuller, Bill Sullivan and Charles Williams House Sergeants-at-Arms and House Pages, Carson Guy, sponsored by Representative Daughtridge, Nash County, John Lane, sponsored by Speaker Black, Nash County, Keifer Wynn, sponsored by Representative Dollar, Wake County, Arlane Belisle, sponsored by Speaker Black, Ottawa, Canada, and Caitlin Sexton, sponsored by Representative Coleman, Johnston County.

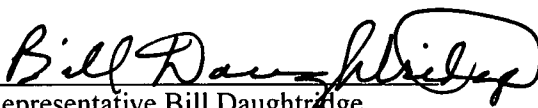
Representative Daughtridge called the meeting to order, introduced the House Sergeants-at-Arms, and the House Pages assisting with the meeting.

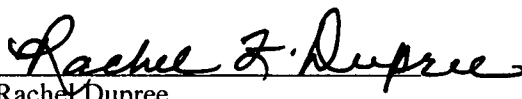
The order of business was **PROPOSED COMMITTEE SUBSTITUTE H947-CSLY-D [v2] – AN ACT TO REPLACE THE TAX CREDITS GENERALLY AVAILABLE UNDER THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT WITH MORE NARROWLY FOCUSED CREDITS FOR JOB CREATION AND BUSINESS INVESTMENT; AND TO EXTEND THE JOB DEVELOPMENT INVESTMENT GRANT PROGRAM.** – sponsored by Representatives Owens, Gibson and Daughtridge. Representative Owens discussed the proposed committee substitute and Canaan Huie from Bill Drafting explained the changes.

Representative Gibson submitted an amendment to the committee substitute; discussion followed by Committee Members and Representative Gibson motioned to give the bill with the amendment a favorable report. The bill was referred to the House Committee on Finance.

The Committee adjourned at 2:00 P.M.

Respectfully submitted,


Representative Bill Daughtridge
Presiding Chairman


Rachel Dupree
Committee Assistant

MINUTES

HOUSE COMMITTEE ON COMMERCE

April 27, 2005

The HOUSE COMMITTEE ON COMMERCE met on Wednesday, April 27, 2005, in Room 643 of the Legislative Office Building at 1:00 P. M. The following were present: Representative Daughtridge, presiding Chair, Representatives Goforth and Rapp, Co-Chairs, Representative Owens, Vice-Chair, Representative Rayfield was excused, and Representatives L. Allen, Barnhart, Bordsen, Brown, Carney, Cole, Coleman, Current, Dickson, England, Faison, Frye, Gibson, Haire, Jeffus, Jones, McGee, Pierce, Ray, Sauls, Stam, Vinson, Walend, Wiley, Wray and Representative Cunningham, Ex-Officio. Assisting with the meeting were Karen Cochran-Brown and Regan Walker, Staff Counsel, Dot Barber, Rachel Dupree, and Ann Jordan, Committee Assistants. Also assisting were Frank Prevo, Linda Fuller, Bill Sullivan and Charles Williams House Sergeants-at-Arms and House Pages, Carson Guy, sponsored by Representative Daughtridge, Nash County, John Lane, sponsored by Speaker Black, Nash County, Keifer Wynn, sponsored by Representative Dollar, Wake County, Arlane Belisle, sponsored by Speaker Black, Ottawa, Canada, and Caitlin Sexton, sponsored by Representative Coleman, Johnston County.

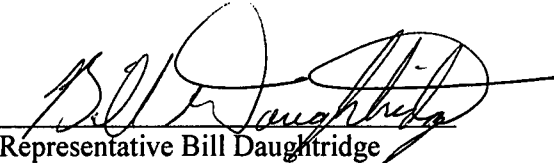
Representative Daughtridge called the meeting to order, introduced the House Sergeants-at-Arms, and the House Pages assisting with the meeting.


The order of business was **PROPOSED COMMITTEE SUBSTITUTE H947-CSLY-D [v2] – 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.** – sponsored by Representatives Owens, Gibson and Daughtridge. Representative Owens discussed the proposed committee substitute and Canaan Huie from Bill Drafting explained the changes.

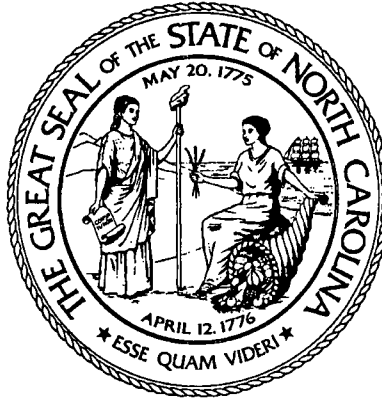
Representative Gibson submitted an amendment to the committee substitute; discussion followed by Committee Members and Representative Gibson motioned to give the bill with the amendment a favorable report. The bill was referred to the House Committee on Finance.

The Committee adjourned at 2:00 P.M.

Respectfully submitted,


Representative Bill Daughtridge
Presiding Chairman


Rachel Dupree
Committee Assistant



House Committee on Commerce

April 27, 2005

LOB 643

1:00 PM

Presiding Chair – Representative Bill Daughtridge

I. Call to Order

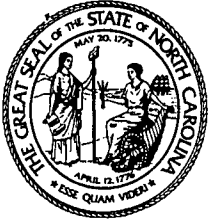
II. Program

**HB 947 - Business Growth and Investment Act of 2005
Representatives Owens, Gibson, Daughtridge**

**HB 1208 - Extend Bill Lee Act – Certain Manufacturers
Representative Tolson**

**HB 1335 - Extend and Expand Bill Lee Act
Representatives Rapp, Goforth, LaRoque**

III. Adjournment



HOUSE BILL 947: Business Growth and Investment Act of 2005

BILL ANALYSIS

Committee:	House Commerce	Date:	April 26, 2005
Introduced by:	Reps. Owens, Gibson, Daughtridge	Summary by:	Y. Canaan Huie Committee Counsel
Version:	First Edition H947-CSLY-5		

SUMMARY: This bill would create a new Article under Chapter 105 to provide tax credits to new and expanding businesses, effective for taxable years beginning on or after January 1, 2006, and would extend the sunset on the Job Development Investment Grant (JDIG) Program by two years.

BILL ANALYSIS:

Part I. Replace Bill Lee Act.

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 enterprise 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, 2006.¹

This bill would create a new package of State tax incentives to replace the Bill Lee Act. Many of the provisions of this proposed new Article are similar or identical to the provisions of the Bill Lee Act. There are some significant differences however.

General Administration.

Under this bill, by November 30 of each year, the Department of Commerce would be required to assign a tier designation to each of the 100 counties in the State. In order to make these assignments, the Department would rank all counties based on the following factors: unemployment, median household income, percentage population growth, and per capita assessed property value. Regardless of the development factor, any county with a population of less than 12,000 would automatically be included

¹ There are several exceptions to the 2006 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.

House Bill 947

Page 2

in the counties with the 40 highest rankings and any county with a population of less than 50,000 would automatically be included in the counties with the 80 highest rankings. The 40 counties with the highest ranking would be designated as development tier one, the next 40 highest counties would be designated as development tier two, and the remaining counties would be designated as development tier three. A county designated as a tier one county could not be redesignated as a higher tier until it had been at its current tier for at least two consecutive years.

This differs in several keys ways from the Bill Lee Act. First, the Bill Lee Act designation is not required until December 31. Second, in order to make the Bill Lee assignments, the Department of Commerce ranks all 100 counties based on the following three factors: unemployment, average per capita income, and percentage growth in population. The current bill would substitute median household income for per capita income and add the new factor related to assessed property value per capita. Third, under the Bill Lee Act, counties are divided into five tiers rather than three.²

Under this bill, all of the credits would be allowed against the franchise tax levied in Article 3 of Chapter 105, the income taxes levied in Article 4 of Chapter 105, the gross premiums tax levied in Article 8B of Chapter 105, or a combination of these taxes. The credits allowed under the Bill Lee Act are also allowed against these taxes; however, unlike this bill, under the Bill Lee Act, a taxpayer may take a credit against only one of the three taxes.

Under this bill, the total amount of credits allowed could not exceed 50% of the cumulative amount of the taxpayer's tax liability for franchise, income, and gross premiums taxes. Under the Bill Lee Act, the credits are limited to 50% of the taxpayer's tax liability for the one tax against which the taxpayer chooses to apply it. As with the Bill Lee Act, this cap would apply to the cumulative amount of credits for the current year and carryforwards of credits from previous years. Under this bill, any unused credit could be carried forward for the succeeding five years. This is also the standard carryforward period for the Bill Lee Act, but there are numerous exceptions under that Act that provide for longer carryforward provisions.

When filing a return for a taxable year in which the taxpayer engaged in activity for which the taxpayer is eligible for a credit, the taxpayer would be required to submit a fee of \$500 for each credit the taxpayer intended to claim. The fee would be divided between the Department of Revenue and the Department of Commerce and used to offset the costs of administering the new Article. Under the Bill Lee Act, there is a maximum fee of \$1,500 per taxable year: there would be no maximum fee under the proposed new Article.

As under the Bill Lee Act, each taxpayer claiming a credit under the proposed new Article would be required to provide any information required by the Secretary of Revenue to evaluate the eligibility of the taxpayer for the credit claimed.

As under the Bill Lee Act, the Department of Revenue and the Department of Commerce would be required to make several reports on the proposed new Article. By each April 1, the Department of

² Under the Bill Lee Act, the Department of Commerce is also responsible for designating development zones. Development zones are areas of higher poverty within urban centers. In order to be designated as a development zone, the area must satisfy all of the following conditions: every census tract or block group in the zone is located in a city with a population of at least 5,000, the zone has a population of at least 1,000, more than 20% of the population of the zone is below the poverty level, every census track or block group in the zone has more than 10% of its population below the poverty level or is immediately adjacent to a census tract or block group that has more than 20% of its population below the poverty level, and no census tract or block group in the zone is located in another development zone. Designation as a development zone is effective for two years. Location in a development zone leads to more favorable treatment for the taxpayer with respect to the wage standard, the credit for creating new jobs, the credit for investing in machinery and equipment, and the credit for worker training. This bill does not contain any provisions related to development zones.

House Bill 947

Page 3

Revenue would be required publish information itemized by credit and by taxpayer relating to the amount and tier designation of new jobs, new real property investment, and new business property. The Department of Commerce would be required to make biennial reports on tax equity and the impact of the proposed new Article.

As with the Bill Lee Act, credits under the proposed new Article could not be taken more than six months after the deadline for filing the tax return (including extensions) on which they were claimed. This is more restrictive than is generally the case under North Carolina law. In general, an overpayment may be refunded only if the discovery is made or the written request for a refund made within 3 years of the date set by statutes for filing the return or within 6 months of the date of the overpayment, whichever is later.

Basic Eligibility

Type of Business. Under this bill, in order to be eligible for a credit under the proposed new Article, a taxpayer would be required to meet eligibility requirements with regards to type of business. Under the proposed new Article, business type would be determined solely by reference to the primary activity of the particular establishment.³ The following types of businesses would be eligible for credits under the proposed new Article:

- Aircraft maintenance and repair.
- Air courier services.
- Customer service call centers, if at least 60% of the center's calls are incoming.
- Electronic shopping and mail order houses.
- Information technology and services.
- Manufacturing.
- Motorsports racing teams.
- Research and development.
- Warehousing.
- Wholesale trade.

Business-type eligibility under the proposed new Article would be substantially different than under the Bill Lee Act. Under the Bill Lee Act, business type eligibility depends on several factors including the primary business of the taxpayer as a whole, the primary activity of the particular establishment⁴, the location of the establishment, and the number of new jobs created. The following types of business are eligible under the Bill Lee Act:

- Air courier services, if the primary business of the taxpayer is air courier services.
- Data processing, if the primary business of the taxpayer is data processing.
- Manufacturing, if the primary business of the taxpayer is manufacturing, warehousing, or wholesale trade and the primary activity of the establishment is manufacturing.
- Warehousing, if the primary business of the taxpayer is manufacturing, warehousing, or wholesale trade and the primary activity of the establishment is warehousing, or if the primary activity of an establishment is warehousing, the establishment is located in an enterprise tier 1-3 area, and the establishment serves 25 or more establishments of the taxpayer.

³ The definition of "establishment" under the proposed new Article is different from the definition of "establishment" under the Bill Lee Act. Generally, under this definition, an establishment means a single physical location whereas the Bill Lee definition revolves around accounting units, although usually it refers to a single location as well.

⁴ An "establishment" is defined by NAICS (North American Industry Classification System) as the smallest operating entity for which records provide information on the cost of resources – materials, labor, and capital – employed to produce the units of output. In the United States, an establishment is generally a single physical location; although there are many exceptions to this generality.

House Bill 947

Page 4

- Wholesale trade, if the primary business of the taxpayer is manufacturing, warehousing, or wholesale trade and the primary activity of the establishment is wholesale trade.
- Computer services, if the primary activity of the establishment is computer services.
- Electronic mail order house, if the primary activity of the establishment is an electronic mail order house and the electronic mail order house is located in an enterprise tier 1-3 area and creates at least 250 new jobs.
- Customer service center, if the primary business of the taxpayer is financial services or telecommunications, the primary activity of the establishment is a customer service center, and the center is located in an enterprise tier 1-3 area.
- Central office or aircraft facility, if the primary activity of the establishment is a central administrative office or a training or maintenance center for an interstate air passenger carrier and the establishment creates at least 40 new jobs.

Under the proposed new Article, motorsports racing teams would be eligible for credits whereas they are not currently eligible under the Bill Lee Act. A larger group of manufacturers, warehouseers, wholesale traders, electronic mail order houses, and customer service centers would be eligible for credits under the proposed new Article than under the Bill Lee Act. Under the proposed new Article, credits for central administrative office facilities would be eliminated and credits for data processing would be replaced by credits for information technology and services.

Wage Standard. Under this bill, a taxpayer would be eligible for a credit under the proposed new Article only if the jobs provided by the taxpayer met a wage standard. As with the Bill Lee Act, no wage standard would apply in the lower-tiered areas.⁵ For development tiers two and three, the jobs provided by the taxpayer would be required to pay at least the lower of 100% of the average county wage or 110% of the average State wage. This differs significantly from the manner in which the wage standard is calculated under the Bill Lee Act. Under the Bill Lee Act, for enterprise tier areas three through five, the jobs provided by the taxpayer must pay at least 110% of the applicable average weekly wage. The applicable average weekly wage of the county is the lowest of the following: the average weekly wage for all insured private employers in the county, the average weekly wage for all insured private employers in the State, and the average weekly wage for all insured private employers in the county multiplied by the county income/wage adjustment factor.⁶

Under the proposed new Article, the wage standard would be calculated in different ways for the credit for creating jobs and the credit for investing in business property. For the credit for creating jobs, the average weekly wage of the jobs for which the credit was claimed and the average weekly wage of all jobs at the establishment with respect to which the credit was claimed would be required to meet the relevant wage standard. For the credit for investing in business property, the average weekly wage of all jobs at the establishment with respect to which the credit was claimed must meet the relevant wage standard. This is equivalent to how the wage standard is applied under the Bill Lee Act for the credits for creating jobs and for investing in machinery and equipment. As with the Bill Lee Act, there would be no wage standard for the credit for investing in real property under the proposed new Article since that credit would be available only in the lower-tiered counties where the wage standard requirement would not apply.

⁵ Legislation enacted in 2002 eliminated the wage standard in tiers one and two under the Bill Lee Act. Under the proposed new Article, no wage standard would apply in tier one. Tier one under the proposed new Article is roughly equivalent to tiers one and two under the Bill Lee Act.

⁶ The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The income/wage ratio is determined by dividing the average per capita income in the relevant jurisdiction by the annualized average wage for all insured private employers in the jurisdiction.

House Bill 947

Page 5

Under the Bill Lee Act, all jobs, including part-time jobs, must be included in the wage standard calculation. However, part-time jobs that also provide health insurance are considered to have an average weekly wage at least equal to the relevant wage standard. For the purpose of calculating the wage standard, the weekly wage of a part-time job is converted to a full-time equivalency. Under the proposed new Article, no part-time jobs would be included in the calculation of the wage standard. As under the Bill Lee Act, all jobs that were filled for at least 1600 hours during the year in which the taxpayer engaged in the activity for which a credit was claimed would be included in the wage standard calculation under the proposed new Article even if those jobs were not filled at the time the taxpayer claimed the credit.

Health insurance. As under the Bill Lee Act, a taxpayer would be required to provide health insurance for all full-time jobs at the establishment in order to be eligible for a credit under the proposed new Article. The taxpayer would be required to pay at least 50% of the premiums for health insurance that met at least the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee. Each year that a taxpayer claimed an installment or carryforward of a credit, the taxpayer would be required to provide certification that it continued to provide health insurance for all full-time employees. If the taxpayer ceased to provide health insurance, the credit would expire and the taxpayer would not be able to take any remaining installment or carryforward of the credit.

Environmental Impact. As under the Bill Lee Act, a taxpayer would be ineligible for a credit under the proposed new Article if the taxpayer had any pending administrative, civil, or criminal enforcement action based on alleged significant violation of any program implemented by an agency of the Department of Environment and Natural Resources or if the taxpayer had had any final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources in the last five years. The Secretary of Environment and Natural Resources would be required to notify the Department of Revenue of all persons who currently had any of these pending actions or who had had any of these final determinations in the past five years.

Safety and Health Programs. As under the Bill Lee Act, a taxpayer would be ineligible for a credit under the proposed new Article if the taxpayer had any outstanding violations under the Occupational Safety and Health Act that had become a final order for "willful serious" or "failure to abate serious" violations within the past three years. The Department of Labor would be required to notify the Department of Revenue of all employers who had had these citations become final orders in the past three years.

Overdue Tax Debts. As under the Bill Lee Act, a taxpayer would be ineligible for a credit under the proposed new Article if the taxpayer had any overdue tax debts. An overdue tax debt is any part of a tax debt that remains unpaid 90 days or more after a notice of final assessment was mailed to the taxpayer. A tax debt is a final assessment after all possibilities for appeal have been exhausted.

Under general existing law, if the Secretary of Revenue discovers that any tax is due from a taxpayer, the Secretary must notify the taxpayer in writing of the Secretary's intent to assess the taxpayer for the tax. The notice must describe the basis for the assessment, the amount of tax to be assessed and any interest and penalties due. If the taxpayer disagrees with the assessment, the taxpayer has 30 days to request a hearing before the Secretary. The Secretary must then schedule a hearing to occur within 90 days of the request. Within 90 days after the hearing, the Secretary must issue a decision on the hearing. If the taxpayer does not request a hearing within the 30 days allowed, or if the Secretary finds that the tax is due after the hearing, the proposed assessment becomes a final assessment. If a taxpayer disagrees

House Bill 947

Page 6

with a final assessment, the taxpayer may appeal the decision to the Tax Review Board, and then on to superior court, the Court of Appeals, and the Supreme Court.

Expiration. Under the Bill Lee Act, credits may expire for several reasons. If the taxpayer is no longer engaged in an eligible type of business or if the number of jobs of an eligible business falls below the minimum number required, the credit expires. Generally, if a credit expires, the taxpayer may not continue to take installments of the credit, but may continue to take carryforwards of installments that accrued in previous years⁷. The credit for creating jobs and the credit for investing in machinery and equipment expire if the jobs are no longer filled or if the machinery and equipment are taken out of service used in an eligible business. The credit does not expire if the enterprise tier designation of an eligible taxpayer changes after the credit is first claimed. The credits under the proposed new Article would retain most of these expiration provisions, but would not expire if the jobs remained filled or the business property remained in service but in a business that was not an eligible business.

Forfeiture. Under the Bill Lee Act, a taxpayer forfeits a credit if the taxpayer was not eligible for the credit in the year in which the taxpayer engaged in the activity for which the credit was claimed. A taxpayer that forfeits a credit is liable for all past taxes avoided as a result of the credit plus interest. The past taxes and interest are due 30 days after the date the credit is forfeited. The credits under the proposed new Article would retain these forfeiture provisions.

Specific Credits.

Credit for creating jobs, G.S. 105-129.78. Under this bill, a taxpayer would be allowed a credit for creating new full-time jobs. In order to be eligible for this credit, the taxpayer would be required to meet a job creation threshold based on the development tier designation of the location where the jobs were created. The amount of the credit would vary depending on the development tier designation of the area in which the job is located. A job would be located in an area if 50% or more of the employee's duties were performed in the area. The full amount of the credit could not be taken in the first year, but instead would be taken in four equal installments beginning with the taxable year following the year in which the employee was hired. Jobs transferred from one part of the State to another would not qualify for the credit. The amount of the credit and the job creation threshold would be equal to the amounts in the following table based on the development tier area in which the job is located:

<u>Area Development Tier</u>	<u>Amount of Credit</u>	<u>Threshold</u>
Tier One	\$12,500	5
Tier Two	5,000	10
Tier Three	500	50

Under the proposed new Article, if in one of the four years in which the installment of a credit accrues, the jobs with respect to which the credit was taken were unfilled, the credit related to those specific jobs would expire and the taxpayer would not be allowed to take any remaining installments of the credit. If, in one of the four years in which the installment of a credit accrues, the total number of jobs fell below the sum of the applicable job creation threshold and the number of jobs existing in the year before the new jobs were created, the credits with respect to all the new jobs would expire and the taxpayer would not be allowed to take any remaining installments of the credits. If, in one of the four years in which an installment of the credit accrued, a job that qualified for the credit was subsequently transferred to another area, the remaining installments of the credit would be calculated as if the job had been initially located in the later area.

Under the proposed new Article, a taxpayer that will create new jobs in a specific area during the next year could sign a letter of commitment with the Department of Commerce in order to lock-in the current

⁷ Expiration of a credit because the taxpayer ceases to provide health insurance is an exception to this general rule. In that case, the taxpayer may not claim installments or carryforwards after the credit expires.

House Bill 947

Page 7

year's development tier designations for the purposes of this credit. If the taxpayer created the jobs within the next year, the taxpayer would be allowed to compute the amount of the credit based on the designations in effect in either the year in which the letter of commitment was signed or the year in which the jobs were created. If the taxpayer did not create the jobs in the next year, the taxpayer could still claim a credit under the existing tier designation if the jobs were later created.

A taxpayer could not claim a credit under this proposed new Article and under the Bill Lee Act with respect to the same job. This is important because the Bill Lee Act will remain in effect for a limited group of taxpayers until 2010.

There are several significant differences between the proposed new credit for creating jobs and the credit that currently exists under the Bill Lee Act (G.S. 105-129.8). First, the Bill Lee Act credit does not require the taxpayer to meet a job creation threshold whereas the proposed new credit would. Second, the amount of the credit per job is more generous for some taxpayers under this proposed credit than under the existing Bill Lee Act credit. Third, under the Bill Lee Act credit, a letter of commitment signed by the taxpayer allows the taxpayer to lock-in the current enterprise tier designation for the following two years, whereas the proposed new credit would allow the taxpayer to lock-in the current development tier designation for only the following year.

Credit for investing in machinery and equipment, G.S. 105-129.79. Under this bill, a taxpayer would be allowed a credit for the cost of the eligible investment amount of business property placed into service during a taxable year. The eligible investment amount is the lesser of (i) the cost of the eligible business property and (ii) the net increase in eligible business property over the base year (the year of the preceding three years in which the taxpayer had the largest amount of business property in service in the State). In order to be eligible for the credit, the taxpayer would be required to place new business property into service in excess of a threshold based on the development tier designation. The credit would be taken in four equal installments, beginning the year after the equipment was placed in service. The amount of the credit would be equal to a percentage of the eligible investment amount of the business property. If the taxpayer placed eligible business property into service in more than one county during a year, the threshold would apply separately to each county. If the taxpayer placed eligible business property into service at more than one establishment in a single county during a year, the threshold would apply jointly to all establishments within the county. The following table sets out the relevant percentage and threshold for each development tier area:

<u>Enterprise Tier</u>	<u>Threshold</u>	<u>Credit Percentage</u>
Tier One	\$ -0-	7%
Tier Two	1,000,000	5%
Tier Three	10,000,000	4%

If in one of the four years in which the installment of a credit would accrue, the business property with respect to which the credit was taken was disposed of, moved out of State, or taken out of service, the credit would expire and the taxpayer could not take any remaining installments of the credit unless the cost of that business property was offset in the same taxable year by the taxpayer's new investment in business property. If eligible business property that qualified for a credit was subsequently transferred to another area, the remaining installments of the credit would be calculated as if the business property had been initially located in the later area

A taxpayer that would place specific business property in service at a specific location within the next year could sign a letter of commitment with the Department of Commerce in order to lock-in the current year's development tier designation for the purposes of this credit. If the taxpayer placed the eligible business property in service within the next year, the taxpayer could compute the amount of the credit based on the designations in effect in either the year in which the letter of commitment was signed or the

House Bill 947

Page 8

year in which the business property was placed in service. If the taxpayer did not place the business property in service in the next year, the taxpayer could still claim a credit under the existing tier designation if the business property was later placed in service.

A taxpayer could not claim a credit under this proposed new Article and under the Bill Lee Act with respect to the same business property. This is important because the Bill Lee Act will remain in effect for a limited group of taxpayers until 2010.

There are significant differences between the proposed new credit for investing in business property and the credit currently allowed under the Bill Lee Act for investing in machinery and equipment. First, the thresholds under the proposed credit are generally higher than the thresholds under the existing credit. However, under the proposed credit once the threshold has been met, the taxpayer may take a credit for all of the eligible business property placed into service, not just the amount that exceeds the threshold as is the case under the existing credit. Second, the definition of "business property" under the proposed new credit is broader than the definition of "machinery and equipment" under the existing credit. Third, the percentage that determines the amount of the credit under the proposed new credit is less than the percentage for the existing credit for some taxpayers located in higher tiers. Fourth, the existing Bill Lee Act credit allows a taxpayer to satisfy the threshold requirement over a two-year period when property is being phased in over two years, whereas the proposed no credit would require the threshold requirement to be satisfied in each year. Fifth, under the Bill Lee Act credit, a letter of commitment signed by the taxpayer allows the taxpayer to lock-in the current enterprise tier designation for the following two years, whereas the proposed new credit would allow the taxpayer to lock-in the current development tier designation for only the following year.

Credit for substantial investment in other property, G.S. 105-129.79. Under this bill, a taxpayer that is located in a development tier one area would be eligible for a credit for investment in real property. In order for the taxpayer to claim this credit, the Secretary of Commerce would be required to make a written determination that the taxpayer was expected to invest at least \$10 million in real property at a location within a three-year period and that the location would create at least 200 new jobs within two years of the time that the property was first used in an eligible business. The taxpayer could begin to claim the credit once the property was first used in an eligible business. The amount of the credit would be equal to 30% of the eligible investment amount and could be taken in installments over a seven-year period. There would no ceiling on the amount of the credit. The credit for investment in real property would expire if the number of people employed at the location fell below 200.

A taxpayer could not claim both the proposed credit for investment in real property and the existing Bill Lee Act credit for substantial investment in other property with respect to the same property. This is important because the Bill Lee Act will remain in effect for a limited group of taxpayers until 2010.

There is only one significant difference between the proposed credit for investing in real property and the existing credit for substantial investment in other property. The existing Bill Lee Act credit allows for an extended carryforward period, 20 years, for unused amounts of that credit. The proposed credit would be subject to the standard carryforward period of five years.

Expiring credits. The Bill Lee Act contains five credits that do not have a counterpart in this bill. Those credits are as follows:

- *G.S. 105-129.9A. Technology commercialization credit.* The technology commercialization credit is essentially an enhanced version of the credit for investing in machinery and equipment for taxpayers that are making significant investments in certain types of machinery and equipment. There is no similar enhancement in the proposed new Article.

House Bill 947

Page 9

- *G.S. 105-129.10. Credit for research and development.* The Bill Lee Act contains a credit for research and development expenditures. In 2004, the General Assembly created a new, stand-alone credit for research and development (See Article 3G of Chapter 105 of the General Statutes). Therefore, no similar credit is included in the proposed new Article.
- *G.S. 105-129.11. Credit for worker training.* The Bill Lee Act contains a credit with which a taxpayer could offset certain worker training expenses. There is no similar credit in the proposed new Article.
- *G.S. 105-129.12. Credit for investing in central office or aircraft facility property.* The Bill Lee Act contains a credit for investing in central office or aircraft facility property. The credit was equal to 7% of the eligible investment amount and was capped at \$500,000. There is no similar credit in the proposed new Article.
- *G.S. 105-129.13. Credit for development zone projects.* This credit allowed a taxpayer to claim a credit equal to 25% of a donation to a development zone agency for an improvement project in a development zone. There is no similar credit in the proposed new Article.

Constitutional Concerns.

The credits under the proposed new Article would be vulnerable to attack under the reasoning of the *Cuno* decision because they evince a clear preference for in-State economic activity at the expense of out-of-state development. On September 2, 2004, the Sixth Circuit Court of Appeals issued its decision in *Cuno v. DaimlerChrysler*, 386 F.3d 738, (6th Cir. (Ohio)). In that decision, the Court found that Ohio's investment tax credit violated the Commerce Clause of the United States Constitution because it (a) encouraged in-state economic development at the expense of out-of-state economic development and (b) allowed the taxpayer to reduce pre-existing income tax liability by investing in-state but not by investing out-of-state.

Although the Sixth Circuit's decision is not binding in North Carolina⁸ and is subject to further review⁹, a similar case could be brought in this jurisdiction. If the decision applicable in this jurisdiction followed the reasoning of the Sixth Circuit opinion, the credits under the proposed new Article would be ruled unconstitutional. If that happened, it is uncertain what the remedy would be. Possible remedies could include ordering the State to provide retroactive credits to otherwise similarly situated taxpayers who had made similar investments in other states.

Part II. Extend JDIG.

S.L. 2002-172 created a new economic development tool for new and expanding businesses in North Carolina, the Job Development Investment Grant (JDIG) Program. JDIG is used to attract businesses to the State by allowing a five-member committee to award grants to businesses. The grants may be awarded over as many as 12 years and the amounts of the grants are based on income tax withholdings from new jobs created by the businesses. The committee may enter into no more than 25 agreements per calendar year and may commit no more than \$15 million in any fiscal year under all agreements entered into during a single calendar year.¹⁰ When the General Assembly created the program it imposed a two-year sunset on the authority of the committee to enter into new grant agreements. In

⁸ The decision is binding only in the states that compose the Sixth Circuit: Kentucky, Michigan, Ohio, and Tennessee.

⁹ Ohio petitioned the Sixth Circuit Court of Appeals for rehearing *en banc*, but that petition was denied in January of 2005. The state could also appeal the decision to the United States Supreme Court. Ohio recently received an extension of time to file the appeal with the Supreme Court; that appeal must now be filed by mid-June of 2005.

¹⁰ Originally, the committee was limited to 15 agreements per year with a total cost not to exceed \$10 million in any fiscal year for agreements entered into in any one year. These amounts were increased in 2004 effective in that year.

House Bill 947

Page 10

2004, the General Assembly voted to extend this sunset by one year. This bill would extend the sunset an additional two years, until January 1, 2008.

H0947e1-SMLY-CSLY-5

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Daughtridge, Goforth, LaRoque, Rapp (Chairs) for the Committee on
COMMERCE.

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 the committee substitute bill, unfavorable as to the original bill,
and recommendation that the committee substitute bill be re-referred to the Committee on
FINANCE.

(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 947
PROPOSED COMMITTEE SUBSTITUTE H947-CSLY-5 [v.2]

4/26/2005 11:19:02 AM

Short Title: Business Growth and Investment Act of 2005.

(Public)

Sponsors:

Referred to:

March 29, 2005

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.

The General Assembly of North Carolina enacts:

PART I. REPLACE BILL LEE ACT

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

"Article 3H.

"Tax Credits for Growing Businesses.

"§ 105-129.70. Legislative findings.

The General Assembly finds that:

(1) It is the policy of the State of North Carolina to stimulate economic activity and to create new jobs for the citizens of the State by encouraging and promoting the expansion of existing business and industry within the State and by recruiting and attracting new business and industry to the State.

(2) Both short-term and long-term economic trends at the State, national, and international levels have made the successful implementation of the State's economic development policy and programs both more critical and more challenging; and the decline in the State's traditional industries, and the resulting adverse impact upon the State and its citizens, have been exacerbated in recent years by adverse national and State economic trends that contribute to the reduction in the State's industrial base and that inhibit the State's ability to sustain or attract new and expanding businesses.

- 1 (3) The economic condition of the State is not static and recent changes in
2 the State's economic condition have created economic distress that
3 requires a reevaluation of certain existing State programs and the
4 enactment of a new program as provided in this Article that is
5 designed to stimulate new economic activity and to create new jobs
6 within the State.
- 7 (4) The enactment of this Article is necessary to stimulate the economy
8 and create new jobs in North Carolina; and this Article will promote
9 the general welfare and confer, as its primary purpose and effect,
10 benefits on citizens throughout the State through the creation of new
11 jobs, an enlargement of the overall tax base, an expansion and
12 diversification of the State's industrial base, and an increase in revenue
13 to the State and its political subdivisions.
- 14 (5) The purpose of this Article is to stimulate economic activity and to
15 create new jobs within the State.
- 16 (6) The State is in need of a focused tax credit program that encourages
17 and facilitates economic growth and development within the State.
- 18 (7) The resources of the State are not evenly distributed throughout the
19 State and different communities have different abilities and needs in
20 attracting and maintaining new and expanding business and industry.

21 **"§ 105-129.71. Definitions.**

22 The following definitions apply in this Article:

- 23 (1) Aircraft maintenance and repair. – The provision of specialized
24 maintenance or repair services for commercial aircraft or the
25 rebuilding of commercial aircraft.
- 26 (2) Air courier services. – The furnishing of air delivery of individually
27 addressed letters and packages for compensation, in interstate
28 commerce, except by the United States Postal Service.
- 29 (3) Business property. – Tangible personal property used in a business that
30 is capitalized under the Code.
- 31 (4) Cost. – In the case of property owned by the taxpayer, cost is
32 determined pursuant to regulations adopted under section 1012 of the
33 Code. In the case of property the taxpayer leases from another, cost is
34 value as determined pursuant to G.S. 105-130.4(j)(2).
- 35 (5) Customer service call center. – The provision of support service by a
36 business to its customers by telephone to support products or services
37 of the business.
- 38 (6) Development tier. –The classification assigned to an area pursuant to
39 G.S. 105-129.73.
- 40 (7) Electronic shopping and mail order houses. – An industry in electronic
41 shopping and mail order houses industry group 4541 as defined by
42 NAICS.
- 43 (8) Establishment. – Defined in 29 C.F.R § 1904.46, as it existed on
44 January 1, 2002.

- 1 (9) Full-time job. – A position that requires at least 1,600 hours of work
2 per year and is intended to be held by one employee during the entire
3 year. A full-time employee is an employee who holds a full-time job.
- 4 (10) Information technology and services. – An industry in one of the
5 following:
6 a. Internet service providers, web search portals, and data
7 processing subsector 518 as defined by NAICS.
8 b. Software publishers industry group 5112 as defined by NAICS.
9 c. Computer systems design and related services industry group
10 5415 as defined by NAICS.
- 11 (11) Manufacturing. – An industry in manufacturing sectors 31 through 33,
12 as defined by NAICS, but not including quick printing or retail
13 bakeries.
- 14 (12) Motorsports racing team. – A professional or semiprofessional racing
15 team primarily engaged in the research and development, design,
16 manufacture, repair, maintenance, and operation of motor vehicles
17 used in live motorsports racing events before a paying audience.
- 18 (13) NAICS. – The North American Industry Classification System adopted
19 by the United States Office of Management and Budget as of
20 December 31, 2002.
- 21 (14) New job. – A full-time job that represents a net increase in the number
22 of the taxpayer's employees statewide. A new employee is an
23 employee who holds a new job. The term does not include a job
24 currently located in this State that is transferred to the business from a
25 related member of the business.
- 26 (15) Overdue tax debt. – Defined in G.S. 105-243.1.
- 27 (16) Purchase. – Defined in section 179 of the Code.
- 28 (17) Related entity. – Defined in G.S. 105-130.7A.
- 29 (18) Research and development. – An industry in scientific research and
30 development services industry group 5417 as defined by NAICS.
- 31 (19) Warehousing. – An industry in warehousing and storage subsector 493
32 as defined by NAICS.
- 33 (20) Wholesale trade. – An industry in wholesale trade sector 42 as defined
34 by NAICS.

35 **"§ 105-129.72. Sunset; studies.**

- 36 (a) Sunset. – This Article is repealed effective for business activities that occur
37 on or after January 1, 2010.
- 38 (b) Equity Study. – The Department of Commerce shall study the effect of the
39 tax incentives provided in this Article on tax equity. This study shall include the
40 following:

- 41 (1) Reexamining the formula in G.S. 105-129.73(b) used to define
42 development tiers, to include consideration of alternative measures for
43 more equitable treatment of counties in similar economic
44 circumstances.

1 (2) Considering whether the assignment of tiers and the applicable
2 thresholds are equitable for smaller counties, for example those under
3 50,000 in population.

4 (3) Compiling any available data on whether expanding North Carolina
5 businesses receive fewer benefits than out-of-State businesses that
6 locate to North Carolina.

7 (c) Impact Study. – The Department of Commerce shall study the effectiveness
8 of the tax incentives provided in this Article. This study shall include:

9 (1) Studying the distribution of tax incentives across new and expanding
10 businesses and industries.

11 (2) Examining data on economic recruitment for the period from 2004
12 through the most recent year for which data are available by county, by
13 industry type, by size of investment, and by number of jobs, and other
14 relevant information to determine the pattern of business locations and
15 expansions before and after the enactment of this Article.

16 (3) Measuring the direct costs and benefits of the tax incentives.

17 (4) Compiling available information on the current use of incentives by
18 other states and whether that use is increasing or declining.

19 (d) Report. – The Department of Commerce shall report the results of these
20 studies and its recommendations to the General Assembly biennially with the first report
21 due by April 1, 2007.

22 "**§ 105-129.73. Development tier designation.**

23 (a) Tiers Defined. – A development tier one area is a county whose annual
24 ranking is one of the 40 highest in the State. A development tier two area is a county
25 whose annual ranking is one of the next 40 highest in the State. A development tier
26 three area is a county that is not in a lower-numbered development tier.

27 (b) Development Factor. – Each year, on or before November 30, the Secretary
28 of Commerce shall assign to each county in the State a development factor that is the
29 sum of the following:

30 (1) The county's rank in a ranking of counties by average rate of
31 unemployment from lowest to highest, for the preceding 12 months.

32 (2) The county's rank in a ranking of counties by median household
33 income from highest to lowest, for the preceding 12 months.

34 (3) The county's rank in a ranking of counties by percentage growth in
35 population from highest to lowest, for the preceding 36 months.

36 (4) The county's rank in a ranking of counties by assessed property value
37 per capita, from highest to lowest, for the most recent taxable year.

38 (c) Annual Ranking. – After computing the development factor as provided in
39 subsection (b) of this section, the Secretary of Commerce shall rank all the counties
40 within the State according to their development factor from highest to lowest.
41 Regardless of the actual development factor, any county that has a population of less
42 than 12,000 shall automatically be ranked one of the 40 highest counties and any county
43 that has a population of less than 50,000 shall automatically be ranked one of the 80
44 highest counties. The Secretary shall then identify all the areas of the State by

1 development tier and publish this information. A development tier designation is
2 effective only for the calendar year following the designation.

3 (d) Data. – In measuring rates of unemployment and median household income,
4 the Secretary shall use the latest available data published by a State or federal agency
5 generally recognized as having expertise concerning the data. In measuring population
6 and population growth, the Secretary shall use the most recent estimates of population
7 certified by the State Budget Officer. In measuring assessed property value, the
8 Secretary shall use the tax records prepared in each county.

9 (e) Exception for Development Tier One Areas. – Notwithstanding the
10 provisions of this section, a county designated as a development tier one area may not
11 be redesignated as a higher-numbered development tier area until it has been in its
12 development tier area for at least two consecutive years.

13 (f) Exception for Two-County Industrial Park. – For the purpose of this Article,
14 an eligible two-county industrial park has the lower development tier designation of the
15 designations of the two counties in which it is located if it meets all of the following
16 conditions:

- 17 (1) It is located in two contiguous counties, one of which has a lower
18 development tier designation than the other.
- 19 (2) At least one-third of the park is located in the county with the lower
20 tier designation.
- 21 (3) It is owned by the two counties or a joint agency of the counties.
- 22 (4) The county with the lower tier designation contributed at least the
23 lesser of one-half of the cost of developing the park or a proportion of
24 the cost of developing the park equal to the proportion of land in the
25 park located in the county with the lower tier designation.

26 **"§ 105-129.74. Eligibility; forfeiture.**

27 (a) Eligible Business. – A taxpayer is eligible for a credit under this Article only
28 with respect to activities occurring at an establishment whose primary activity is listed
29 in this subsection. The primary activity of an establishment is determined based on the
30 establishment's principal product or group of products produced or distributed, or
31 services rendered

- 32 (1) Aircraft maintenance and repair.
- 33 (2) Air courier services.
- 34 (3) Customer service call centers, if at least sixty percent (60%) of the
35 center's calls are incoming.
- 36 (4) Electronic shopping and mail order houses.
- 37 (5) Information technology and services.
- 38 (6) Manufacturing.
- 39 (7) Motorsports racing team.
- 40 (8) Research and development.
- 41 (9) Warehousing
- 42 (10) Wholesale trade.

43 (b) Wage Standard. – A taxpayer is eligible for a credit under this Article in a
44 development tier two or three area if the taxpayer satisfies a wage standard. Jobs satisfy

1 the wage standard if they pay an average weekly wage that is at least equal to the lesser
2 of one hundred ten percent (110%) of the average wage for all insured private
3 employers in the State and one hundred percent (100%) of the average wage for all
4 insured private employers in the county. The Department of Commerce must annually
5 publish the wage standard for each county.

6 In making the wage calculation, the taxpayer must include any jobs that were filled
7 for at least 1,600 hours during the calendar year the taxpayer engages in the activity that
8 qualifies for the credit even if those jobs are not filled at the time the taxpayer claims
9 the credit. For a taxpayer with a taxable year other than a calendar year, the taxpayer
10 must use the wage standard for the calendar year in which the taxable year begins. Only
11 full-time jobs are included when making the wage calculation.

12 (c) Health Insurance. – A taxpayer is eligible for a credit under this Article if the
13 taxpayer provides health insurance for all of the full-time jobs at the establishment with
14 respect to which the credit is claimed when the taxpayer engages in the activity that
15 qualifies for the credit. For the purposes of this subsection, a taxpayer provides health
16 insurance if it pays at least fifty percent (50%) of the premiums for health care coverage
17 that equals or exceeds the minimum provisions of the basic health care plan of coverage
18 recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

19 Each year that a taxpayer claims a credit or carryforward of a credit allowed under
20 this Article, the taxpayer must provide with the tax return the taxpayer's certification
21 that the taxpayer continues to provide health insurance for all the jobs at the
22 establishment with respect to which the credit was claimed. If the taxpayer ceases to
23 provide health insurance for the jobs during a taxable year, the credit expires and the
24 taxpayer may not take any remaining installment or carryforward of the credit.

25 (d) Environmental Impact. – A taxpayer is eligible for a credit allowed under this
26 Article only if the taxpayer certifies that, at the time the taxpayer claims the credit, the
27 taxpayer has no pending administrative, civil, or criminal enforcement action based on
28 alleged significant violations of any program implemented by an agency of the
29 Department of Environment and Natural Resources, and has had no final determination
30 of responsibility for any significant administrative, civil, or criminal violation of any
31 program implemented by an agency of the Department of Environment and Natural
32 Resources within the last five years. A significant violation is a violation or alleged
33 violation that does not satisfy any of the conditions of G.S. 143-215.6B(d). The
34 Secretary of Environment and Natural Resources must notify the Department of
35 Revenue annually of every person that currently has any of these pending actions and
36 every person that has had any of these final determinations within the last five years.

37 (e) Safety and Health Programs. – A taxpayer is eligible for a credit allowed
38 under this Article only if the taxpayer certifies that, as of the time the taxpayer claims
39 the credit, at the establishment with respect to which the credit is claimed, the taxpayer
40 has no citations under the Occupational Safety and Health Act that have become a final
41 order within the past three years for willful serious violations or for failing to abate
42 serious violations. For the purposes of this subsection, "serious violation" has the same
43 meaning as in G.S. 95-127. The Commissioner of Labor must notify the Department of

1 Revenue annually of all employers who have had these citations become final orders
2 within the past three years.

3 (f) Overdue Tax Debts. – A taxpayer is not eligible for a credit allowed under
4 this Article if, at the time the taxpayer claims the credit or an installment or
5 carryforward of the credit, the taxpayer has received a notice of an overdue tax debt and
6 that overdue tax debt has not been satisfied or otherwise resolved.

7 (g) Forfeiture. – A taxpayer forfeits a credit allowed under this Article if the
8 taxpayer was not eligible for the credit for the calendar year in which the taxpayer
9 engaged in the activity for which the credit was claimed. In addition, a taxpayer forfeits
10 a credit for investment in real property under G.S. 105-129.80 if the taxpayer fails to
11 timely create the number of required new jobs or to timely make the required level of
12 investment required under G.S. 105-129.80(b). A taxpayer that forfeits a credit under
13 this Article is liable for all past taxes avoided as a result of the credit plus interest at the
14 rate established under G.S. 105-241.1(i), computed from the date the taxes would have
15 been due if the credit had not been allowed. The past taxes and interest are due 30 days
16 after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and
17 interest by the due date is subject to the penalties provided in G.S. 105-236.

18 (h) Change in Ownership of Business. – As used in this subsection, the term
19 'business' means a taxpayer or an establishment. The sale, merger, consolidation,
20 conversion, acquisition, or bankruptcy of a business, or any transaction by which an
21 existing business reformulates itself as another business, does not create new eligibility
22 in a succeeding business with respect to credits for which the predecessor was not
23 eligible under this Article. A successor business may, however, take any credit or
24 carried-over portion of a credit that its predecessor could have taken if it had a tax
25 liability. The acquisition of a business is a new investment that creates new eligibility in
26 the acquiring taxpayer under this Article if either of the following conditions is met:

27 (1) The business closed before it was acquired.

28 (2) The business was required to file a notice of plant closing or mass
29 layoff under the federal Worker Adjustment and Retraining
30 Notification Act, 29 U.S.C. § 2101, before it was acquired.

31 (i) Advisory Ruling. – A taxpayer may request in writing from the Secretary of
32 Revenue specific advice regarding eligibility for a credit under this Article.
33 G.S. 105-264 governs the effect of this advice. A taxpayer may not legally rely upon
34 advice offered by any other State or local government official or employee acting in an
35 official capacity regarding eligibility for a credit under this Article.

36 (j) Planned Expansion. – A taxpayer that signs a letter of commitment with the
37 Department of Commerce, after the Department has calculated the development tier
38 designations for the next year but before the beginning of that taxable year, to undertake
39 specific activities at a specific site within the next taxable year may calculate the credit
40 for which it qualifies based on the location's development tier designation in the year in
41 which the letter of commitment was signed by the taxpayer.

42 **"§ 105-129.75. Tax election; cap; carryforwards; limitations.**

43 (a) Tax Election. – The credits provided in this Article are allowed against the
44 franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of

1 this Chapter, and the gross premiums tax levied in Article 8B of this Chapter. The
2 taxpayer may divide a credit between the taxes against which it is allowed.
3 Carryforwards of a credit may be divided between the taxes against which it is allowed
4 without regard to the original election.

5 (b) Cap. – The credits allowed under this Article may not exceed fifty percent
6 (50%) of the cumulative amount of taxes against which they are claimed for the taxable
7 year, reduced by the sum of all other credits allowed against those taxes, except tax
8 payments made by or on behalf of the taxpayer. This limitation applies to the
9 cumulative amount of credit, including carryforwards, claimed by the taxpayer under
10 this Article against the taxes for the taxable year. Credits that may eliminate only a
11 portion of the taxpayer's liability must be taken before credits that may eliminate all of a
12 taxpayer's liability, which in turn must be taken before any credits that are refundable.

13 (c) Carryforward. – Any unused portion of a credit under this Article may be
14 carried forward for the succeeding five years.

15 (d) Statute of Limitations. – Notwithstanding Article 9 of this Chapter, a taxpayer
16 must claim a credit under this Article within six months after the date set by statute for
17 the filing of the return, including any extensions of that date.

18 **§ 105-129.76. Fees and reports.**

19 (a) Fee. – When filing a return for a taxable year in which the taxpayer engaged
20 in activity for which the taxpayer is eligible for a credit under this Article, the taxpayer
21 must pay the Department of Revenue a fee of five hundred dollars (\$500.00) for each
22 credit the taxpayer claims or intends to claim. The fee is due at the time the return is due
23 for the taxable year in which the taxpayer engaged in the activity for which the taxpayer
24 is eligible for a credit. No credit is allowed under this Article for a taxable year until all
25 outstanding fees have been paid. The Secretary of Revenue shall retain three-fourths of
26 the proceeds of the fee imposed in this section for the costs of administering and
27 auditing the credits allowed in this Article. The Secretary of Revenue shall credit the
28 remaining proceeds of the fee imposed in this section to the Department of Commerce
29 for the costs of administering this Article. The proceeds of the fee are receipts of the
30 Department to which they are credited.

31 (b) Reports. – The Department of Revenue shall publish by April 1 of each year
32 the following information itemized by credit and by taxpayer for the 12-month period
33 ending the preceding December 31:

- 34 (1) The number of claims for each credit allowed in this Article.
- 35 (2) The number and development tier area of new jobs with respect to
36 which credits were claimed.
- 37 (3) The cost and development tier area of business property with respect to
38 which credits were claimed.
- 39 (4) The cost and development tier area of real property investment with
40 respect to which credits were claimed.

41 **"§ 105-129.77. Substantiation.**

42 (a) Records. – To claim a credit allowed by this Article, the taxpayer must
43 provide any information required by the Secretary of Revenue. Every taxpayer claiming
44 a credit under this Article shall maintain and make available for inspection by the

Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

(b) Documentation. – Each taxpayer must provide with the tax return qualifying information for each credit claimed under this Article. The qualifying information must be in the form prescribed by the Secretary and must be signed and affirmed by the individual who signs the taxpayer's tax return. The information required by this subsection is information demonstrating that the taxpayer has met the conditions for qualifying for a credit and any carryforwards, and includes the following:

- (1) The physical location of the jobs and investment with respect to which the credit is claimed, including the street address and the development tier designation of the location.
- (2) The type of business with respect to which the credit is claimed and the average weekly wage at the facility with respect to which the credit is claimed.
- (3) Any other qualifying information related to a specific credit allowed under this Article.

"§ 105-129.78. Credit for creating jobs.

(a) Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.74 and satisfies the threshold requirement for new job creation in this State under subsection (b) of this section during the taxable year is allowed a credit for creating those new jobs. The amount of the credit for each new job created is set out in the table below and is based on the development tier designation of the county in which the job is located.

<u>Area Development Tier</u>	<u>Amount of Credit</u>
<u>Tier One</u>	<u>\$12,500</u>
<u>Tier Two</u>	<u>5,000</u>
<u>Tier Three</u>	<u>500</u>

(b) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier designation of the county where the new jobs are created during the taxable year. If the taxpayer creates new jobs at more than one eligible establishment in a county during the taxable year, the threshold applies to the aggregate number of new jobs created at all eligible establishments within the county during that year. If the taxpayer creates new jobs at eligible establishments in different counties during the taxable year, the threshold applies separately to the aggregate number of new jobs created at eligible establishments in each county.

<u>Area Development Tier</u>	<u>Threshold</u>
<u>Tier One</u>	<u>5</u>
<u>Tier Two</u>	<u>10</u>
<u>Tier Three</u>	<u>50</u>

(c) Calculation. – A job is located in a county if more than fifty percent (50%) of the employee's duties are performed in the county. The number of new jobs a taxpayer

1 creates during the taxable year is determined by subtracting the average number of
2 full-time employees the taxpayer had in this State during the 12-month period preceding
3 the beginning of the taxable year from the average number of full-time employees the
4 taxpayer has in this State during the taxable year.

5 (d) Installments. – The credit may not be taken in the taxable year in which the
6 new jobs are created. Instead, the credit must be taken in equal installments over the
7 four years following the taxable year in which the new jobs were created and is
8 conditional upon the continued maintenance of those jobs by the taxpayer. If, in one of
9 the four years in which the installment of a credit accrues, a job is no longer filled, the
10 credit with respect to that job expires and the taxpayer may not take any remaining
11 installment of the credit with respect to that job. If, in one of the years in which the
12 installment of a credit accrues, the number of the taxpayer's full-time employees falls
13 below the sum of the applicable threshold and the number of full-time employees the
14 taxpayer had in the year before the year in which the taxpayer qualified for the credit,
15 the credits with respect to all of the new jobs expire and the taxpayer may not take any
16 remaining installments of the credits. When a credit expires under this subsection, the
17 taxpayer may, however, take the portion of an installment that accrued in a previous
18 year and was carried forward to the extent permitted under G.S. 105-129.75.

19 (e) Transferred Jobs. – Jobs transferred from one area in the State to another area
20 in the State are not considered new jobs for purposes of this section. Jobs transferred to
21 the taxpayer from a related member of the taxpayer are not considered new jobs for
22 purposes of this section. If, in one of the four years in which the installment of a credit
23 accrues, the jobs with respect to which the credit was claimed are moved to an area in a
24 higher-numbered development tier, the remaining installments of the credit are allowed
25 only to the extent they would have been allowed if the jobs were initially created in the
26 area to which they were moved. If, in one of the years in which the installment of a
27 credit accrues, the jobs are moved to an area in a lower-numbered development tier, the
28 remaining installments of the credit must be calculated as if the jobs had been created
29 initially in the area to which they were moved.

30 (f) Wage Standard. – For the purposes of this section, a taxpayer satisfies the
31 wage standard requirement of G.S. 105-129.74 only if the taxpayer satisfies the
32 requirement with respect to both the new jobs, considered collectively, for which a
33 credit is claimed and all of the jobs at the establishment, considered collectively, with
34 respect to which a credit is claimed.

35 (g) No Double Credit. – A taxpayer may not claim a credit under this section
36 with respect to jobs for which a taxpayer claims a credit under G.S. 105-129.8.

37 **"§ 105-129.79. Credit for investing in business property.**

38 (a) General Credit. – A taxpayer that has purchased or leased business property
39 and placed it in service in this State during the taxable year and that has satisfied the
40 threshold requirements of subsection (c) of this section is allowed a credit equal to the
41 applicable percentage of the eligible investment amount. Business property is eligible if
42 it is not leased to another party. The credit may not be taken for the taxable year in
43 which the business property is placed in service but shall be taken in equal installments

1 over the four years following the taxable year in which it is placed in service. The
 2 applicable percentage is as follows:

<u>Area Development Tier</u>	<u>Applicable Percentage</u>
Tier One	7%
Tier Two	5%
Tier Three	4%

7 (b) Eligible Investment Amount. – The eligible investment amount is the lesser
 8 of (i) the cost of the eligible business property and (ii) the amount by which the cost of
 9 all of the taxpayer's eligible business property that is in service in this State on the last
 10 day of the taxable year exceeds the cost of all of the taxpayer's eligible business
 11 property that was in service in this State on the last day of the base year. The base year
 12 is that year, of the three immediately preceding taxable years, in which the taxpayer had
 13 the most eligible business property in service in this State.

14 (c) Threshold. – The applicable threshold is the appropriate amount set out in the
 15 following table based on the development tier where the eligible business property is
 16 placed in service during the taxable year. If the taxpayer places eligible business
 17 property in service at more than one establishment in a county during the taxable year,
 18 the threshold applies to the aggregate amount of eligible business property placed in
 19 service during the taxable year at all establishments in the county. If the taxpayer places
 20 eligible business property in service at establishments in different counties, the
 21 threshold applies separately to the aggregate amount of eligible business property
 22 placed in service in each county.

<u>Area Development Tier</u>	<u>Threshold</u>
Tier One	\$ -0-
Tier Two	1,000,000
Tier Three	10,000,000

27 (d) Expiration. – As used in this subsection, the term "disposed of" means
 28 disposed of, taken out of service, or moved out of State. If, in one of the four years in
 29 which the installment of a credit accrues, the business property with respect to which
 30 the credit was claimed is disposed of, the credit expires and the taxpayer may not take
 31 any remaining installment of the credit for that business property unless the cost of that
 32 business property is offset in the same taxable year by the taxpayer's new investment in
 33 eligible business property placed in service in the same county, as provided in this
 34 subsection. If, during the taxable year the taxpayer disposed of the business property for
 35 which installments remain, there has been a net reduction in the cost of all the taxpayer's
 36 eligible business property that are in service in the same county as the business property
 37 that was disposed of, and the amount of this reduction is greater than twenty percent
 38 (20%) of the cost of the business property that was disposed of, then the taxpayer
 39 forfeits the remaining installments of the credit for the business property that was
 40 disposed of. If the amount of the net reduction is equal to twenty percent (20%) or less
 41 of the cost of the business property that was disposed of, or if there is no net reduction,
 42 then the taxpayer does not forfeit the remaining installments of the expired credit. In
 43 determining the amount of any net reduction during the taxable year, the cost of
 44 business property the taxpayer placed in service during the taxable year and for which

1 the taxpayer claims a credit under Article 3A or Article 3B of this Chapter may not be
2 included in the cost of all the taxpayer's eligible business property that is in service. If in
3 a single taxable year business property with respect to two or more credits in the same
4 county are disposed of, the net reduction in the cost of all the taxpayer's eligible
5 business property that is in service in the same county is compared to the total cost of all
6 the business property for which credits expired in order to determine whether the
7 remaining installments of the credits are forfeited.

8 The expiration of a credit does not prevent the taxpayer from taking the portion of an
9 installment that accrued in a previous year and was carried forward to the extent
10 permitted under G.S. 105-129.75.

11 If, in one of the four years in which the installment of a credit accrues, the business
12 property with respect to which the credit was claimed is moved to a county in a
13 higher-numbered development tier, the remaining installments of the credit are allowed
14 only to the extent they would have been allowed if the business property had been
15 placed in service initially in the county to which it was moved. If, in one of the four
16 years in which the installment of a credit accrues, the business property with respect to
17 which a credit was claimed is moved to a county in a lower-numbered development tier,
18 the remaining installments of the credit must be calculated as if the business property
19 had been placed in service initially in the county to which it was moved.

20 (e) Wage Standard. – For the purposes of this section, a taxpayer satisfies the
21 wage standard requirement of G.S. 105-129.74 only if the taxpayer satisfies the
22 requirement with respect to all of the jobs at the establishment, considered collectively,
23 with respect to which a credit is claimed.

24 (f) No Double Credit. – A taxpayer may not claim a credit under this section
25 with respect to business property for which the taxpayer claims a credit under
26 G.S. 105-129.9 or G.S. 105-129.9A.

27 **§ 105-129.80. Credit for investment in real property.**

28 (a) Credit. – If a taxpayer that has purchased or leased real property in a
29 development tier one area begins to use the property in an eligible business during the
30 taxable year, the taxpayer is allowed a credit equal to thirty percent (30%) of the eligible
31 investment amount if all of the eligibility requirements of G.S. 105-129.74 and of
32 subsection (b) of this section are met. For the purposes of this section, property is
33 located in a development tier one area if the area the property is located in was a
34 development tier one area at the time the taxpayer made a written application for the
35 determination required under subsection (b) of this section. The eligible investment
36 amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost
37 of all of the real property the taxpayer is using in this State in an eligible business on the
38 last day of the taxable year exceeds the cost of all of the real property the taxpayer was
39 using in this State in an eligible business on the last day of the base year. The base year
40 is that year, of the three immediately preceding taxable years, in which the taxpayer was
41 using the most real property in this State in an eligible business. In the case of property
42 that is leased, the cost of the property is not determined as provided in G.S. 105-129.71
43 but is considered to be the taxpayer's lease payments over a seven-year period, plus any
44 expenditures made by the taxpayer to improve the property before it is used by the

1 taxpayer if the expenditures are not reimbursed or credited by the lessor. The entire
2 credit may not be taken for the taxable year in which the property is first used in an
3 eligible business but shall be taken in equal installments over the seven years following
4 the taxable year in which the property is first used in an eligible business. When part of
5 the property is first used in an eligible business in one year and part is first used in an
6 eligible business in a later year, separate credits may be claimed for the amount of
7 property first used in an eligible business in each year. The basis in any real property for
8 which a credit is allowed under this section shall be reduced by the amount of credit
9 allowable.

10 (b) Determination by the Secretary of Commerce. – A taxpayer is eligible for the
11 credit allowed under this section with respect to a location only if the Secretary of
12 Commerce makes a written determination that the taxpayer is expected to purchase or
13 lease and use in an eligible business at that location within a three-year period at least
14 ten million dollars (\$10,000,000) of real property and that the location that is the subject
15 of the credit will create at least 200 new jobs within two years of the time that the
16 property is first used in an eligible business. If the taxpayer fails to timely make the
17 required level of investment or fails to timely create the required number of new jobs,
18 the taxpayer forfeits the credit as provided in G.S. 105-129.74.

19 (c) Mixed Use Property. – If the taxpayer uses only part of the property in an
20 eligible business, the amount of the credit allowed under this section is reduced by
21 multiplying it by a fraction, the numerator of which is the square footage of the property
22 used in an eligible business and the denominator of which is the total square footage of
23 the property.

24 (d) Expiration. – If, in one of the seven years in which the installment of a credit
25 accrues, the property with respect to which the credit was claimed is no longer used in
26 an eligible business, the credit expires and the taxpayer may not take any remaining
27 installment of the credit. If, in one of the seven years in which the installment of a credit
28 accrues, part of the property with respect to which the credit was claimed is no longer
29 used in an eligible business, the remaining installments of the credit shall be reduced by
30 multiplying it by the fraction described in subsection (c) of this section. If, in one of the
31 years in which the installment of a credit accrues and by which the taxpayer is required
32 to have created 200 new jobs at the property, the total number of employees the
33 taxpayer employs at the property with respect to which the credit is claimed is less than
34 200, the credit expires and the taxpayer may not take any remaining installment of the
35 credit.

36 In each of these cases, the taxpayer may nonetheless take the portion of an
37 installment that accrued in a previous year and was carried forward to the extent
38 permitted under G.S. 105-129.75.

39 (e) No Double Credit. – A taxpayer may not claim a credit under this section
40 with respect to real property for which a credit is claimed under G.S. 105-129.12 or
41 G.S. 105-129.12A."

42 **SECTION 1.2.** This part is effective for taxable years beginning on or after
43 January 1, 2006, and applies to business activities occurring on or after that date.
44

1 **PART II. EXTEND JDIG**

2 **SECTION 2.1.** G.S. 143B-437.62 reads as rewritten:

3 **"§ 143B-437.62. Expiration.**

4 The authority of the Committee to enter into new agreements expires January 1,
5 | 2006.2008."

6 **SECTION 2.2.** This part is effective when it becomes law.

7
8 **PART III. EFFECTIVE DATE**

9 **SECTION 3.** Except as otherwise provided, this act is effective when it
10 becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 947

DATE Apr. 27, 2005

S. B. No. _____

Amendment No. 1 - Page 1

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE V H 947-CSLY-5 [v.2]

Rep.) Gibson
Sen.)

1 moves to amend the bill on page 14, lines 8-10

2 () WHICH CHANGES THE TITLE

3 by rewriting the lines to read:

4 " PART III BILL LEE AMENDMENT

5 Section 3. G.S. 105-129. 2 (8a) reads or rewritten:

6 '(8a) Eligible major industry. - A taxpayer is an eligible
7 major industry for the purposes of this Article if the
8 taxpayer satisfies one of the following conditions:

9 a. It is primarily engaged in one of the
10 industries listed in G.S. 105-167. 14(j)(3) and
11 the Secretary of Commerce has certified that the
12 owner of the facility will invest at least one
13 hundred million dollars (\$100,000,000) of private funds
14 to acquire, construct, and equip a facility in this
15 State to engage in one or more of those industries.

16 b. The primary activity of the establishment is in
17 soft drink and ice manufacturing industry 31211 as
18 defined by NAICS, and the Secretary of Commerce
19 has certified that the owner of the facility will invest

SIGNED _____ (continued)

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 947

DATE Apr. 27, 2005

S. B. No. _____

Amendment No. 1, Page 2

COMMITTEE SUBSTITUTE H947- CS01-5 [v.2]

(to be filled in by
Principal Clerk)

Rep.) Gibson
Sen.) _____

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

2 () WHICH CHANGES THE TITLE

3 by _____

4 at least one hundred million dollars (\$100,000,000)
5 of private funds to acquire, construct, and equip
6 a facility in an enterprise tier one area in this
7 State and will create at least 200 new jobs within
8 36 months of beginning operations at the facility."

10 PART IV EFFECTIVE DATE

11 Section 4. Except as otherwise provided, this
12 act is effective when it becomes law."

SIGNED Gibson

ADOPTED _____ FAILED _____ TABLED _____

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Daughtridge, Goforth, LaRoque, Rapp (Chairs) for the Committee on
COMMERCE.

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 the committee substitute bill, unfavorable as to the original bill,
and recommendation that the committee substitute bill be re-referred to the Committee on
FINANCE.

(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.

VISITOR REGISTRATION SHEET

COMMERCE

4-27-05

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

<u>NAME</u>	<u>FIRM OR AGENCY</u>
Paul Hogeman	Taylor Inc.
George Suddath	PBV
Batoh Gannella	NCSPA
Rebecca Trentman	NCACC
Kathy Hawkins	Progress Energy
Elizabeth Dalton	NCCBI
Kaye Gottis	NC State Ports
Cam Corew	BPM HL
Bob Swift	NC Child Care Coalition
Jim Graham	NC DOC
Alice Garland	NC DOC
Lee Holtz	KCLH
Stephanie Dorko	Charlotte Chamber
Lisa Martin	NC Home Builders Assoc
Mary Thomsen	REBIC
John Pless	NCEDA
Chris Kilian	Rebo - mulch
John McKeef	GOV OFFICE
Shiranne Buckley	GOV OFFICE
Ed TURLINGTON	" "
Dick Carlton	ARKY.
Bill Rowe	NC Rural Center
Jim Lowry	NC Justice Ct.
Esther St. John	NC Utility Contractors Assn
Stephanie Simpson	Elected Cities
Rebecca Key	NCAR
Jonathan TART	INTERN
	NC DOR

House Pages

COMMERCE

Name Of Committee: _____

Date: _____

4-27-05

1. Name: Carson Guy

County: Nash

Sponsor: Daughtridge

2. Name: John Lane

County: Nash

Sponsor: Black

3. Name: Keifer Wynn

County: Wake

Sponsor: Dollar

4. Name: Ariane Belisle

County: Ottawa, Canada

Sponsor: Black

5. Name: Carlin Sexton

County: Johnston

Sponsor: Coleman

Sgt-At-Arms

1. Name: FRANK PREVU

2. Name: LINDA FULLER

3. Name: BILL SULLIVAN

4. Name: CHARLES WILLIAMS

5. Name: _____

MINUTES

HOUSE COMMITTEE ON COMMERCE

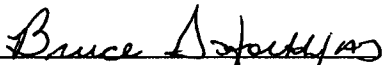
May 4, 2005 – 1:00 p.m.
Room 643 LOB

The HOUSE COMMITTEE ON COMMERCE met at 1:00 p.m. on Wednesday, May 4th, 2005 in Room 643 of the Legislative Office Building. The following members were present: Representatives Daughtride, Goforth, LaRoque and Rapp, Chairs; Representatives Owens and Rayfield. Vice-Chairs; and Representatives Almond, Barnhart, Bordsen, Brown, Carney, Cole, Coleman, Current, Dickson, England, Faison, Frye, Gibson, Haire, Jeffus, Jones, McGee, McLawhorn, Pierce, Ray, Tucker, Vinson, Walend, Wiley and Wray. Assisting the meeting were Karen Cochrane-Brown and Walker Regan, Staff Counsel.


Chairman Bruce Goforth called the meeting to order at 1:05 p.m. After recognizing Pages and Sgt-At-Arms staff, Chairman Goforth turned the podium over to Chairman LaRoque to preside while he explained his bill, HB 630 – MANUFACTURED HOMES ESCROW ACCOUNTS. Rep. Goforth said the bill had been thoroughly discussed in the April 20th meeting and in the subcommittee which had been appointed to further study the bill. He recommended that the bill be moved forward at this time. Brad Lovin from the NC Manufactured Housing Institute again expressed opposition. He said that the Department of Insurance and the Manufactured Housing Institute were working on a similar issue. After discussion Rep. Cole made a motion for a favorable report on the PCS with an unfavorable to the original. Motion carried.

Chairman LaRoque turned the podium back over to Chairman Goforth. Chairman Daughtride was recognized to discuss HB1365 – ECONOMIC DEVELOPMENT OVERSIGHT COMMITTEE. Chairman Daughtride explained that the purpose of the bill was to create the Economic Development Oversight Committee to examine, on a continuing basis, economic growth and development issues and strategies and to make ongoing recommendations to the General Assembly. After discussion, Chairman Rapp made a motion for approval. Motion carried.

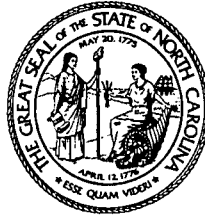
Meeting adjourned at 1:43 p.m.



Rep. Bruce Goforth – Chairman



Ann Jordan – Committee Assistant



HOUSE COMMITTEE ON COMMERCE

**Wednesday, May 4, 2005
LOB – Room 643
1:00 p.m.**

Presiding Chair – Representative Bruce Goforth

I. Call to Order

II. Program

**HB 630 – MANUFACTURED HOMES ESCROW
ACCOUNTS
Representative Goforth - (Subcommittee Report)**

**HB 1365 – ECONOMIC DEVELOPMENT OVERSIGHT
COMMITTEE
Representative Daughtridge**

III. Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 630

Short Title: Manufactured Homes Escrow Accounts.

(Public)

Sponsors: Representatives Goforth; Harrell, LaRoque, and Wilkins.

Referred to: Commerce.

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE MANUFACTURED HOMES ESCROW ACCOUNTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-143.21A(d) reads as rewritten:

"(d) The dealer shall return the deposit or other payment toward or payment for the purchase price to the buyer if the buyer cancels the purchase before midnight of the third business day after the date the buyer signed the purchase agreement or if any of the material terms of the purchase agreement are changed by the dealer. To make the cancellation effective, the buyer shall give the dealer written notice of the buyer's cancellation of the purchase. The dealer shall return the deposit or other payment toward or payment for the purchase price to the buyer within 15 business days after receipt of the notice of cancellation or within three business days of any change by the dealer of the purchase agreement. For purposes of this section, "business day" means any day except Sunday and legal holidays. Each time the dealer gives the buyer a new set of financing terms, unless the financing terms are more favorable to the buyer, terms, the buyer shall be given another three-day cancellation period. The dealer shall not commence setup procedures until after the final three-day cancellation period has expired."

SECTION 2. G.S. 143-143.21A(f) reads as rewritten:

"(f) ~~The Board shall adopt rules concerning the terms of any deposit paid by a buyer to a dealer. The rules may exempt deposits of less than two thousand dollars (\$2,000). The dealer shall place all deposits made by the buyer in an escrow account to be held until delivery and acceptance of the manufactured home by the buyer. To the extent practicable, the rules shall protect allowable under federal bankruptcy laws, the deposits held by the seller in the escrow account required by this subsection shall be free from the claims of the creditors of a dealer that may thereafter be in bankruptcy. The rules shall further provide for funds held in the escrow account shall be subject to the same requirements of subsection (d) of this section requiring the prompt return of a buyer's deposit if the buyer is entitled to its return.~~"

1

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 1365

Short Title: Economic Development Oversight Committee. (Public)

Sponsors: Representatives Daughtridge; Barnhart, Brown, Faison, Hill, Justice, Justus, McGee, Moore, Sauls, and Wray.

Referred to: Commerce.

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AN ECONOMIC DEVELOPMENT OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 120 of the General Statutes is amended by adding a new Article to read:

"Article 120.

"Joint Legislative Economic Development Oversight Committee.

"§ 120-70.130. Creation and membership of Joint Legislative Economic Development Oversight Committee.

The Joint Legislative Economic Development Oversight Committee is established. The Committee consists of 12 members as follows:

- (1) Six members of the Senate appointed by the President Pro Tempore of the Senate; and
- (2) Six members of the House of Representatives appointed by the Speaker of the House of Representatives.

Terms on the Committee are for two years and begin on the convening of the General Assembly in each odd-numbered year, except the terms of the initial members, which begin on appointment and end on the day of the convening of the 2007 General Assembly. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until a successor is appointed. A vacancy shall be filled by the officer who made the original appointment.

"§ 120-70.131. Purpose and powers of Committee.

(a) The Joint Legislative Economic Development Oversight Committee shall examine, on a continuing basis, economic growth and development issues and strategies

1 in North Carolina in order to make ongoing recommendations to the General Assembly
2 on ways to promote cost-effective economic development initiatives. In this
3 examination, the Committee may:

4 (1) Study the budgets, programs, and policies of the Department of
5 Commerce, the North Carolina Partnership for Economic
6 Development, and other State, regional, and local entities involved in
7 economic development.

8 (2) Analyze legislation from other states regarding economic
9 development.

10 (3) Analyze proposals produced by the Economic Development Board.

11 (4) Study any other matters that the Committee considers necessary to
12 fulfill its mandate.

13 (b) The Committee may make interim reports to the General Assembly on
14 matters for which it may report to a regular session of the General Assembly. A report
15 to the General Assembly may contain any legislation needed to implement a
16 recommendation of the Committee.

17 **"§ 120-70.132. Organization of Committee.**

18 (a) The President Pro Tempore of the Senate and the Speaker of the House of
19 Representatives shall each designate a cochair of the Joint Legislative Economic
20 Development Oversight Committee. The Committee shall meet upon the joint call of the
21 cochairs.

22 (b) A quorum of the Committee is seven members. Only recommendations,
23 including proposed legislation, receiving at least six affirmative votes may be included
24 in a Committee report to the General Assembly. While in the discharge of its official
25 duties, the Committee has the powers of a joint committee under G.S. 120-19 and
26 G.S. 120-19.1 through G.S. 120-19.4.

27 (c) The cochairs of the Committee may call upon other knowledgeable persons
28 or experts to assist the Committee in its work.

29 (d) Members of the Committee shall receive subsistence and travel expenses as
30 provided in G.S. 120-3.1, 138-5, or 138-6, as appropriate. The Committee may contract
31 for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative
32 Services Commission, through the Legislative Services Officer, shall assign
33 professional staff to assist the Committee in its work. Upon the direction of the
34 Legislative Services Commission, the Supervisors of Clerks of the Senate and of the
35 House of Representatives shall assign clerical staff to the Committee. The expenses for
36 clerical employees shall be borne by the Committee."

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

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND BILL SPONSOR NOTICE
2005-2006 SESSION
CORRECTED NOTICE!
Removing HB 1240**

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

DAY & DATE: Wednesday, May 4, 2005

TIME: 1:00 p.m.

LOCATION: Room 643

The following bills will be considered:

**HB 630 – MANUFACTURED HOMES ESCROW ACCOUNTS – Rep. Goforth
(Subcommittee Report)**

**HB 1365 – ECONOMIC DEVELOPMENT OVERSIGHT COMMITTEE -
Rep. Daughtridge**

Respectfully,

Representatives Daughtridge, Goforth, LaRoque
and Rapp - Chairmen

I hereby certify this notice was filed by the committee assistant at the following offices at 10:00 a.m. on May 3, 2005.

___ Principal Clerk
___ Reading Clerk - House Chamber

Ann Jordan (Committee Assistant)

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Daughtridge, Goforth, LaRoque, Rapp (Chairs) for the Committee on
COMMERCE.

Committee Substitute for

HB 630 A BILL TO BE ENTITLED AN ACT TO REQUIRE MANUFACTURED
HOMES ESCROW ACCOUNTS.

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.

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Daughtride, Goforth, LaRoque, Rapp (Chairs) for the Committee on
COMMERCE.

Committee Substitute for

HB 1365 A BILL TO BE ENTITLED AN ACT TO ESTABLISH AN
ECONOMIC DEVELOPMENT OVERSIGHT COMMITTEE.

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 _____.

Minutes

HOUSE COMMITTEE ON COMMERCE

May 11, 2005

The HOUSE COMMITTEE ON COMMERCE met on Wednesday, May 11, 2005, in Room 643 LOB at 1:00 p.m. The following members were present: Representatives Daughtridge, Goforth, LaRoque, and Rapp, Chairs; Representatives Rayfield, Vice Chair; Representatives Allen, Almond, Brown, Bordson, Carney, Cole, Coleman, Current, Dickson, England, Faison, Frye, Gibson, Haire, Jeffus, Jones, McGee, McLawhorn, Pierce, Ray, Salus, Stam, Tucker, Vinson, Walend, Wiley, Wray. Assisting the meeting were Karen Cochrane-Brown and Walker Reagan, Staff Counsel; Dot Barber, Rachel Dupree, Lisa Kennedy, and Ann Jordan, Committee Assistants; Charles Williams, Earl Coker, Linda Fuller, Bill Sullivan, and Frank Prevo, House Sgt.-at-Arms; House Pages Asia-La Walker of Guilford County, sponsored by Rep. Pricey Harrison.

Chairman LaRoque called the meeting to order introduced the House Sergeants-at Arms, the Committee Assistants, and the House Pages assisting with the meeting.

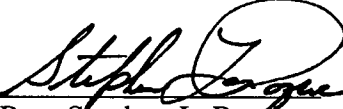
The order of Business was H.B. 1539- UNC/ AMEND UMSTEAD ACT- sponsored by Representatives Daughtridge, Brubaker, Haire, and Yongue. Representative Daughtridge explained the bill.


Discussion was followed by the Committee Members. Leslie Winner, with General Council of UNC and Roth Blizzard, of the NCCBI, spoke in favor of the bill. Kathryn Sawyer of ACEC/NC spoke in the opposition.

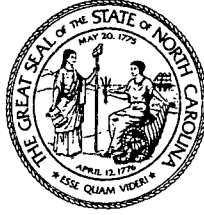
Chairman LaRoque decided to refer HB 1539 to a subcommittee for further study and changes. He appointed the following members to serve: Faison, Stam, Jones, Wiley, Cole (chair), McGee and Bordson.

There being no further business, the meeting was adjourned at 1:50pm.

Respectfully submitted,


Rep. Stephen LaRoque
Presiding Chairman


Lisa D. Kennedy
Committee Assistant



HOUSE COMMITTEE ON COMMERCE

Wednesday, May 11, 2005

LOB – Room 643

1:00 p.m.

Presiding Chair – Representative Stephen LaRoque

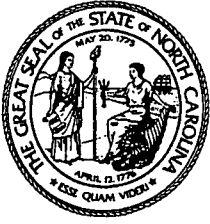
I. Call to Order

II. Program

**HB 892 – REGULATE SALES OF MALT BEVERAGE
KEGS – Rep. Alexander**

**HB 1539 – UNC/AMEND UMSTEAD ACT – Rep.
Daughtridge, Brubaker, Haire & Yongue**

III. Adjournment



HOUSE BILL 1539: UNC/Amend Umstead Act

BILL ANALYSIS

Committee:	House Commerce	Date:	May 11, 2005
Introduced by:	Reps. Daughtridge, Brubaker, Haire, Yongue	Summary by:	Karen Cochrane-Brown
Version:	First Edition		Committee Co-Counsel

SUMMARY: *House Bill 1539 amends the Umstead Act to broaden the scope of activities that may be offered by the University of North Carolina as long as the activity is not unfair competition. Whether an activity is unfair competition will be determined by a panel established by the Board of Governors and composed of people appointed by the Governor and the Board of Governors.*

[As introduced, this bill was identical to S758, as introduced by Sen. Nesbitt, which is currently in Senate Commerce.]

CURRENT LAW:

The Umstead Act (G.S. 66-58) makes it unlawful for any unit, department or agency of the State to engage in the sale of merchandise, to engage in the operation of eating establishments, or to provide services customarily rendered by private enterprises, in competition with citizens of the State.

The University of North Carolina currently is exempted from the Umstead Act when it engages in a number of specific activities, including:

- Utilities and other services
- Sale of education related articles and items valued at \$.25 or less when sold to staff, students or their families.
- Sale of meals and merchandise at conventions.
- The operation of an inn or hotel and related facilities.
- The hospital and Medical School.
- NCSU Coliseum.
- Centennial Campus at NCSU.
- Horace Williams Campus at UNC.
- A Millennial Campus at other constituent institutions.
- Student health services.
- Agreements by the School of the Arts to create commercial materials if the proceeds benefit the school's educational mission.

The University is also authorized to operate gift shops, snack bars and food services in its public exhibition spaces, provided the proceeds are used to support the public exhibition spaces.

House Bill 1539

Page 2

BILL ANALYSIS:

This bill would create a new standard further exempting the University from the prohibition of the Umstead Act. Currently, the Act prohibits any activity that merely competes with the private sector. This bill would allow the University to engage in an activity so long as it did not *unfairly* compete with the private sector.

The University could engage in any activity that:

1. Furthers the mission of the University.
2. Primarily serves students, employees or alumni of the University.
3. Enables the local community or the people of the State to use the University 's facilities as long as the activity is not unfair competition.

The bill provides that the Board of Governors shall establish a panel to determine what is unfair competition. The panel shall consist of equal number of members appointed by the Governor and the University Board of Governors. The Governors appointees must be from the business community and the University members may not be employees of the University. The panel may make determinations in response to complaints from potential private competitors or requests from constituent institutions.

The bill makes the panel's determination as to whether an activity is unfair competition an absolute defense in any prosecution brought under the Umstead Act.

Finally, the bill provides that the proceeds of these activities must be placed in one of the University's institutional trust funds and used to continue the activity or further the University's mission.

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

H1539e1-SMRO



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1539

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

H1539-ARO-14 [v.2]

Page 1 of 3

Date _____, 2005

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

Representative Daughtridge

1 moves to amend the bill on page 2, lines 36-37, by rewriting the lines to read:
2 "panel shall consist of five members appointed by the Governor who are familiar with
3 the interests of the business community of the State and four members.";
4

5
6 and on page 3, line 5, by deleting the phrase "subsection (i) or subsection (j)" and
7 substituting the phrase "subdivisions (2) and (3) of subsection (i)";
8

9
10 and on page 3, line 10, by rewriting the line to read:

11 **"SECTION 3. G.S. 116-36.1(g) reads as rewritten:**

12 '(g) As used in this section, "trust funds" means:

13 (1) Moneys, or the proceeds of other forms of property, received by an
14 institution as gifts, devises, or bequests that are neither presumed nor
15 designated to be gifts, devises, or bequests to the endowment fund of
16 the institution;

17 (2) Moneys received by an institution pursuant to grants from, or contracts
18 with, the United States government or any agency or instrumentality
19 thereof;

20 (3) Moneys received by an institution pursuant to grants from, or contracts
21 with, any State agencies, any political subdivisions of the State, any
22 other states or nations or political subdivisions thereof, or any private
23 entities whereby the institution undertakes, subject to terms and
24 conditions specified by the entity providing the moneys, to conduct



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1539

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

H1539-ARO-14 [v.2]

Page 2 of 3

- 1 research, training or public service programs, or to provide financial
2 aid to students;
- 3 (4) Moneys collected by an institution to support extracurricular activities
4 of students of the institution;
- 5 (5) Moneys received from or for the operation by an institution of
6 activities established for the benefit of scholarship funds or student
7 activity programs;
- 8 (6) Moneys received from or for the operation by an institution of any of
9 its self-supporting auxiliary enterprises, including institutional student
10 auxiliary enterprise funds for the operation of housing, food, health,
11 and laundry services;
- 12 (7) Moneys received by an institution in respect to fees and other
13 payments for services rendered by medical, dental or other health care
14 professionals under an organized practice plan approved by the
15 institution or under a contractual agreement between the institution and
16 a hospital or other health care provider;
- 17 (8) The net proceeds from the disposition effected pursuant to Chapter
18 146, Article 7, of any interest in real property owned by or under the
19 supervision and control of an institution if the interest in real property
20 had first been acquired by gift, devise, or bequest or through
21 expenditure of moneys defined in this subsection (g) as "trust funds,"
22 except the net proceeds from the disposition of an interest in real
23 property first acquired by the institution through expenditure of
24 moneys received as a grant from a State agency;
- 25
26
27
28
29
30
31
32
33



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1539

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

H1539-ARO-14 [v.2]

Page 3 of 3

1
2
3
4
5
6
7
8
9
10
11

(9) Moneys received from the operation and maintenance of institutional forests and forest farmlands, provided, that such moneys shall be used, when used, by the institution for support of forest-related research, teaching, and public service programs.

(10) Moneys received from an activity authorized by G.S. 66-58(i)."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

1

HOUSE BILL 1539

Short Title: UNC/Amend Umstead Act. (Public)

Sponsors: Representatives Daughtridge, Brubaker, Haire, Yongue (Primary Sponsors); McLawhorn, McMahan, and Rapp.

Referred to: Commerce.

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE UMSTEAD ACT TO BROADEN THE SCOPE OF ACTIVITIES THAT MAY BE OFFERED BY THE UNIVERSITY OF NORTH CAROLINA PROVIDED THE ACTIVITIES ARE NOT, IN FACT, UNFAIR COMPETITION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-58(b)(8) reads as rewritten:

"(b) The provisions of subsection (a) of this section shall not apply to:

...

(8) The University of North Carolina with regard to:

- a. The University's utilities and other services ~~now operated by it~~ operated by it prior to January 1, 2005.
- b. The sale of articles produced incident to the operation of instructional departments, articles incident to educational research, articles of merchandise incident to classroom work, meals, books, or to articles of merchandise ~~not exceeding twenty five cents (25¢) in value~~ when sold to members of the educational staff or staff auxiliary to education or to duly enrolled students or occasionally to immediate members of the families of members of the educational staff or of duly enrolled students.
- c. The sale of meals or merchandise to persons attending meetings or conventions as invited guests.
- d. The operation by the University of North Carolina of an inn or hotel and dining and other facilities usually connected with a hotel or inn.
- e. The hospital and Medical School of the University of North Carolina.

- 1 f. The Coliseum of North Carolina State University at Raleigh,
2 and the other schools and colleges for higher education
3 maintained or supported by the State.
- 4 g. The Centennial Campus of North Carolina State University at
5 Raleigh.
- 6 h. The Horace Williams Campus of the University of North
7 Carolina at Chapel Hill.
- 8 i. A Millennial Campus of a constituent institution of The
9 University of North Carolina.
- 10 j. The comprehensive student health services or the
11 comprehensive student infirmaries maintained by the
12 constituent institutions of the University of North Carolina.
- 13 k. Agreements by the North Carolina School of the Arts to the use
14 of that school's facilities, equipment, and services of students,
15 faculty, and staff for the creation of commercial materials and
16 productions that may be unrelated to educational purposes, so
17 long as the proceeds from those agreements are used for the
18 benefit of the educational mission of the North Carolina School
19 of the Arts.

20 ..."

21 SECTION 2. G.S. 66-58 is amended by adding the following new
22 subsections:

23 "(i) Notwithstanding subsection (a) of this section, nothing in this section shall
24 prohibit The University of North Carolina from engaging in an activity that does any of
25 the following:

- 26 (1) Furtheres the mission of the University as stated in G.S. 116-1.
27 (2) Primarily serves students, employees, or alumni of the University.
28 (3) Enables the community in which a constituent institution or other
29 University entity is located, or the people of the State, to utilize the
30 University's facilities, equipment, or expertise, and the activity is not
31 unfair competition. Whether an activity is unfair competition shall be
32 determined as set out in subsection (j) of this section.

33 (j) The Board of Governors of The University of North Carolina shall establish a
34 panel to determine whether an activity undertaken pursuant to subdivision (i)(3) of this
35 section is unfair competition with an existing or proposed nongovernmental entity. The
36 panel shall consist of an equal number of members appointed by the Governor who are
37 familiar with the interests of the business community of the State and members
38 appointed by the Board of Governors none of whom may be employees of The
39 University of North Carolina. The panel may make the determination whether a
40 proposed or ongoing activity of The University of North Carolina is unfair competition
41 based on a complaint from any nongovernmental entity in the State that is in or
42 proposes to be in the same or a similar or competing business or based on a request
43 from the constituent institution or other university system entity engaging in or
44 proposing to engage in the activity. The University of North Carolina and its employees

1 may rely on a determination by the panel as to whether an activity violates this section,
2 and a determination that an activity is not unfair competition and therefore does not
3 violate this section shall be an absolute defense in any prosecution brought under this
4 section.

5 (k) The proceeds of any activity undertaken under subsection (i) or subsection (j)
6 of this section shall be placed in an institutional trust fund pursuant to G.S. 116-36.1 and
7 shall be used to continue to conduct the activity that generated the proceeds or to further
8 the mission of the constituent institution or other University entity engaging in the
9 activity."

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

UNC/Amend Umstead Act
SB 758

Purpose of the Bill: To amend the Umstead Act to allow UNC to make its equipment, expertise, and facilities available to the communities where the constituent institutions are and to the people of the State to enhance economic development or otherwise to enhance those communities.

What does the Bill do? The bill adds an exception to the Umstead Act which provides that UNC may engage in any activity that

- (1) Furthers the mission of the University as stated in G.S. 116-1.
- (2) Primarily serves students, employees, or alumni of the University.
- (3) Enables the community in which a constituent institution or other University entity is located, or the people of the State, to utilize the University's facilities, equipment, or expertise, and the activity is not unfair competition.

What is the mission of UNC? NCGS §116-1 states that the mission of UNC is to discover, create transmit and apply knowledge through instruction, through research and other scholarly and creative activities, and through public service. Numerous Opinions of the Attorney General have stated that UNC's activities in furtherance of its mission do not violate the Umstead Act. Subsection (1) makes this explicit in the statute.

What activities primarily serve students, employees, or alumni? UNC already engages in support activities primarily designed to serve these groups such as operating bookstores, dining halls, and student health centers. This subsection simplifies and clarifies that these activities are permitted.

Why will allowing UNC to use its equipment, expertise and facilities for other activities help the State? UNC has highly specialized equipment, and substantial faculty expertise, which it uses for instruction and research, but which have additional capacity that could be used to further the economic development and enrich the community life of the State. For example, UNC campuses have filmmaking capability that could be used to help local tourism groups make promotional videos. Sometimes there is more highly specialized equipment that could be made available. For example, Western Carolina University has Rapid Prototyping equipment that could be used to help businesses bring products to market. Similarly UNC might make engineering or market development services available to start up businesses, or might make electron microscope or materials testing services available to entities that would benefit by utilizing them. In addition, in some communities UNC has unique facilities, such as

fitness centers or auditoriums, that could enhance the community if they were available when not in use by the University.

The bill limits these activities to those that are not “unfair competition”. What does this mean and how will it be determined? What is unfair competition may depend on where the activity is taking place. Allowing the public to attend first run movies on campus in Cullowhee, where there are no competing movie theaters, may not be unfair competition, while the same activity in Raleigh or Greensboro would be. To determine what is unfair competition, the bill sets up a panel to determine whether a proposed or ongoing activity is unfair competition with an existing or proposed nongovernmental entity. The panel would have an equal number of members appointed by the Governor who are familiar with the interests of the business community and appointed by the UNC Board of Governors who may not be UNC employees. Any business could make a complaint to the panel, and UNC would be bound by its determination.

Enactment of this bill would increase the utilization of UNC’s equipment, expertise and facilities to promote economic development and to enhance community life.

House Pages

COMMERCE

Name Of Committee: _____

Date: _____

5-11-05

1. Name: ASIALA Bae Walker

County: Gulford

Sponsor: Pracey Harrison

2. Name: _____

County: _____

Sponsor: _____

3. Name: _____

County: _____

Sponsor: _____

4. Name: _____

County: _____

Sponsor: _____

5. Name: _____

County: _____

Sponsor: _____

Sgt-At-Arms

1. Name: CHARLES WILLIAMS

2. Name: BILL SULLIVAN

3. Name: LINDA FULKER

4. Name: EARL COKER

5. Name: FRANK PREVO

VISITOR REGISTRATION SHEET

Commerce Committee
Name of Committee

May 11, 2005
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Phillie Gorman	UNC
Rayd Canale	City of Charlotte
MARK NEWBOLD	CMAA
WILLIAM IRBY	CMPD
Jon Carr	Jordan Price - NE ABC Boards
W.C. Chandler	NC ALE
Rebecca Stutchman	NCALE
Mike Robertson	NCALE
Andy Ellen	NC RMA
Chris Valeri	NC Beer & Wine Assoc.
Dean Plunkett	NC BWWA

VISITOR REGISTRATION SHEET

Commerce Committee

May 11, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Don Horvath	KCDUC
Kevin Leonard	WCSR
Kevin FitzGerald	VNCCCH
Lee Hodge	KCLH
Cassandra Skinner	NCCPS
Rob Buzzano	NCCBI
Elizabeth Dalton	NCCBI
Kathryn Sawyer	ACEC/NC
David Auger	Time Warner
Sue Breckenridge	Time Warner
Rich Wells	NCGA Intern

Minutes

HOUSE COMMITTEE ON COMMERCE

May 18, 2005

The HOUSE COMMITTEE ON COMMERCE met on Wednesday, May 18, 2005, in Room 643 LOB at 1:00 p.m. The following members were present: Representatives Daughtridge, Goforth, LaRoque and Rapp, Chairs; Representatives Owens and Rayfield, Vice-Chairs; Representatives Allen, Almond, Bordsen, Brown, Carney, Cole, Coleman, Current, Faison, Frye, Gibson, Jeffus, Jones, McLawhorn, Pierce, Ray, Sauls, Stam, Tucker, Vinson, Walend, Wiley, Wray and Ex-Officio Member Culpepper. Rep. Phil Haire had an excused absence. Assisting with the meeting were Karen Cochrane-Brown and Walker Reagan, Staff Counsel; Dot Barber, Ann Jordan, Rachel Dupree and Lisa Kennedy, Committee Assistants; Linda Fuller, Fred Hines, Bill Sullivan, Charles Williams and Frank Prevo, Sgt.-at-Arms; House Pages Ben Carr of Wake County, sponsored by Rep. Stam and Thomas Edwards of Wake County, sponsored by Speaker Pro Temp Morgan.

Representative Ray Rapp called the meeting to order and welcomed all persons in attendance. Representative Rapp recognized Representative Alma Adams, sponsor of HB 330, for the purpose of explaining **H.B. 330 (LIVING WAGE ACT)** to the members. Rep. Adams recognized the following persons who spoke in support of H.B. 330: Eighth Graders from Southerner's for Economic Justice, Female Institute (Miss Natasha Cannon, Miss Claudia Cannon and Miss Shaquane Moore); Sorien Schmidt, Legislative Director, NC Justice Center; Barbara Zelter, Program Associate, NC Council of Churches; and Donna Latimer, Executive Director of New Life Women's Leadership Project of Williamston, NC. Representative Rapp recognized the following persons who spoke in opposition to HB 330: Mr. T. Jerry Williamson on behalf of the NC Restaurant Association; Ms. Fran Preston, NC Retail Merchants Association; Mr. Gregg Thompson, National Federation of Independent Business; Ms. Connie Wilson, Southern Strategies, Inc. and Mr. Rolf Blizzard, NC Citizens for Business & Industry.


The Chair stated that no vote would be taken on HB 330 at this meeting.

Chairman Rapp recognized Representative Martha Alexander, sponsor of HB 892, to explain the bill to the members. Representative Alexander stated that there was a Proposed Committee Substitute for HB 892. Representative Goforth offered the **PCS for H.B. 892 (REGULATE SALE OF MALT BEVERAGE KEGS)** and moved for its adoption for consideration. Motion carried. Staff Counsel Walker Reagan helped explain new parts of the PCS to the membership and answered questions. Representative Alexander recognized Mr. Mark Newbold, Police Attorney for the Charlotte-Mecklenburg Police Department, who spoke in support of this legislation. The General Council of the Retail Merchants, Mr. Andy Ellen, spoke in opposition to this bill. After some discussion and several questions, Representative Rapp announced that time was


running out and that this Proposed Committee Substitute for H.B. 892 would be carried over to the next meeting.

There being no further business, the meeting was adjourned at approximately 2:05 pm.

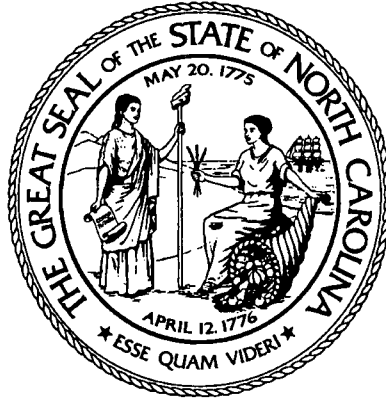
Respectfully submitted,



Representative Ray Rapp
Presiding Chairman



Dot H. Barber
Committee Assistant



HOUSE COMMITTEE ON COMMERCE

May 18, 2005
Room #643 LOB 1:00 p.m.

Presiding Chair – Representative Ray Rapp

I. Call to Order

II. Introduction of Sgt.-at-Arms and Pages

III. Program:

H.B. 330 – Living Wage Act – Rep. Adams and Rep. Farmer-Butterfield

H.B. 892 – Regulate Sale of Malt Beverage Kegs – Rep. Alexander

H.B. 1539 – UNC/Amend Umstead Act – Reps. Daughtridge, Brubaker, Haire
and Yongue

SUBCOMMITTEE REPORT NOT READY AT THIS TIME

IV. Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 330

Short Title: Living Wage Act.

(Public)

Sponsors: Representatives Adams, Farmer-Butterfield (Primary Sponsors);
Alexander, B. Allen, Coleman, Jeffus, Luebke, Ross, Starnes, and Weiss.

Referred to: Commerce.

February 22, 2005

A BILL TO BE ENTITLED

AN ACT AMENDING THE WAGE AND HOUR ACT TO RAISE THE STATE
MINIMUM WAGE TO A LIVABLE WAGE.

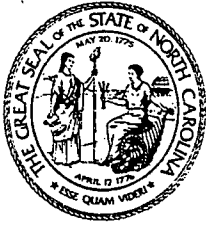
The General Assembly of North Carolina enacts:

SECTION 1. 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 and fifteen cents (\$6.15) per hour, increasing to seven dollars and fifteen cents (\$7.15) per hour on Labor Day 2006, and increasing to eight dollars and fifty cents (\$8.50) per hour on Labor Day 2007, except as otherwise provided in this section."

SECTION 2. This act becomes effective September 1, 2005.



HOUSE BILL 330: Living Wage Act

BILL ANALYSIS

Committee: House Commerce	Date: May 18, 2005
Introduced by: Reps. Adams, Farmer-Butterfield	Summary by: O. Walker Reagan
Version: First Edition	Committee Co-Counsel

SUMMARY: *House Bill 330 would amend the State minimum wage law by increasing the minimum wage to \$6.15 on September 1, 2005, to \$7.15 on Labor Day, 2006 and to \$8.50 on Labor Day 2007.*

CURRENT LAW: Currently the State minimum wage is set at the rate as the federal minimum wage. The current minimum wage is \$5.15 per hour.

BILL ANALYSIS: House Bill 330 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 substitutes a graduated increase in the State minimum wage from \$6.15 beginning September 1, 2005, to \$7.15 on Labor Day, 2006, to \$8.50 on Labor Day 2007.

EFFECTIVE DATE: The bill becomes effective September 1, 2005.

BACKGROUND: The North Carolina minimum wage has been increased as follows: 1997 – Linked to federal minimum wage (see federal minimum wage increases attached); 1993 - \$4.25, 1992 - \$3.80, 1987 - \$3.35.

Minimum Wage Notes

Current Federal Minimum Wage= \$ 5.15 per hour

Timeline of Federal Minimum Wage Increases

Date	Wage
Oct. 24, 1938	\$0.25/hour
Oct. 24, 1939	\$0.30
Oct. 24, 1945	\$0.40
Jan. 25, 1950	\$0.75
Mar. 01, 1956	\$1.00
Sept. 03, 1961	\$1.15
Sept. 03, 1963	\$1.25
Feb. 01, 1967	\$1.40
Feb. 01, 1968	\$1.60
May 01, 1974	\$2.00

Date	Wage
Jan. 01, 1975	\$2.10
Jan. 01, 1976	\$2.30
Jan. 01, 1978	\$2.65
Jan. 01, 1979	\$2.90
Jan. 01, 1980	\$3.10
Jan. 01, 1981	\$3.35
Apr. 01, 1990	\$3.80
Apr. 01, 1991	\$4.25
Oct. 01, 1996	\$4.75
Sept. 01, 1997	\$5.15

Source: U.S. Department of Labor,
History of Federal Minimum Wage Rates
Under the Fair Labor Standards Act, 1938-1997.

Recent Federal Legislative Activity On Minimum Wage

- March 7, 2005 Senate voted down two amendments to increase minimum wage attached to the bankruptcy bill.
 - The first amendment proposed to raise the minimum wage from \$5.15/hour to \$7.25 per hour over two years. The amendment was defeated in a 46 to 49 vote.
 - The second amendment proposed to raise the minimum wage by \$1.10 over two years to \$6.25/hour. This amendment was defeated in a 38-61 vote.

Dot Barber (Rep. Rapp)

From: T. Jerry Williams [tjw@tjerryinc.com]
Sent: Tuesday, May 17, 2005 11:45 PM
To: Rep. Ray Rapp
Subject: Living Wage Act

May 17, 2005

Reference: HB 330, Living Wage Act

Dear Representative Rapp...

The North Carolina Restaurant Association (NCRA) is strongly opposed to amending the Wage & Hour Act to raise the State Minimum Wage in stages to \$6.15, \$7.15 and, as called for in HB 330, up to \$8.50 on Labor Day 2007. You will note that increase is an increase of \$3.35 over the existing wage rate of \$5.15 in less than 28 months. It also translates into a total 65 percent minimum wage increase in less than 28 months. Therefore, it should be no surprise that we at NCRA ask you to oppose H 330. Passage would have catastrophic impact upon our industry.

According to the Bureau of Labor Statistics less than 3 percent of the workforce makes the Minimum Wage. However, our concern is not just the minimum wage earner but those workers who are now making over \$5.15 an hour who will want a percentage increase to maintain their positioning ahead of the minimum wage.

For example, the immediate increase from \$5.15 to \$6.15 is a 19 percent increase but the worker making \$7.50 an hour today is making 37 percent above the minimum wage. For that employee just to maintain a wage rate equal to 37 percent above the new minimum wage rate North Carolina employers would have to raise that individual's pay an additional \$2.78 per hour to \$10.28 per hour. That translates into an increase of \$111.20 per 40 hour week.

But let's back up to the employee who is now making \$6.00 per hour. Today that person is making 17 percent above the minimum wage. Just to maintain that 17 percentage factor our employers would have to pay that individual an additional \$1.05 per hour or a wage rate of \$7.20 per hour or an increase of \$42 per week.

Now, let's jump forward to the employee making \$10 per hour. He or she is making \$4.85 above the minimum wage or 94 percent above the minimum wage. For that person to maintain a wage rate equal to 95 percent above the minimum wage that individual would have to be raised \$5.58 per hour to \$15.58 per hour.

With these three examples, we are only referencing the first and immediate year of increase. Such an increase will mean fewer entry level jobs for the under employable. Numerous restaurants now hanging on by a shoe string will be going out of business and unemployment will more than offset any gain.

Even worse is when we consider the proposed increase in the minimum wage rate by 65 percent over a 28 month period. In that instance we are looking at an economic catastrophe for North Carolina. The restaurant industry of this state, an industry that already has a high mortality rate cannot withstand this increase. It's obvious to us that other industries will face the same kinds of problems. We are not alone.

5/18/2005

For example, that employee now making \$7.50 per hour or 37 percent above the minimum wage would have to be increased to 11.65 an hour just to maintain his or her position on the scale once the wage rate reaches \$8.50 per hour.

After pondering this issue today it came to my mind that those with a lower income might be much better off in this economy with an earned income tax credit that could be adjusted, based upon the number of members in the family and the family's total income.

Regardless, this is the wrong time in our recovering economy to pass a law raising the minimum wage by 19 percent the first year and a total of 65 percent over 28 months.

While I am sharing this information in advance to all members of the House Commerce Committee, I do wish to speak against this matter in committee tomorrow. Unfortunately, many of you will not get this information until tomorrow and may have too little time to think about it. Therefore, I will appreciate the opportunity to be heard.

On behalf of the North Carolina Restaurant Association, we thank you for your consideration.

--tjw

T. Jerry Williams, Lobbyist & Consultant

116 N. West Street, Suite 240, Raleigh, North Carolina (USA) 27603-1772

Telephone 919.834.3338 Cell Phone 919-607.4339 eFax 919.287.2480

www.tjerrywilliams.com

"Rather than letting things happen to you, let them happen because of you."



Justice Center

/ opportunity
and prosperity for all /

Issue Brief

Raising North Carolina's Minimum Wage Supports the Economy and Working Families

May 2005

House Bill 330 Living Wage Act, sponsored by Representatives Alma Adams and Jean Farmer-Butterfield, would increase North Carolina's minimum wage by \$1 or more per year for each of the next three years on Labor Day until it reaches \$8.50 per hour. North Carolina currently follows the federal minimum wage of \$5.15 per hour that was set in 1997. This issue brief explores facts and research about the minimum wage.

Minimum Wage Quick Facts:

- The current federal - and North Carolina - minimum wage is \$5.15 per hour. A federal minimum wage has been a part of the U.S. economy for 67 years.
- The federal minimum wage was last increased over a two year period from \$4.25 in 1995 to \$5.15 in 1997.
- Inflation has completely eroded the value of the last increase and today's \$5.15 will buy a worker less than the minimum wage of \$4.25 did in 1995.
- Minimum wage equals \$10,712 per year salary for full-time work, five days per week for 52 weeks per year. This is less than the 2005 federal poverty level for two, which is \$12,830.
- Fifteen states have in place a higher minimum wage than the federal \$5.15. Since 1979 states have been passing higher state minimums. The latest is Florida which implemented a \$1/hour increase on May 2, 2005.
- Seventy-two percent (72%) of workers whose wages would be raised by an increase to \$7.25 by 2007 are over 20 years old and 44% work full-time. Women and minorities benefit the most.

P.O. Box 28068
Raleigh, NC
27611-8068

Editor: Sorien Schmidt
919/856-2151
sorien@ncjustice.org
www.ncjustice.org

Answers to Common Minimum Wage Concerns:

1. **Raising the minimum wage does not increase job loss** – Since 1979, economists have been able to conduct empirical research comparisons between states with higher and states with lower minimum wages. They have found no increase in job loss due to a minimum wage increase. Nationally after the 1996-97 federal increase, the low-wage labor market performed better than it had in decades. (David Card and Alan Krueger, Princeton, 1995)
2. **Small businesses do not perform worse in higher minimum wage states** – When comparing small businesses - 50 employees or less – in states with higher minimums and those with the federal minimum wage, small businesses in the higher minimum wage states experienced faster growth in new small companies, jobs, and annual and average payroll. (Fiscal Policy Institute, 2004.)
3. **There are no discernable differences in business failures after minimum wage increases** – A 30 year study reported in the Journal of Economic Issues, March 1998, found “no discernable correlation between minimum wage increases and a rise in business failures, either in the year the increase occurred or in the following year.” (Jerold Waltman, Allan McBride and Nicole Camhout, 1998.)

Benefits of a Higher North Carolina Minimum Wage:

1. **The Greatest Benefits Go To the Lowest Income Households** – National data show that if the minimum wage were to increase to \$7/hour over two years the bottom 40% of households by wages and salary would receive nearly 60% of the gains from the increase. (Economic Policy Institute, CPS, 2004)
2. **North Carolina Workers’ Wages are Dropping** – The average annual wage of growing industries in North Carolina is 7% less than the average annual wage of the jobs leaving. This equals about \$2,000 less income per year per job. North Carolina’s median income has declined almost \$3,000 per household and the poverty rate has increased.
3. **Economic Models Show Increased Economic Activity, Decreased Absenteeism and Growth in Productivity** – Economic models looking at low-wage markets have found decreased absenteeism and higher productivity following minimum wage increases. Workers also spend new earnings quickly causing some increased economic activity.

Conclusion

North Carolina’s growing number of low-wage adult workers and their families will benefit the most from an increase in the state minimum wage. They are likely to spend their increased wages quickly to meet family needs and thereby stimulate the economy. Economic studies have found no evidence of damage to business or increase in low-wage job loss due to past minimum wage increases. With the recent drop in North Carolina’s median wage and increase in low-wage service and retail employment, these workers could use the boost a minimum wage increase provides.

How can you be more involved?

Use our resource materials

- Newsletters (*Church Council Bulletin* and *Manna*)
- Topical bulletin inserts (*Works and Words*)
- Legislative updates (*Raleigh Report*)
- Study guides, adult education curricula, worship resources

Join a program committee

- Committees work on a variety of topics, ranging from climate change to racism to legislative issues.
- Committees usually meet in the center of the state, with members sharing their time and expertise to help shape the Council's ministry.

Contribute financially

- Gifts of cash, stocks, or real estate enable us to continue our ministries of unity and justice.
- Remembering us in your estate planning enables you to support us into the future.
- Donations to the North Carolina Council of Churches are tax-deductible.

Contact us at:

North Carolina Council of Churches
1307 Glenwood Ave, Suite 156
Raleigh, N.C. 27605

Phone: 919-828-6501/Fax: 919-828-9697

E-mail: ncccofc@nccouncilofchurches.org

Web: www.nccouncilofchurches.org

Staff:

Rose Gurkin, Secretary & Database Manager
Audrey Hornaday, Administrator/Bookkeeper
Denise Cumber Long, Program Associate
Aleta Payne, Communications Associate
George Reed, Executive Director
Rollin O. Russell, Program Associate
Steve Smith, Program Associate
Barbara Zelter, Program Associate

Member Communion

African Methodist Episcopal Church
African Methodist Episcopal Zion Church
Christian Methodist Episcopal Church
Christian Church (Disciples of Christ)
Episcopal Church
Evangelical Lutheran Church in America
General Baptist State Convention
Metropolitan Community Churches
Moravian Church in America
Presbyterian Church (U.S.A.)
Reformed Church in America
Religious Society of Friends
Roman Catholic Church
United Church of Christ
United Methodist Church
Seven Baptist Congregations

We are all parts of one body, we have the same Spirit, and we have all been called to the same glorious future. For us there is only one Lord, one faith, one baptism, and we all have the same God who is over us all and in us all, and living through every part of us.

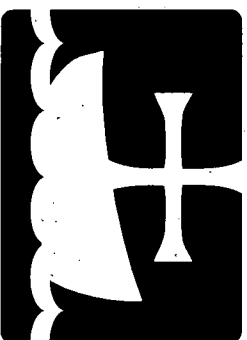
Ephesians 4:4-6



Carolyn King hangs banners displaying the word "Peace" in different languages and symbols at a Memorial Day weekend peace gathering co-sponsored by the NC Council of Churches in 2004.

UPDATED September 2004

NORTH
CAROLINA
COUNCIL
OF
CHURCHES



Strength in Unity
Peace through Justice

1307 Glenwood Ave, Suite 156
Raleigh, N.C. 27605
919-828-6501
www.nccouncilofchurches.org

Who are we?

- The North Carolina Council of Churches is a statewide ecumenical organization encouraging Christian unity and working for a more just society. While we are a Christian organization, many of our program committees include people from other faith communities.
- Members are the North Carolina judicatories (dioceses, presbyteries, conferences, etc.) of fifteen Christian denominations plus seven congregations. Individual congregations may join if their judicatory is not a member of the Council.
- Though we share the goals of Christian unity and justice with the World and National Councils of Churches, we are not related to either in a structural way, and we actually predate both.

What do we do?

- Promote greater understanding and unity among Christian denominations.
- Inform people of faith about matters of progressive social justice and organize grass-roots lobbying on issues of justice and compassion.
- Work with other groups, both faith-based and secular, on matters of shared interest. A current example: partnering with Habitat for Humanity to establish FaithWorks, a statewide rural housing initiative.

Where do we stand?

Our recent activities reflect our priorities:

- Organizing for peace and an end to the misunderstanding and injustice that often breed violence.
- Providing a community forum series that offers speakers on a variety of topics including economic justice, cultural sensitivity toward our Latino neighbors, the environment, and mental health in rural areas.
- Supporting legislative initiatives which further racial justice, gender justice, and economic justice.
- Opposing a state-run lottery and lobbying for programs that serve children, the elderly, people with disabilities, and others who often lack advocates.
- Producing resources and worship materials on issues such as job loss, the plight of farm workers, inadequate housing, and Christian anthropology.
- Engaging in research, education, and advocacy in opposition to the death penalty.
- Working through program committees, made up of volunteers, to address critical issues statewide. Concerns include treatment of the state's farm workers, the impact of climate change on God's earth, special needs of our state's rural areas, and the role of faith groups in supporting public education.

How are we governed?

- Our House of Delegates is made up of more than 200 people selected by the member judicatories and congregations. Judicatories are encouraged to select delegates who represent diversity of gender, race/ethnicity, age, and geography.
- Our Executive Board has 36 members and is named by the House of Delegates, with an eye toward being representative of the Council's denominational composition.

How are we funded?

- Member judicatories and member congregations contribute about one-half of our income.
- Individuals and other congregations, including those that choose to give beyond what is provided by their judicatories, contribute about one-quarter of our income.
- Grants for specific projects contribute to the remainder. Recent grantors include the Z. Smith Reynolds Foundation, The Duke Endowment, The Ford Foundation and the National Religious Partnership for the Environment.
- Additional sources of funding include fees for legislative services, interest income and administrative fees.
- Our budget is about \$250,000.

Let justice roll down like waters, and righteousness like an ever-flowing stream. Amos 5:24

May 18, 2005

NCGA House Commerce Committee hearing of HB 330, Living Wage Act, Rep. Alma Adams

Barbara Zelter for the NC Council of Churches, 919-828-6501, bzelter@nccouncilofchurches.org

FAIR WAGES ARE A MORAL ISSUE.

Good afternoon, everyone. My name is Barbara Zelter and I staff the statewide Economic Justice committee of the NC Council of Churches. The people represented by my words are the members of 15 major religious denominations in North Carolina that comprise the Council. You can see those denominations on the back of our brochure—maybe you are in one of them. And while I speak from the point of view of our Christian denominations, we as the Council work in partnership with other religious traditions and know that many other traditions agree with our stand, which is that:

FAIR WAGES ARE A MORAL ISSUE.

Do you know of the evangelical minister named Jim Wallis, who for over 30 years has lived in the slums of Washington, D.C., and who leads Call to Renewal, a national movement to challenge our country's policies that keep poverty in place? He tells about the American bible. Years ago, he says, a student was asked to go through the bible and cut out with an Exacto knife all the passages that challenged the rich to share with the poor, that show managers paying latecomers as much as those who started the job at dawn, that said that the Lord hears the cries of the laborers in the fields. The student was asked to cut out all the passages where prophets and Jesus challenged the rich, the landowners, the moneylenders, to lift their feet off the backs of the poor if they wanted to understand what the kingdom was all about. And so, the student started cutting. And cutting. Turns out, all that was left was a lot of shreds. When opened and held upside down, that bible was a mess of hanging tatters. Turns out, that righteousness in the bible was not so much about individual spiritual purity, the student learned, but about the health of the community as a whole. Turns out, the student saw, that work and wages and wealth and poverty were hot topics—the main ones, in fact, after idolatry. In both the Old and New Testaments of Judeo-Christian scripture, we find a vision of holiness defined as the Shalom community, where everyone deserves respect and has enough—not necessarily a lot, but enough. Jesus hung out with the little-deal people, and called on the big deals to wake up and care.

Based on this understanding, and the facts that we have heard today about not making it in North Carolina, our Council's Executive Board in 2000 unanimously adopted a policy statement in support of a living wage in our state and nation. Many individual denominations also have their own policy statements favoring a living wage. As you might imagine, our diverse group of denominations disagrees on a range of issues. But it was clear to us all that our faith tradition called on churches to be champions of a fair day's pay for a fair day's work. Our Living Wage policy statement is on your table and I ask you to take a look at it later on, remembering all the people of faith who stand behind this position. I can tell you that I have been leading workshops on this topic all over the state for years, and people think it is simply immoral and wrong to work hard all day and bring home only a pittance. They want this bill to pass, sooner rather than later.

On a final note, I would challenge all who stand on faith to ask ourselves this question: Which is our highest value? On the one hand, we can go along with the current business model—which clearly leaves a layer of our people in dire economic straits. It seems to do this, we must intentionally blind ourselves to the pain so clearly expressed by so many hard workers, and in essence say—too bad for you! On the other hand, we can be open to the challenge of scripture and the generous guidance of the Spirit to open our hand, treat workers with fair wages and dignity, and then watch the Shalom community emerge. Which do you favor?

We as the Council hold on to the belief that we as a state and nation do not need to have our boot on the neck of the lowest-paid workers in order to have a functioning economic system. We hope you, especially those who share the Judeo-Christian faith tradition, agree, and pass HB 330 out of this committee, onto the floor of this building, and into the paychecks of our North Carolina families. Thank you.

A LIVING WAGE
A Policy Statement Adopted by the House of Delegates
North Carolina Council of Churches

November 9, 2000

OVERVIEW

From the shadows of banking towers of Charlotte and Raleigh to the small towns and hamlets far away from the bustling Piedmont, the much-ballyhooed economy has not lifted all boats. Many people are working hard but are not earning enough to make ends meet in today's economy. For this reason, a "living wage" movement is gaining momentum around the nation. This movement seeks to educate policymakers and the community about the true costs of making ends meet and to require that local governments and their contractors pay a living wage to their employees.

Over 40 cities and counties across the nation, including the city of Durham, have adopted living wage ordinances. Greensboro, Charlotte, Asheville, and Raleigh may also see campaigns for living wage ordinances.

DIFFERENCE BETWEEN MINIMUM WAGE AND LIVING WAGE

The minimum wage is currently \$5.15 an hour. Congress has been debating whether to increase it to \$6.15 an hour. Such an increase would:

- help the 70 percent of minimum wage earners who are adults.
- benefit the 46 percent of minimum wage earners who work full time.
- increase the 54 percent of family income that minimum wage workers contribute.

It would affect approximately one out of every five North Carolina workers.

But even a full-time minimum wage earner could not lift a family out of poverty. Moreover, earning a minimum wage is not enough to pay the bills – for housing, for food, for child care. A worker who works 40 hours per week, 52 weeks per year, takes no vacation, and misses no work because of sickness would have a gross income of \$10,712. If that worker has one child, the family falls more than \$500 below the federal poverty line for a family of two--\$11,250.

And the federal poverty figures, based on the cost of a "thrifty" diet more than thirty years ago, are widely conceded to be inadequate in today's world. So how much does it cost to live? In recent years, several respected North Carolina groups have calculated the costs:

- In 1997, NC Equity released a "self-sufficiency standard" for each of North Carolina's 100 counties. This standard factored in costs of housing, child care, food, etc., and showed that the federal poverty guidelines were not high enough to reflect the true cost of living. The standard described how much money various configurations of families would have to earn to make ends meet without government assistance. In high-cost areas like the Triangle, the amounts reached almost \$14 an hour.
- In September 2000, the NC Low-Income Housing Coalition released a study about the growing trend of unaffordable housing in North Carolina. The Coalition estimated that a full-time wage earner would have to make \$10.15 an hour to rent a two-bedroom apartment without spending an unaffordable share of his or her income. Increases in costs for shelter, especially in the Triangle and Wilmington areas, have been among the highest in the nation, far outpacing the growth in wages.

- Also in September, the Common Sense Foundation, a Raleigh-based research and advocacy organization, released its State of the Worker report. The Foundation urged an increase in the state minimum wage to \$8.50 an hour, about enough to move a family of four above the poverty line. More than one-fourth of North Carolina jobs are at or below this amount.
- In November, the NC Justice Center will release an update similar to the self-sufficiency standard. The “Living Income Standard” will likely show that families even in rural areas have to earn at least \$8 an hour to live. Costs in urban areas, especially for housing, will be higher.

IS HARD WORK ENOUGH?

Many Americans still believe that hard work is enough to support a family. But is it? The information in the previous section would suggest that it is not. And, in fact, over three-quarters of North Carolina families living in poverty include a worker. For them, work simply isn’t enough to provide basic necessities.

A disturbing trend contributing to the problem is that income is being distributed more unequally. Since 1979, family income (adjusted for inflation) has:

- declined by 0.6 percent for the lowest-income families.
- increased by 5.6 percent for middle-income families.
- increased by 29.9 percent for the wealthiest families.

This unequal distribution of income, a mirror of opportunity, makes it more difficult to sustain a democratic society, to say nothing of a just society.

As a result, many are working more just to keep pace. Married-couple middle-income families now work almost 600 hours more (or 20 percent) annually than they did in 1979. Families at all income levels work at least 14 percent more than their peers did two decades ago. However, there has been little change in North Carolina’s poverty rate in the last decade, despite low unemployment and much job growth.

While it is clear that families have tried to keep pace by having more of their members work outside the home and by working more hours, it is also clear that this trend can injure families. Spouses have less time for each other; parents have less time for their children. People are living to work, not working to live.

WHY SHOULD PEOPLE OF FAITH SUPPORT A LIVING WAGE?

We live in a radically different world, with radically different economic systems, from that in which the Bible was written. Still, the Bible contains teachings which are relevant. Consider these three points:

1. Workers were to be paid fairly and quickly (Leviticus 19:13; James 5:4). In a society in which people lived from day to day and from hand to mouth, to withhold a worker’s wages, even for a day, was unjust.
2. Justice required assistance for the most vulnerable in society. In Hebrew law, these were the widows, orphans, and immigrants, and there were special protections built into the law (e.g., Deuteronomy 24:17-22). For Jesus, it was “the least of these,” and “all the nations” were to be rewarded or punished based on whether or not they had helped (Matthew 25:31-46).
3. Wealth was to be distributed with some sense of equity. The Jubilee Year provided that the ownership of land (economic capital in that day) was to revert to its original owners every fifty years

(Leviticus 25:8-17). The New Testament records that members of the early church shared whatever they had to help fellow believers in need (Acts 2:44-47). While there is nothing to indicate that the Jubilee Year was widely honored or that this extraordinary sharing existed for long periods of time in the First Century, the message of these passages should not be too quickly dismissed.

RECOMMENDATIONS

Advocacy steps fall into two broad categories: increasing workers' wages and reducing their out-of-pocket costs.

1. Strategies for improving wages include:

- *Modeling good behavior.* Faith-based organizations (of which we are members) should pay living wages and provide adequate benefits to their employees. Governments (of which we are citizens) should pay their employees a living wage plus benefits, should require their contractors to do so as well, and should require businesses benefiting from tax incentives to pay living wages and benefits.
- *Increase the state minimum wage.* The state minimum wage is currently \$5.15 an hour. More than ten states have increased their minimum wage above the level required by the federal government, in part to recognize that the minimum wage has not kept pace with inflation or the cost of living in general. These increases have had little or no harmful effect on employment.

2. Families spend the majority of their money on housing, child care, food, transportation, health care and taxes. To reduce the impact of these costs, we advocate:

- *Affordable Housing Construction* through a statewide bond issue and dedicated sources of revenue for the Housing Trust Fund, the only source of state dollars for affordable housing.
- *Continued Support for Child Care.* While the amount of subsidies for those needing child care has increased in recent years, there are still families on waiting lists for subsidies in many North Carolina counties.
- *Health Insurance.* While the state has been very successful at enrolling children in public health insurance programs, such as Medicaid and Health Choice, there are still many working North Carolina adults without health insurance. Many employers don't provide it, and workers can't afford to buy it for themselves. The state should extend the Medicaid program to help these adults gain access to health care.
- *State Earned Income Tax Credit.* Nearly 625,000 North Carolina working families with children benefit from the federal Earned Income Tax Credit (EITC). The EITC was created to lower the federal tax burden and supplement wages for low- and moderate-income workers. It lifts more people out of poverty than any other program except Social Security. Fifteen states have created their own versions of the EITC.

The Bible teaches that the worker is worthy of his or her hire (Matthew 10:10). Full-time workers should be able to provide basic support for their families. North Carolina should take these recommended steps to reward work and to support working families.

Dot Barber (Rep. Rapp)

From: common-sense-bounces@lists.ibiblio.org on behalf of Common Sense Foundation
[david@common-sense.org]
Sent: Wednesday, May 18, 2005 3:19 PM
To: common-sense@lists.ibiblio.org
Subject: Consider This: Living With The Minimum Wage

The COMMON SENSE Foundation

Consider This...

LIVING WITH THE MINIMUM WAGE

You can always count on the same wealthy lobbyists to oppose a minimum-wage increase. Keeping wages low doesn't hurt their families.

Today the N.C. House Commerce Committee held a hearing on a bill that would increase the state's minimum wage toward (but not all the way to) a living wage. The bill would raise the state minimum wage to \$8.50 an hour in two stages.

The hearing was for show. The committee is called "Commerce" for a reason, and it was clear that the short-term profits of business would trump any other concerns.

But one can only hope that at least a few of the committee members were listening to the North Carolinians who testified before the committee about the impossibility of getting by on \$5.15 an hour, about the fatigue and despair brought about by having to work two or three low-paying jobs, about the strain placed on government services by an outrageously low wage scale.

Committee members also could have listened to the advocates who talked about the increased consumer buying power that always results from a wage hike, or the benefits to business from decreased turnover and increased productivity, or the lack of business failures after previous wage increases.

In response to these real concerns, business lobbyists trot out the same tired adages, claiming that many jobs will be lost if the minimum wage ever increases. That's not only false, it's disingenuous—business lobbyists care about business profits, not job loss.

Real people spoke today to the General Assembly and told their representatives that the minimum wage (which translates to roughly \$10,000 per year full-time) was inadequate. It remains to be seen if many legislators can abandon one of their principle articles of faith—that they must always bow to the short-term profit interests of business—long enough to hear and consider the actual evidence.

Consider This is brought to you three days a week by the Common Sense Foundation.

All editions of Consider This are available from a link on the first page of our website, <http://www.common-sense.org> .

To register for a free subscription to Consider This, or to unsubscribe, please visit our website.

If you find "Consider This" challenging, informative, and useful, as many of our readers tell us they do, please show your support by donating to the Common Sense Foundation today.

The Common Sense Foundation provides "Consider This" to thousands of readers free, three times per week. We get plenty of feedback from readers of all types, from all over North Carolina and all over the world!

But producing "Consider This" takes time and energy, and we need your support to keep doing the work we do. That's why we want to take this opportunity to encourage you to make a tax-deductible donation to the Common Sense Foundation to support "Consider This."

Contribute \$50. Or \$100. Or more, if you can afford it. We'll take contributions in any amount, of course, in support of promoting progressive public policy. Your contribution is tax-deductible.

Click on this link to learn how to contribute:

<http://www.common-sense.org/?fnoc=membership>

You can contribute by check or credit card, over the Web or over the phone.

Help us keep "Consider This" going! Help support the Common Sense Foundation.

Dot Barber (Rep. Rapp)

From: Fitzsimon File [FitzsimonFile@ncpolicywatch.com]
Sent: Thursday, May 19, 2005 1:07 PM
To: Rep. Ray Rapp
Subject: Fitzsimon File. Waging a battle to make work pay.

The Fitzsimon File. Wednesday May 19, 2005
Waging a battle to make work pay.

The House Commerce Committee held a brief public hearing this week on legislation proposed by Rep. Alma Adams to raise the state minimum wage to \$8.15 an hour over the next three years. Low-wage workers, community leaders, and advocates for the poor spoke in support of the bill and they have a compelling case.

An adult who has a child and works full-time at the current minimum wage of \$5.15 an hour is living in poverty, earning well below the federal poverty level for a family of two.

Sixteen states currently have minimum wages higher than the federal level and several more are expected to join that list. None of those states has experienced the massive job loss that the opponents of increasing the minimum wage always predict. And despite the claims to the contrary, most of the people in minimum wage jobs are not teenagers.

Data from the bureau of labor statistics shows that in 2004 roughly half of the workers who make \$5.15 an hour are over 25 years old. Another 20 percent are between 19 and 25. One study found that 40 percent of minimum wage workers are the sole breadwinners in their families. These are not high school juniors working at the mall after school to buy an iPod. These are folks trying to support their families.

The bill's opponents claimed it would be a catastrophe for businesses and hurt the state's competitiveness when recruiting industry. Probably a safe bet that their counterparts in the states that have already raised the minimum wage made the same cries of wolf when their state considered this idea.

The opponents didn't mention a 1999 study by the Jerome Levy Economics Institute. Nine out of 10 of the small businesses surveyed in that study said the last minimum wage increase did not effect their employment or hiring decisions

Then there is the ripple effect of higher wages, percolate up economics instead of trickle down. Higher wages means more spending power for employees, more money in the economy, more people able to buy goods and services, less people who must rely on government services that lawmakers struggle every year to fund.

The personal stories of the workers brings up the most compelling argument of all for a higher minimum wage---the inherent promise in our society that if you work hard and follow the rules, you will make it.

Thousands of people in the state are working hard, 40 hours a week, and living in poverty, struggling to pay their bills, feed their families, and find a safe, decent place to live.

Members of the House Commerce Committee ought to consider that someone making \$5.15 an hour makes \$10,700 a year, far less than the base legislative pay of \$13,900. Wonder how many lawmakers could live on their legislative salary if they didn't have expense money, much less another lucrative job or retirement income?

Two of the lobbyists who spoke against the bill were former legislators, Connie Wilson from Charlotte and Gregg Thompson from Spruce Pine. Another one, Rolf Blizzard, recently resigned as chief of staff for Senate President Pro Tem Marc Basnight to begin lobbying for North Carolina

Citizens for Business and Industry.

NCCBI's other lobbyist this session is Elizabeth Dalton, the daughter of Senator Walter Dalton, who happens to be the head of the powerful Senate appropriations committee.

Pretty hard for average folks to get something passed if the lawmakers consider the lobbyists for the other side friends and family.

Many politicians are fond of saying that the best anti-poverty program is a job. Not anymore, unless lawmakers listen to the workers instead of the lobbyists and finally raise the minimum wage.

Thursday's Radio Commentary
House budget off to an ominous start.

The Fitzsimon File is published daily on www.ncpolicywatch.com, where you can post comments on today's edition and past editions. You can also listen to radio commentaries from the last week. The website will be offering new features soon.

While on the policy watch page, check out the rest of the Philanthropy Journal for the latest news about the philanthropic world and the vital role it plays in our community. You can sign up for the Journal email newsletters.

If you have comments or ideas, email us at Fitzsimonfile@ncpolicywatch.org. If you are in the Triangle and want to listen to News and Views, a half-hour radio show produced by NC Policy Watch, tune into the WRAL-FM 101.5 at 7:30 Sunday mornings.

This message was sent to raymond@ncleg.net
To manage your preferences, please [click here](#).

Forward this message to a friend.

HB 330 Living Wage Bill
Commerce Committee Meeting
1:00 pm Room: 643 LOB

Individuals Speaking Present

- ✓ 1. Donna Latimer, Executive Director of New Life Women's Leadership Project, Williamston, NC
- ✓ 2. Eighth Graders from Southerner's for Economic Justice, Female Institute
- ✓ 3. Sorien Schmidt, Legislative Director, NC Justice Center
- 4. Mary Wells, Business and Professional Women's Association
- ✓ 5. Barbara Zelter, Program Associate, NC Council of Churches

Can we have
MS. ERIN BYRD to speak
in place of speaker who
did not arrive

?

NCCBI ✓

North Carolina Citizens for Business & Industry

Rolf Blizzard

VICE PRESIDENT OF
GOVERNMENTAL AFFAIRS

P.O. Box 2508, 225 Hillsborough Street, Raleigh, N.C. 27602
919/836-1406, FAX 919/836-1425
e-mail: rblizzard@nccbi.org

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

D

HOUSE BILL 892*
PROPOSED COMMITTEE SUBSTITUTE H892-CSRU-29 [v.7]

5/18/2005 12:06:24 PM

Short Title: Regulate Sale of Malt Beverage Kegs.

(Public)

Sponsors:

Referred to:

March 24, 2005

1 A BILL TO BE ENTITLED
2 AN ACT REGULATING THE SALE OF KEGS CONTAINING MALT
3 BEVERAGES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 3 of Chapter 18B of the General Statutes is amended
6 by adding a new section to read:

7 "§ 18B-310. Keg sales of malt beverages.

8 (a) As used in this section, the term 'keg' means a container capable of holding at
9 least seven and three-quarters gallons of malt beverage.

10 (b) The sale of malt beverages in kegs is subject to all of the following:

11 (1) Every keg of malt beverages resold by a retail seller shall be tagged
12 with a uniquely numbered and coded tag or adhesive label that meets
13 all of the following requirements:

14 a. It shall be issued by the Alcoholic Beverage Control
15 Commission to the malt beverage retailer.

16 b. It shall be used for a single sale of the marked keg.

17 (2) The retail seller of the keg shall require the retail purchaser of the keg
18 to complete a form that is provided to the retail seller by the Alcoholic
19 Beverage Control Commission. The form shall include all of the
20 following:

21 a. The retail purchaser's name.

22 b. The retail purchaser's address.

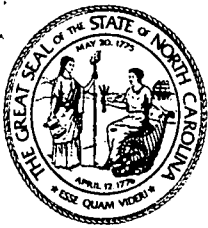
23 c. The retail purchaser's telephone number.

24 d. The retail purchaser's date of birth, verified by viewing a valid
25 driver's license, a special identification card issued under
26 G.S. 20-37.7, a military identification card, or a passport,
27 showing his age to be at least the required age for purchase and

- 1 bearing a physical description of the person named on the card
2 reasonably describing the purchaser.
- 3 e. The keg's unique tag number or code.
4 f. The specific address or location where the malt beverage in the
5 keg will be consumed and the date or dates on which it will be
6 consumed.
- 7 g. The form will summarize all of the following information:
8 1. The requirements of this section.
9 2. The penalties for violating any provision of this section.
10 3. The penalties for providing malt beverages to underage
11 persons.
- 12 h. The signature of the retail purchaser.
- 13 (3) The retail purchaser shall return the coded tag or adhesive label along
14 with the keg to the retail seller. The retail seller shall remove the coded
15 tag or adhesive label and return the keg to the beverage wholesaler.
16 The retail seller shall maintain a copy of the signed form required by
17 subdivision (2) of this subsection for a period of three years from the
18 date of purchase. The form and the information contained on it are
19 public records.
- 20 (4) The retail seller shall report the following to the Alcohol Law
21 Enforcement Division or to its local law enforcement agency:
- 22 a. The failure of a retail purchaser to return a keg within 30 days
23 of purchase.
- 24 b. The defacing of a coded tag or adhesive label attached to a
25 returned keg.
- 26 c. The removal of a coded tag or adhesive label from a returned
27 keg.
- 28 (c) The Alcoholic Beverage Control Commission may charge fees to the malt
29 beverage retailer to cover the cost of producing the coded tag or adhesive label and the
30 forms required under subdivisions (b)(1) and (b)(2) of this section.
- 31 (d) The following penalties shall apply to violations of the provisions of this
32 section:
- 33 (1) Any person, other than an ABC permittee or law enforcement officer
34 or agent, who defaces or removes the coded tag or adhesive label
35 provided by the Alcoholic Beverage Control Commission on a keg or
36 who possesses an unlabeled or untagged keg containing or having
37 contained malt beverages shall be guilty of a Class 1 misdemeanor and
38 shall be fined not less than fifty dollars (\$50.00).
- 39 (2) Any retail purchaser who fails either to return a keg or to provide the
40 retail seller with the reason for the failure for the return of the keg
41 within 30 days after purchase shall be guilty of a Class 1 misdemeanor
42 and shall be fined not less than fifty dollars (\$50.00).
- 43 (3) Any permittee that fails to obtain, record, maintain, or report the
44 information required by this section or fails in any other way to

1 comply with the requirements of this section may have its permit
2 revoked by the Commission."

3 **SECTION 2.** This act becomes effective December 1, 2005, and applies to
4 offenses committed on or after that date.



HOUSE BILL 892: Regulate Sale of Malt Beverage Kegs

BILL ANALYSIS

Committee:	House Commerce	Date:	May 18, 2005
Introduced by:	Rep. Alexander	Summary by:	O. Walker Reagan
Version:	PCS to First Edition H892-CSRU-29		Committee Co-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.*

CURRENT LAW: Current law does not require beer kegs to be uniquely identifiable.

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 892 requires the following for kegs of beer sold at retail:

- When the retail seller sells the keg to the retail purchaser, it 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 containing the purchaser's name, address, telephone number, date of birth, coded tag or adhesive label number, address and date where the keg is to be consumed, purchaser's signature, and a summary on the law for tag law and underage drinking.
- After the return of the keg, the retail seller is to remove the tag or label.
- The retail seller shall report to ALE or law enforcement whenever a keg is not returned or a coded tag has been defaced or removed.
- 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 is guilty of a Class 1 misdemeanor with a minimum \$50.00 fine. A retail seller who fails to comply with this law is subject to losing its ABC permits.

EFFECTIVE DATE: This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

H0892e1-SMRU-CSRU-29

Original Bill



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

1

HOUSE BILL 892*

Short Title: Regulate Sale of Malt Beverage Kegs.

(Public)

Sponsors: Representative Alexander.

Referred to: Commerce.

March 24, 2005

A BILL TO BE ENTITLED

AN ACT REGULATING THE SALE OF KEGS CONTAINING MALT BEVERAGE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 10 of Chapter 18B of the General Statutes is amended by adding a new section to read:

"§ 18B-1010. Keg sales of malt beverages.

(a) As used in this section a 'keg' is 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 supplied for sale by a malt beverage wholesaler to a permittee other than a hotel, restaurant, or private club shall be marked with a permanent identification number and shall also be tagged with a uniquely numbered and coded tag that meets all of the following requirements:

a. It shall be issued by the Alcohol Law Enforcement Division to the malt beverage retailer upon the payment of a fee that shall cover the cost of producing the tag.

b. It shall be used for a single sale of the marked keg.

c. It shall be removed from the keg upon the keg's return to the malt beverage wholesaler and maintained with the records of the sale.

d. It shall be returned to the Alcohol Law Enforcement Division semiannually for destruction.

(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 Alcohol Law Enforcement Division upon the payment of a fee covering the cost of producing the form. The form shall include all of the following:

a. The retail purchaser's name.

b. The retail purchaser's address.

- 1 c. The retail purchaser's telephone number.
2 d. The retail purchaser's date of birth, verified by viewing the
3 purchaser's drivers license.
4 e. The keg's identification number.
5 f. The keg's unique tag number or code.
6 g. The specific address or location where the malt beverage in the
7 keg will be consumed and the date or dates on which it will be
8 consumed.
9 h. The form will summarize all of the following information:
10 1. The requirements of this section.
11 2. The penalties for violating any provision of this section.
12 3. The penalties for providing malt beverages to underage
13 persons.
14 i. The signature of the retail purchaser.
15 (3) The retail purchaser shall return the coded tag along with the keg to the
16 retail seller. The retail seller shall remove the coded tag and return the
17 keg to the beverage wholesaler. The coded tag shall be retained by the
18 retail seller along with a copy of the signed form required by
19 subdivision (2) of this subsection for a period of three years from the
20 date of purchase. The from and the information contained on it are
21 public records.
22 (4) The retail seller shall collect from the retail buyer, in addition to any
23 other costs, a deposit in the amount of fifty dollars (\$50.00)
24 guaranteeing that the coded tag shall not be defaced or removed and if
25 it is, then the retail seller shall keep the deposit as liquidated damages
26 for the defacing or removal of the tag.
27 (5) The retail seller shall report the following to the Alcohol Law
28 Enforcement Division and to its local law enforcement agency:
29 a. The failure of a retail buyer to return a keg.
30 b. The defacing of a coded tag attached to a returned keg.
31 c. The removal of a coded tag from a returned keg.
32 (c) Penalties. – The following penalties shall apply to violations of the provisions
33 of this section:
34 (1) Any person who defaces or removes the identification tag provided by
35 the Alcohol Law Enforcement Division on a keg or who possesses an
36 unlabeled or untagged keg shall be guilty of a Class 1 misdemeanor
37 and upon conviction shall be fined not less than fifty dollars (\$50.00),
38 imprisoned, or both in the discretion of the court.
39 (2) Any person who fails either to return a keg or to provide the retail
40 seller with the reason for the failure for the return of the keg within 30
41 days after purchase shall be guilty of a Class 1 misdemeanor, and upon
42 conviction shall be fined not less than fifty dollars (\$50.00),
43 imprisoned, or both in the discretion of the court.

1 (3) Any permittee that fails to obtain, record, maintain, or report the
2 information required by this section or fails in any other way to
3 comply with the requirements of this section shall have its permit
4 revoked by the Commission in accordance with the policies of the
5 Commission.

6 (4) If a person sold a malt beverage in compliance with the provision of
7 this section and any rules adopted pursuant to this section, then it shall
8 be a defense in any criminal prosecution or proceeding or civil or
9 administrative action under this section."

10 **SECTION 2.** This act becomes effective December 1, 2005, and applies to
11 offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

D

HOUSE BILL 892*
PROPOSED COMMITTEE SUBSTITUTE H892-CSRU-29 [v.9]

5/20/2005 3:52:57 PM

Short Title: Regulate Sale of Malt Beverage Kegs.

(Public)

Sponsors:

Referred to:

March 24, 2005

1 A BILL TO BE ENTITLED
2 AN ACT REGULATING THE SALE OF KEGS CONTAINING MALT
3 BEVERAGES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 3 of Chapter 18B of the General Statutes is amended
6 by adding a new section to read:

7 "§ 18B-310. Keg sales of malt beverages.

8 (a) As used in this section, the term 'keg' means a container capable of holding at
9 least seven and three-quarters gallons of malt beverage.

10 (b) The sale of malt beverages in kegs is subject to all of the following:

11 (1) Every keg of malt beverages resold by a retail seller, while outside the
12 retail seller's possession or control, shall be tagged with a uniquely
13 numbered and coded tag or adhesive label that meets all of the
14 following requirements:

15 a. It shall be issued by the Alcoholic Beverage Control
16 Commission to the malt beverage retailer.

17 b. It shall be used for a single sale of the marked keg.

18 (2) The retail seller of the keg shall require the retail purchaser of the keg
19 to complete a form that is provided to the retail seller by the Alcoholic
20 Beverage Control Commission. The form shall include all of the
21 following:

22 a. The retail purchaser's name.

23 b. The retail purchaser's address.

24 c. The retail purchaser's telephone number.

25 d. The retail purchaser's date of birth, verified by viewing a valid
26 driver's license, a special identification card issued under
27 G.S. 20-37.7, a military identification card, or a passport,
28 showing his age to be at least the required age for purchase and

- 1 bearing a physical description of the person named on the card
2 reasonably describing the purchaser.
- 3 e. The keg's unique tag number or code.
- 4 f. The specific address or location where the malt beverage in the
5 keg will be consumed and the date or dates on which it will be
6 consumed.
- 7 g. The form will summarize all of the following information:
- 8 1. The requirements of this section.
- 9 2. The penalties for violating any provision of this section.
- 10 3. The penalties for providing malt beverages to underage
11 persons.
- 12 h. The signature of the retail purchaser.
- 13 (3) The retail purchaser shall return the coded tag or adhesive label along
14 with the keg to the retail seller. The retail seller shall remove the coded
15 tag or adhesive label and return the keg to the beverage wholesaler.
16 The retail seller shall maintain a copy of the signed form required by
17 subdivision (2) of this subsection for a period of three years from the
18 date of purchase. The form and the information contained on it are
19 public records.
- 20 (c) The Alcoholic Beverage Control Commission may charge fees to the malt
21 beverage retailer to cover the cost of producing the coded tag or adhesive label and the
22 forms required under subdivisions (b)(1) and (b)(2) of this section.
- 23 (d) The following penalties shall apply to violations of the provisions of this
24 section:
- 25 (1) Any person, other than an ABC permittee or law enforcement officer
26 or agent, who defaces or removes the coded tag or adhesive label
27 provided by the Alcoholic Beverage Control Commission on a keg or
28 who possesses an unlabeled or untagged keg containing or having
29 contained malt beverages shall be guilty of a Class 1 misdemeanor and
30 shall be fined not less than fifty dollars (\$50.00).
- 31 (2) Any retail purchaser who fails either to return a keg or to provide the
32 retail seller with the reason for the failure for the return of the keg
33 within 30 days after purchase shall be guilty of a Class 1 misdemeanor
34 and shall be fined not less than fifty dollars (\$50.00)."
- 35 **SECTION 2.** This act becomes effective December 1, 2005, and applies to
36 offenses committed on or after that date.

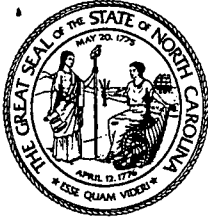
Dot Barber (Rep. Rapp)

From: Dot Barber (Rep. Rapp)
Sent: Wednesday, May 18, 2005 10:34 AM
To: Rep. Bill Daughtridge, Jr.; Rep. Harold "Bru" Brubaker; Katie Stanley (Rep. Yongue); Rep. Phillip Haire
Cc: Rep. Ray Rapp; Ann Jordan (Rep. Goforth); Rep. Stephen LaRoque; Rep. Nelson Cole
Subject: HB 1539 - UNC/Amend Umstead Act

For Your Information....

It is my understanding that the Subcommittee of the House Commerce Committee considering HB 1539 met this morning and they will not be ready to report to the full Committee at the meeting today at 1:00 p.m.

Dot H. Barber
Legislative Assistant to Rep. Ray Rapp
AC 919 733-5732
Office 2213 State Legislative Bldg.
Raleigh, N. C. 27601-1096



HOUSE BILL 1539: UNC/Amend Umstead Act

BILL ANALYSIS

Committee:	House Commerce	Date:	May 23, 2005
Introduced by:	Reps. Daughtridge, Brubaker, Haire, Yongue	Summary by:	Karen Cochrane-Brown
Version:	PCS to First Edition H1539-CSRO-21[v.5]		Committee Co-Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 1539 amends the Umstead Act to broaden the scope of activities that may be undertaken by the University of North Carolina without violating the Act. The PCS also directs the Board of Governors to establish a panel that will determine whether an activity undertaken by the University is authorized under the exceptions to the Act.*

BILL ANALYSIS:

The PCS adds four new exceptions to the Umstead Act. The University may undertake:

- Activities that further the mission of the University.
- Activities that primarily serve students or employees of the University.
- Activities that primarily provide University related services or market University related merchandise to alumni.
- Activities that enable the community in which a constituent institution or other University entity is located, or the people of the State to utilize the University's facilities, equipment, or expertise.

The Board of Governors is directed to establish a panel to determine whether the University is authorized to engage in an activity under one of the last three new exceptions. The panel shall consist of nine members appointed by the Governor, the leaders of the General Assembly, and the Board of Governors.

The Board of Governors must also establish and publish procedures by which the panel will operate. The panel will determine whether an activity that primarily serves students and faculty or that primarily provides University related services and merchandise to alumni is unauthorized competition. The panel may also determine whether an activity that enables the community or the people of the State to utilize the University's facilities, equipment or expertise is both unauthorized and unfair competition. The University may rely on a panel determination and a determination is an absolute defense to prosecution for activities undertaken before a contrary determination by the Attorney General or a court.

The PCS also provides for an institutional trust fund for proceeds from certain of the new activities authorized by this act.

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

H1539e1-SMRO-CSRO-21v5

VISITOR REGISTRATION SHEET

Commerce

5-18-05

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Chris Fitzsimon

NC PolicyWatch

Ryland Pond

Intern - Rep. Carney

Rev. MARK CREECH

CHRISTIAN ACTION LEAGUE OF N.C.

Natasha Cannon

1804 MLK Blvd. Raleigh NC.

Claudia Cannon

5370 Jone Skowrye RD.

Rhonda Roney

NC Justice Center

Lor. Ana Harris

LATA

Lisa Martin

NC Home Builders

Rob Schofield

NC Justice Center

Joe Stewart

IFNC

Paul Burdano

NCCB

NBS ROSEBAND

NC DQS

Eugene BARUFKIN

NC SENIOR DEMOCRATS LEE CO.

VISITOR REGISTRATION SHEET

Commence

5-18-05

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<i>Jerry Sennett</i>	<i>Charlotte Meck. Police Department 601 E Trade St Charlotte NC 28202</i>
<i>John Long</i> <i>WILLIAM IRBY</i>	<i>Martin Marietta Materials - Charlotte Mecklenburg Police Dept. 601 E Trade St. Charlotte, NC 28202</i>
<i>John C. Brooks</i> <i>John C. Brooks</i>	<i>Att. at Law 576 N. Blount St., Raleigh, N.C.</i>
<i>Paula A. Hoef.</i>	<i>Planned Parenthood Health Systems 410 Weathergreen Dr.</i>
<i>Betty Ann Knudsen</i>	<i>Women's Forum of NC Raleigh, NC 27615</i>
<i>Jan Long</i>	<i>W's Forum of NC SPARC Academy</i>
<i>Shaquana Moore</i>	<i>2401 Crusader Dr. Raleigh NC</i>
<i>Ruth P. Rideout</i>	<i>Faith Matters - Greensboro, NC 27401</i>
<i>Patricia McSwain</i>	<i>u u u u</i>
<i>MARK NEWBOLD</i>	<i>CHARLOTTE-MECKLENBURG POLICE DEPT 601 EAST TRADE, CHARLOTTE NC 28202</i>

28202

VISITOR REGISTRATION SHEET

COMMERCE

5-18-05

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[Signature]	NCRA
Rich Webb	NCA Inter
Jim Boyett	J Gordon Boyett attorney 2302 W. meadowview st # 100 G.S., NC 27307
JASON R. JENKINS	NC COUNCIL OF CHURCHES
WARREN MURPHY	COMMON CAUSE/NC
Cyrus King	Community United Church of Christ
Dani Martinez-Moore	Durham resident
IAN NICHOLS	CHATHAM RESIDENT
Diane Morris	NC Justice Center
John Quinteros	
Anna Cameron	Justice Center
Bill Hester	A.D.S.

VISITOR REGISTRATION SHEET

Commerce

5-18-05

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<i>Azmar D. K. ...</i>	<i>NC Justice Center</i>
<i>Jamie Fitzgerald</i>	<i>NCFPC</i>
<i>Natalie Fixmer</i>	<i>Planned Parenthood</i>
<i>Paige Johnson</i>	<i>Planned Parenthood</i>
BRIAN LEWIS	<i>Covenant w/ NC's Children</i>
<i>Richard Nixon</i>	<i>White House (in the sky)</i>
<i>Mike Okun</i>	<i>NC SP AFL-CIO</i>
<i>Mylena ...</i>	<i>NCJCAC</i>
<i>Phyllis D. Nunn</i>	<i>NC Justice Center</i>
<i>John Parker</i>	<i>Good work</i>
<i>Brian Elderbroom</i>	<i>The Common Sense Foundation</i>

VISITOR REGISTRATION SHEET

Commerce

5-18-05

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<i>David Mills</i>	<i>Common Sense Foundation</i>
<i>Shannon Reid</i>	<i>NCGS (Bill Drafting)</i>
<i>W. Chavel</i>	<i>N/AE</i>
<i>M. R. Roberts</i>	<i>NC ALE</i>
<i>Chandra Stinner</i>	<i>NC CEPS</i>
<i>Keith Sutton</i>	<i>Triangle Urban League</i>
<i>Marius Davis</i>	<i>NCAE</i>
<i>John [Signature]</i>	<i>[Signature] Lobby</i>
<i>W. [Signature]</i>	<i>Capital Group</i>
<i>Gregg [Signature]</i>	<i>NFIB</i>
<i>Jon Carr</i>	<i>Jordan Price Law Firm - ABC Boards</i>

MINUTES

HOUSE COMMITTEE ON COMMERCE

May 23, 2005

The HOUSE COMMITTEE ON COMMERCE met on Monday, May 23, 2005 in Room 643 of the Legislative Office Building at 1:00 P.M. The following were present: Representative Daughtride, presiding Chair, Representatives Goforth, LaRoque, and Rapp, Co-Chairs, Representative Rayfield, Vice-Chair, and Representatives L. Allen, Almond, Bordsen, Brown, Carney, Cole, Coleman, Current, Dickson, England, Faison, Frye, Jones, McGee, McLawhorn, Ray, Stam, Tucker, Wiley, Wray, and Representative Culpepper, Ex-Officio. Assisting with the meeting were Karen Cochran-Brown and Regan Walker, Staff Counsel, Dot Barber, Rachel Dupree, and Ann Jordan, Committee Assistants. Also assisting were Jay Callaway, Earl Coker, Linda Fuller, Frank Prevo, Bill Sullivan, and Charles Williams, Sergeants-at-Arms.

Representative Daughtride called the meeting to order, and introduced the House Sergeants-at-Arms assisting with the meeting.

The order of business was:


HB 1240 VACATION RENTAL ACT AMENDMENTS. – Rep. Culpepper submitted a proposed committee substitute and explained the bill and changes. After some discussion by the committee members, Rep. Goforth moved for a favorable report to the committee substitute and unfavorable report to the original. The motion passed.

HB 1539 UNC/AMEND UMSTEAD ACT. – Rep. Cole, Chair of a Subcommittee appointed to modify the bill, submitted a Proposed Committee Substitute and Rep. Daughtride explained the changes made by the Subcommittee. After questions by the members, Rep. Faison submitted a second amendment to the bill. This amendment failed. Rolf Blizzard, NCCBI, spoke in support of the bill and Katherine Sawyer, American Council of Engineering Companies of North Carolina, opposed the bill. Rep. Rapp moved to submit a favorable report to the Proposed Committee Substitute recommended by the subcommittee and an unfavorable report to the original bill.

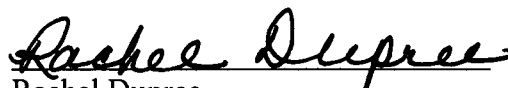
HB 892 REGULATE SALE OF MALT BEVERAGE KEGS – Representative Alexander submitted a Proposed Committee Substitute, explained the changes and answered questions from the members. Kimberly Overton, Conference of District Attorneys, spoke in favor of the bill, Andy Owens, NC Retail Association, opposed the bill. Representative Carney moved for a favorable report for the proposed committee substitute and unfavorable to the original. Motion passed and HB 892 was referred to the House Committee on Finance.

The Committee adjourned at 2:00 P.M.

Respectfully submitted,



Representative Bill Daughtridge
Presiding Chairman



Rachel Dupree
Committee Assistant

AGENDA

HOUSE COMMITTEE MEETING ON COMMERCE

May 23, 2005

5:00 P.M.

Room 643 Legislative Office Building

Call to Order

Representative Bill Daughtridge

Introduction of Sgt.-at-Arms and Pages

Bills

**HB 892 Regulate Sale of Malt Beverage Kegs.
(Representative Alexander)**

**HB 1240 Vacation Rental Act Amendments.
(Representative Culpepper)**

**HB 1539 UNC/Amend Umstead Act.
(Representatives Daughtridge, Brubaker,
Haire and Yongue)**

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

D

HOUSE BILL 892*
PROPOSED COMMITTEE SUBSTITUTE H892-CSRU-29 [v.7]

5/18/2005 12:06:24 PM

Short Title: Regulate Sale of Malt Beverage Kegs.

(Public)

Sponsors:

Referred to:

March 24, 2005

1 A BILL TO BE ENTITLED
2 AN ACT REGULATING THE SALE OF KEGS CONTAINING MALT
3 BEVERAGES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 3 of Chapter 18B of the General Statutes is amended
6 by adding a new section to read:

7 "§ 18B-310. Keg sales of malt beverages.

8 (a) As used in this section, the term 'keg' means a container capable of holding at
9 least seven and three-quarters gallons of malt beverage.

10 (b) The sale of malt beverages in kegs is subject to all of the following:

11 (1) Every keg of malt beverages resold by a retail seller shall be tagged
12 with a uniquely numbered and coded tag or adhesive label that meets
13 all of the following requirements:

14 a. It shall be issued by the Alcoholic Beverage Control
15 Commission to the malt beverage retailer.

16 b. It shall be used for a single sale of the marked keg.

17 (2) The retail seller of the keg shall require the retail purchaser of the keg
18 to complete a form that is provided to the retail seller by the Alcoholic
19 Beverage Control Commission. The form shall include all of the
20 following:

21 a. The retail purchaser's name.

22 b. The retail purchaser's address.

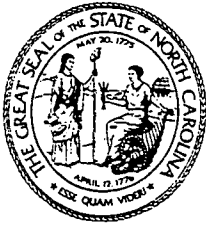
23 c. The retail purchaser's telephone number.

24 d. The retail purchaser's date of birth, verified by viewing a valid
25 driver's license, a special identification card issued under
26 G.S. 20-37.7, a military identification card, or a passport,
27 showing his age to be at least the required age for purchase and

- 1 bearing a physical description of the person named on the card
2 reasonably describing the purchaser.
- 3 e. The keg's unique tag number or code.
4 f. The specific address or location where the malt beverage in the
5 keg will be consumed and the date or dates on which it will be
6 consumed.
7 g. The form will summarize all of the following information:
8 1. The requirements of this section.
9 2. The penalties for violating any provision of this section.
10 3. The penalties for providing malt beverages to underage
11 persons.
12 h. The signature of the retail purchaser.
- 13 (3) The retail purchaser shall return the coded tag or adhesive label along
14 with the keg to the retail seller. The retail seller shall remove the coded
15 tag or adhesive label and return the keg to the beverage wholesaler.
16 The retail seller shall maintain a copy of the signed form required by
17 subdivision (2) of this subsection for a period of three years from the
18 date of purchase. The form and the information contained on it are
19 public records.
- 20 (4) The retail seller shall report the following to the Alcohol Law
21 Enforcement Division or to its local law enforcement agency:
22 a. The failure of a retail purchaser to return a keg within 30 days
23 of purchase.
24 b. The defacing of a coded tag or adhesive label attached to a
25 returned keg.
26 c. The removal of a coded tag or adhesive label from a returned
27 keg.
- 28 (c) The Alcoholic Beverage Control Commission may charge fees to the malt
29 beverage retailer to cover the cost of producing the coded tag or adhesive label and the
30 forms required under subdivisions (b)(1) and (b)(2) of this section.
- 31 (d) The following penalties shall apply to violations of the provisions of this
32 section:
- 33 (1) Any person, other than an ABC permittee or law enforcement officer
34 or agent, who defaces or removes the coded tag or adhesive label
35 provided by the Alcoholic Beverage Control Commission on a keg or
36 who possesses an unlabeled or untagged keg containing or having
37 contained malt beverages shall be guilty of a Class 1 misdemeanor and
38 shall be fined not less than fifty dollars (\$50.00).
- 39 (2) Any retail purchaser who fails either to return a keg or to provide the
40 retail seller with the reason for the failure for the return of the keg
41 within 30 days after purchase shall be guilty of a Class 1 misdemeanor
42 and shall be fined not less than fifty dollars (\$50.00).
- 43 (3) Any permittee that fails to obtain, record, maintain, or report the
44 information required by this section or fails in any other way to

1 comply with the requirements of this section may have its permit
2 revoked by the Commission."

3 **SECTION 2.** This act becomes effective December 1, 2005, and applies to
4 offenses committed on or after that date.



HOUSE BILL 892: Regulate Sale of Malt Beverage Kegs

BILL ANALYSIS

Committee:	House Commerce	Date:	May 18, 2005
Introduced by:	Rep. Alexander	Summary by:	O. Walker Reagan
Version:	PCS to First Edition H892-CSRU-29		Committee Co-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.*

CURRENT LAW: Current law does not require beer kegs to be uniquely identifiable.

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 892 requires the following for kegs of beer sold at retail:

- When the retail seller sells the keg to the retail purchaser, it 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 containing the purchaser's name, address, telephone number, date of birth, coded tag or adhesive label number, address and date where the keg is to be consumed, purchaser's signature, and a summary on the law for tag law and underage drinking.
- After the return of the keg, the retail seller is to remove the tag or label.
- The retail seller shall report to ALE or law enforcement whenever a keg is not returned or a coded tag has been defaced or removed.
- 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 is guilty of a Class 1 misdemeanor with a minimum \$50.00 fine. A retail seller who fails to comply with this law is subject to losing its ABC permits.

EFFECTIVE DATE: 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

1

HOUSE BILL 1240

Short Title: Vacation Rental Act Amendments.

(Public)

Sponsors: Representative Culpepper.

Referred to: Judiciary IV.

April 18, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE VACATION RENTAL HOME ACT CONCERNING
VACATION RENTAL AGREEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42A-17(b) reads as rewritten:

"(b) Except as ~~otherwise provided in this subsection,~~ G.S. 42A-36, if, at the time the tenant is to begin occupancy of the property, the landlord or real estate broker cannot provide the property in a fit and habitable condition or substitute a reasonably comparable property in such condition, the landlord and real estate broker shall refund to the tenant all payments made by the tenant."

SECTION 2. G.S. 42A-19(a) reads as rewritten:

"(a) The grantee of residential property voluntarily transferred by a landlord who has entered into a vacation rental agreement for the use of the property shall take his or her title subject to the vacation rental agreement if the vacation rental is to end not later than 180 days after the grantee's interest in the property is recorded in the office of the register of deeds. If the vacation rental is to end more than 180 days after the recording of the grantee's interest, the tenant shall have no right to enforce the terms of the agreement unless the grantee has agreed in writing to honor ~~such those~~ terms, but the tenant shall be entitled to a refund of payments made by him or her, as provided in subsection (b) of this section.

Prior to entering into any contract of sale, the landlord shall disclose to the grantee the time periods that the property is subject to a vacation rental agreement. Not later than 10 days after ~~entering into the contract of sale~~ transfer of the property, the landlord shall disclose to the grantee each tenant's name and address and shall provide the grantee with a copy of each vacation rental agreement. Not later than 10 days after transfer of the property, the grantee or the grantee's agent shall:

(1) Notify each tenant in writing of the property transfer, the grantee's name and address, and the date the grantee's interest was recorded.

1 (2) Advise each tenant whether he or she has the right to occupy the
2 property subject to the terms of the vacation rental agreement and the
3 provisions of this section.

4 (3) Advise each tenant of whether he or she has the right to receive a
5 refund of any payments made by him or her.

6 However, if the grantee engages as his broker and rental agent for the property the
7 broker who procured the tenant's vacation rental agreement for the landlord, and if the
8 grantee elects not to honor the vacation rental agreements ending more than 180 days
9 after the grantee's interest in the property is recorded, the grantee shall have no
10 obligation under subdivisions (1), (2), and (3) of this subsection with regard to those
11 tenants whose vacation rental agreements must be honored under this section."

12 **SECTION 3.** G.S. 42A-36 reads as rewritten:

13 **"§ 42A-36. Mandatory evacuations.**

14 If State or local authorities, acting pursuant to Article 36A of Chapter 14 or Article 1
15 of Chapter 166A of the General Statutes, order a mandatory evacuation of an area that
16 includes the residential property subject to a vacation rental, the tenant ~~in possession of~~
17 ~~the property under the vacation rental agreement~~ shall comply with the evacuation
18 order. Upon compliance, the tenant shall be entitled to a refund from the landlord of the
19 prorated rent for each night that the tenant is unable to occupy the property because of
20 the mandatory evacuation order. The tenant shall not be entitled to a refund if: (i) prior
21 to the tenant taking possession of the property, the tenant refused insurance offered by
22 the landlord or real estate broker that would have compensated him or her for losses or
23 damages resulting from loss of use of the property due to a mandatory evacuation order;
24 or (ii) the tenant purchased insurance offered by the landlord or real estate broker. The
25 insurance offered shall be provided by an insurance company duly authorized by the
26 North Carolina Department of Insurance, and the cost of the insurance shall not exceed
27 eight percent (8%) of the total rent charged for the vacation rental to the tenant."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

D

HOUSE BILL 1539
PROPOSED COMMITTEE SUBSTITUTE H1539-CSRO-21 [v.2]

5/19/2005 12:01:06 PM

Short Title: UNC/Amend Umstead Act.

(Public)

Sponsors:

Referred to:

April 21, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE UMSTEAD ACT RELATING TO ACTIVITIES OF THE
3 UNIVERSITY OF NORTH CAROLINA, AND TO CREATE A PANEL TO
4 DETERMINE WHETHER UNIVERSITY ACTIVITIES VIOLATE THE ACT.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 66-58(b)(8) reads as rewritten:

7 "(b) The provisions of subsection (a) of this section shall not apply to:

8 ...

9 (8) The University of North Carolina with regard to:

- 10 a. The University's utilities and other services ~~now operated by~~
11 ~~it operated by it prior to January 1, 2005.~~
- 12 b. The sale of articles produced incident to the operation of
13 instructional departments, articles incident to educational
14 research, articles of merchandise incident to classroom work,
15 meals, books, or to articles of merchandise ~~not exceeding~~
16 ~~twenty-five cents (25¢) in value when sold to members of the~~
17 ~~educational staff or staff auxiliary to education or to duly~~
18 ~~enrolled students or occasionally to immediate members of the~~
19 ~~families of members of the educational staff or of duly enrolled~~
20 ~~students.~~
- 21 c. The sale of meals or merchandise to persons attending meetings
22 or conventions as invited guests.
- 23 d. The operation by the University of North Carolina of an inn or
24 hotel and dining and other facilities usually connected with a
25 hotel or inn.
- 26 e. The hospital and Medical School of the University of North
27 Carolina.

- 1 f. The Coliseum of North Carolina State University at Raleigh,
2 and the other schools and colleges for higher education
3 maintained or supported by the State.
4 g. The Centennial Campus of North Carolina State University at
5 Raleigh.
6 h. The Horace Williams Campus of the University of North
7 Carolina at Chapel Hill.
8 i. A Millennial Campus of a constituent institution of The
9 University of North Carolina.
10 j. The comprehensive student health services or the
11 comprehensive student infirmaries maintained by the
12 constituent institutions of the University of North Carolina.
13 k. Agreements by the North Carolina School of the Arts to the use
14 of that school's facilities, equipment, and services of students,
15 faculty, and staff for the creation of commercial materials and
16 productions that may be unrelated to educational purposes, so
17 long as the proceeds from those agreements are used for the
18 benefit of the educational mission of the North Carolina School
19 of the Arts.
20 l. Activities that further the mission of the University as stated in
21 G.S. 116-1.
22 m. Activities that primarily serve students, or employees of the
23 University.
24 n. Activities that primarily provide services or market University
25 related merchandise to alumni of the University.
26 o. Activities that enable the community in which the constituent
27 institution or other University entity is located, or the people of
28 the State to utilize the University's facilities, equipment, or
29 expertise.

30 ..."

31 SECTION 2. G.S. 66-58 is amended by adding the following new
32 subsection:

33 "(i) There is established a panel to determine whether an activity undertaken by
34 The University of North Carolina pursuant to subdivision (8) of subsection (b) of this
35 section competes with an existing or proposed nongovernmental entity. The panel shall
36 consist of nine members as follows:

- 37 (1) Four members who are familiar with the interests of the business
38 community of the State appointed by the Governor.
39 (2) Two members appointed by the Speaker of the House of
40 Representatives.
41 (3) Two members appointed by the President Pro Tempore of the Senate.
42 (4) One member who is not an employee of The University of North
43 Carolina appointed by the Board of Governors.

1 The panel may make the determination whether a proposed or ongoing activity of The
2 University of North Carolina is unauthorized competition based on a complaint from
3 any nongovernmental entity in the State that is in or proposes to be in the same or a
4 similar or competing business or based on a request from the constituent institution or
5 other university system entity engaging in or proposing to engage in the activity. The
6 University of North Carolina and its employees may rely on a determination by the
7 panel as to whether an activity violates this section, until a contrary determination is
8 made by a court or by an opinion of the Attorney General."

9 **SECTION 3.** The panel established by section 2 of this bill shall report to
10 the Joint Legislative Economic Development Oversight Committee as proposed by
11 House Bill 1365 of the 2005 Session of the General Assembly, if that bill is enacted.
12 The panel shall report to the Committee by May 1, of each year on the number and
13 types of determinations made during the preceding year.

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



HOUSE BILL 1539: UNC/Amend Umstead Act

BILL ANALYSIS

Committee:	House Commerce	Date:	May 23, 2005
Introduced by:	Reps. Daughtridge, Brubaker, Haire, Yongue	Summary by:	Karen Cochrane-Brown
Version:	PCS to First Edition H1539-CSRO-21[v.5]		Committee Co-Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 1539 amends the Umstead Act to broaden the scope of activities that may be undertaken by the University of North Carolina without violating the Act. The PCS also directs the Board of Governors to establish a panel that will determine whether an activity undertaken by the University is authorized under the exceptions to the Act.*

BILL ANALYSIS:

The PCS adds four new exceptions to the Umstead Act. The University may undertake:

- Activities that further the mission of the University.
- Activities that primarily serve students or employees of the University.
- Activities that primarily provide University related services or market University related merchandise to alumni.
- Activities that enable the community in which a constituent institution or other University entity is located, or the people of the State to utilize the University's facilities, equipment, or expertise.

The Board of Governors is directed to establish a panel to determine whether the University is authorized to engage in an activity under one of the last three new exceptions. The panel shall consist of nine members appointed by the Governor, the leaders of the General Assembly, and the Board of Governors.

The Board of Governors must also establish and publish procedures by which the panel will operate. The panel will determine whether an activity that primarily serves students and faculty or that primarily provides University related services and merchandise to alumni is unauthorized competition. The panel may also determine whether an activity that enables the community or the people of the State to utilize the University's facilities, equipment or expertise is both unauthorized and unfair competition. The University may rely on a panel determination and a determination is an absolute defense to prosecution for activities undertaken before a contrary determination by the Attorney General or a court.

The PCS also provides for an institutional trust fund for proceeds from certain of the new activities authorized by this act.

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

H1539e1-SMRO-CSRO-21v5

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representatives **Daughtridge, Goforth, LaRoque, Rapp** (Chairs) for the Committee on
COMMERCE.

Committee Substitute for
H.B. 1240 A BILL TO BE ENTITLED AN ACT TO AMEND THE VACATION RENTAL
HOME ACT CONCERNING VACATION RENTAL AGREEMENTS.

- 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, unfavorable as to (the original
bill).
- With a favorable report as to House committee substitute bill (#), which changes
the title, unfavorable as to Senate committee substitute bill.
- With an unfavorable report.
- With recommendation that the House concur.
- With recommendation that the House do not concur.
- With recommendation that the House do not concur; request conferees.
- With recommendation that the House concur; committee believes bill to be material.
- With an unfavorable report, with a Minority Report attached.
- Without prejudice.
- With an indefinite postponement report.
- With an indefinite postponement report, with a Minority Report attached.
- With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representatives **Daughtridge, Goforth, LaRoque, Rapp** (Chairs) for the Committee on
COMMERCE.

- Committee Substitute for
H.B. 892 A BILL TO BE ENTITLED AN ACT REGULATING THE SALE OF KEGS
CONTAINING MALT BEVERAGE.
- 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), X which changes the title,
unfavorable as to (the original bill), (and recommendation that the committee substitute bill)
be re-referred to the Committee on Finance.)
- With a favorable report as to House committee substitute bill (#), which changes
the title, unfavorable as to Senate committee substitute bill.
- With an unfavorable report.
- With recommendation that the House concur.
- With recommendation that the House do not concur.
- With recommendation that the House do not concur; request conferees.
- With recommendation that the House concur; committee believes bill to be material.
- With an unfavorable report, with a Minority Report attached.
- Without prejudice.
- With an indefinite postponement report.
- With an indefinite postponement report, with a Minority Report attached.
- With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Daughtridge, Goforth, LaRoque, Rapp (Chairs) for the Committee on
COMMERCE.

Committee Substitute for

HB 1539 A BILL TO BE ENTITLED AN ACT TO AMEND THE UMSTEAD ACT TO BROADEN THE SCOPE OF ACTIVITIES THAT MAY BE OFFERED BY THE UNIVERSITY OF NORTH CAROLINA PROVIDED THE ACTIVITIES ARE NOT, IN FACT, UNFAIR COMPETITION.

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.

VISITOR REGISTRATION SHEET

COMMERCIE

5-23-05

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<u>Rebecca Troutman</u>	<u>NCACC</u>
<u>T. Miller</u>	<u>NCA60 for the NCRBC</u>
<u>DON HUBBARD</u>	<u>NCDUC</u>
<u>RONEY W. LAMM, JR.</u>	<u>WCPSA</u>
<u>WILLIAM IRBY</u>	<u>Charlotte - Mecklenburg Police Dept. 601 E. Trade St Charlotte, NC 28202</u>
<u>MARIC NEWBOLD</u>	<u>POLICE ATTY CHARLOTTE - MECKLENBURG POLICE DEPT.</u>
<u>Jerry Sennett</u>	<u>Charlotte Meck. Police Dept 601 E Trade St Charlotte NC</u>
<u>Kimberly Overton</u>	<u>NC Conference of District Attorneys</u>
<u>Rick Zedric</u>	<u>NC Assoc. of Public</u>
<u>Stephanie Annin</u>	<u>NC AR</u>
<u>Debbie Wynn</u>	<u>JNC</u>

VISITOR REGISTRATION SHEET

COMMERCE

5-23-05

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Steve Carlton	attys
Andy Ellen	NCLR MA
J. Jones	NCRFA
Mark Fleming	University
Kevin Fitzgerald	Carolina !!
Elizabeth Dalton	NCCB1
Rolf Blizzard	NCCB1
Richard S. Lee	Richard S. Lee & Assoc.

House Pages

COMMERCE

Name Of Committee: _____ Date: 5-23-05

1. Name: _____

County: _____

Sponsor: _____

2. Name: _____

County: _____

Sponsor: _____

3. Name: _____

County: _____

Sponsor: _____

4. Name: _____

County: _____

Sponsor: _____

5. Name: _____

County: _____

Sponsor: _____

Sgt-At-Arms

1. Name: Linda Fuller (5)

2. Name: Jay Callaway (1)

3. Name: Earl Coker (2)

4. Name: Frank Prevost (4)

5. Name: Bill Sullivan (5)

Charles Williams (6)

VISITOR REGISTRAT ON SHEET

COMMERCE

7-13-05

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME

FIRM OR AGENCY

<u>NAME</u>	<u>FIRM OR AGENCY</u>
Lee Hodge	KCLH
Kevin G. Leonard	WCSR
Tom Egan	NMRS
Earl Davis	Save Our Skies Coalition
Jim Gault	Sm. Parliament
Chip Wilkin	Rebecca Mullin
Muel Jones	Nelva Mullins
Stephanie Dorko	Charlotte Chamber
Mary Thomas	REBIC
Kathleen Edwards	UNC-CH Institute of Gov't
Joe Stewart	IFNC
Jim [unclear]	NCDO
Alice Garland	NC DOC
John McBig	GOVORAC &
Andy Romchak	NCLM
Gibb Jenkins	Rep. Donahoe's office
David Fox	Alley Assoc.
Don McCorquodale	SAS
B. Brent Williams	NCHBA
JOHN GOODMAN	ALLEY ASSOCIATES
John [unclear]	JOALPI
[unclear]	[unclear]

House Pages

Name Of Committee: Commence Date: 7/13/05

1. Name: Brandon Smith
County: Wake
Sponsor: Stam
2. Name: Kelsey Schmidt
County: Mecklenburg
Sponsor: Gulley
3. Name: Megan Flanagan
County: Mecklenburg
Sponsor: Alexander
4. Name: Thomas Rhodes
County: Nash
Sponsor: Daughtridge
5. Name: _____
County: _____
Sponsor: _____

Sgt-At-Arms

1. Name: Dusty Rhodes
2. Name: FRANK PREVO PrevO
3. Name: LINDA FULLER
4. Name: BRAD BANEFoot
5. Name: WALTER SPELL
MARK CONE

MINUTES

HOUSE COMMITTEE ON COMMERCE

**June 1, 2005 – 1:00 p.m.
Room 643- LB**


The HOUSE COMMITTEE ON COMMERCE met at 1:00 p.m. on Wednesday, June 1, 2005 in Room 643 of the Legislative Office Building. The following members were present: Representatives Daughtridge, Goforth, LaRoque and Rapp, Chairs; Representatives Rayfield, Vice-Chair; and Representatives Allen, Almond, Barnhart, Bordsen, Brown, Carney, Cole, Coleman, Current, Dickson, Faison, Frye, Gibson, Gillespie, Haire, Hunter, Jeffus, Jones, McGee, McLawhorn, Pierce, Ray, Sauls, Stam, Tucker, Vinson, Walend, Wiley, and Wray. Ex-officio Representatives Cunningham, Eddins and Hackney also attended. Assisting the meeting were Karen Cochrane-Brown and Walker Regan, Staff Counsel.

Chairman Goforth recognized Representative Sauls for a motion for the Proposed Committee Substitute on HB 330 – LIVING WAGE ACT to be properly before the committee. Chairman Goforth said a vote is planned on the bill at 1:35 p.m. Representative Alma Adams was recognized for brief comments. Chairman Goforth asked for comments from proponents and opponents. Stacy Flannery with the NC Healthcare Facilities Association and Greg Thompson with the National Federation of Independent Businesses spoke in opposition of the bill. James Andrews with the NC State AFL-CIO and Chris Fitzsimmons with NC Policy Watch spoke in support of the bill. Members of the committee were allowed to voice comments. Rep. Phil Haire offered up an amendment to the bill to change the effective date to January 1, 2006. The bill sponsor was in agreement and the motion passed. Committee members continued with their discussion. The bill failed by a vote of 18 to 17. Rep. Cunningham requested a roll call vote. Chair ruled that the vote failed.

HB 1388 – EXCLUDE INTERNET SALES/AUCTION ACTIVITIES was next on the agenda. Representative Rapp made a motion for the PCS to be properly before the committee. Rep. Pryor Gibson was recognized to explain the bill. He said the bill, if passed, would lay dormant until the short session. He said the bill amends the law governing Auction and Auctioneers to exclude certain sales that are conducted by electronic means from the activities regulated by the act. Mr. Bill Forbes, Past President of the NC Auctioneers Association, was recognized for comments. Rep. Haire proposed an amendment removing real estate from the bill. Mr. Bill Scoggins, with the Kennedy, Covington Law Firm representing E-Bay, was recognized for comments. Rep. Hairs' amendment passed. Rep. Steven LaRoque made a motion for a favorable report as amended and unfavorable to the original. Motion carried.

Representative Pryor Gibson explained HB 1522 – AMEND STATE PORTS
ENABLING LEGISLATION for Rep. Danny McComas. Following his presentation
Rep. Becky Carney moved for a favorable report. Motion carried.

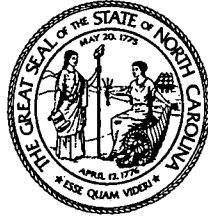
Meeting adjourned at 1:55 p.m.



Rep. Bruce Goforth – Chairman



Ann Jordan – Committee Assistant



HOUSE COMMITTEE ON COMMERCE

**Wednesday, June 1, 2005
LOB – Room 643
1:00 p.m.**

Presiding Chair – Representative Bruce Goforth

I. Call to Order

II. Program

HB 330 – LIVING WAGE ACT - Rep. Adams

**HB 1388 – EXCLUDE INTERNET SALES/AUCTION
ACTIVITIES – Reps. Cole and Gibson**

**HB 1522 – AMEND STATE PORTS ENABLING
LEGISLATION – Rep. McComas**

III. Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

D

HOUSE BILL 330
PROPOSED COMMITTEE SUBSTITUTE H330-PCS70488-LR-24

Short Title: Living Wage Act.

(Public)

Sponsors:

Referred to:

February 22, 2005

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE WAGE AND HOUR ACT TO RAISE THE STATE
3 MINIMUM WAGE TO A LIVABLE WAGE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 95-25.3(a) reads as rewritten:

6 "§ 95-25.3. Minimum wage.

7 (a) Every employer shall pay to each employee who in any workweek performs
8 any work, wages of at least ~~the minimum wage set forth in paragraph 1 of section 6(a)~~
9 ~~of the Fair Labor Standards Act, 29 U.S.C. 206(a)(1), as that wage may change from~~
10 ~~time to time, six dollars and fifteen cents (\$6.15) per hour, except as otherwise provided~~
11 in this section."

12 SECTION 2. This act becomes effective September 1, 2005.

HB: 330 Living Wage Bill



REPRESENTATIVE ALMA S. ADAMS, PH.D.
N.C. HOUSE OF REPRESENTATIVES
58TH DISTRICT

542 LEGISLATIVE OFFICE BUILDING
300 N. SALISBURY STREET
RALEIGH, NORTH CAROLINA 27603-5925
919-733-5902 TELEPHONE
919-754-3121 FAX
E-MAIL: ALMAA@NCLEG.NET

DISTRICT ADDRESS:
2109 LIBERTY VALLEY RD.
GREENSBORO, NC 27406
336-273-9280

ENDORSERS OF HB 330 LIVING WAGE ACT

This bill would increase North Carolina's minimum wage by \$1 or more per year for each of the next three years on Labor Day until it reaches \$8.50 per hour. North Carolina currently follows the federal minimum wage \$5.15 per hour that was set in 1997 and has lost all added value due to inflation.

Accion Hispana
ACORN- Association of Community Organizations
for Reform Now, NC Affiliate
Asociación de Mexicanos en Carolina del Norte
Black Workers for Justice Women's Commission
Blue Springs-Hoke County CDC
Carolina Association of Black Women
Covenant with North Carolina's Children
Entrepreneurs, Inc.
Caucus of N C Black Municipal Officials
Caucus of NC Black County Officials
Center for Community Action
Coalition for Responsible Lending
Community Reinvestment Association of NC
Ebenezer Missionary Baptist Church
El Pueblo
Land Loss Prevention Project
Local Initiatives Support Corporation (LISC)-
Winston-Salem, NC Office
Minority Health Advisory Council, Chair-Rep.
Thomas Wright
Mother Wit, Inc.
NARAL Pro-Choice North Carolina
NC Association of Community Development
Corporations
NC Black Leadership Caucus
NC Coalition of Farm & Rural Families
NC Community Action Association
NC Community Development Initiative
NC Families Against Mandatory Minimums
NC Fair Share
NC Indian Economic Development Initiative, Inc.
NC Institute of Minority Economic Development
NC Justice and Community Development Center
NC Minority Support Center
New Life Women's Leadership Project
Neighbors for Better Neighborhoods
Operation Spring Plant
Opportunities Industrialization Center, Wilson
Opportunities Industrialization Center, Rocky
Mount
Regional Economic Justice Network
Rocky Mount Branch NAACP
Southern Rural Development Initiative
Southerners for Economic Justice
The African American Caucus of the NC
Democratic Party
Triangle Urban League
Women's Center of Wake County
Blue Springs/Hoke County Community
Development Corporation
Cape Fear Regional Community Development
Corporation
Cleveland County Community Development
Corporation
Columbus County DREAM Center, Inc.
Consumer Credit Counseling of Durham
Cumberland Regional Improvement Corporation
DHIC, Inc.
Durham Community Land Trustees
Gateway Community Development Corporation
Glory-to-Glory House of Refuge
Goler Community Development Corporation
Grier Heights Economic Foundation, Inc.
Haliwa-Saponi Tribe, Inc.
Hispanic Community Development Corporation
Kingdom Community Development Corporation
Lakewood Community Development Corporation
Lumbee Revitalization & Community
Development Association
Monroe Union County Community Development
Corporation
Northeast Community Development Corporation
NW Corridor Community Development
Corporation
Oliver Hill Community Development Corporation
Inc.
Quality of Life Association Hertford County
Restoration Community Development Corporation
Rocky Mount/Edgecombe Community
Development Corporation
Southside Alliance for Neighborhood
Empowerment
Sampson County Community Development
Corporation
Simon Green Atkins Community Development
Corporation, Inc.
South Side Community Development Corporation
Tree of Life Community Development Corporation
UDI Community Development Corporation
Uhuru Community Development Corporation
United Family Support Services
Warren Family Institute
West End Revitalization
Wilson Community Improvement Association, Inc.



Powered by Clickability

States say \$5.15 an hour too little

By Dennis Cauchon, USA TODAY

More states are raising their minimum wages, pushing hourly rates above \$7 in some and shrinking the role of the federal minimum wage, which hasn't gone up in eight years.

Eleven states have raised their rates since January 2004, and Wisconsin will become the 12th on Wednesday. Employers there must pay at least \$5.70 an hour through June 2006, when the minimum wage rises again to \$6.50 an hour.

In all, 17 states and the District of Columbia — covering 45% of the U.S. population — have set minimums above the federal rate of \$5.15. That has helped cut the number of workers earning the minimum or less (for those earning tips) from 4.8 million in 1997 to 2 million last year, or 2.7% of hourly earners, the Bureau of Labor Statistics says.

About half of minimum-wage earners work at restaurants. Millions more have wages that are influenced by the minimum. Its buying power is at its lowest point since 1949.

Congress last changed the federal minimum wage in 1997. The latest proposal to raise it died in the Senate in March.

"The federal government is not living up to its responsibility, so the states are acting," says New Jersey state Sen. Steve Sweeney, a Democrat who sponsored a law that will raise the state's minimum.

Hiking the minimum wage

Seventeen states and the District of Columbia will have a minimum wage by Oct. 1 that exceeds the federal rate of \$5.15 per hour.

State	Current rate	Future increases
Alaska	\$7.15	
Calif.	\$6.75	
Conn.	\$7.10	\$7.40 beginning Jan. 1; \$7.65 on Jan. 1, 2007
D.C.	\$6.60	\$7 on Jan. 1
Del.	\$6.15	
Fla.	\$6.15	Increases yearly with inflation
Hawaii	\$6.25	\$6.75 on Jan. 1 and \$7.25 on Jan. 1, 2007, unless governor vetoes
Ill.	\$6.50	
Maine	\$6.35	\$6.50 on Oct. 1
Mass.	\$6.75	
Minn.	\$5.15	\$6.15 on Aug. 1
N.J.	\$5.15	\$6.15 on Oct. 1; \$7.15 on Oct. 1, 2006
N.Y.	\$6.00	\$6.75 on Jan. 1; \$7.15 on Jan. 1, 2007
Ore.	\$7.25	Increases yearly with inflation
R.I.	\$6.75	
Vt.	\$7.00	Considering \$7.25

Wash.	\$7.35	Increases yearly with inflation
Wis.	\$5.15	\$5.70 beginning Wednesday; \$6.50 on June 1, 2006

Sources: Center for Policy Alternatives; USA TODAY research.

the Connecticut Restaurant Association. "The burden not only threatens the bottom line, it threatens the survival of many restaurants."

Some states have rejected minimum wage increases. The New Hampshire Senate voted Thursday against raising the state's minimum. Other key actions:

- Hawaii Gov. Linda Lingle, a Republican, will decide soon whether to veto a law that would raise the minimum wage in two steps from \$6.25 to \$7.25.

- Maryland legislators voted to raise the wage from \$5.15 to \$6.15 an hour, but Republican Gov. Robert Ehrlich vetoed the bill.

- Voters in Florida and Nevada approved higher minimum wages in November. Nevada voters must approve it again in 2006 for it to become law.

Polls show that minimum wage increases are popular. In a Pew Research Center Poll in December, 86% supported raising the federal minimum to \$6.45.

Liberal activists say they're using the minimum wage to put Republicans on the defensive. They hope to put minimum wage initiatives on the ballots next year in nine states, including Ohio, Michigan and Arizona, says Kristina Wilfore, head of the liberal Ballot Strategy Initiative Center.

"This is going to take off like wildfire," she says. "It will pull progressive voters to the polls. The way the gay marriage amendment lured conservative voters to the polls (in November) was a wake-up call for us."

Efforts to raise the minimum wage have had most success in states that voted for 2004 Democratic presidential nominee John Kerry. Florida and Alaska are the only states that voted for President Bush last year to have minimum wages above the federal rate.

• REPRINTS & PERMISSIONS

Find this article at:

http://www.usatoday.com/news/washington/2005-05-30-minimum-wage_x.htm

Check the box to include the list of links referenced in the article.





Justice Center

opportunity
and prosperity for all

Issue Brief

Raising North Carolina's Minimum Wage Supports the Economy and Working Families

May 2005

House Bill 330 Living Wage Act, sponsored by Representatives Alma Adams and Jean Farmer-Butterfield, would increase North Carolina's minimum wage by \$1 or more per year for each of the next three years on Labor Day until it reaches \$8.50 per hour. North Carolina currently follows the federal minimum wage of \$5.15 per hour that was set in 1997. This issue brief explores facts and research about the minimum wage.

Minimum Wage Quick Facts:

- The current federal - and North Carolina - minimum wage is \$5.15 per hour. A federal minimum wage has been a part of the U.S. economy for 67 years.
- The federal minimum wage was last increased over a two year period from \$4.25 in 1995 to \$5.15 in 1997.
- Inflation has completely eroded the value of the last increase and today's \$5.15 will buy a worker less than the minimum wage of \$4.25 did in 1995.
- Minimum wage equals \$10,712 per year salary for full-time work, five days per week for 52 weeks per year. This is less than the 2005 federal poverty level for two, which is \$12,830.
- Fifteen states have in place a higher minimum wage than the federal \$5.15. Since 1979 states have been passing higher state minimums. The latest is Florida which implemented a \$1/hour increase on May 2, 2005.
- Seventy-two percent (72%) of workers whose wages would be raised by an increase to \$7.25 by 2007 are over 20 years old and 44% work full-time. Women and minorities benefit the most.

P.O. Box 28068
Raleigh, NC
27611-8068

Editor: Sorien Schmidt
919/856-2151
sorien@ncjustice.org
www.ncjustice.org

Answers to Common Minimum Wage Concerns:

1. **Raising the minimum wage does not increase job loss** - Since 1979, economists have been able to conduct empirical research comparisons between states with higher and states with lower minimum wages. They have found no increase in job loss due to a minimum wage increase. Nationally after the 1996-97 federal increase, the low-wage labor market performed better than it had in decades. (David Card and Alan Krueger, Princeton, 1995)
2. **Small businesses do not perform worse in higher minimum wage states** - When comparing small businesses - 50 employees or less - in states with higher minimums and those with the federal minimum wage, small businesses in the higher minimum wage states experienced faster growth in new small companies, jobs, and annual and average payroll. (Fiscal Policy Institute, 2004.)
3. **There are no discernable differences in business failures after minimum wage increases** - A 30 year study reported in the Journal of Economic Issues, March 1998, found "no discernable correlation between minimum wage increases and a rise in business failures, either in the year the increase occurred or in the following year." (Jerold Waltman, Allan McBride and Nicole Camhout, 1998.)

Benefits of a Higher North Carolina Minimum Wage:

1. **The Greatest Benefits Go To the Lowest Income Households** - National data show that if the minimum wage were to increase to \$7/hour over two years the bottom 40% of households by wages and salary would receive nearly 60% of the gains from the increase. (Economic Policy Institute, CPS, 2004)
2. **North Carolina Workers' Wages are Dropping** - The average annual wage of growing industries in North Carolina is 7% less than the average annual wage of the jobs leaving. This equals about \$2,000 less income per year per job. North Carolina's median income has declined almost \$3,000 per household and the poverty rate has increased.
3. **Economic Models Show Increased Economic Activity, Decreased Absenteeism and Growth in Productivity** - Economic models looking at low-wage markets have found decreased absenteeism and higher productivity following minimum wage increases. Workers also spend new earnings quickly causing some increased economic activity.

Conclusion

North Carolina's growing number of low-wage adult workers and their families will benefit the most from an increase in the state minimum wage. They are likely to spend their increased wages quickly to meet family needs and thereby stimulate the economy. Economic studies have found no evidence of damage to business or increase in low-wage job loss due to past minimum wage increases. With the recent drop in North Carolina's median wage and increase in low-wage service and retail employment, these workers could use the boost a minimum wage increase provides.

U

A LIVING WAGE **A Policy Statement Adopted by the House of Delegates** **North Carolina Council of Churches**

November 9, 2000

OVERVIEW

From the shadows of banking towers of Charlotte and Raleigh to the small towns and hamlets far away from the bustling Piedmont, the much-ballyhooed economy has not lifted all boats. Many people are working hard but are not earning enough to make ends meet in today's economy. For this reason, a "living wage" movement is gaining momentum around the nation. This movement seeks to educate policymakers and the community about the true costs of making ends meet and to require that local governments and their contractors pay a living wage to their employees.

Over 40 cities and counties across the nation, including the city of Durham, have adopted living wage ordinances. Greensboro, Charlotte, Asheville, and Raleigh may also see campaigns for living wage ordinances.

DIFFERENCE BETWEEN MINIMUM WAGE AND LIVING WAGE

The minimum wage is currently \$5.15 an hour. Congress has been debating whether to increase it to \$6.15 an hour. Such an increase would:

- help the 70 percent of minimum wage earners who are adults.
- benefit the 46 percent of minimum wage earners who work full time.
- increase the 54 percent of family income that minimum wage workers contribute.

It would affect approximately one out of every five North Carolina workers.

But even a full-time minimum wage earner could not lift a family out of poverty. Moreover, earning a minimum wage is not enough to pay the bills – for housing, for food, for child care. A worker who works 40 hours per week, 52 weeks per year, takes no vacation, and misses no work because of sickness would have a gross income of \$10,712. If that worker has one child, the family falls more than \$500 below the federal poverty line for a family of two—\$11,250.

And the federal poverty figures, based on the cost of a "thrifty" diet more than thirty years ago, are widely conceded to be inadequate in today's world. So how much does it cost to live? In recent years, several respected North Carolina groups have calculated the costs:

- In 1997, NC Equity released a "self-sufficiency standard" for each of North Carolina's 100 counties. This standard factored in costs of housing, child care, food, etc., and showed that the federal poverty guidelines were not high enough to reflect the true cost of living. The standard described how much money various configurations of families would have to earn to make ends meet without government assistance. In high-cost areas like the Triangle, the amounts reached almost \$14 an hour.
- In September 2000, the NC Low-Income Housing Coalition released a study about the growing trend of unaffordable housing in North Carolina. The Coalition estimated that a full-time wage earner would have to make \$10.15 an hour to rent a two-bedroom apartment without spending an unaffordable share of his or her income. Increases in costs for shelter, especially in the Triangle and Wilmington areas, have been among the highest in the nation, far outpacing the growth in wages.

(Leviticus 25:8-17). The New Testament records that members of the early church shared whatever they had to help fellow believers in need (Acts 2:44-47). While there is nothing to indicate that the Jubilee Year was widely honored or that this extraordinary sharing existed for long periods of time in the First Century, the message of these passages should not be too quickly dismissed.

RECOMMENDATIONS

Advocacy steps fall into two broad categories: increasing workers' wages and reducing their out-of-pocket costs.

1. Strategies for improving wages include:

- *Modeling good behavior.* Faith-based organizations (of which we are members) should pay living wages and provide adequate benefits to their employees. Governments (of which we are citizens) should pay their employees a living wage plus benefits, should require their contractors to do so as well, and should require businesses benefiting from tax incentives to pay living wages and benefits.
- *Increase the state minimum wage.* The state minimum wage is currently \$5.15 an hour. More than ten states have increased their minimum wage above the level required by the federal government, in part to recognize that the minimum wage has not kept pace with inflation or the cost of living in general. These increases have had little or no harmful effect on employment.

2. Families spend the majority of their money on housing, child care, food, transportation, health care and taxes. To reduce the impact of these costs, we advocate:

- *Affordable Housing Construction* through a statewide bond issue and dedicated sources of revenue for the Housing Trust Fund, the only source of state dollars for affordable housing.
- *Continued Support for Child Care.* While the amount of subsidies for those needing child care has increased in recent years, there are still families on waiting lists for subsidies in many North Carolina counties.
- *Health Insurance.* While the state has been very successful at enrolling children in public health insurance programs, such as Medicaid and Health Choice, there are still many working North Carolina adults without health insurance. Many employers don't provide it, and workers can't afford to buy it for themselves. The state should extend the Medicaid program to help these adults gain access to health care.
- *State Earned Income Tax Credit.* Nearly 625,000 North Carolina working families with children benefit from the federal Earned Income Tax Credit (EITC). The EITC was created to lower the federal tax burden and supplement wages for low- and moderate-income workers. It lifts more people out of poverty than any other program except Social Security. Fifteen states have created their own versions of the EITC.

The Bible teaches that the worker is worthy of his or her hire (Matthew 10:10). Full-time workers should be able to provide basic support for their families. North Carolina should take these recommended steps to reward work and to support working families.

Minimum Wage Laws*

Proposed Minimum Wage Rate (per hour)

	Minimum Wage (9/1/2005)	Minimum Wage (Labor Day 2006)	Minimum Wage (Labor Day 2007)
North Carolina	\$6.15	\$7.15	\$8.50

Federal

	Basic Minimum Rate (per hour)	Rank	Premium Pay After Designated Hours (daily)	Premium Pay After Designated Hours (weekly)	Basic Minimum Rate (per hour) Effective 1/1/2006
Federal	\$5.15	N/A	8	40	N/A

State

State	Basic Minimum Rate (per hour)	Rank	Premium Pay After Designated Hours (daily)	Premium Pay After Designated Hours (weekly)	Basic Minimum Rate (per hour) Effective 1/1/2006
Washington	\$7.35	1		40	
Oregon	\$7.25	2		40	
Alaska	\$7.15	3	8	40	
Connecticut	\$7.10	4		40	
Vermont	\$7.00	5		40	
California	\$6.75	7†	8	40	
Massachusetts	\$6.75	7†		40	
Rhode Island	\$6.75	7†		40	
District of Columbia	\$6.60	9		40	\$7.00
Illinois	\$6.50	10		40	
Maine	\$6.35	11		40	
Hawaii	\$6.25	12		40	
Delaware	\$6.15	13†			
Florida	\$6.15	13†			
New York	\$6.00	15		40	\$6.75
Arkansas	\$5.15	29†		40	
Colorado	\$5.15	29†	12	40	
Georgia	\$5.15	29†			
Idaho	\$5.15	29†			
Indiana	\$5.15	29†		40	
Iowa	\$5.15	29†			
Kentucky	\$5.15	29†		40	
Maryland	\$5.15	29†		40	
Michigan	\$5.15	29†		40	
Minnesota	\$5.15	29†		48	
Missouri	\$5.15	29†		40	
Montana	\$5.15	29†		40	
Nebraska	\$5.15	29†			
Nevada	\$5.15	29†	8	40	
New Hampshire	\$5.15	29†		40	
New Jersey	\$5.15	29†		40	
New Mexico	\$5.15	29†		40	
North Carolina	\$5.15	29†		40	
North Dakota	\$5.15	29†		40	
Oklahoma	\$5.15	29†			
Pennsylvania	\$5.15	29†		40	
South Dakota	\$5.15	29†			
Texas	\$5.15	29†			
Utah	\$5.15	29†			
Virginia	\$5.15	29†			
West Virginia	\$5.15	29†		40	
Wisconsin	\$5.15	29†		40	
Wyoming	\$5.15	29†			
Ohio**	\$4.25	44		40	
Kansas**	\$2.65	45		46	
Alabama	No state minimum wage law				
Arizona	No state minimum wage law				
Louisiana	No state minimum wage law				
Mississippi	No state minimum wage law				
South Carolina	No state minimum wage law				
Tennessee	No state minimum wage law				

Minimum Wage Laws*

Proposed Minimum Wage Rate (per hour)

	Minimum Wage (9/1/2005)	Minimum Wage (Labor Day 2006)	Minimum Wage (Labor Day 2007)
North Carolina	\$6.15	\$7.15	\$8.50

Federal

	Basic Minimum Rate (per hour)	Rank	Premium Pay After Designated Hours (daily)	Premium Pay After Designated Hours (weekly)	Basic Minimum Rate (per hour) Effective 1/1/2006
Federal	\$5.15	N/A	8	40	N/A

State

State	Basic Minimum Rate (per hour)	Rank	Premium Pay After Designated Hours (daily)	Premium Pay After Designated Hours (weekly)	Basic Minimum Rate (per hour) Effective 1/1/2006
Washington	\$7.35	1		40	
Oregon	\$7.25	2		40	
Alaska	\$7.15	3	8	40	
Connecticut	\$7.10	4		40	
Vermont	\$7.00	5		40	
California	\$6.75	7†	8	40	
Massachusetts	\$6.75	7†		40	
Rhode Island	\$6.75	7†		40	
District of Columbia	\$6.60	9		40	\$7.00
Illinois	\$6.50	10		40	
Maine	\$6.35	11		40	
Hawaii	\$6.25	12		40	
Delaware	\$6.15	13†			
Florida	\$6.15	13†			
New York	\$6.00	15		40	\$6.75
Arkansas	\$5.15	29†		40	
Colorado	\$5.15	29†	12	40	
Georgia	\$5.15	29†			
Idaho	\$5.15	29†			
Indiana	\$5.15	29†		40	
Iowa	\$5.15	29†			
Kentucky	\$5.15	29†		40	
Maryland	\$5.15	29†		40	
Michigan	\$5.15	29†		40	
Minnesota	\$5.15	29†		48	
Missouri	\$5.15	29†		40	
Montana	\$5.15	29†		40	
Nebraska	\$5.15	29†			
Nevada	\$5.15	29†	8	40	
New Hampshire	\$5.15	29†		40	
New Jersey	\$5.15	29†		40	
New Mexico	\$5.15	29†		40	
North Carolina	\$5.15	29†		40	
North Dakota	\$5.15	29†		40	
Oklahoma	\$5.15	29†			
Pennsylvania	\$5.15	29†		40	
South Dakota	\$5.15	29†			
Texas	\$5.15	29†			
Utah	\$5.15	29†			
Virginia	\$5.15	29†			
West Virginia	\$5.15	29†		40	
Wisconsin	\$5.15	29†		40	
Wyoming	\$5.15	29†			
Ohio**	\$4.25	44		40	
Kansas**	\$2.65	45		46	
Alabama	No state minimum wage law				
Arizona	No state minimum wage law				
Louisiana	No state minimum wage law				
Mississippi	No state minimum wage law				
South Carolina	No state minimum wage law				
Tennessee	No state minimum wage law				

NFIB. North Carolina News

National Federation of Independent Business • 100 Sawmill Road Suite 201 • Raleigh, NC 27615 • 919-844-6342 • Fax: 919-844-6343

FOR IMMEDIATE RELEASE

CONTACT: Gregg Thompson (919) 844-6342
Jim Brown (615) 874-5288

Small Business: Living Wage is Bad Public Policy *Key House Commerce Committee Vote Scheduled for Wednesday, June 1*

RALEIGH, May 26, 2005 – The National Federation of Independent Business, North Carolina's largest small-business group representing 15,000 members, today said it will continue to oppose an effort to establish a living wage in North Carolina. Next Wednesday, June 1, the House Commerce Committee is scheduled to hear HB 330, which would establish a living wage that would increase \$3 (58 percent above the current federal minimum wage) over a three-year period.

"Concrete evidence shows that living wages are job destroyers and dreadful public policy," NFIB/North Carolina State Director Gregg Thompson said. "NFIB members and small-business owners know this well-intended legislation would cause significant layoffs across the state."

Thompson cited a report released earlier this month by the National Bureau of Economic Research that concludes implemented living wages cause an employment reduction among lower-skilled workers. Municipalities that have passed living-wage laws have experienced an average 1.7-percentage point increase in unemployment among low-wage workers, according to the data. The authors of the paper also found employment among low-wage workers drop as much as 3.5 percent two to three years after the enactment of a living wage law.

NFIB's Research Foundation estimates that North Carolina, which had 3.87 million non-farm jobs as of April 2005, could lose as many as 135,000 jobs with a living wage, with a breakdown as follows: trade, transportation and utilities: 85,400 jobs lost; leisure and hospitality services: 34,750 jobs lost; and education and health services: 14,850 jobs lost.

A full copy of the report, as well as statistics from the U.S. Department of Labor, is available by visiting http://www.nfib.com/object/IO_22558.html or by contacting Mr. Thompson.

###

The National Federation of Independent Business (NFIB) is North Carolina's and the nation's largest small-business advocacy group. A nonprofit, nonpartisan organization founded in 1943, NFIB represents the consensus views of its 600,000 members in Washington and all 50 state capitals. For more information on NFIB/North Carolina, visit www.NFIB.com/NC.

Representative Bill Daughtridge, House District 25

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

D

HOUSE BILL 1388

PROPOSED COMMITTEE SUBSTITUTE H1388-PCS70511-RO-33

Short Title: Exclude Internet Sales/Auction Activities.

(Public)

Sponsors:

Referred to:

April 21, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO EXCLUDE INTERNET-BASED SALES FROM ACTIVITIES
3 REGULATED BY THE LAWS PERTAINING TO AUCTIONS AND
4 AUCTIONEERS.

5 The General Assembly of North Carolina enacts:

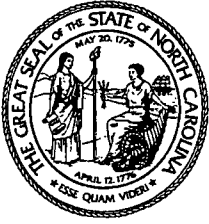
6 SECTION 1. G.S. 85B-2(a) is amended by adding the following new
7 subdivision to read:

8 "§ 85B-2. Activities governed by Chapter.

9 (a) This Chapter shall apply to all auctions held in this State except the
10 following:

11 ...
12 (12) Sales of goods where there is only one initial offer for sale, the offers
13 to purchase are submitted automatically by electronic means, and
14 neither the seller, consignor, nor auctioneer have the discretion to
15 select from offers."

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



HOUSE BILL 1388: Exclude Internet Sales/Auction Activities

BILL ANALYSIS

Committee:	House Commerce	Date:	June 1, 2005
Introduced by:	Reps. Gibson, Cole	Summary by:	Karen Cochrane-Brown Committee Counsel
Version:	PCS to First Edition H1388-CSRO-32[v.1]		

SUMMARY: *House Bill 1388 amends the law governing Auctions and Auctioneers to exclude certain sales that are conducted by electronic means from the activities regulated by the Act.*

The Proposed Committee Substitute revises the language to more accurately reflect the kinds of sales that are being excluded from the Act.

CURRENT LAW:

Chapter 85B of the General Statutes regulates the conduct of auctions and creates the Auctioneers Commission to license and supervise auctioneers. Under the Act, the term "auction" is defined as "the sale of goods or real estate by means of exchanges between a auctioneer and members of an audience, the exchanges consisting of a series of invitations for offers made by the auctioneer, offers by members of the audience, and the acceptance by the auctioneer of the highest or most favorable offer."

Section 85B-2 lists several exceptions to the requirement that all auctions be conducted in accordance with the Act, including:

1. Auction sales conducted by the owner of the property, unless the owner's regular business includes conducting auctions.
2. Auctions conducted by a public authority.
3. Sales by a fiduciary or by a person acting under court order or order of a bankruptcy court.
4. Sales required by law to be at auction.
5. Sales of livestock regulated by the Commissioner of Agriculture.
6. Sales of leaf tobacco conducted in accordance with Chapter 106.
7. Automobile auction sales conducted under Chapter 20.
8. Auction sales of certain breeds of livestock regulated by federal law.
9. Sales conducted by or on behalf of charitable or religious organizations; and sales conducted by civic clubs, not exceeding one sale per year.
10. Sales conducted by a trustee in a real property foreclosure.
11. Certain sales authorized by the Uniform Commercial Code.

BILL ANALYSIS:

This bill would add another exception to the list of activities that are not covered by the Act. The bill would exclude sales of goods or real estate where there is only one initial offer that is submitted

House Bill 1388

Page 2

automatically by electronic means and neither the seller, consignor nor auctioneer have the discretion to select from offers.

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

H1388e1-SMRO-CSRO-32[v.1]

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Daughtridge, Goforth, LaRoque, Rapp (Chairs) for the Committee on
COMMERCE.

Committee Substitute for

HB 1388 A BILL TO BE ENTITLED AN ACT TO EXCLUDE INTERNET-
BASED SALES FROM ACTIVITIES REGULATED BY THE LAWS PERTAINING TO
AUCTIONS AND AUCTIONEERS.

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 1522

Short Title: Amend State Ports Enabling Legislation.

(Public)

Sponsors: Representatives McComas; and Stiller.

Referred to: Commerce.

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATE PORTS AUTHORITY ENABLING
LEGISLATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-453 reads as rewritten:

"§ 143B-453. Purposes of Authority.

Through the Authority hereinbefore created, the State of North Carolina may engage in promoting, developing, constructing, equipping, maintaining and operating the harbors and seaports within the State, or within the jurisdiction of the State, and works of internal improvements incident thereto, including the acquisition or construction, maintenance and operation at such seaports or harbors of watercraft and highways and bridges thereon or essential for the proper operation thereof. Said Authority is created as an instrumentality of the State of North Carolina for the accomplishment of the following general purposes:

- (1) To develop and improve the harbors or seaports at ~~Wilmington, Wilmington and Morehead City and Southport, City~~, North Carolina, and such other places, including inland ports and facilities, as may be deemed feasible for a more expeditious and efficient handling of waterborne commerce from and to any place or places in the State of North Carolina and other states and foreign countries.

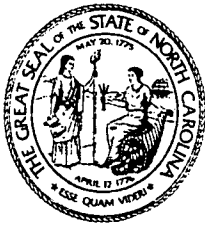
..."

SECTION 2. G.S. 143B-454(a)(5) reads as rewritten:

- "(5) The Authority shall appoint an Executive Director, whose salary shall be fixed by the Authority, to serve at its pleasure. The Executive Director or his designee shall appoint, employ, dismiss and, within the limits of available funding, fix the compensation of such other employees as he deems necessary to carry out the purposes of this Part. There shall be an executive committee consisting of the chairman of the Authority and ~~two~~ four other members elected annually by the

1 Authority. The executive committee shall be vested with authority to
2 do all acts which are authorized by the bylaws of the Authority.
3 Members of the executive committee shall serve until their successors
4 are elected;".

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



HOUSE BILL 1522: Amend State Ports Enabling Legislation

BILL ANALYSIS

Committee:	House Commerce	Date:	June 1, 2005
Introduced by:	Rep. McComas	Summary by:	O. Walker Reagan
Version:	First Edition		Committee Co-Counsel

SUMMARY: *House Bill 1522 would amend the State Ports Authority laws to remove the City of Southport from the cities in which the State Ports Authority is to operate harbors and seaports. The bill also expands the State Ports Authority executive committee from 3 members to 5 members.*

CURRENT LAW: Currently a part of the State Ports Authority's duties is to develop and improve the harbors and seaports at Wilmington, Morehead City and Southport as may be deemed feasible for a more expeditious and efficient handling of waterborne commerce to and from North Carolina. Also the current law requires the Authority to appoint an executive committee consisting of the chair of the Authority and two members elected by the Authority.

BILL ANALYSIS:

Section 1 of the bill would amend the authority of the State Port Authority to develop and improve harbors and seaports to only facilities in Wilmington and Morehead City. The State Ports would not be required to develop or improve the harbor or seaport at Southport.

Section 2 would expand the size of the State Port Authority from 3 members to 5 members.

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

H1522e1-SMRU

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Daughtridge, Goforth, LaRoque, Rapp (Chairs) for the Committee on
COMMERCE.

Committee Substitute for

HB 1522 A BILL TO BE ENTITLED AN ACT TO AMEND THE STATE
PORTS AUTHORITY ENABLING LEGISLATION.

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 _____.

Ran.
643

House Pages

Name Of Committee: Commerce Da : 6-1-05

1. Name: Jessie Hollingsworth X

County: Pitt

Sponsor: Marion McLawhorn

2. Name: Jack Neese X

County: wake

Sponsor: Black

3. Name: William Gbelle T

County: Iredell

Sponsor: Ray

4. Name: Cameron Isaacs X

County: Iredell

Sponsor: Ray

5. Name: _____

County: _____

Sponsor: _____

Sgt-At-Arms

1. Name: Charles Williams

2. Name: Linda Fuller

3. Name: Bill Sullivan

4. Name: FRANK PRERO

5. Name: _____

VISITOR REGISTRATION SHEET

COMMERCE COMMITTEE

JUNE 1, 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
Karen Geary	NEA CDS
Sarah Steege	intern, Common Sense Foundation
Stephanie Dorko	Charlotte Chamber
Mary Thumser	KEBLC
Jeff Strader	North Carolina State Ports Authority
Laura Wilson	North Carolina State Ports BOD
Mayo Gattis	NC State Ports Authority
Bill Thumpe	Chapel Hill
Suzanne Buckley	GOV OFFICE
Mr. [unclear]	NC State Ports - BOD

VISITOR REGISTRATION SHEET

COMMERCE COMMITTEE

JUNE 1, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

J. E. MILES	NORTH CAROLINA ST. PORTS AUTHORITY, WILMINGTON
Stacey Holzinger	FAYETTEVILLE Chamber
Fran Preston	NCRMA
Andy Ellen	NCRMA
Alie Garland	NC DOC
Meredith Herkey	Paper & Ink
Steph Ann	Planned Parenthood
Denise Wilmer	AKG
Amanda Herkey	visiting page
Meredith Herkey	visiting Page
Cady Mack Gaddis	visiting Page

VISITOR REGISTRATION SHEET

COMMERCE COMMITTEE

JUNE 1, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Stephanie Simpson	NC Association of REALTORS
Rick Zechini	"
Lisa Martin	NC Home Builders
Lyn Wilson	NCAATCF
Stacy Flannery	NCHCFA
Kathy Hawkins	Progress Energy of
John Holton	Intercon
John K. Schmidt	NC Justice Center
James Andrews	NC State AFL-CIO
Erin Byrd	SEJ
Rob Scholfield	NC Justice Ctr.

VISITOR REGISTRATION SHEET

COMMERCE COMMITTEE

JUNE 1, 2005

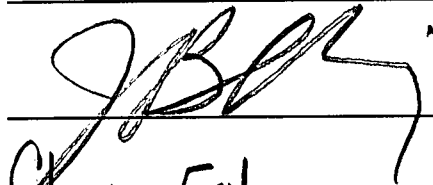
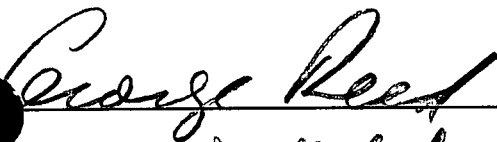
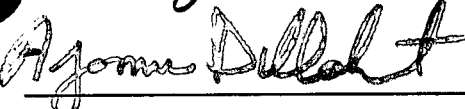
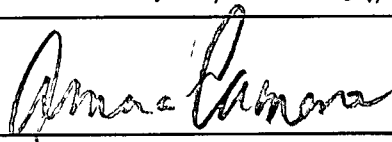
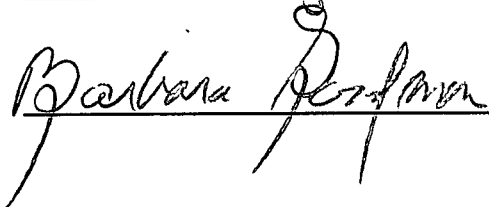
Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

	
Chris Estes	224 S. Dawson NE Housing Coalition, Raleigh 27601
Teresa Saunders	Rep Linda Coleman
	NC Council of Churches
	NC Justice Center
Chris Fitzsimon	NE Policy Watch
	NC Justice Center
John Quintorno	
Elaine Mejra	NCJC
	A of Fletcher Foundation

VISITOR REGISTRATION SHEET

Commerce

Name of Committee

6-1-05

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Laura Cindoch	Latin American Solidation Charlotte, NC
Paula A. Wolf	El Pueblo
Betty Boop	Cartoon Network
Michael House	NCAE
BRIAN LEWIS	Covenant with NC's Children
Aimee Schmitt	Wake County Progressive Democrats Caucus
Eric Gorny	Buncombe County
Dana Simpson	Smith Anderson
Amy Hibbs	NCTLA
Jenny White	NCPA

Ann Jordan (Rep. Goforth)

From: Ann Jordan (Rep. Goforth)
Date: Thursday, May 26, 2005 9:11 AM
Subject: Commerce Committee Meeting Notice for June 1

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

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

DAY & DATE: Wednesday, June 1, 2005
TIME: 1:00 p.m.
LOCATION: Room 643 - LOB

The following bills will be considered:

HB 330 – LIVING WAGE ACT - Rep. Adams

**HB 388 – EXCLUDE INTERNET SALES/AUCTION ACTIVITIES –
Reps. Cole and Gibson**

HB 1522 – AMEND STATE PORTS ENABLING LEGISLATION – Rep. McComas

Respectfully,

Representatives Daughtridge, Goforth, LaRoque and
Rapp - Chairmen

I hereby certify this notice was filed by the committee assistant at the following offices at 9:00 a.m. on May 26, 2005.

____ Principal Clerk
____ Reading Clerk - House Chamber

Ann Jordan (Committee Assistant)



MINUTES

HOUSE COMMITTEE ON COMMERCE

June 1, 2005 – 8:40 p.m. (2nd Meeting)
Room 643- LB

The HOUSE COMMITTEE ON COMMERCE met for it's second meeting of the day at 8:40 p.m. when the House recessed. The Committee met in Room 643 of the Legislative Office Building. The following members were present: Representatives Daughtridge, Goforth, LaRoque and Rapp, Chairs; Representatives Rayfield, Vice-Chair; and Representatives Allen, Almond, Barnhart, Bordsen, Carney, Cole, Coleman, Current, Dickson, Faison, Frye, Gibson, Gillespie, Haire, Hunter, Jeffus, Jones, McGee, McLawhorn, Pierce, Ray, Sauls, Stam, Tucker, Vinson, Walend, Wiley, and Wray. Ex-officio Representatives Cunningham, Eddins and Hackney also attended. Assisting the meeting were Karen Cochran-Brown and Walker Regan, Staff Counsel.

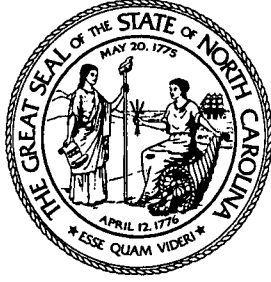
Chairman Goforth called the meeting to order. He recognized and thanked the Sgt.-At-Arms for staffing the late meeting. Rep. Lorene Coates was recognized to explain HB 1473 – CLAWBACK FAILED INCENTIVES. She said this is an accountability bill that would require reports on the number and amount of tax credits forfeited or erroneously claimed under the Tax Incentives for New and Expanding Business Act. Rep. Coates asked Rep. Cole, who deferred to staff, to explain the hiring portion of the bill. This portion of the bill would require businesses that are eligible for direct economic development grants or loans for the purpose of job creation or from the One North Carolina Industrial Recruitment Fund to enter into a first source-hiring contract with the State Employment Commission. Rep. Cole then commended the bill to the committee. After discussion, Rep. Howard Hunter made a motion for a favorable report. Motion carried.

Rep. Bruce Goforth brought up HB 330 – Living Wage Act, which was heard in the morning meeting, for reconsideration. Ex-Officio member Rep. Pete Cunningham made a motion for the bill to be before the committee. Bill Sponsor Representative Alma Adams was recognized for comments. Rep. Becky Carney made a motion for a favorable report as amended. After discussion, on whether to have a role call vote, it was decided the vote would be decided by a show of hands. The bill passed by a vote of 19 to 17.

Meeting adjourned at 9.00 p.m.


Rep. Bruce Goforth – Chairman


Ann Jordan – Committee Assistant



HOUSE COMMITTEE ON COMMERCE

June 1, 2005

LOB 643

During 1st recess or immediately after Session

Presiding Chair – Representative Stephen LaRoque

I. Call to Order

II. Program

HB 1473 – CLAWBACK FAILED INCENTATIVES)

III. Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 1473

Short Title: Clawback Failed Incentives. (Public)

Sponsors: Representatives Coates, Cole, Luebke (Primary Sponsors); Carney, Coleman, Dickson, England, Faison, Farmer-Butterfield, Fisher, Glazier, Goforth, Goodwin, Hackney, Haire, Harrell, Harrison, Holliman, Insko, Jeffus, Martin, McLawhorn, Rapp, Ross, Tolson, Underhill, Wainwright, Warren, Weiss, Wilkins, Williams, and Wray.

Referred to: Commerce.

April 21, 2005

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE FOR PUBLICATION, MONITORING, AND REPORTING
2 ON ECONOMIC DEVELOPMENT INCENTIVE CLAWBACKS AND TO
3 PROVIDE FOR FIRST SOURCE HIRING AGREEMENTS FOR INCENTIVE
4 GRANTS AND LOANS.
5

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 105-129.6(b) reads as rewritten:

8 "(b) Reports. – The Department of Revenue shall publish by March 1 of each year
9 the following information itemized by credit and by taxpayer for the 12-month period
10 ending the preceding December 31:

- 11 (1) The number of claims for each credit allowed in this Article.
- 12 (2) The number and enterprise tier area of new jobs with respect to which
13 credits were generated and to which credits were claimed.
- 14 (3) The cost and enterprise tier area of machinery and equipment with
15 respect to which credits were generated and to which credits were
16 claimed.
- 17 (4) The number of new jobs created by businesses located in development
18 zones, and the percentage of jobs at those locations that were filled by
19 residents of the zones.
- 20 (5) The amount and enterprise tier area of worker training expenditures
21 with respect to which credits were generated and to which credits were
22 claimed.
- 23 (6) The amount and enterprise tier area of new research and development
24 expenditures with respect to which credits were generated and to
25 which credits were claimed.

- 1 (7) The cost and enterprise tier area of real property investment with
2 respect to which credits were generated and to which credits were
3 claimed.
- 4 (8) The number and amount of credits forfeited under G.S. 105-129.4(d)
5 and the reason for the forfeiture.
- 6 (9) The number and amount of assessments for credits erroneously
7 claimed under this Article that are not included in subdivision (8) of
8 this subsection."

9 SECTION 2. Article 10 of Chapter 143B of the General Statutes is amended
10 by adding the following new sections to read:

11 "§ 143B-435.1. Clawbacks.

12 (a) Clawback Defined. – For the purpose of this Article, a clawback is a
13 requirement that all or part of an economic development incentive will be returned if the
14 recipient business does not fulfill its responsibilities under the incentive law, contract, or
15 both.

16 (b) Findings. – The General Assembly finds that in order for a clawback to be
17 effective, there must be monitoring and reporting regarding the business's performance
18 of its responsibilities and a mechanism for obtaining repayment if the clawback is
19 triggered. Clawback provisions are essential to protect the State's investment in a private
20 business and ensure that the public benefits from the incentive will be secured.

21 (c) Catalog. – The Department of Commerce shall catalog all clawbacks in State
22 and federal programs it administers, whether provided by statute, by rule, or under a
23 contract. The catalog must include a description of each clawback, the program to
24 which it applies, and a citation to its source. The Department shall publish the catalog
25 on its Web site and update it every six months.

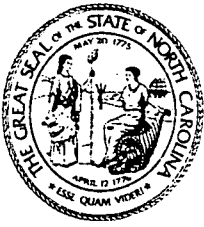
26 (d) Report. – The Department of Commerce shall report to the Revenue Laws
27 Study Committee by April 1 and October 1 of each year on all clawbacks that have been
28 triggered under programs it administers and its progress on obtaining repayment. The
29 report must include the name of each business, the event that triggered the clawback,
30 and the amount to be repaid.

31 "§ 143B-435.2. First source hiring.

32 In order for a business to be eligible for a direct economic development grant or loan
33 under this Article for the purposes of job creation or from the One North Carolina
34 Industrial Recruitment Competitive Fund, the business must have entered into a first
35 source hiring contract to utilize the State Employment Security Commission and any
36 cooperating local agency as a first source for recruitment and referral of applicants for
37 new and replacement employment associated with the grant or loan. To meet the first
38 source hiring requirement under the contract, the business must allow the agency three
39 days to refer applicants. Upon request of the business in the case of an emergency, the
40 agency may waive the three-day period. Under the contract, the business must interview
41 and consider qualified candidates referred by the agency concurrently with interviewing
42 other candidates. The Secretary of Commerce may waive this requirement for projects
43 in enterprise tiers one and two and in areas of especially severe economic distress, as
44 determined by the Secretary."

1

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



HOUSE BILL 1473: Clawback Failed Incentives

BILL ANALYSIS

Committee: House Commerce	Date: June 1, 2005
Introduced by: Reps. Coates, Cole, Luebke	Summary by: O. Walker Reagan
Version: First Edition	Committee Co-Counsel

SUMMARY: *House Bill 1473 would require reports on the number and amount of tax credits forfeited or erroneously claimed under the Tax Incentives for New and Expanding Businesses Act. It would also require the Department of Commerce to catalog and report on clawbacks of incentives paid to businesses that do not fulfill the requirements to qualify for the incentives. It would also require businesses benefiting from the One North Carolina Industrial Recruitment Competitive Fund to use the State Employment Security Commission as a first choice hiring source.*

CURRENT LAW: Current law does not require reporting on new and expanding business tax credits forfeited or claimed erroneously. It also does not require any cataloging or reporting on clawbacks that are triggered. There is no requirement that the State Employment Security Commission as its first choice hiring source.

BILL ANALYSIS:

Section 1 of the bill would require the Department of Revenue to publish March 1 of each year the number and amounts of tax credits forfeited under the Tax Incentives for New and Expanding Business law and the number and amount of assessments for credits erroneously claimed.

Section 2 would add two new statutory sections.

The new **G.S. 143B-435.1** would require the Department of Commerce to catalog and report on all clawbacks in State and federal programs the Department administers. The Department is also required to report on April 1 and October 1 on all clawbacks that have been triggered.

The new **G.S. 143B-435.2** would require those businesses that are eligible for direct economic development grants or loans for the purposes of job creation or from the One North Carolina Industrial Recruitment Competitive Fund to enter into a first source hiring contract with the State Employment Security Commission. Three days must be allowed for the ESC to refer applicants to the business. The business must interview and consider qualified candidates referred by the ESC concurrently with interviewing other candidates. The requirements of this section can be waived under certain circumstances.

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

H1473e1-SMRU

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

D

HOUSE BILL 330

PROPOSED COMMITTEE SUBSTITUTE H330-PCS70488-LR-24

Short Title: Living Wage Act.

(Public)

Sponsors:

Referred to:

February 22, 2005

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE WAGE AND HOUR ACT TO RAISE THE STATE
3 MINIMUM WAGE TO A LIVABLE WAGE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 95-25.3(a) reads as rewritten:

6 "§ 95-25.3. Minimum wage.

7 (a) Every employer shall pay to each employee who in any workweek performs
8 any work, wages of at least ~~the minimum wage set forth in paragraph 1 of section 6(a)~~
9 ~~of the Fair Labor Standards Act, 29 U.S.C. 206(a)(1), as that wage may change from~~
10 ~~time to time, six dollars and fifteen cents (\$6.15) per hour, except as otherwise provided~~
11 in this section."

12 SECTION 2. This act becomes effective September 1, 2005.

HB: 330 Living Wage Bill



REPRESENTATIVE ALMA S. ADAMS, PH.D.
N.C. HOUSE OF REPRESENTATIVES
58TH DISTRICT

542 LEGISLATIVE OFFICE BUILDING
300 N. SALISBURY STREET
RALEIGH, NORTH CAROLINA 27603-5925
919-733-5902 TELEPHONE
919-754-3121 FAX
E-MAIL: ALMAA@NCLEG.NET

DISTRICT ADDRESS:
2109 LIBERTY VALLEY RD.
GREENSBORO, NC 27406
336-273-9280

ENDORSERS OF HB 330 LIVING WAGE ACT

This bill would increase North Carolina's minimum wage by \$1 or more per year for each of the next three years on Labor Day until it reaches \$8.50 per hour. North Carolina currently follows the federal minimum wage \$5.15 per hour that was set in 1997 and has lost all added value due to inflation.

Accion Hispana
ACORN- Association of Community Organizations
for Reform Now, NC Affiliate
Asociación de Mexicanos en Carolina del Norte
Black Workers for Justice Women's Commission
Blue Springs-Hoke County CDC
Carolina Association of Black Women
Covenant with North Carolina's Children
Entrepreneurs, Inc.
Caucus of N C Black Municipal Officials
Caucus of NC Black County Officials
Center for Community Action
Coalition for Responsible Lending
Community Reinvestment Association of NC
Ebenezer Missionary Baptist Church
El Pueblo
Land Loss Prevention Project
Local Initiatives Support Corporation (LISC)-
Winston-Salem, NC Office
Minority Health Advisory Council, Chair-Rep.
Thomas Wright
Mother Wit, Inc.
NARAL Pro-Choice North Carolina
NC Association of Community Development
Corporations
NC Black Leadership Caucus
NC Coalition of Farm & Rural Families
NC Community Action Association
NC Community Development Initiative
NC Families Against Mandatory Minimums
NC Fair Share
NC Indian Economic Development Initiative, Inc.
NC Institute of Minority Economic Development
NC Justice and Community Development Center
NC Minority Support Center
New Life Women's Leadership Project
Neighbors for Better Neighborhoods
Operation Spring Plant
Opportunities Industrialization Center, Wilson
Opportunities Industrialization Center, Rocky
Mount
Regional Economic Justice Network
Rocky Mount Branch NAACP
Southern Rural Development Initiative
Southerners for Economic Justice
The African American Caucus of the NC
Democratic Party
Triangle Urban League
Women's Center of Wake County
Blue Springs/Hoke County Community
Development Corporation
Cape Fear Regional Community Development
Corporation
Cleveland County Community Development
Corporation
Columbus County DREAM Center, Inc.
Consumer Credit Counseling of Durham
Cumberland Regional Improvement Corporation
DHIC, Inc.
Durham Community Land Trustees
Gateway Community Development Corporation
Glory-to-Glory House of Refuge
Goler Community Development Corporation
Grier Heights Economic Foundation, Inc.
Haliwa-Saponi Tribe, Inc.
Hispanic Community Development Corporation
Kingdom Community Development Corporation
Lakewood Community Development Corporation
Lumbee Revitalization & Community
Development Association
Monroe Union County Community Development
Corporation
Northeast Community Development Corporation
NW Corridor Community Development
Corporation
Oliver Hill Community Development Corporation
Inc.
Quality of Life Association Hertford County
Restoration Community Development Corporation
Rocky Mount/Edgecombe Community
Development Corporation
Southside Alliance for Neighborhood
Empowerment
Sampson County Community Development
Corporation
Simon Green Atkins Community Development
Corporation, Inc.
South Side Community Development Corporation
Tree of Life Community Development Corporation
UDI Community Development Corporation
Uhuru Community Development Corporation
United Family Support Services
Warren Family Institute
West End Revitalization
Wilson Community Improvement Association, Inc.



Powered by Clickability

States say \$5.15 an hour too little

By Dennis Cauchon, USA TODAY

More states are raising their minimum wages, pushing hourly rates above \$7 in some and shrinking the role of the federal minimum wage, which hasn't gone up in eight years.

Eleven states have raised their rates since January 2004, and Wisconsin will become the 12th on Wednesday. Employers there must pay at least \$5.70 an hour through June 2006, when the minimum wage rises again to \$6.50 an hour.

In all, 17 states and the District of Columbia — covering 45% of the U.S. population — have set minimums above the federal rate of \$5.15. That has helped cut the number of workers earning the minimum or less (for those earning tips) from 4.8 million in 1997 to 2 million last year, or 2.7% of hourly earners, the Bureau of Labor Statistics says.

About half of minimum-wage earners work at restaurants. Millions more have wages that are influenced by the minimum. Its buying power is at its lowest point since 1949.

Congress last changed the federal minimum wage in 1997. The latest proposal to raise it died in the Senate in March.

"The federal government is not living up to its responsibility, so the states are acting," says New Jersey state Sen. Steve Sweeney, a Democrat who sponsored a law that will raise the state's minimum.

Hiking the minimum wage

Seventeen states and the District of Columbia will have a minimum wage by Oct. 1 that exceeds the federal rate of \$5.15 per hour.

State	Current rate	Future increases
Alaska	\$7.15	
Calif.	\$6.75	
Conn.	\$7.10	\$7.40 beginning Jan. 1; \$7.65 on Jan. 1, 2007
D.C.	\$6.60	\$7 on Jan. 1
Del.	\$6.15	
Fla.	\$6.15	Increases yearly with inflation
Hawaii	\$6.25	\$6.75 on Jan. 1 and \$7.25 on Jan. 1, 2007, unless governor vetoes
Ill.	\$6.50	
Maine	\$6.35	\$6.50 on Oct. 1
Mass.	\$6.75	
Minn.	\$5.15	\$6.15 on Aug. 1
N.J.	\$5.15	\$6.15 on Oct. 1; \$7.15 on Oct. 1, 2006
N.Y.	\$6.00	\$6.75 on Jan. 1; \$7.15 on Jan. 1, 2007
Ore.	\$7.25	Increases yearly with inflation
R.I.	\$6.75	
Vt.	\$7.00	Considering \$7.25

Wash. \$7.35 Increases yearly with inflation
Wis. \$5.15 \$5.70 beginning Wednesday; \$6.50 on June 1, 2006

Sources: Center for Policy Alternatives; USA TODAY research.

the Connecticut Restaurant Association. "The burden not only threatens the bottom line, it threatens the survival of many restaurants."

Some states have rejected minimum wage increases. The New Hampshire Senate voted Thursday against raising the state's minimum. Other key actions:

•Hawaii Gov. Linda Lingle, a Republican, will decide soon whether to veto a law that would raise the minimum wage in two steps from \$6.25 to \$7.25.

•Maryland legislators voted to raise the wage from \$5.15 to \$6.15 an hour, but Republican Gov. Robert Ehrlich vetoed the bill.

•Voters in Florida and Nevada approved higher minimum wages in November. Nevada voters must approve it again in 2006 for it to become law.

Polls show that minimum wage increases are popular. In a Pew Research Center Poll in December, 86% supported raising the federal minimum to \$6.45.

Liberal activists say they're using the minimum wage to put Republicans on the defensive. They hope to put minimum wage initiatives on the ballots next year in nine states, including Ohio, Michigan and Arizona, says Kristina Wilfore, head of the liberal Ballot Strategy Initiative Center.

"This is going to take off like wildfire," she says. "It will pull progressive voters to the polls. The way the gay marriage amendment lured conservative voters to the polls (in November) was a wake-up call for us."

Efforts to raise the minimum wage have had most success in states that voted for 2004 Democratic presidential nominee John Kerry. Florida and Alaska are the only states that voted for President Bush last year to have minimum wages above the federal rate.

• [REPRINTS & PERMISSIONS](#)

Find this article at:

http://www.usatoday.com/news/washington/2005-05-30-minimum-wage_x.htm

Check the box to include the list of links referenced in the article.





NC Justice Center

*Opportunity
and prosperity for all!*

Issue Brief

Raising North Carolina's Minimum Wage Supports the Economy and Working Families

May 2005

House Bill 330 Living Wage Act, sponsored by Representatives Alma Adams and Jean Farmer-Butterfield, would increase North Carolina's minimum wage by \$1 or more per year for each of the next three years on Labor Day until it reaches \$8.50 per hour. North Carolina currently follows the federal minimum wage of \$5.15 per hour that was set in 1997. This issue brief explores facts and research about the minimum wage.

Minimum Wage Quick Facts:

- The current federal – and North Carolina - minimum wage is \$5.15 per hour. A federal minimum wage has been a part of the U.S. economy for 67 years.
- The federal minimum wage was last increased over a two year period from \$4.25 in 1995 to \$5.15 in 1997.
- Inflation has completely eroded the value of the last increase and today's \$5.15 will buy a worker less than the minimum wage of \$4.25 did in 1995.
- Minimum wage equals \$10,712 per year salary for full-time work, five days per week for 52 weeks per year. This is less than the 2005 federal poverty level for two, which is \$12,830.
- Fifteen states have in place a higher minimum wage than the federal \$5.15. Since 1979 states have been passing higher state minimums. The latest is Florida which implemented a \$1/hour increase on May 2, 2005.
- Seventy-two percent (72%) of workers whose wages would be raised by an increase to \$7.25 by 2007 are over 20 years old and 44% work full-time. Women and minorities benefit the most.

P.O. Box 28068
Raleigh, NC
27611-8068

Editor: Sorien Schmidt
919/856-2151
sorien@ncjustice.org
www.ncjustice.org

Answers to Common Minimum Wage Concerns:

1. **Raising the minimum wage does not increase job loss** - Since 1979, economists have been able to conduct empirical research comparisons between states with higher and states with lower minimum wages. They have found no increase in job loss due to a minimum wage increase. Nationally after the 1996-97 federal increase, the low-wage labor market performed better than it had in decades. (David Card and Alan Krueger, Princeton, 1995)
2. **Small businesses do not perform worse in higher minimum wage states** - When comparing small businesses - 50 employees or less - in states with higher minimums and those with the federal minimum wage, small businesses in the higher minimum wage states experienced faster growth in new small companies, jobs, and annual and average payroll. (Fiscal Policy Institute, 2004.)
3. **There are no discernable differences in business failures after minimum wage increases** - A 30 year study reported in the Journal of Economic Issues, March 1998, found "no discernable correlation between minimum wage increases and a rise in business failures, either in the year the increase occurred or in the following year." (Jerold Waltman, Allan McBride and Nicole Camhout, 1998.)

Benefits of a Higher North Carolina Minimum Wage:

1. **The Greatest Benefits Go To the Lowest Income Households** - National data show that if the minimum wage were to increase to \$7/hour over two years the bottom 40% of households by wages and salary would receive nearly 60% of the gains from the increase. (Economic Policy Institute, CPS, 2004)
2. **North Carolina Workers' Wages are Dropping** - The average annual wage of growing industries in North Carolina is 7% less than the average annual wage of the jobs leaving. This equals about \$2,000 less income per year per job. North Carolina's median income has declined almost \$3,000 per household and the poverty rate has increased.
3. **Economic Models Show Increased Economic Activity, Decreased Absenteeism and Growth in Productivity** - Economic models looking at low-wage markets have found decreased absenteeism and higher productivity following minimum wage increases. Workers also spend new earnings quickly causing some increased economic activity.

Conclusion

North Carolina's growing number of low-wage adult workers and their families will benefit the most from an increase in the state minimum wage. They are likely to spend their increased wages quickly to meet family needs and thereby stimulate the economy. Economic studies have found no evidence of damage to business or increase in low-wage job loss due to past minimum wage increases. With the recent drop in North Carolina's median wage and increase in low-wage service and retail employment, these workers could use the boost a minimum wage increase provides.

U
A LIVING WAGE
A Policy Statement Adopted by the House of Delegates
North Carolina Council of Churches

November 9, 2000

OVERVIEW

From the shadows of banking towers of Charlotte and Raleigh to the small towns and hamlets far away from the bustling Piedmont, the much-ballyhooed economy has not lifted all boats. Many people are working hard but are not earning enough to make ends meet in today's economy. For this reason, a "living wage" movement is gaining momentum around the nation. This movement seeks to educate policymakers and the community about the true costs of making ends meet and to require that local governments and their contractors pay a living wage to their employees.

Over 40 cities and counties across the nation, including the city of Durham, have adopted living wage ordinances. Greensboro, Charlotte, Asheville, and Raleigh may also see campaigns for living wage ordinances.

DIFFERENCE BETWEEN MINIMUM WAGE AND LIVING WAGE

The minimum wage is currently \$5.15 an hour. Congress has been debating whether to increase it to \$6.15 an hour. Such an increase would:

- help the 70 percent of minimum wage earners who are adults.
- benefit the 46 percent of minimum wage earners who work full time.
- increase the 54 percent of family income that minimum wage workers contribute.

It would affect approximately one out of every five North Carolina workers.

But even a full-time minimum wage earner could not lift a family out of poverty. Moreover, earning a minimum wage is not enough to pay the bills -- for housing, for food, for child care. A worker who works 40 hours per week, 52 weeks per year, takes no vacation, and misses no work because of sickness would have a gross income of \$10,712. If that worker has one child, the family falls more than \$500 below the federal poverty line for a family of two--\$11,250.

And the federal poverty figures, based on the cost of a "thrifty" diet more than thirty years ago, are widely conceded to be inadequate in today's world. So how much does it cost to live? In recent years, several respected North Carolina groups have calculated the costs:

-
- In 1997, NC Equity released a "self-sufficiency standard" for each of North Carolina's 100 counties. This standard factored in costs of housing, child care, food, etc., and showed that the federal poverty guidelines were not high enough to reflect the true cost of living. The standard described how much money various configurations of families would have to earn to make ends meet without government assistance. In high-cost areas like the Triangle, the amounts reached almost \$14 an hour.
 - In September 2000, the NC Low-Income Housing Coalition released a study about the growing trend of unaffordable housing in North Carolina. The Coalition estimated that a full-time wage earner would have to make \$10.15 an hour to rent a two-bedroom apartment without spending an unaffordable share of his or her income. Increases in costs for shelter, especially in the Triangle and Wilmington areas, have been among the highest in the nation, far outpacing the growth in wages.

(Leviticus 25:8-17). The New Testament records that members of the early church shared whatever they had to help fellow believers in need (Acts 2:44-47). While there is nothing to indicate that the Jubilee Year was widely honored or that this extraordinary sharing existed for long periods of time in the First Century, the message of these passages should not be too quickly dismissed.

RECOMMENDATIONS

Advocacy steps fall into two broad categories: increasing workers' wages and reducing their out-of-pocket costs.

1. Strategies for improving wages include:

- *Modeling good behavior.* Faith-based organizations (of which we are members) should pay living wages and provide adequate benefits to their employees. Governments (of which we are citizens) should pay their employees a living wage plus benefits, should require their contractors to do so as well, and should require businesses benefiting from tax incentives to pay living wages and benefits.
- *Increase the state minimum wage.* The state minimum wage is currently \$5.15 an hour. More than ten states have increased their minimum wage above the level required by the federal government, in part to recognize that the minimum wage has not kept pace with inflation or the cost of living in general. These increases have had little or no harmful effect on employment.

2. Families spend the majority of their money on housing, child care, food, transportation, health care and taxes. To reduce the impact of these costs, we advocate:

- *Affordable Housing Construction* through a statewide bond issue and dedicated sources of revenue for the Housing Trust Fund, the only source of state dollars for affordable housing.
- *Continued Support for Child Care.* While the amount of subsidies for those needing child care has increased in recent years, there are still families on waiting lists for subsidies in many North Carolina counties.
- *Health Insurance.* While the state has been very successful at enrolling children in public health insurance programs, such as Medicaid and Health Choice, there are still many working North Carolina adults without health insurance. Many employers don't provide it, and workers can't afford to buy it for themselves. The state should extend the Medicaid program to help these adults gain access to health care.
- *State Earned Income Tax Credit.* Nearly 625,000 North Carolina working families with children benefit from the federal Earned Income Tax Credit (EITC). The EITC was created to lower the federal tax burden and supplement wages for low- and moderate-income workers. It lifts more people out of poverty than any other program except Social Security. Fifteen states have created their own versions of the EITC.

The Bible teaches that the worker is worthy of his or her hire (Matthew 10:10). Full-time workers should be able to provide basic support for their families. North Carolina should take these recommended steps to reward work and to support working families.

Minimum Wage Laws*

Proposed Minimum Wage Rate (per hour)

	Minimum Wage (9/1/2005)	Minimum Wage (Labor Day 2006)	Minimum Wage (Labor Day 2007)
North Carolina	\$6.15	\$7.15	\$8.50

Federal

	Basic Minimum Rate (per hour)	Rank	Premium Pay After Designated Hours (daily)	Premium Pay After Designated Hours (weekly)	Basic Minimum Rate (per hour) Effective 1/1/2006
Federal	\$5.15	N/A	8	40	N/A

State

State	Basic Minimum Rate (per hour)	Rank	Premium Pay After Designated Hours (daily)	Premium Pay After Designated Hours (weekly)	Basic Minimum Rate (per hour) Effective 1/1/2006
Washington	\$7.35	1		40	
Oregon	\$7.25	2		40	
Alaska	\$7.15	3	8	40	
Connecticut	\$7.10	4		40	
Vermont	\$7.00	5		40	
California	\$6.75	7t	8	40	
Massachusetts	\$6.75	7t		40	
Rhode Island	\$6.75	7t		40	
District of Columbia	\$6.60	9		40	\$7.00
Illinois	\$6.50	10		40	
Maine	\$6.35	11		40	
Hawaii	\$6.25	12		40	
Delaware	\$6.15	13t			
Florida	\$6.15	13t			
New York	\$6.00	15		40	\$6.75
Arkansas	\$5.15	29t		40	
Colorado	\$5.15	29t	12	40	
Georgia	\$5.15	29t			
Idaho	\$5.15	29t			
Indiana	\$5.15	29t		40	
Iowa	\$5.15	29t			
Kentucky	\$5.15	29t		40	
Maryland	\$5.15	29t		40	
Michigan	\$5.15	29t		40	
Minnesota	\$5.15	29t		48	
Missouri	\$5.15	29t		40	
Montana	\$5.15	29t		40	
Nebraska	\$5.15	29t			
Nevada	\$5.15	29t	8	40	
New Hampshire	\$5.15	29t		40	
New Jersey	\$5.15	29t		40	
New Mexico	\$5.15	29t		40	
North Carolina	\$5.15	29t		40	
North Dakota	\$5.15	29t		40	
Oklahoma	\$5.15	29t			
Pennsylvania	\$5.15	29t		40	
South Dakota	\$5.15	29t			
Texas	\$5.15	29t			
Utah	\$5.15	29t			
Virginia	\$5.15	29t			
West Virginia	\$5.15	29t		40	
Wisconsin	\$5.15	29t		40	
Wyoming	\$5.15	29t			
Ohio	\$4.25	44		40	
Kansas	\$2.65	45		46	
Alabama			No state minimum wage law		
Arizona			No state minimum wage law		
Louisiana			No state minimum wage law		
Mississippi			No state minimum wage law		
South Carolina			No state minimum wage law		
Tennessee			No state minimum wage law		

VISITOR REGISTRATION SHEET

Commence

6-1-05

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris Fitzsim	NC Policy Watch
Bill Rowe	NC Justice Center
James Andrews	NC State AFL-CIO
Katalie Fixmer	Planned Parenthood
Jon Schmidt	NC Justice Center
Paige Johnson	Planned Parenthood
John McBy	Good Office
Lee Hodge	KLUH
Steve Woodson	NC Farm Bureau
Owen Pollock	Sen. Graham's office
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

Loanne Kinzie	NC SBA
Molly Ryan	NC SBA
Juffone	Bone & ASSO.
Lisa Martin	NC ABTA
Alastair Macaulay	NC HBA
Alicia Kurlana	NCTOC
Low Wilson	NCLTCFA
Payne	
Stephanie Simpson	NCA R
Michael Houser	NCAE
Teresa Saunders	Rep. Linda Coleman

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Daughtride, Goforth, LaRoque, Rapp (Chairs) for the Committee on
COMMERCE.

Committee Substitute for

HB 330 A BILL TO BE ENTITLED AN ACT AMENDING THE WAGE AND HOUR
ACT TO RAISE THE STATE MINIMUM WAGE TO A LIVABLE WAGE.

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.

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Daughtride, Goforth, LaRoque, Rapp (Chairs) for the Committee on
COMMERCE.

Committee Substitute for

HB 1473 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR
PUBLICATION, MONITORING, AND REPORTING ON ECONOMIC DEVELOPMENT
INCENTIVE CLAWBACKS AND TO PROVIDE FOR FIRST SOURCE HIRING
AGREEMENTS FOR INCENTIVE GRANTS AND LOANS.

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 _____.

Ann Jordan (Rep. Goforth)

From: Ann Jordan (Rep. Goforth)
Date: Wednesday, June 01, 2005 3:04 PM
Subject: Commerce Meeting Notice - During Recess or after session

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

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

DAY & DATE: Wednesday, June 1, 2005
TIME: During 1st recess or immediately after session
LOCATION: Room 643 - LOB

The following bills will be considered:

HB 1473 – CLAWBACK FAILED INCENTATIVES

Respectfully,

Representatives Daughtride, Goforth, LaRoque and
Rapp - Chairmen

I hereby certify this notice was filed by the committee assistant at the following offices at 3:00 a.m. on June 1, 2005.

____ Principal Clerk
____ Reading Clerk - House Chamber

Ann Jordan (Committee Assistant)

Minutes

HOUSE COMMITTEE ON COMMERCE

June 8, 2005

The HOUSE COMMITTEE ON COMMERCE met on Wednesday, June 8, 2005, in Room 643 LOB at 1:00 p.m. The following members were present: Representatives Daughtridge, Goforth, LaRoque, and Rapp, Chairs; Representatives Rayfield and Representative Owen Vice Chairs; Representatives Allen, Almond, Barnhart, Bordsen, Brown, Carney, Cole, Coleman, Current, Dickson, England, Faison, Frye, Gibson, Gillespie, Haire, Jeffus, Jones, McGee, McLawhorn, Pierce, Ray, Salus, Stam, Tucker, Vinson, Walend, Wiley, Wray. Assisting the meeting were Karen Cochrane-Brown and Walker Reagan, Staff Counsel; Dot Barber, Rachel Dupree, Lisa Kennedy, and Ann Jordan, Committee Assistants; Charles Williams, Earl Coker, Linda Fuller, Jim Womack, Brad Barefoot and Jay Callaway, House Sgt.-at-Arms; House Pages Michael Pell of Alamance County, sponsored by Representative Allred, Jennifer Stewart of Cumberland County, Sponsored by Representative Glaizer, Samantha Alexander of Cumberland County, Sponsored by Representative Nye, Amelia Muse of Durham County, Sponsored by Representative Hackney, Jenna Carpenter of Jackson County, Sponsored by Representative Haire, Jessica Glenn of Lincoln County Sponsored by Representative Kiser, Chris Hall of Robeson County, Sponsored by Speaker Black, Casey Cline of Lincoln County Sponsored by Representative McMahan.

Chairman LaRoque called the meeting to order introduced the House Sergeants-at Arms, the Committee Assistants, and the House Pages assisting with the meeting.

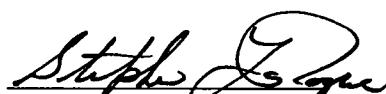
The order of Business was S.B. 629- Manufacturing Redevelopment Districts- sponsored by Senator Snow. Representative Walend and Senator Snow explained the bill.


Discussion was followed by the Committee Members. Bruce Thompson with Parker, Poe, Adams, and Bernstein, Dale Carroll with Advantage West, Chris Neaville with ARCADIS spoke in favor of the bill. Richard Rogers with DENR, Annie Pickle with Southern Environmental Law Center, Molly Diggins with the Sierra Club spoke in the opposition.

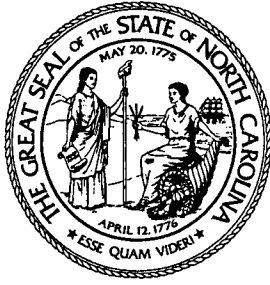
Representative Goforth made a motion for a favorable report. Motion was passed.

There being no further business, the meeting was adjourned at 1:45pm.

Respectfully submitted,


Rep. Stephen LaRoque
Presiding Chairman


Lisa D. Kennedy
Committee Assistant



HOUSE COMMITTEE ON COMMERCE

June 8, 2005

LOB 643

1:00 PM

Presiding Chair – Representative Stephen LaRoque

I. Call to Order

II. Program

Speaker: Tom Ticknor: "Why Not the Best? Priorities for Enhancing the North Carolina Economic Development Delivery System." Prepared for the North Carolina Economic Development Board.

SB629-Manufacturing Redevelopment Districts (Senator John Snow)

III. Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

2

SENATE BILL 629*
Judiciary II Committee Substitute Adopted 5/31/05

Short Title: Manufacturing Redevelopment Districts. (Public)

Sponsors:

Referred to:

March 17, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE REDEVELOPMENT OF CERTAIN
3 MANUFACTURING DISTRICTS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Manufacturing redevelopment districts: legislative
6 findings.

7 The General Assembly of North Carolina makes the following findings
8 regarding the need for manufacturing redevelopment districts:

- 9 (1) Economic development in the State will be served by providing an
10 opportunity to restart production in manufacturing facilities designed
11 for targeted industries such as photographic materials, digital inkjet
12 products, digital photographic applications, and other photographic
13 printing technology, thereby providing employment opportunities for
14 the residents of North Carolina.
- 15 (2) When an existing facility can be modified to meet the needs of the new
16 industry and thereby preserve and create jobs, it is in the public interest
17 to provide a mechanism for these modifications to occur.
- 18 (3) Economically distressed counties continue to lose manufacturing jobs,
19 and the General Assembly must act to create new jobs for citizens
20 residing in those counties.
- 21 (4) The health and safety of the citizens of North Carolina will be served
22 through the assessment and remediation of known and unknown
23 environmental conditions at manufacturing facilities.
- 24 (5) The public interest of the State will be served by securing a property
25 interest in real property located within significant State property
26 holdings to the State and by providing a property interest in the real
27 property to a new operator that is sufficient to enable the new operator
28 to restart manufacturing at existing facilities on the real property in

1 consideration for the preservation and creation by the new operator of
2 jobs and economic opportunities.

- 3 (6) The public interest of the State will be served by encouraging owners
4 of manufacturing facilities to transfer ownership in property in order to
5 make it possible for new operators to restart production at these
6 facilities.

7 **SECTION 2. Manufacturing redevelopment districts: purpose.**

8 A manufacturing redevelopment district shall exist to provide manufacturing,
9 research and development, and related service and support jobs to citizens of the State
10 while ensuring the remediation of known and unknown environmental conditions at
11 manufacturing facilities.

12 **SECTION 3. Manufacturing redevelopment districts: establishment.**

13 A manufacturing redevelopment district may be established on any parcel or
14 tract of land or on any combination of contiguous parcels or tracts of land as provided in
15 this section. To establish a manufacturing redevelopment district, the new operator of
16 the manufacturing facilities located within the boundaries of the district shall certify to
17 the Secretary of State that the district meets all of the criteria set out in this section. The
18 certification shall describe the boundaries of the district by metes and bounds and shall
19 set out the specific financial mechanism that guarantees completion of the assessment
20 and remediation program as required under subdivision (8) of this section. This
21 certification shall constitute prima facie evidence that these criteria have been met. The
22 district shall be considered to be established as a manufacturing redevelopment district
23 on the date the certification is filed. Once established, a manufacturing development
24 district shall continue to exist unless the real property comprising the district reverts to
25 the State pursuant to Section 6 of this act. A manufacturing redevelopment district may
26 be established only if all of the following criteria are met at the time the district is
27 established:

- 28 (1) The real property is located in a county that is economically distressed.
29 For purposes of this section, a county shall be considered economically
30 distressed if all of the following apply:
31 a. The average weekly wage in the county is less than five
32 hundred twenty-five dollars (\$525.00) per person.
33 b. The percentage of unemployed workers is greater than six
34 percent (6%).
35 c. The percentage of citizens who are at or below the federal
36 poverty level, as determined by the most recent federal
37 decennial census, is greater than nine percent (9%).
38 (2) All of the real property comprising the district is a privately owned
39 in-holding of 50 acres or more within a State forest of 10,000 acres or
40 more.
41 (3) The district contains a manufacturing facility that has been out of
42 production for two years or more.
43 (4) Failure to restart the manufacturing facility would result in a
44 permanent lost opportunity to create 50 or more jobs.

- 1 (5) The manufacturing facility has a total square footage of 500 square
2 feet or more.
- 3 (6) The new operator of the manufacturing facility intends to employ more
4 than 50 employees. For purposes of this act, a new operator is an entity
5 that restarts operations at a manufacturing facility located within a
6 manufacturing redevelopment district.
- 7 (7) The new operator of the facility has accepted responsibility for the
8 assessment and remediation of known and unknown environmental
9 conditions in accordance with applicable State law and rules.
- 10 (8) The new operator of the facility has prefunded an assessment and
11 remediation program in an amount of at least five million dollars
12 (\$5,000,000) to assess and remediate known environmental conditions
13 in accordance with applicable environmental laws and in light of the
14 intended use of the facility by that new operator. In order to guarantee
15 completion of the assessment and remediation program, the new
16 operator shall prefund the program by means of an escrow account or
17 other financing mechanism that runs in favor of the State in the event
18 of a default.
- 19 (9) The owner donates the real property comprising the manufacturing
20 redevelopment district to the State of North Carolina.

21 **SECTION 4. Manufacturing redevelopment districts: immunity.**

22 No person who owned or had an interest in any real property within a
23 manufacturing redevelopment district at any time prior to the establishment of the
24 district in accordance with this act shall be liable to the State, to any governmental unit
25 or subdivision of the State, or to any private or third party, for the cleanup of
26 environmental damage or restoration of natural resources on any of the real property
27 comprising the district, or for any other claims arising out of the presence of oil,
28 hazardous substances, or hazardous waste, as defined under any applicable State statute
29 or rule, in any media at the real property. The immunity provided by this section shall
30 attach at the time that the real property comprising the manufacturing redevelopment
31 district is donated to the State. The immunity provided by this section is with respect to
32 any theory of legal liability, including, but not limited to, any claim of negligence,
33 nuisance, or trespass, or arising under other common law principles, or arising under
34 any State statute or rule, including, but not limited to, Article 9 of Chapter 130A of the
35 General Statutes, Articles 21 and 21A of Chapter 143 of the General Statutes, and rules
36 adopted pursuant to those Articles. Notwithstanding the foregoing, this act shall not be
37 construed to prevent the State from enforcing remediation standards, monitoring, or
38 compliance requirements specifically required by the United States Environmental
39 Protection Agency to be enforced by the State as a condition to receiving and retaining
40 federal funds or program approval, authorization, or delegation.

41 **SECTION 5. Manufacturing redevelopment districts: claims.**

42 The new operator of the manufacturing redevelopment district shall be liable
43 for all claims subject to the immunity provided by Section 4 of this act to the same
44 extent as any prior owner of the property that comprises the manufacturing

1 redevelopment district. The new operator shall have all rights, claims, and defenses that
2 are or would have been available to any prior owner with respect to those immunized
3 claims.

4 **SECTION 6. Manufacturing redevelopment districts: donation and**
5 **transfer of the district; reversionary interest.**

6 Notwithstanding any other provision of Chapter 146 of the General Statutes,
7 the State Property Office shall accept the donation by the owner of the real property
8 comprising the manufacturing redevelopment district on behalf of the State of North
9 Carolina. The State Property Office shall then, in the name of the State of North
10 Carolina, immediately transfer to the new operator a fee simple determinable interest in
11 the real property. The event that will terminate the fee simple determinable interest in
12 the real property is the permanent cessation of manufacturing operations at the real
13 property. The consideration for the transfer by the State of the property interest to the
14 new operator shall be the creation of jobs and economic opportunities that will result
15 from restarting manufacturing operations on the real property. If the fee simple
16 determinable interest is terminated and the real property reverts to the State, the State
17 Property Office shall allocate the property to the contiguous State forest.

18 **SECTION 7. Effective date.** This act is effective when it becomes law.

Mark Burrows

Friends of
DuPont Forest



March 7, 2005

Mr. Ray Miller
Chairman, County Commissioners
Transylvania County
Brevard, NC 28712

Dear Mr. Miller,

Friends of DuPont Forest is a volunteer, non-profit corporation whose mission is to enhance the use and enjoyment of the DuPont State Forest while protecting its natural resources. We regularly work to assist the NC Forest Service staff to maintain the environment in the forest to allow present and future generations to enjoy its spectacular beauty.

We understand that efforts are ongoing to allow Ilford to purchase a portion of the existing Agfa property and operate a coated paper operation. This project would bring approximately 90 needed skilled jobs to Transylvania County.

This letter is to affirm that Friends of DuPont Forest supports Transylvania County in this effort to improve the community by attracting these jobs.

While there are undoubtedly many complex legal and technical issues involved, we trust that the Division of Environment and Natural Resources will work to assure the thorough clean-up of hazardous wastes and groundwater contamination, regardless of the owner.

Assuming that these complex issues can be properly addressed to DENR's satisfaction, we do feel that such a facility can be compatible with the mission of the neighboring State Forest. We also support the proposals that would transition portions of the remaining Agfa acres into the State Forest at the appropriate time.

Sincerely,

Chuck McGrady
President





May 30, 2005

The Honorable John Snow
N.C. State Senate
Legislative Building
Raleigh, NC

Dear Senator Snow:

We at the WNC Regional Economic Development Commission (AdvantageWest) share your commitment to finding solutions to re-employ displaced manufacturing workers. The effort you have placed on the recruitment of Ilford to the former AGFA manufacturing complex in Transylvania County has been outstanding. Your leadership led to a very productive meeting of all parties with the Governor's Senior Staff, the Secretary of Commerce and Chief Legal Counsel with NC DENR. Now you have shown even more determination by introducing "An Act to Provide for the Redevelopment of Certain Manufacturing Districts" S629-CSRT-18 [V.2]. At AdvantageWest we have reviewed the language in this bill and offer our strong support for this proposed legislation.

We first became involved with the AGFA site in 2001. At that time, AdvantageWest commissioned a study by Fluor Global Services with cost sharing by the Transylvania Partnership and AGFA. The study focused on adaptive reuse of the manufacturing complex because AGFA had determined they would consolidate production to other facilities. Fluor determined that it would take a special type of manufacturer to reuse the unique production equipment AGFA utilized to manufacture X-Ray film. In 2003 the Transylvania Partnership found such a client when they began negotiations with Ilford regarding acquisition of the AGFA facility. More specifically, Ilford can use the equipment on site to produce material for the very active inkjet printing market like AGFA did so for the once thriving X-Ray film sector.

In addition to the obvious benefits from restoring manufacturing jobs and tax base in Transylvania County, Ilford also represents a prompt way to begin environmental remediation at the AGFA site. In other words, we believe we have the potential for a win-win scenario if the Ilford project comes to fruition. Please let us know if you have questions. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Gordon S. Myers".

Gordon S. Myers
Chairman of the Board

Sincerely,

A handwritten signature in black ink that reads "Dale B. Carroll".

Dale B. Carroll
President & CEO












919 733 3248

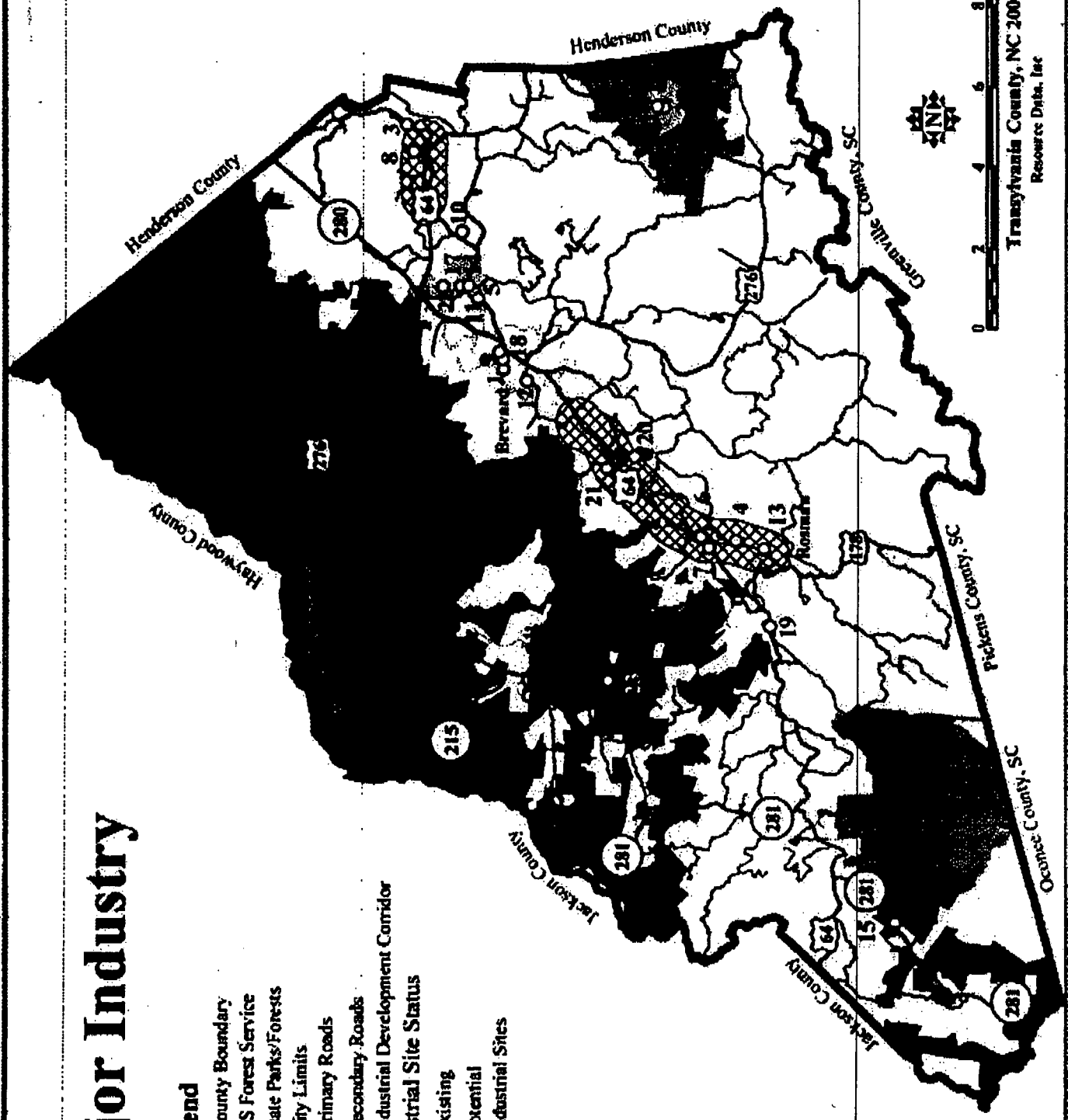
717 104 5070

From: Transylvania County Planning & Economic Development
Phone 828 884-3205

Major Industry

Legend

-  County Boundary
-  US Forest Service
-  State Parks/Forests
-  City Limits
-  Primary Roads
-  Secondary Roads
-  Industrial Development Corridor
-  Industrial Site Status
-  Existing
-  Potential
-  Industrial Sites



Transylvania County, NC 2004
Resource Data, Inc



SENATE BILL 629: Manufacturing Redevelopment Districts

BILL ANALYSIS

Committee: House Commerce
Introduced by: Sen. Snow
Version: Second Edition

Date: June 8, 2005
Summary by: Karen Cochrane-Brown
Committee Co-Counsel

SUMMARY: Senate Bill 629:

- [As introduced, this bill was identical to H789, as introduced by Rep. Walend, which is currently in House Appropriations.]
- *Establishes a process for the creation of manufacturing redevelopment districts (redevelopment districts);*
- *Grants immunity from State environmental laws for any person who had an ownership interest in land and facilities contained within a redevelopment district prior to the creation of the district;*
- *Provides for the donation of the land that contains the redevelopment district to the State and for the State to re-convey the land to a new operator of the manufacturing facility subject to a reversionary interest;*
- *Provides for the new operator to open a manufacturing facility that will employ more than 50 employees;*
- *Provides for the new operator to provide at least \$5 million to fund an assessment and remediation program for environmental conditions at the district; and*
- *Provides that upon the permanent cessation of the new operator's manufacturing operations, the land shall revert to the State and shall be allocated to the contiguous State forest.*

BILL ANALYSIS:

Section 1 contains legislative findings regarding the need for manufacturing redevelopment districts (redevelopment districts). These include that the economic development of the State will be served by providing an opportunity to restart production in manufacturing facilities to meet the needs of a new industry thereby creating and preserving jobs, that economically distressed counties continue to lose jobs and the General Assembly must act to create new jobs for citizens in those counties, that the health and safety of North Carolina citizens will be served through the assessment and remediation of known and unknown environmental conditions at manufacturing facilities, that the public interest will be served by the State securing an interest in property located within significant State property and by providing an interest sufficient to allow the new operator to restart a manufacturing facility and provide new jobs, and that the public interest will be served by encouraging a former owner to transfer ownership in order to make it possible for new operators to restart production at the facilities.

Section 2 provides that a redevelopment district shall exist to provide manufacturing, research and development, and related service and support jobs to citizens of the State while ensuring the remediation of known and unknown environmental conditions at manufacturing facilities.

Senate Bill 629

Page 2

Section 3 set-outs the process for establishing a redevelopment district. The district is created when the new operator certifies to the Secretary of State that the district meets all of the criteria specified in this section. The criteria includes:

- The real property is located in a county that is economically distressed, meaning the average weekly wage in the county is less than \$525/week, the unemployment rate is greater than 6%, and more than 9% of the citizens are at or below the federal poverty level.
- All of the real property of the district is privately owned in-holding of 50 acres or more within a State forest of 10,000 acres or more.
- The district contains a manufacturing facility that has been out of production for two years or more.
- Failure to restart the facility would result in a permanent lost opportunity to create 50 or more jobs.
- The manufacturing facility has a total of 500 square feet or more.
- The new operator intends to employ 50 or more workers.
- The new operator accepts responsibility for the assessment of known and unknown environmental conditions under applicable State laws and rules.
- The new operator has pre-funded an assessment and remediation program in an amount of at least \$5 million by means of an escrow account or other financing mechanism that runs in favor of the State in the event of a default.
- The owner donates the real property comprising the redevelopment district to the State of North Carolina.

The redevelopment district is created on the date the certification is filed. Once established, the district will exist until the real property reverts to the State.

Section 4 grants immunity to any person who owned or had an interest in any real property within a redevelopment district at any time prior to the establishment of the district. The immunity is for liability to the State, any political subdivision of the State, or to any private or third party for the cleanup of environmental damage or restoration of natural resources on any of the real property comprising the district or for other claims arising out of the presence of oil or any other hazardous substance arising under any State statute or rule. The immunity would be with regard to any theory of liability including negligence, nuisance or trespass arising under any common law theory or State statutes such as Article 9 of Chapter 130A (Solid Waste Management), or Articles 21 (Clean Air and Water) and 21A (Oil and Hazardous Substances) of Chapter 143. The act would not be construed to prevent the State from enforcing remediation standards, monitoring, or compliance requirements required by the EPA to be enforced by the State as a condition to receiving or retaining federal funds or program approval.

Section 5 makes the new operator liable for all claims that the former owner would have been liable for and to the same extent as the former owner of the redevelopment district.

Section 6 directs the State Property Office to accept the donation by the owner of the real property comprising the redevelopment district on behalf of the State. It also directs the State Property Office to immediately transfer the property to the new operator in fee simple determinable. The permanent cessation of the new operator's manufacturing operations shall be the event that will terminate the new operator's ownership of the property. The property would then revert to the State, which in turn would allocate the property to the contiguous State forest.

Senate Bill 629

Page 3

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

ISSUES: The questions below were raised by committee staff in a previous bill summary. Bruce Thompson, of Parker Poe and counsel to Ilford Imaging submitted responses to each issue. Those responses are provided below in italics.

Is the bill an unconstitutional local act abating a nuisance or regulating manufacturing or trade? If so, what would be the consequences of the act being held void?

No. First, this bill is not a local act as it applies statewide. The project that DuPont and Ilford are contemplating fits within the parameters of the legislation. However, the legislation is not limited to this project.

Second, the purpose of the bill is to create economic development in distressed counties, not to abate a nuisance. The Ilford project entails some environmental remediation that in no way would be considered to be the abatement of a nuisance. Likewise, the general requirements in the legislation do not require a nuisance in order for any other projects to go forward.

Finally, the bill does not regulate manufacturing. It merely provides a vehicle for restarting production in facilities that meet the general requirements in the legislation. It is clear from the language and intent of the proposed bill that if passed the legislature will be creating a special privilege for former owners of manufacturing redevelopment districts. However, under the court's current analysis, the proposed legislation would survive constitutional scrutiny. The text and purpose of the legislation clearly satisfy the public purpose requirement of the court's two-part test. Similarly, the state's belief that limiting liability encourages redevelopment satisfies the reasonable basis aspect of the court's two-part test.

Is there any State oversight regarding whether the joint certification filed by the former owners and the new operator is accurate at the time of filing? (Note – the new PCS does not refer to "joint certification". Only the new operator would provide certification to the Secretary of State.)

Yes, there is oversight in the sense that the certification is simply prima facie evidence. The certification can be challenged by the State of North Carolina.

Is the new operator's liability for assessment and remediation limited to \$5 million?

No. Liability is not limited to \$5 million. The legislation requires the new operator to accept liability for all environmental claims at the facility to the same extent as the prior owner, and also specifically requires the new owner to accept responsibility for assessment and remediation as part of the preconditions to the designation of the district.

Could the State be held liable by third parties for the environmental conditions on the property? Who would have standing in such an action?

No. The State of North Carolina would not be held liable for environmental claims for any number of reasons. First, the State has sovereign immunity for third-party claims in general.

The few instances where the State does not have immunity impose liability for clean up. On this topic, the guaranteed remediation product outlined in the legislation will perform the cleanup, leaving absolutely no liability for the State.

Senate Bill 629

Page 4

Finally, under applicable law, former owners are liable for cleanup only to the extent that disposal took place during their ownership. Here, the State will only hold a full interest for a few minutes and thus, there will be no basis for liability.

However, this is really a moot point because the bill requires the cleanup will be performed and be guaranteed, leaving nothing for the state. The remediation product also includes insurance that will benefit the state, if all else fails (which it won't).

Does federal law allow the State to waive immunity from State environmental laws for former owners?

Legislative grants of immunity are not without precedent. One example of such legislative limits on liability is statutes of repose. See G.S. 1-50(5) & 1-50(6). Statutes of repose shield specific parties from "open-ended" liability by limiting the number of years those parties are liable for their actions. For example, G.S. 1-50(6) provides a six year window of liability on durable goods sold by manufacturers. The courts have repeatedly upheld statutes of repose as constitutional in the face of an art. I § 32 challenge. See Lamb 308 N.C. at 438, 302 S.E. 2d at 879 (holding that the state had a reasonable basis for limiting the liability of architects and contractors under G.S. 1-50(5)); Tetterton v. Long 314 N.C. 44, 53, 332 S.E. 2d 67, 72 (1985) (upholding court's rational in Lamb).

Statutes of repose differ slightly from the proposed act in that our legislation ends liability for the former owner at the moment the property is donated to the State. However, unlike a statute of repose, **this legislation does not extinguish liability for any claims.** Instead, it transfers all liability for third party claims to the new operator of the facility.

Notwithstanding the last sentence of Section 4, could the waiver of immunity cause the federal government to remove the State's authority to enforce environmental laws, and/or could the State lose federal funds?

No. Governmental entities, including states, routinely settle out liability for environmental matters for appropriate consideration. Here, the consideration could not be more appropriate. Instead of some cut deal, the immunity is offered only if ALL of the former owner's liability is covered. This is the same issue that DENR addressed and decided was not an impediment to the covenant not to sue, and it is handled the exact same way here, even employing DENR's own language. This issue is a red herring.

What will be the cost to the State if/when the property becomes part of the State forest? Will the State be liable for additional remediation and clean-up based upon the property's new use as part of a State forest?

This hypothetical type of issue should not be an impediment to the current and very real economic opportunity that the bill presents. The cleanup will be complete now, and may well result in conditions that allow virtually unrestricted use. With the remediation product, the engineers will have to work with the State to reach the appropriate cleanup goals.

Kory Goldsmith, counsel to the Senate Judiciary II Committee, substantially contributed to this summary.

S0629e2-SMRO



REPRESENTATIVE RAY RAPP
NORTH CAROLINA HOUSE OF REPRESENTATIVES
118TH DISTRICT

OFFICE 2213 STATE LEGISLATIVE BUILDING
RALEIGH, NC 27601-1096
919-733-5732
919-733-2599 FAX
RAYR@NCLC.GOV

HOME ADDRESS
133 QUAIL RIDGE ROAD
MARS HILL, NC 28754
828-689-2214

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

- The First Amendment of the U.S. Constitution

OPINION

DEDICATED TO THE UPBUILDING OF WESTERN NORTH CAROLINA 1870-2005

A GANNETT NEWSPAPER

CITIZEN-TIMES.COM
ASHEVILLE CITIZEN-TIMES • VOICE OF THE MOUNTAINS

EDITORIAL

Benefits of adding a new employer justify a state deal with DuPont

The British company Ilford, which specializes in high-quality digital imaging, wants to buy the former DuPont plant in Transylvania County, invest \$10 million and create at least 60 jobs.

That's good news for Transylvania County, where about 4,500 manufacturing jobs have been lost in the last 15 years, but Ilford's intentions could come to naught unless the issue of responsibility for years of industrial waste located on the property can be resolved.

A bill that passed the state Senate last week and is scheduled to be taken up in the House Commerce Committee today would address the problem by absolving DuPont of responsibility for contamination on 100 acres of the 400-acre site, according to the bill's sponsor, Sen. John Snow, D-Murphy. Snow's district includes Transylvania County.

In return, DuPont would transfer the 100 acres to the state, which would then transfer it to Ilford. The bill passed the Senate 49-0, but even if it passes the House it may run into problems when it

gets to Gov. Mike Easley, who believes it is unconstitutional.

DuPont produced X-ray film at the site for decades, but in 1997 sold the plant to Sterling, another film company. In 1999, Sterling sold the plant to Agfa, yet another manufacturer of film. Agfa closed the plant in 2002. At the time of the original sale in 1997, DuPont sold more than 7,000 acres surrounding the plant to North Carolina to create DuPont State Forest.

When Agfa shut down its operation, the property reverted to DuPont. Under its contract with DuPont, Agfa was to tear down the buildings. DuPont then planned to clean up the site and turn it over to the state to become part of DuPont State Forest, according to Dexter Matthews of the Department of Environment and Natural Resources Division of Waste Management.

In 2004, Ilford expressed an interest in making paper used for printing digital photographs at the site and entered into negotiations with DuPont. But the negotiations stalled because DuPont's corpo-

rate policies require that the environmental issues be remediated before transfer, according to Snow, and that couldn't happen in this case because time is of the essence to ensure that the jobs come to North Carolina.

When the negotiations stalled, Snow became concerned that the opportunity that would absolve DuPont of responsibility for contamination. The bill states that the new operator of the facility, which would be Ilford, will "accept responsibility for the assessment and remediation of known and unknown environmental conditions in accordance with applicable state laws and rules," and has put \$5 million in escrow to pre-

fund a remediation program. According to Snow's office, Ilford would put up an additional \$500,000 to purchase insurance to protect the state from any possible future liability.

Alan Hirsch, a spokesman for Gov. Easley, said the governor would love to have the jobs but believes the bill is unconstitutional for several reasons. Be-

cause it absolves DuPont and other previous owners of liability not only to the state, but also to "any private or third party," Hirsch said, the bill violates the due process clause. He also believes that giving property owned by the state to Ilford violates the "emolument" clause, which states that "No person or set of persons is entitled to exclusive or separate emoluments (Benefits) or privileges from the community but in consideration of public services." Hirsch said the governor is also concerned that the bill will set a precedent for other contamination sites.

The bill passed the Senate over objections from the Department of Environment and Natural Resources.

Matthews is worried that if the state is inserted in the chain of ownership, the state will become liable for contamination at the site should Ilford, which just emerged from a receivership in February, become bankrupt. The state doesn't yet know the extent of the contamination at the site, he said. If Ilford were no longer in the picture, the \$5 million the

company has agreed to put in escrow might or might not cover cleanup costs.

Despite these reservations, this seems like a no-brainer. Transylvania County, as Snow points out, lost 2,640 manufacturing jobs since 1998. In June 2004, according to Snow, only 480 manufacturing jobs remained.

The unemployment rate is greater than 6 percent and the number of people living below the federal poverty level is greater than 9 percent. The jobs created by Ilford would pay an average of \$60,000 a year. Ilford wants to clean up the property, invest in it and put people to work.

Every effort should be made to assure that the bill passes constitutional muster and that no precedent is set that could later come back to put taxpayers in jeopardy of having to spend millions to clean up an industrial waste site. But North Carolina has jumped through all sorts of hoops to provide incentives for companies to locate here. Surely, it can find a way to help a company that wants to come here do so.

LETTERS TO THE EDITOR

Regarding procreation,

let nature take its course

The recent flap over that male enhancement product has opened up an unforeseen spiritual can of worms. Any one of our sensory organs going on

THE SUPREME COURT HAS MADE LAW ENFORCEMENT WITH SAFER BY ALLOWING US TO CRACK DOWN ON MEDICAL MARIJUANA, SINCE CATCHING SICK PEOPLE

Plus

Why Not the Best?

Priorities for Enhancing the NC Economic Development Delivery System

House Commerce Committee
June 8, 2005

Presented by
Tom Ticknor
Ticknor & Associates
Ticknor@aol.com

Presentation Purpose

1. To review EDB recommendations about how to make NC more competitive re:
 - ✓ *critical*
 - ✓ *relatively inexpensive*
 - ✓ *high benefit*economic development fundamentals.

2. To answer your questions.

House Commerce Committee

2

The EDB Project

- Focus on greatest short-term gain
 - Business attraction
 - Retention & expansion of NC firms
- Inputs
 - 34 NC interviews & Project review team
 - In-person interviews in 7 benchmark states for good practice analysis
 - Consultant knowledge/experience
 - North American ED practice
 - Corporate location background
 - National Association of State Development Agencies

House Commerce Committee

3

The Competitive Challenge

- Virginia
 - VEDP structure, resources
 - 26 GIS/IT/Research staff for Business & Industry function
 - Superb website and ED information system
- Georgia
 - Looking to increase Commerce resources
 - Integrated public/private ED network & ED data
 - \$1.2 million Georgia Allies Budget
 - 50% private/50% state match
- Pennsylvania
 - \$180 million high tech budget
 - Substantial new marketing resources
 - Comprehensive support for regional R&E

Public Commerce Executive

The Competitive Challenge

- Michigan
 - Dedicated % of slot machine \$ to MEDC
 - Strategic retention & expansion
 - Supported by \$900k customized CIS
- Ohio
 - New \$8.3 million marketing budget
 - Public/private board headed by P&G executive
- South Carolina
 - Coming back from the bottom resource-wise
 - Statewide Competitiveness Council for clusters

Public Commerce Executive

NC Invests a Lot in ED

- \$700 million transportation package
- Qualified Business Venture Credit
- JDIG & One North Carolina Fund
- Customized Merck & Dell incentives
- Rural Center, Bio Tech Center, Film development, Regional Partnerships
- Lee Act Renewal
- Investments in education

Public Commerce Executive

But NC is Underinvested in DOC Fundamentals

- Effective DOC operating systems
- Proactive statewide ED marketing & sales resources
- Strategic Retention & Attraction programs
- A comprehensive statewide Business Development plan
- A strategic statewide public/private ED partnership

We need to overcome this even in a very difficult budget year. It is an investment, not an expense.

Summary Recommendations

- I. Build DOC Organizational Systems
- II. Build DOC Business Development Capabilities
- III. Enact Statewide ED Organizational Strategies

Budget increment to enact recommendations

- **\$2.75 million in FY 05/06** (over 04/05)
- **\$4.7 million in FY 06/07** (over 04/05)

I. Why Build Superior Organizational Systems?

- Customer needs
 - Centralized Internet sites are critical to location & expansion decisions
 - You must know what NC companies are thinking & planning
- Maximum performance
 - Advanced communications, performance measures, and competitive staff incentives

I-Competitive DOC Organizational Systems

1. Superior IT & Customer Information Systems



- Recommendations
 - World-class NC ED website & GIS capabilities (VA, GA)
 - Maintain EDIS information base (VA, GA)
 - Build retention & expansion Customer Information System (PA, MI)
 - Develop ally website with NC Economic Developers Association
- Required Resources:
 - 05/06 \$900,000
 - 06/07 \$1,000,000

I-Competitive DOC Organizational Systems

2. Performance Management



- Set Goals for Results & Customer Service
 - Attraction (OH, VA, GA, PA)
 - Retention & Expansion (MI, PA)
 - Ally Relationships (MI, TN)
- Build in Regional Partnerships, local EDC's
- DOC Annual Report (GA, VA)
- Required Resources
 - 05/06 \$35,000

I-Competitive DOC Organizational Systems

3. Compensation & Staff Development



- More closely tie compensation to results
 - Broadband salaries
 - Spot & annual bonuses (VA, SC, MI)
 - Upgrade entry B&I salary ranges (most benchmark competitors)
- Management & ED training (MI, PA, GA)
- Required Resources
 - 05/06 \$375,000
 - 06/07 \$400,000

II. Why Strengthen Business Development?

- Customers require vast amount of information
- Customer understanding is a competitive edge
- The best ED marketing consistently builds relationships

II-Strengthen DOC Business Development Programs 1. Business Development Market Research

- Create 6 new competitively funded research positions supporting DOC Business & Industry
 - Support competitive website and EDIS
 - "Whatever it takes" client response
 - Build case for competitive advantage
 - Maintain performance measurement system
- Required resources
 - 05/06 \$355,000
 - 06/07 \$375,000

II- Strengthen DOC Business Development Programs 2. Close Marketing Resource Gap

- Build full marketing/integrated communications (VA, PA, GA, OH)
 - Core contact targets by cluster
 - Cluster-specific website content
 - Mail, e-mail, telephone contact
 - Public Relations
 - Trade show & events
 - Personal calling
 - Relationship building
- Required resources
 - 05/06 \$500,000
 - 06/07 \$1,500,000 (to reach benchmark average)

III. Why Enact Statewide Organizational Strategies?

- Maximize effectiveness
- Maximize efficiency
- Leverage DOC and state resources
- Encourage long term continuity of best state ED practices

III-Increase Statewide Organizational Competitiveness 1. Create a Public/Private NC Economic Development Foundation

- Involve business & public leadership (GA, VA, MI, OH)
- Strategic planning, plug key system gaps
- Leverage state resources
- Fund/broaden Friends of North Carolina marketing
- Proposed \$1.575 million annual NCED Foundation budget
 - \$600k private
 - \$300 RP, local EDO's, other state ED organizations
 - \$675k state match on Georgia model
- Required State Resources
 - 05/06 \$337,500
 - 06/07 \$676,000

III-Increase Statewide Organizational Competitiveness 2. Update the DOC Strategic Business Development Plan

- Cluster marketing and retention & expansion integration with Regional Partnership Vision Plans
- Specifics for 06/06 DOC marketing plan (VA, PA, GA, MI)
- Performance measures/accountability (MI, VA)
- Regional Partnership & ally involvement (MI, GA)
- Required Resources
 - 05/06 \$250,000

Why Not the Best?

A Call to Action

+

- *Failure to enact these recommendations will keep NC behind most competitors*
- *These changes will bring high return—they are a long-term investment, not an expense*
- *Enhancements will help every NC region*

North Carolina needs your support and advocacy to get this done.

10 | ENTREPRENEUR

House Pages

COMMERCE

Name Of Committee: _____ Date: 6-8-05

1. Name: <u>Michael Pell</u>	<u>Jessica Glenn</u>
County: <u>Alamance</u>	<u>Lincoln</u>
Sponsor: <u>Allred</u>	<u>Kiser</u>
2. Name: <u>Jennifer Stewart</u>	<u>Chris Hall</u>
County: <u>Cumberland</u>	<u>Robeson</u>
Sponsor: <u>Rick Glizer</u>	<u>Jim Black</u>
3. Name: <u>Samantha Alexander</u>	<u>Casey Cline</u>
County: <u>Cumberland</u>	<u>Lincoln</u>
Sponsor: <u>Fred Nye</u>	<u>Mallahan</u>
4. Name: <u>Amelia Muse</u>	
County: <u>Durham</u>	
Sponsor: <u>Hackney</u>	
5. Name: <u>Jenna Carpenter</u>	
County: <u>Jackson</u>	
Sponsor: <u>Phil Hair</u>	

Sgt-At-Arms

1. Name: LINDA FULLER
 2. Name: EARL COKER
 3. Name: Jim Womack
 4. Name: Brad BARE FOOT
 5. Name: JAY CALLAWAY
- CHARLES WILLIAMS
CHRIS HALL

VISITOR REGISTRATION SHEET

Commerce

June 8, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

A. T. Hahn	Dupont
Molly Diggins	Sierra Club
Amy PICKLE	Southern Environmental Law Center
Robb Leandro	Parker, Poe, Adams, & Bernstein
John Snow	Staff
Al Ripley	NC Justice Ctr
Elizabeth Onzts	NCPIRG
Gretchen Leehr	NC Cons. Network
Quissa Dolan	NC Conservation Network
erin kimvey	NC Conservation Network
DAN HOBART	NC DOC
Kathy Hawkins	Progress Energy

VISITOR REGISTRATION SHEET

Commerce

June 8, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

R Rogers	DRNL
CAROL W. VICK	North Carolina Hospital Assoc.
Fran Vick	North Carolina Hospital Assoc. Surg. Co.
Buena Dobson	NC. Hospital Voluntary ^{Mission Hospital} Asheville
TOM GRIFFIN	Parker, Poe, Adams & Bernstein on behalf of Iford
Q Edc	" " " " " " " "
BENCE THOMPSON	"
Jak Coynt	"
Chris Neaville	ARCADIS
DARIN THOMAS	ARCADIS
Jamie VanBueskirk	DuPont

VISITOR REGISTRATION SHEET

Commerce

June 8, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Holton	Intern (Dickson)
Emily Coward	Law Clerk (School of Gov't, UNC)
Debra Eidson	School of government
X John Bowditch	ADA
Jack Glenn	Infan Inc.
John Peterson	NCEDA
Franklin	Duke Energy
Fay Almeida	Duke Energy
John McAlister	Duke Energy
Ryland Pond	Intern - Rep. Carney
Elizabeth Dutton	NCCB

VISITOR REGISTRATION SHEET

Commerce

June 8, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Johanna Reese	DENR
Jim Kisner	former Agfa employee
Carl Mooney, Jr	Former Agfa employee
Kate Ruetzer	Sierra Club
Jennifer Bunmarker	
Phil Moore	UNC
Adrienne Carr	UNC
Dexter Matthews	DENR - Division of Waste Management
Jamie Fitzgerald	NC Family Policy Council
Marie E. Sumner	NC Dept of Commerce
Anna Wood	UNC

VISITOR REGISTRATION SHEET

Commerce

June 8, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Barbara Combs	RR62
Alicia Karlana	NCDOC
Suzanne Buckley	COU OFFICE
John McKey	COU OFFICE
Dale Carroll	Advantage West
Mark R. Furrows	Transylvania County
Aetie Wilson	Transylvania County
Ray Miller	Transylvania County
John Danuz	TRANSYLVANIA COUNTY
Ken Walend	Former DuPont employee
Robin Smith	DENT

Minutes

HOUSE COMMITTEE ON COMMERCE

July 6, 2005

The HOUSE COMMITTEE ON COMMERCE met on Wednesday, July 6, 2005, in Room 643 LOB at 1:00 p.m. The following members were present: Representatives Daughtridge, Goforth, LaRoque and Rapp, Chairs; Representatives Owens and Rayfield, Vice Chairs; Representatives Allen, Almond, Barnhart, Bordsen, Brown, Carney, Coleman, Current, Dickson, England, Frye, Gibson, Gillespie, Haire, Jeffus, Jones, McGee, McLawhorn, Pierce, Ray, Sauls, Stam, Tucker, Vinson, Wiley, and Wray. Representative Faison had an excused absence. Assisting with the meeting were Karen Cochrane-Brown and Walker Reagan, Staff Counsel; Dot Barber, Rachel Dupree, Lisa Kennedy and Ann Jordan, Committee Assistants; Linda Fuller, Frank Prevo, Brad Barefoot, Bill Sullivan and Charles Williams, Sgt.-at-Arms; House Pages Dante Rossi of Wake County, Stephen Litsos, Wake County and Shannan Allen of Vance County, all sponsored by Speaker Jim Black; and Anna Fowell of Forsyth County sponsored by Rep. Dale Folwell.

Rep Rapp called the meeting to order and welcomed all persons in attendance.


Rep. Rapp recognized Senator David Hoyle, sponsor of **Proposed Committee Substitute for Senate Bill 951 (PUBLIC-PRIVATE SOLID WASTE COLLECTION)**. Rep. Goforth moved that the PCS for SB 951 be adopted for consideration. Motion carried. Senator Hoyle explained the PCS to the committee. Much discussion followed. Rep. Owens asked if a Fiscal Note had been prepared on this bill. Karen Cochrane-Brown, Staff Counsel, stated that a Fiscal Note is not required according to Staff. One is not available on this bill. Several members felt that a Fiscal Note was needed on this legislation. Mr. Jimmy Jones with Allied Waste, Ms. Amy Pearson with Tyson Sanitation Services and Mr. Harry Shaw with Shaw Sanitation spoke in support of this bill.

Rep. Russell Tucker stated that he wanted to give this bill an UNFAVORABLE REPORT TO THE PROPOSED COMMITTEE SUBSTITUTE AND TO THE ORIGINAL BILL. Chairman Rapp said he would not take this motion from Rep. Tucker at this time. The bill would be carried over to another meeting.

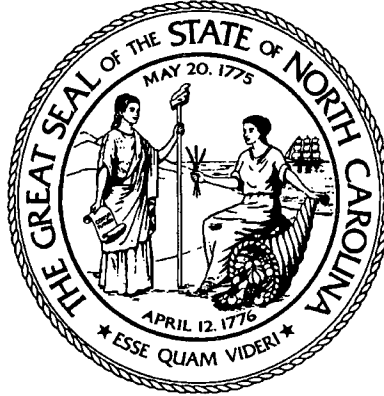
There being no further business, the meeting was adjourned at approximately 2:00 p.m.

Respectfully submitted,

Representative Ray Rapp
Presiding Chairman



Dot H. Barber
Committee Assistant



HOUSE COMMITTEE ON COMMERCE

July 6, 2005
Room #643 LOB 1:00 p.m.

Presiding Chair – Representative Ray Rapp

I. Call to Order

II. Introduction of Sgt.-at-Arms and Pages

III. Program

S.B. 951 – Public-Private Solid Waste Collection (Senator David Hoyle)

IV. Adjournment

Dot Barber (Rep. Rapp)

From: Dot Barber (Rep. Rapp)
Sent: Tuesday, July 05, 2005 4:56 PM
To: Sen. John Snow; Sen. David Hoyle
Cc: John Umstead (House Intern)
Subject: House Commerce Committee Meeting

REVISED NOTICE
****S.B. 247 REMOVED FROM AGENDA****

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

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

DAY & DATE: Wednesday, July 6, 2005
TIME: 1:00 p.m.
LOCATION: # 643 LOB

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

S. B. 951 – Public-Private Solid Waste Collection (Senator Hoyle)

Respectfully,
Representatives Daughtridge, Goforth, LaRoque, and
Rapp, Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **10:15 am on July 1, 2005.**

Principal Clerk
 Reading Clerk - House Chamber

Dot Barber (Committee Assistant)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

D

SENATE BILL 951
Judiciary I Committee Substitute Adopted 5/31/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S951-CSRU-56 [v.7]

7/6/2005 11:39:04 AM

Short Title: Public-Private Solid Waste Collection.

(Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A UNIT OF LOCAL GOVERNMENT THAT DISPLACES A PRIVATE COMPANY THAT IS PROVIDING COLLECTION SERVICES FOR SOLID WASTE OR RECOVERED MATERIALS TO GIVE NOTICE OF ITS INTENT TO DO SO OR TO PROVIDE COMPENSATION TO THE DISPLACED PRIVATE COMPANY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-37.3 reads as rewritten:

"§ 160A-37.3. Contract with private solid waste collection firm(s).

~~(a) — If the area to be annexed described in a resolution of intent passed under G.S. 160A-37(a) includes an area where a private solid waste collection firm or firms:~~

~~(1) — On the ninetieth day preceding the date of adoption of the resolution of intent in accordance with G.S. 160A-37(j) or~~

~~(2) — On the ninetieth day preceding the date of adoption of the resolution of consideration in accordance with G.S. 160A-37(i) was providing solid waste collection services in the area to be annexed, and is still providing such services on the date of adoption of the resolution of intent, and:~~

~~(3) — By reason of such annexation any franchise with a county or arrangements with third parties for solid waste collection will be terminated, and~~

~~(4) — During the 90 day period preceding the date of adoption of the resolution of intent or resolution of consideration provided by subdivisions (1) or (2) of this subsection, the firm had in such area an average of 50 or more residential customers or a monthly average revenue from nonresidential customers in such area of five hundred dollars (\$500.00) or more; provided that customers shall be included in~~

1 ~~such calculation only if policies of the city will provide solid waste~~
2 ~~collection to those customers such that arrangements between the solid~~
3 ~~waste firm and the customers will be terminated, and~~

4 ~~(5) If such firm makes a written request that it wishes to contract, signed~~
5 ~~by an officer or owner of the firm, and delivered to the city clerk at~~
6 ~~least 10 days before the public hearing, unless other arrangements~~
7 ~~satisfactory to the private solid waste collection firm or firms have~~
8 ~~been made, the city shall either:~~

9 ~~(6) Contract with such solid waste collection firm(s) for a period of two~~
10 ~~years after the effective date of the annexation ordinance to allow the~~
11 ~~solid waste collection firm(s) to provide collection services to the city~~
12 ~~in the area to be annexed for sums determined under subsection (d) of~~
13 ~~this section, or~~

14 ~~(7) Pay to the solid waste collection firm(s) in lieu of a contract a sum~~
15 ~~equal to the economic loss determined under subsection (f) of this~~
16 ~~section.~~

17 (a) If the area to be annexed described in a resolution of intent passed under
18 G.S. 160A-37(a) includes an area where a firm meets the requirements of subsection
19 (a1) of this section, on the ninetieth day preceding the date of adoption of the resolution
20 of intent or resolution of consideration, was providing solid waste collection services in
21 the area to be annexed and on the date of adoption of the resolution of intent is still
22 providing such services and by reason of the annexation the firm's franchise with a
23 county or arrangements with third parties for solid waste collection will be terminated,
24 the city shall do one of the following:

25 (1) Contract with the firm for a period of two years after the effective date
26 of the annexation ordinance to allow the firm to provide collection
27 services to the city in the area to be annexed for sums determined
28 under subsection (d) of this section.

29 (2) Pay to the firm the firm's economic loss, with one-third of the
30 economic loss to be paid within 30 days of the termination and the
31 balance paid in twelve (12) equal monthly installments during the next
32 succeeding twelve (12) months.

33 (3) Make other arrangements satisfactory to the firm.

34 (a1) To qualify for the options set forth in subsection (a) of this section, a firm
35 must have done one of the following:

36 (1) Subsequent to receiving notice of the annexation in accordance with
37 subsection (b) of this section, filed with the city clerk at least 10 days
38 prior to the public hearing a written request to contract with the city to
39 provide solid waste collection services containing a certification,
40 signed by an officer or owner of the firm, that the firm serves at least
41 50 customers within the county at that time.

42 (2) Contacted the city clerk pursuant to public notice published by the
43 city, pursuant to G.S. 160A-37(b), at least 10 days before the hearing
44 and provided to the city clerk a written request to contract with the city

1 to provide solid waste collection services. The request must contain a
2 certification signed by an officer or owner of the firm that the firm
3 serves at least 50 customers within the county at that time.

4 (b) ~~The city shall make a good faith effort to provide at least 20 days before the~~
5 ~~public hearing a copy of the resolution of intent to each private firm providing solid~~
6 ~~waste collection services in the area to be annexed. At least four weeks prior to the date~~
7 ~~of the informational meeting, the city shall provide written notice of the resolution of~~
8 ~~intent to all firms serving the area to be annexed. The notice shall be sent to all firms~~
9 ~~that filed notice in accordance with subsection (a2) of this section by certified mail,~~
10 ~~return receipt requested, to the address provided by the firm under subsection (a2) of~~
11 ~~this section.~~

12 (c) The city may require that the contract contain:

- 13 (1) A requirement that the ~~private~~ firm post a performance bond and
14 maintain public liability insurance coverage;
- 15 (2) A requirement that the ~~private~~ firm agree to service customers in the
16 annexed area that were not served by that firm on the effective date of
17 annexation;
- 18 (3) A provision that divides the annexed area into service areas if there
19 were more than one firm being contracted within the area, such that the
20 entire area is served by the ~~private~~ firms, or by the city as to customers
21 not served by the ~~private~~ firms;
- 22 (4) A provision that the city may serve customers not served by the firm
23 on the effective date of annexation;
- 24 (5) A provision that the contract can be cancelled in writing, delivered by
25 certified mail to the firm in question with 30 days to cure ~~for~~
26 ~~substantial violations of the contract, but no contract may be cancelled~~
27 ~~on these grounds unless the Local Government Commission finds that~~
28 ~~substantial violations have occurred, except that the city may suspend~~
29 ~~the contract for up to 30 days if it finds substantial violation of health~~
30 ~~laws;~~
- 31 (6) Performance standards, not exceeding city ~~standards,~~ standards existing
32 at the time of notice published pursuant to G.S. 160A-37(b), with
33 ~~provision that the contract may be cancelled for substantial violations~~
34 ~~of those standards, but no contract may be cancelled on those grounds~~
35 ~~unless the Local Government Commission finds that substantial~~
36 ~~violations have occurred;~~
- 37 (7) A provision for monetary damages if there are violations of the
38 contract or of performance standards.

39 (d) If the services to be provided to the city by reason of the annexation are
40 substantially the same as rendered under the franchise with the county or arrangements
41 with the parties, the amount paid by the city shall be at least ninety percent (90%) of the
42 amount paid or required under the existing franchise or arrangements. If such services
43 are required to be adjusted to conform to city standards or as a result of changes in the
44 number of customers, and as a result there are changes in disposal costs (including

1 mileage and landfill charges), requirements for storage capacity (dumpsters and/or
2 residential carts), and/or frequency of collection, the amount paid by the city for the
3 service shall be increased or decreased to reflect the value of such adjusted services as if
4 computed under the existing franchise or arrangements. In the event agreement cannot
5 be reached between the city and the private firm under this subsection, ~~such~~ the matters
6 shall be determined by the Local Government Commission.

7 ~~(e) The city may, at any time after one year's operation thereunder, terminate a~~
8 ~~contract made with the solid waste collection firm under subsection (a) of this section~~
9 ~~upon payment to said firm of an amount equal to the economic loss determined in~~
10 ~~subsection (f) of this section, but discounted by the percentage of the contract which has~~
11 ~~elapsed prior to the effective date of the termination.~~

12 ~~(f) As used in this section, "economic loss" is 12 times the average monthly~~
13 ~~revenue for the three months prior to the passage of the resolution of intent or resolution~~
14 ~~of consideration, as applicable under subsection (a) of this section, collected or due the~~
15 ~~private firm for residential, commercial, and industrial collection service in the area~~
16 ~~annexed or to be annexed.~~

17 ~~(g) The private firm may, if it contends that no contract has been offered, appeal~~
18 ~~to the Local Government Commission within 30 days following passage of an~~
19 ~~annexation ordinance. The private firm may appeal to the Local Government~~
20 ~~Commission for an order staying the operation of the annexation ordinance pending the~~
21 ~~outcome of the review. The Commission may grant or deny the stay upon such terms as~~
22 ~~it deems proper. If the Local Government Commission finds that the city has not made~~
23 ~~an offer which complies with this section, it shall remand the ordinance to the municipal~~
24 ~~governing board for further proceedings, and the ordinance shall not become effective~~
25 ~~until the Local Government Commission finds that such an offer has been made. Either~~
26 ~~the private firm or the city may obtain judicial review in accordance with Chapter 150B~~
27 ~~of the General Statutes.~~

28 ~~(h) A firm which has given notice under subsection (a) of this section that it~~
29 ~~desires to contract, and any firm that the city believes is eligible to give such notice,~~
30 ~~shall make available to the city not later than 10-30 business days following a written~~
31 ~~request of the city, sent by certified mail return receipt requested, all information in its~~
32 ~~possession or control, including but not limited to operational, financial and budgetary~~
33 ~~information, necessary for the city to determine if the firm qualifies for the benefits of~~
34 ~~this section and to determine the nature and scope of the potential contract and/or~~
35 ~~economic loss. The firm forfeits its rights under this section if it fails to make a good~~
36 ~~faith response within 10-30 business days following receipt of the written request for~~
37 ~~information from the city, provided that the city's written request states that statutory~~
38 ~~rights will be forfeited in the absence of a timely response and includes a specific~~
39 ~~reference to this section.~~

40 ~~(i) As used in this section, the following terms mean:~~

41 ~~(1) Economic loss. – A sum equal to 15 times the average gross monthly~~
42 ~~revenue for the three months prior to the passage of the resolution of~~
43 ~~intent or resolution of consideration, as applicable under subsection (a)~~

of this section, collected or due the firm for residential, commercial, and industrial collection service in the area annexed or to be annexed.

(2) Firm. – A private solid waste collection firm."

SECTION 2. G.S. 160A-49.3 reads as rewritten:

"§ 160A-49.3. Contract with private solid waste collection firm(s).firms.

(a) If the area to be annexed described in a resolution of intent passed under G.S. 160A-49(a) includes an area where a private solid waste collection firm or firms:

(1) On the ninetieth day preceding the date of adoption of the resolution of intent in accordance with G.S. 160A-49(j) or

(2) On the ninetieth day preceding the date of adoption of the resolution of consideration in accordance with G.S. 160A-49(i)

was providing solid waste collection services in the area to be annexed, and is still providing such services on the date of adoption of the resolution of intent, and:

(3) By reason of such annexation any franchise with a county or arrangements with third parties for solid waste collection will be terminated, and

(4) During the 90 day period preceding the date of adoption of the resolution of intent or resolution of consideration provided by subdivisions (1) or (2) of this subsection, the firm had in such area an average of 50 or more residential customers or a monthly average revenue from nonresidential customers in such area of five hundred dollars (\$500.00) or more; provided that customers shall be included in such calculation only if policies of the city will provide solid waste collection to those customers such that arrangements between the solid waste firm and the customers will be terminated, and

(5) If such firm makes a written request that it wishes to contract, signed by an officer or owner of the firm, and delivered to the city clerk at least 10 days before the public hearing;

unless other arrangements satisfactory to the private solid waste collection firm or firms have been made, the city shall either:

(6) Contract with such solid waste collection firm(s) for a period of two years after the effective date of the annexation ordinance to allow the solid waste collection firm(s) to provide collection services to the city in the area to be annexed for sums determined under subsection (d) of this section, or

(7) Pay to the solid waste collection firm(s) in lieu of a contract a sum equal to the economic loss determined under subsection (f) of this section.

(a) If the area to be annexed described in a resolution of intent passed under G.S. 160A-49(a) includes an area where a firm that meets the requirements of subsection (a1) of this section, on the ninetieth day preceding the date of adoption of the resolution of intent was providing solid waste collection services in the area to be annexed on the date of adoption of the resolution of intent or the resolution of consideration and on the date of adoption of the resolution or intent is still providing

1 such services and by reason of the annexation the firm's franchise with a county or
2 arrangements with third parties for solid waste collection will be terminated, the city
3 shall do one of the following:

4 (1) Contract with the firm for a period of two years after the effective date
5 of the annexation ordinance to allow the firm to provide collection
6 services to the city in the area to be annexed for sums determined
7 under subsection (d) of this section.

8 (2) Pay the firm for the firm's economic loss, with one-third of the
9 economic loss to be paid within 30 days of the termination and the
10 balance paid in twelve (12) equal monthly installments during the next
11 succeeding twelve (12) months.

12 (3) Make other arrangements satisfactory to the firm.

13 (a1) To qualify for the options set forth in subsection (a) of this section, a firm
14 must have done one of the following:

15 (1) Subsequent to receiving notice of the annexation in accordance with
16 subsection (b) of this section, filed with the city clerk at least 10 days
17 prior to the public hearing a written request to contract with the city to
18 provide solid waste collection services containing a certification,
19 signed by an officer or owner of the firm, that the firm serves at least
20 50 customers within the county at that time.

21 (2) Contacted the city clerk pursuant to public notice published by the
22 city, pursuant to G.S. 160A-49(b), at least 10 days before the hearing
23 and provided to the city clerk a written request to contract with the city
24 to provide solid waste collection services. The request must contain a
25 certification signed by an officer or owner of the firm that the firm
26 serves at least 50 customers within the county at that time.

27 (a2) Firms shall fill notice of provision of solid waste collection service with the
28 city clerk of all cities located in the firm's collection area or within five miles thereof.

29 (b) ~~The city shall make a good faith effort to provide at least 20 days before the~~
30 ~~public hearing a copy of the resolution of intent to each private firm providing solid~~
31 ~~waste collection services in the area to be annexed. At least four weeks prior to the date~~
32 ~~of the informational meeting, the city shall provide written notice of the resolution of~~
33 ~~intent to all firms serving the area to be annexed. The notice shall be sent to all firms~~
34 ~~that filed notice in accordance with subsection (a2) of this section by certified mail,~~
35 ~~return receipt requested, to the address provided by the firm under subsection (a2) of~~
36 ~~this section.~~

37 (c) The city may require that the contract contain:

38 (1) A requirement that the ~~private~~-firm post a performance bond and
39 maintain public liability insurance coverage;

40 (2) A requirement that the ~~private~~-firm agree to service customers in the
41 annexed area that were not served by that firm on the effective date of
42 annexation;

43 (3) A provision that divides the annexed area into service areas if there
44 were more than one firm being contracted within the area, such that the

1 entire area is served by the private-firms, or by the city as to customers
2 not served by the private-firms;

3 (4) A provision that the city may serve customers not served by the firm
4 on the effective date of annexation;

5 (5) A provision that the contract can be cancelled in writing, delivered by
6 certified mail to the firm in question with 30 days to cure for
7 substantial violations of the contract, but no contract may be cancelled
8 on these grounds unless the Local Government Commission finds that
9 substantial violations have occurred, except that the city may suspend
10 the contract for up to 30 days if it finds substantial violation of health
11 laws;

12 (6) Performance standards, not exceeding city ~~standards,~~standards existing
13 at the time of notice published pursuant to G.S. 160A-49(b) with
14 provision that the contract may be cancelled for substantial violations
15 of those standards, but no contract may be cancelled on those grounds
16 unless the Local Government Commission finds that substantial
17 violations have occurred;

18 (7) A provision for monetary damages if there are violations of the
19 contract or of performance standards.

20 (d) If the services to be provided to the city by reason of the annexation are
21 substantially the same as rendered under the franchise with the county or arrangements
22 with the parties, the amount paid by the city shall be at least ninety percent (90%) of the
23 amount paid or required under the existing franchise or arrangements. If such services
24 are required to be adjusted to conform to city standards or as a result of changes in the
25 number of customers and as a result there are changes in disposal costs (including
26 mileage and landfill charges), requirements for storage capacity (dumpsters and/or
27 residential carts), and/or frequency of collection, the amount paid by the city for the
28 service shall be increased or decreased to reflect the value of such adjusted services as if
29 computed under the existing franchise or arrangements. In the event agreement cannot
30 be reached between the city and the private-firm under this subsection, ~~such~~the matters
31 shall be determined by the Local Government Commission.

32 (e) ~~The city may, at any time after one year's operation thereunder, terminate a~~
33 ~~contract made with the solid waste collection firm under subsection (a) of this section~~
34 ~~upon payment to said firm of an amount equal to the economic loss determined in~~
35 ~~subsection (f) of this section, but discounted by the percentage of the contract which has~~
36 ~~elapsed prior to the effective date of the termination.~~

37 (f) ~~As used in this section, "economic loss" is 12 times the average monthly~~
38 ~~revenue for the three months prior to the passage of the resolution of intent or resolution~~
39 ~~of consideration, as applicable under subsection (a) of this section, collected or due the~~
40 ~~private firm for residential, commercial, and industrial collection service in the area~~
41 ~~annexed or to be annexed.~~

42 (g) The private-firm may, if it contends that no contract has been offered, appeal
43 to the Local Government Commission within 30 days following passage of an
44 annexation ordinance. The private-firm may appeal to the Local Government

1 Commission for an order staying the operation of the annexation ordinance pending the
2 outcome of the review. The Commission may grant or deny the stay upon such terms as
3 it deems proper. If the Local Government Commission finds that the city has not made
4 an offer which complies with this section, it shall remand the ordinance to the municipal
5 governing board for further proceedings, and the ordinance shall not become effective
6 until the Local Government Commission finds that such an offer has been made. Either
7 the private firm or the city may obtain judicial review in accordance with Chapter 150B
8 of the General Statutes.

9 (h) A firm which has given notice under subsection (a) of this section that it
10 desires to contract, and any firm that the city believes is eligible to give such notice,
11 shall make available to the city not later than ~~1030~~ business days following a written
12 request of the city, sent by certified mail return receipt requested, all information in its
13 possession or control, including but not limited to operational, financial and budgetary
14 information, necessary for the city to determine if the firm qualifies for the benefits of
15 this section and to determine the nature and scope of the potential contract and/or
16 economic loss. The firm forfeits its rights under this section if it fails to make a good
17 faith response within ~~1030~~ business days following receipt of the written request for
18 information from the city, provided that the city's written request so states by specific
19 reference to this section.

20 (i) As used in this section, the following terms mean:

21 (1) Economic loss. – A sum equal to 15 times the average gross monthly
22 revenue for the three months prior to the passage of the resolution of
23 intent or resolution of consideration, as applicable under subsection (a)
24 of this section, collected or due the firm for residential, commercial,
25 and industrial collection service in the area annexed or to be annexed.

26 (2) Firm. – A private solid waste collection firm."

27 SECTION 3. G.S. 160A-324 reads as rewritten:

28 "§ 160A-324. Contract with private solid waste collection firm(s).

29 (a) ~~This section applies to any area to be annexed by an act of the General~~
30 ~~Assembly which includes an area where a private solid waste collection firm or firms on~~
31 ~~the 90th day preceding the date of introduction in the House of Representatives or the~~
32 ~~Senate of the bill which became the act making the annexation was:~~

33 (1) ~~Providing solid waste collection services in the area to be annexed;~~

34 (2) ~~Is still providing such services on the date of enactment of the act;~~

35 (3) ~~By reason of such annexation any franchise with a county or~~
36 ~~arrangements with third parties for solid waste collection will be~~
37 ~~terminated; and~~

38 (4) ~~During the 90 day period preceding the date of introduction, the firm~~
39 ~~had in such area an average of 50 or more residential customers or a~~
40 ~~monthly average revenue from nonresidential customers in such area~~
41 ~~of five hundred dollars (\$500.00) or more; provided that customers~~
42 ~~shall be included in such calculation only if policies of the city will~~
43 ~~provide solid waste collection to those customers such that~~

1 ~~arrangements between the solid waste firm and the customers will be~~
2 ~~terminated,~~
3 ~~and if such firm makes a written request that it wishes to contract, signed by an officer~~
4 ~~or owner of the firm, and delivered to the city clerk at least 20 days before the effective~~
5 ~~date of the annexation provided in the act, unless other arrangements satisfactory to the~~
6 ~~private solid waste collection firm or firms have been made, the city shall either:~~

7 ~~(1) Contract with such solid waste collection firm(s) for a period of two~~
8 ~~years after the effective date of the annexation act to allow the solid~~
9 ~~waste collection firm(s) to provide collection services to the city in the~~
10 ~~area to be annexed for sums determined under subsection (d) of this~~
11 ~~section, or~~

12 ~~(2) Pay to the solid waste collection firm(s) in lieu of a contract a sum~~
13 ~~equal to the economic loss determined under subsection (f) of this~~
14 ~~section.~~

15 (a) If the area to be annexed described in an act of the General Assembly
16 includes an area where a firm that meets the requirements of subsection (a1) of this
17 section, on the ninetieth day preceding the date of introduction in the House of
18 Representatives or the Senate of the bill which became the act making the annexation,
19 was providing solid waste collection services in the area to be annexed and is still
20 providing such services on the date the act becomes law, and by reason of the
21 annexation the firm's franchise with a county or arrangements with third parties for solid
22 waste collection will be terminated, the city shall do one of the following:

23 (1) Contract with the firm for a period of two years after the effective date
24 of the annexation ordinance to allow the firm to provide collection
25 services to the city in the area to be annexed for sums determined
26 under subsection (d) of this section.

27 (2) Pay the firm for the firm's economic loss, with one-third of the
28 economic loss to be paid within 30 days of the termination and the
29 balance paid in twelve (12) equal monthly installments during the next
30 succeeding twelve (12) months.

31 (3) Make other arrangements satisfactory to the firm.

32 (a1) To qualify for the options set forth in subsection (a) of this section, a firm
33 must have done one of the following:

34 (1) Subsequent to receiving notice of the annexation in accordance with
35 subsection (b) of this section, filed with the city clerk at least 10 days
36 prior to the public hearing a written request to contract with the city to
37 provide solid waste collection services containing a certification,
38 signed by an officer or owner of the firm, that the firm serves at least
39 50 customers within the county at that time.

40 (2) Contacted the city clerk pursuant to public notice published by the city
41 at least 10 days before the hearing and provided to the city clerk a
42 written request to contract with the city to provide solid waste
43 collection services. The request must contain a certification signed by

1 an officer or owner of the firm that the firm serves at least 50
2 customers within the county at that time.

3 (a2) Firms shall file notice of provision of solid waste collection service with the
4 city clerk of all cities located in the firm's collection area or within five miles thereof.

5 (b) The city shall make a good faith effort to provide at least 30 days before the
6 effective date of the annexation a copy of the act to each private firm providing solid
7 waste collection services in the area to be annexed. The notice shall be sent to all firms
8 that filed notice in accordance with subsection (a2) of this section by certified mail,
9 return receipt requested, to the address provided by the firm under subsection (a2) of
10 this section.

11 (c) The city may require that the contract contain:

12 (1) A requirement that the ~~private~~-firm post a performance bond and
13 maintain public liability insurance coverage;

14 (2) A requirement that the ~~private~~-firm agree to service customers in the
15 annexed area that were not served by that firm on the effective date of
16 annexation;

17 (3) A provision that divides the annexed area into service areas if there
18 were more than one firm being contracted within the area, such that the
19 entire area is served by the ~~private~~-firms, or by the city as to customers
20 not served by the ~~private~~-firms;

21 (4) A provision that the city may serve customers not served by the firm
22 on the effective date of annexation;

23 (5) A provision that the contract can be cancelled in writing, delivered by
24 certified mail to the firm in question with 30 days to cure, for
25 substantial violations of the contract, but no contract may be cancelled
26 on these grounds unless the Local Government Commission finds that
27 substantial violations have occurred, except that the city may suspend
28 the contract for up to 30 days if it finds substantial violation of health
29 laws;

30 (6) Performance standards, not exceeding city ~~standards,~~standards existing
31 at the time of notice provided pursuant to subsection (b) of this section,
32 with provision that the contract may be cancelled for substantial
33 violations of those standards, but no contract may be cancelled on
34 those grounds unless the Local Government Commission finds that
35 substantial violations have occurred;

36 (7) A provision for monetary damages if there are violations of the
37 contract or of performance standards.

38 (d) If the services to be provided to the city by reason of the annexation are
39 substantially the same as rendered under the franchise with the county or arrangements
40 with the parties, the amount paid by the city shall be at least ninety percent (90%) of the
41 amount paid or required under the existing franchise or arrangements. If such services
42 are required to be adjusted to conform to city standards or as a result of changes in the
43 number of customers and as a result there are changes in disposal costs (including
44 mileage and landfill charges), requirements for storage capacity (dumpsters and/or

1 residential carts), and/or frequency of collection, the amount paid by the city for the
2 service shall be increased or decreased to reflect the value of such adjusted services as if
3 computed under the existing franchise or arrangements. In the event agreement cannot
4 be reached between the city and the private firm under this subsection, ~~such~~the matters
5 shall be determined by the Local Government Commission.

6 ~~(e) — The city may, at any time after one year's operation thereunder, terminate a~~
7 ~~contract made with the solid waste collection firm under subsection (a) of this section~~
8 ~~upon payment to said firm of an amount equal to the economic loss determined in~~
9 ~~subsection (f) of this section, but discounted by the percentage of the contract which has~~
10 ~~elapsed prior to the effective date of the termination.~~

11 ~~(f) — As used in this section, "economic loss" is 12 times the average monthly~~
12 ~~revenue for the three months prior to the introduction of the bill, collected or due the~~
13 ~~private firm for residential, commercial, and industrial collection service in the area~~
14 ~~annexed or to be annexed.~~

15 (g) If the city fails to offer a contract to the private firm within 30 days following
16 the effective date of the annexation act, the private firm may appeal within 60 days
17 following the effective date of the annexation act to the Local Government Commission
18 for an order directing the city to offer a contract. If the Local Government Commission
19 finds that the city has not made an offer which complies with this section, it shall order
20 the city to pay to the private firm a civil penalty of the amount of payments it finds that
21 the city would have had to make under the contract, during the noncompliance period
22 until the contract offer is made. Either the private firm or the city may obtain judicial
23 review in accordance with Chapter 150B of the General Statutes.

24 (h) A firm which has given notice under subsection (a) of this section that it
25 desires to contract, and any firm that the city believes is eligible to give such notice,
26 shall make available to the city not later than five days following a written request of the
27 city all information in its possession or control, including but not limited to operational,
28 financial and budgetary information, necessary for the city to determine if the firm
29 qualifies for the benefits of this section and to determine the nature and scope of the
30 potential contract and/or economic loss. The firm forfeits its rights under this section if
31 it fails to make a good faith response within 30 business days following receipt of the
32 written request for information from the city, provided that the city's written request so
33 states by specific reference to this section.

34 (i) As used in this section, the following terms mean:

35 (1) Economic loss. — A sum equal to 15 times the average gross monthly
36 revenue for the three months prior to the introduction of the bill under
37 subsection (a) of this section, collected or due the firm for residential,
38 commercial, and industrial collection service in the area annexed or to
39 be annexed.

40 (2) Firm. — A private solid waste collection firm."

41 **SECTION 4.** Part 1 of Article 16 of Chapter 160A of the General Statutes is
42 amended by adding a new section to read:

43 **"§ 160A-327. Displacement of private solid waste collection services.**

1 (a) A unit of local government shall not displace a private company that is
2 providing collection services for municipal solid waste or recovered materials, or both,
3 except as provided for in this section.

4 (b) Prior to considering taking an action to displace a private company, the unit
5 of local government shall provide public notice of its intent to consider an action that
6 will displace a private company by publishing notice of intent once a week for at least
7 four consecutive weeks in at least one newspaper of general circulation in the area in
8 which the unit of local government and the proposed displacement area are located. The
9 first public notice shall be given no less than 30 days but no more than 60 days prior to
10 the displacement issue being placed on the agenda for discussion or action at an official
11 business meeting of the governing body of the unit of local government. The notice
12 shall specify the date and place of the first meeting where the proposed change in solid
13 waste collection service will be discussed, the geographic location in which solid waste
14 collection services are proposed to be changed, and the types of solid waste collection
15 services that may be affected. In addition, the unit of local government shall send
16 written notice by certified mail, return receipt requested, to all companies that have filed
17 notice with the unit of local government clerk pursuant to the provisions of subsection
18 (f) of this section. The unit of local government shall deposit notice in the U.S. mail at
19 least 30 days prior to the displacement issues being placed on the agenda for discussion
20 or action at an official business meeting of the governing body of the unit of local
21 government.

22 (c) Following the public notice required by subsection (b) of the section, but in
23 no event later than six months after the date of the first publication of the public notice
24 pursuant to subsection (b) of this section, the unit of local government may proceed to
25 take action to displace a private company. The unit of local government or other public
26 or private entity selected by the unit of local government may not commence the actual
27 provision of these services for a period of 18 months from the date of the vote by the
28 governing body of the unit of local government awarding a contract or exclusive
29 franchise to a private firm, or approving the final plan for the unit of local government
30 to deliver solid waste collection services, unless the unit of local government provides
31 compensation to the displaced private company as follows:

32 (1) Subject to subdivision (3) of this subsection, if the private company
33 has provided collection services in the displacement area prior to
34 announcement of the displacement action, the unit of local government
35 shall provide compensation to the displaced private company in an
36 amount equal to the total gross receipts for collection services
37 provided in the displacement area for the 12 months prior to the initial
38 public notice required under subsection (b) of this section.

39 (2) Subject to subdivision (3) of this subsection, if the displaced private
40 company has provided collection services in the displacement area for
41 less than 12 months, the unit of local government shall provide
42 compensation to the displaced private company in an amount equal to
43 the total gross receipts for the period of time that the private company
44 provided such services in the displacement area.

1 (3) If the displaced private company purchased an existing operation of
2 another private company providing such services, compensation shall
3 be for 12 months based on the monthly average of the immediate
4 preceding three month's total gross revenue.

5 (d) The amount due from the unit of local government to the displaced company
6 shall be paid as follows: one-third of the economic loss to be paid within 30 days of the
7 displacement and the balance paid in twelve (12) equal monthly installments during the
8 next succeeding twelve (12) months.

9 (e) If the unit of local government fails to change the provision of solid waste
10 services as described in the notices required under subsection (b) of this section within
11 six months of the date of the first meeting pursuant to subsection (b) of this section, the
12 unit of local government shall not take action to displace without complying again with
13 the provisions of subsection (b) of this section.

14 (f) Notice of the provision of solid waste collection service shall be filed with the
15 unit of local government clerk of all cities and counties located in the private company's
16 collection area or within five miles thereof.

17 (g) This section shall not apply when a private company is displaced as the result
18 of an annexation under Article 4A of Chapter 160A of the General Statutes or an
19 annexation by an act of the General Assembly. The provisions of G.S. 160A-37.3, G.S.
20 160-49.3, or G.S. 160A-324 shall apply.

21 (h) If a unit of local government intends to provide compensation under
22 subsection (c) of this section to a private company that has given notice under
23 subsection (b) of this section, the private company shall make available to the unit of
24 local government not later than 30 business days following a written request of the unit
25 of local government, sent by certified mail, return receipt requested, all information in
26 its possession or control, including operational, financial, and budgetary information
27 necessary for the unit of local government to determine if the private company qualifies
28 for the benefits of this section and to determine any potential compensation. The private
29 company forfeits its rights under this section if it fails to make a good faith response
30 within 30 business days following receipt of the written request for information from
31 the unit of local government provided that the unit of local government's written request
32 so states by specific reference to this section.

33 (i) As used in this section, the following terms mean:

34 (1) Displacement. – Any action by a unit of local government that
35 prohibits or has the effect of prohibiting a private company from
36 providing all or a portion of the collection services for municipal solid
37 waste, recovered materials, or recyclables that the company is
38 providing in the affected area at least 90 days prior to the date of the
39 first publication of notice required by subsection (b) of this section.
40 Displacement also means an action by a unit of local government to
41 use an availability fee, nonoptional fee, or taxes to fund competing
42 collection services for municipal solid waste, recovered materials, or
43 recyclables that the private company is providing in the affected areas
44 at least 90 days prior to the date of the first publication of notice

1 required under subsection (b) of this section is given. Displacement
2 does not include any of the following actions:

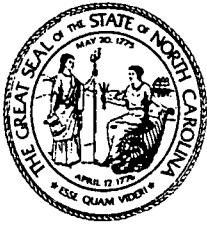
- 3 a. Failure to renew a franchise agreement or contract with a
4 private company.
- 5 b. Taking action that results in a change in solid waste collection
6 services because the private company's operations present an
7 imminent and substantial threat to human health and safety or
8 are causing a substantial public nuisance.
- 9 c. Taking action that results in a change in solid waste collection
10 services because the private company has materially breached
11 its franchise agreement or the terms of a contract with the local
12 government. Notice of breach must be delivered in writing,
13 delivered by certified mail to the firm in question with 30 days
14 to cure the violation of the contract.
- 15 d. Terminating an existing contract or franchise in accordance
16 with the provisions of the contract or franchise agreement.
- 17 e. Providing temporary collection services under a declared state
18 of emergency.
- 19 f. Taking action that results in a change in solid waste collection
20 services due to the existing providers' felony conviction of a
21 violation in the State of federal or state law governing the solid
22 waste collection or disposal.
- 23 g. Contracting with a private company to continue its existing
24 services or provide a different level of service at a negotiated
25 price on terms agreeable to the parties.

26 (2) Unit of local government. – A county, municipality, authority, or
27 political subdivision that is authorized by law to provide for collection
28 of solid waste or recovered materials, or both.

29 (3) Collection. –The gathering of municipal solid waste, recovered
30 materials or recyclables from residential, commercial, industrial,
31 governmental or institutional customers and transporting it to a
32 sanitary landfill or other disposal facility. Collection does not include
33 transport from a transfer station or processing point to a disposal
34 facility.

35 (4) Municipal solid waste. – As defined in G.S. 130A-290(18a)."

36 **SECTION 5.** This act becomes effective July 1, 2006. Sections 1 through 3
37 of this act apply to annexations for which a resolution of intent is adopted on or after
38 that date. Section 4 of this act applies to actions taken on or after that date.



SENATE BILL 951: Public-Private Solid Waste Collection

BILL ANALYSIS

Committee:	House Commerce	Date:	July 6, 2005
Introduced by:	Sen. Hoyle	Summary by:	O. Walker Reagan
Version:	PCS to Second Edition S951-CSRU-56		Committee Co-Counsel

SUMMARY: *The Proposed House Committee Substitute for Senate Bill 951 would require local governments that displace private companies that provide solid waste collection services to residents within the local government's jurisdiction to give notice of its intent to do so, and allow these companies to continue to operate for a certain minimum period of time or provide for compensation to the companies that are being displaced.*

CURRENT LAW: G.S. 160A-37.3, 160A-49.3, and 160A-324 (attached) currently sets out a procedure that municipalities are required to follow when annexing property into the municipality and displacing private solid waste contractors. Under this law, the municipality has to give any private contractor who has contracts in place at least 90 days prior to the date annexation legislation is introduced who serves at least 50 customers or has monthly average revenues in excess of \$500, either a contract to continue to provide services for a minimum of two years or must compensate the company 12 times the average monthly revenue for the three months prior to the commencement of the annexation.

BILL ANALYSIS:

Senate Bill 951 amend the laws for each of the three different annexations laws (towns under 5000, towns over 5000, annexations by the General Assembly), that govern the rights of private solid waste collection services affected by an annexation or by a termination of service by other government action. The bill would require a county, city, authority or other political subdivision (local government) to give notice prior to taking action to displace a private solid waste collection contractor, including displacements due to annexation.

Sections 1, 2 and 3 would require the local government, upon taking action to displace the contractor, to either allow the contractor to continue collection services for at least 2 years, or compensate the contractor in the amount of 15 times the average monthly gross revenue for the 3 months prior to the notice of intent to terminate services. Payment by the local government is to be made over a thirteen-month period.

Section 4 sets out requirements when a solid waste collection service in a municipality is to be displaced. This section would require the local governmental unit, upon taking action to displace the contractor, to either allow the contractor to continue collection services for at least 18 months, or compensate the contractor in an amount equal to the total gross revenue for the 12 months prior to the notice of intent to terminate services. Payment by the local government is to be made over a thirteen-month period. "Displacement" is defined not to include failure by a local government not to renew a contract, actions taken because the company's operations constitute a threat to human health and safety, or termination due to the contractor's breach of contract.

EFFECTIVE DATE: This act becomes effective July 1, 2006. Sections 1 through 3 apply to annexations started on or after that date. Section 4 applies to actions taken on or after that date.

Senate Bill 951

Page 2

§ 160A-324. Contract with private solid waste collection firm(s).

(a) This section applies to any area to be annexed by an act of the General Assembly which includes an area where a private solid waste collection firm or firms on the 90th day preceding the date of introduction in the House of Representatives or the Senate of the bill which became the act making the annexation was:

- (1) Providing solid waste collection services in the area to be annexed;
- (2) Is still providing such services on the date of enactment of the act;
- (3) By reason of such annexation any franchise with a county or arrangements with third parties for solid waste collection will be terminated; and
- (4) During the 90-day period preceding the date of introduction, the firm had in such area an average of 50 or more residential customers or a monthly average revenue from nonresidential customers in such area of five hundred dollars (\$500.00) or more; provided that customers shall be included in such calculation only if policies of the city will provide solid waste collection to those customers such that arrangements between the solid waste firm and the customers will be terminated,

and if such firm makes a written request that it wishes to contract, signed by an officer or owner of the firm, and delivered to the city clerk at least 20 days before the effective date of the annexation provided in the act, unless other arrangements satisfactory to the private solid waste collection firm or firms have been made, the city shall either:

- (1) Contract with such solid waste collection firm(s) for a period of two years after the effective date of the annexation act to allow the solid waste collection firm(s) to provide collection services to the city in the area to be annexed for sums determined under subsection (d) of this section, or
- (2) Pay to the solid waste collection firm(s) in lieu of a contract a sum equal to the economic loss determined under subsection (f) of this section.

(b) The city shall make a good faith effort to provide at least 30 days before the effective date of the annexation a copy of the act to each private firm providing solid waste collection services in the area to be annexed.

(c) The city may require that the contract contain:

- (1) A requirement that the private firm post a performance bond and maintain public liability insurance coverage;
- (2) A requirement that the private firm agree to service customers in the annexed area that were not served by that firm on the effective date of annexation;
- (3) A provision that divides the annexed area into service areas if there were more than one firm being contracted within the area, such that the entire area is served by the private firms, or by the city as to customers not served by the private firms;
- (4) A provision that the city may serve customers not served by the firm on the effective date of annexation;
- (5) A provision that the contract can be cancelled for substantial violations of the contract, but no contract may be cancelled on these grounds unless the Local Government Commission finds that substantial violations have occurred, except that the city may suspend the contract for up to 30 days if it finds substantial violation of health laws;
- (6) Performance standards, not exceeding city standards, with provision that the contract may be cancelled for substantial violations of those standards, but no contract may be cancelled on those grounds unless the Local Government Commission finds that substantial violations have occurred;
- (7) A provision for monetary damages if there are violations of the contract or of performance standards.

(d) If the services to be provided to the city by reason of the annexation are substantially the same as rendered under the franchise with the county or arrangements with the parties, the amount paid by the city shall be at least ninety percent (90%) of the amount paid or required under the existing franchise or arrangements. If such services are required to be adjusted to conform to city standards or as a result of changes in the number of customers and as a result there are changes in disposal costs (including mileage and landfill charges), requirements for storage capacity (dumpsters and/or residential carts), and/or frequency of collection, the amount paid by the city for the service shall be increased or decreased to reflect the value of such adjusted services as if computed under the existing franchise or arrangements. In the event agreement cannot be reached between the city and the private firm under this subsection, such matters shall be determined by the Local Government Commission.

(e) The city may, at any time after one year's operation thereunder, terminate a contract made with the solid waste collection firm under subsection (a) of this section upon payment to said firm of an amount equal to the economic loss determined in subsection (f) of this section, but discounted by the percentage of the contract which has elapsed prior to the effective date of the termination.

(f) As used in this section, "economic loss" is 12 times the average monthly revenue for the three months prior to the introduction of the bill, collected or due the private firm for residential, commercial, and industrial collection service in the area annexed or to be annexed.

Senate Bill 951

Page 3

(g) If the city fails to offer a contract to the private firm within 30 days following the effective date of the annexation act, the private firm may appeal within 60 days following the effective date of the annexation act to the Local Government Commission for an order directing the city to offer a contract. If the Local Government Commission finds that the city has not made an offer which complies with this section, it shall order the city to pay to the private firm a civil penalty of the amount of payments it finds that the city would have had to make under the contract, during the noncompliance period until the contract offer is made. Either the private firm or the city may obtain judicial review in accordance with Chapter 150B of the General Statutes.

(h) A firm which has given notice under subsection (a) of this section that it desires to contract, and any firm that the city believes is eligible to give such notice, shall make available to the city not later than five days following a written request of the city all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for the city to determine if the firm qualifies for the benefits of this section and to determine the nature and scope of the potential contract and/or economic loss.

S0951e2-SMRU-CSRU-56

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

2

SENATE BILL 951
Judiciary I Committee Substitute Adopted 5/31/05

Short Title: Public-Private Solid Waste Collection.

(Public)

Sponsors:

Referred to:

March 24, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE A UNIT OF LOCAL GOVERNMENT THAT DISPLACES A
3 PRIVATE COMPANY THAT IS PROVIDING COLLECTION SERVICES FOR
4 SOLID WASTE OR RECOVERED MATERIALS TO GIVE NOTICE OF ITS
5 INTENT TO DO SO AND TO PROVIDE COMPENSATION TO THE
6 DISPLACED PRIVATE COMPANY.

7 The General Assembly of North Carolina enacts:

8 SECTION 1. G.S. 160A-37.3 and G.S. 160A-324 are repealed.

9 SECTION 2. G.S. 160A-49.3 reads as rewritten:

10 "§ 160A-49.3. Contract with private solid waste collection ~~firm(s)~~ firms.

11 (a) ~~If the area to be annexed described in a resolution of intent passed under~~
12 ~~G.S. 160A-49(a) includes an area where a private solid waste collection firm or firms:~~

13 (1) ~~On the ninetieth day preceding the date of adoption of the resolution of~~
14 ~~intent in accordance with G.S. 160A-49(j) or~~

15 (2) ~~On the ninetieth day preceding the date of adoption of the resolution of~~
16 ~~consideration in accordance with G.S. 160A-49(i)~~

17 ~~was providing solid waste collection services in the area to be annexed, and is still~~
18 ~~providing such services on the date of adoption of the resolution of intent, and:~~

19 (3) ~~By reason of such annexation any franchise with a county or~~
20 ~~arrangements with third parties for solid waste collection will be~~
21 ~~terminated, and~~

22 (4) ~~During the 90 day period preceding the date of adoption of the~~
23 ~~resolution of intent or resolution of consideration provided by~~
24 ~~subdivisions (1) or (2) of this subsection, the firm had in such area an~~
25 ~~average of 50 or more residential customers or a monthly average~~
26 ~~revenue from nonresidential customers in such area of five hundred~~
27 ~~dollars (\$500.00) or more; provided that customers shall be included in~~
28 ~~such calculation only if policies of the city will provide solid waste~~

1 collection to those customers such that arrangements between the solid
2 waste firm and the customers will be terminated, and
3 (5) ~~If such firm makes a written request that it wishes to contract, signed~~
4 ~~by an officer or owner of the firm, and delivered to the city clerk at~~
5 ~~least 10 days before the public hearing,~~
6 ~~unless other arrangements satisfactory to the private solid waste collection firm or firms~~
7 ~~have been made, the city shall either:~~

8 (6) ~~Contract with such solid waste collection firm(s) for a period of two~~
9 ~~years after the effective date of the annexation ordinance to allow the~~
10 ~~solid waste collection firm(s) to provide collection services to the city~~
11 ~~in the area to be annexed for sums determined under subsection (d) of~~
12 ~~this section, or~~
13 (7) ~~Pay to the solid waste collection firm(s) in lieu of a contract a sum~~
14 ~~equal to the economic loss determined under subsection (f) of this~~
15 ~~section.~~

16 (a) If the area to be annexed described in a resolution of intent passed under
17 G.S. 160A-37(a) or G.S. 160A-49(a), or an act of the General Assembly, includes an
18 area where a firm, on the ninetieth day preceding the date of adoption of the resolution
19 of intent in accordance with G.S. 160A-37(i) or (j), or G.S. 160A-49(i) or (j), or the date
20 of introduction in the House of Representatives or the Senate of the bill which became
21 the act making the annexation, as applicable, was providing solid waste collection
22 services in the area to be annexed on the date of adoption of the resolution of intent or
23 the introduction of the bill making the annexation, and by reason of the annexation the
24 firm's franchise with a county or arrangements with third parties for solid waste
25 collection will be terminated, a firm that meets the requirements of subsection (a1) of
26 this section, shall be entitled to choose one of the following options:

27 (1) Contract with the city for a period of two years after the effective date
28 of the annexation ordinance to allow the firm to provide collection
29 services to the city in the area to be annexed for sums determined
30 under subsection (d) of this section.

31 (2) Be paid by the city for the firm's economic loss, with one-third of the
32 economic loss to be paid within 30 days of the termination and the
33 balance paid in five equal monthly installments during the next
34 succeeding five months.

35 (3) Make other arrangements satisfactory to the firm.

36 (a1) To qualify for the options set forth in subsection (a) of this section, a firm
37 must have done one of the following:

38 (1) Subsequent to receiving notice of the annexation in accordance with
39 subsection (b) of this section, filed with the city clerk at least 10 days
40 prior to the public hearing a written request to contract with the city to
41 provided solid waste collection services containing a certification,
42 signed by an officer or owner of the firm, that the firm serves at least
43 50 customers within the county at that time.

1 (2) Contacted the city clerk pursuant to public notice published by the
2 city, pursuant to G.S. 160A-49(b), at least 10 days before the hearing
3 and provide to the city clerk a written request to contract with the city
4 to provide solid waste collection services. The request must contain a
5 certification signed by an officer or owner of the firm that the firm
6 serves at least 50 customers within the county at that time.

7 Notices required under this subsection must be filed in accordance with subsection
8 (a2) of this section.

9 (a2) Notice of provision of solid waste collection service shall be filed with the
10 city clerk of all cities located in the firm's collection area or within five miles thereof.

11 (b) ~~The city shall make a good faith effort to provide at least 20 days before the~~
12 ~~public hearing a copy of the resolution of intent to each private firm providing solid~~
13 ~~waste collection services in the area to be annexed. At least four weeks prior to the date~~
14 ~~of the informational meeting, the city shall provide written notice of the resolution of~~
15 ~~intent to all firms serving the area to be annexed. The notice shall be sent to all firms~~
16 ~~that filed notice in accordance with subsection (a2) of this section by certified mail,~~
17 ~~return receipt requested, to the address provided by the firm under subsection (a2) of~~
18 ~~this section.~~

19 (c) The city may require that the contract contain:

20 (1) A requirement that the ~~private~~-firm post a performance bond and
21 maintain public liability insurance coverage;

22 (2) A requirement that the ~~private~~-firm agree to service customers in the
23 annexed area that were not served by that firm on the effective date of
24 annexation;

25 (3) A provision that divides the annexed area into service areas if there
26 were more than one firm being contracted within the area, such that the
27 entire area is served by the ~~private~~-firms, or by the city as to customers
28 not served by the ~~private~~-firms;

29 (4) A provision that the city may serve customers not served by the firm
30 on the effective date of annexation;

31 (5) A provision that the contract can be cancelled in writing, delivered by
32 certified mail to the firm in question with 30 days to cure for
33 substantial violations of the contract, but no contract may be cancelled
34 on these grounds unless the Local Government Commission finds that
35 substantial violations have occurred, except that the city may suspend
36 the contract for up to 30 days if it finds substantial violation of health
37 laws;

38 (6) Performance standards, not exceeding city ~~standards,~~standards existing
39 at the time of notice published pursuant to G.S. 160A-49(b) with
40 provision that the contract may be cancelled for substantial violations
41 of those standards, but no contract may be cancelled on those grounds
42 unless the Local Government Commission finds that substantial
43 violations have occurred;

1 (7) A provision for monetary damages if there are violations of the
2 contract or of performance standards.

3 (d) If the services to be provided to the city by reason of the annexation are
4 substantially the same as rendered under the franchise with the county or arrangements
5 with the parties, the amount paid by the city shall be at least ninety percent (90%) of the
6 amount paid or required under the existing franchise or arrangements. If such services
7 are required to be adjusted to conform to city standards or as a result of changes in the
8 number of customers and as a result there are changes in disposal costs (including
9 mileage and landfill charges), requirements for storage capacity (dumpsters and/or
10 residential carts), and/or frequency of collection, the amount paid by the city for the
11 service shall be increased or decreased to reflect the value of such adjusted services as if
12 computed under the existing franchise or arrangements. In the event agreement cannot
13 be reached between the city and the ~~private~~-firm under this subsection, ~~such the~~ matters
14 shall be determined by the Local Government Commission.

15 ~~(e) The city may, at any time after one year's operation thereunder, terminate a~~
16 ~~contract made with the solid waste collection firm under subsection (a) of this section~~
17 ~~upon payment to said firm of an amount equal to the economic loss determined in~~
18 ~~subsection (f) of this section, but discounted by the percentage of the contract which has~~
19 ~~elapsed prior to the effective date of the termination.~~

20 ~~(f) As used in this section, "economic loss" is 12 times the average monthly~~
21 ~~revenue for the three months prior to the passage of the resolution of intent or resolution~~
22 ~~of consideration, as applicable under subsection (a) of this section, collected or due the~~
23 ~~private firm for residential, commercial, and industrial collection service in the area~~
24 ~~annexed or to be annexed.~~

25 (g) The ~~private~~-firm may, if it contends that no contract has been offered, appeal
26 to the Local Government Commission within 30 days following passage of an
27 annexation ordinance. The ~~private~~-firm may appeal to the Local Government
28 Commission for an order staying the operation of the annexation ordinance pending the
29 outcome of the review. The Commission may grant or deny the stay upon such terms as
30 it deems proper. If the Local Government Commission finds that the city has not made
31 an offer which complies with this section, it shall remand the ordinance to the municipal
32 governing board for further proceedings, and the ordinance shall not become effective
33 until the Local Government Commission finds that such an offer has been made. Either
34 the ~~private~~-firm or the city may obtain judicial review in accordance with Chapter 150B
35 of the General Statutes.

36 (h) A firm which has given notice under subsection (a) of this section that it
37 desires to contract, and any firm that the city believes is eligible to give such notice,
38 shall make available to the city not later than ~~40~~30 business days following a written
39 request of the city, sent by certified mail return receipt requested, all information in its
40 possession or control, including but not limited to operational, financial and budgetary
41 information, necessary for the city to determine if the firm qualifies for the benefits of
42 this section and to determine the nature and scope of the potential contract and/or
43 economic loss. The firm forfeits its rights under this section if it fails to make a good
44 faith response within ~~40~~30 business days following receipt of the written request for

1 information from the city, provided that the city's written request so states by specific
2 reference to this section.

3 (i) As used in this section, the following terms mean:

4 (1) Economic loss. – A sum equal to 15 times the average gross monthly
5 revenue for the three months prior to the passage of the resolution of
6 intent or resolution of consideration, as applicable under subsection (a)
7 of this section, collected or due the firm for residential, commercial,
8 and industrial collection service in the area annexed or to be annexed.

9 (2) Firm. – A private solid waste collection firm."

10 **SECTION 3.** Part 1 of Article 16 of Chapter 160A of the General Statutes is
11 amended by adding a new section to read:

12 **§ 160A-327. Displacement of private solid waste collection services.**

13 (a) A unit of local government shall not displace a private company that is
14 providing collection services for solid waste or recovered materials, or both, except as
15 provided for in this section.

16 (b) Prior to displacing a private company, the unit of local government shall
17 provide public notice of its intent to consider an action that will displace a private
18 company by publishing notice of intent once a week for at least four consecutive weeks
19 in at least one newspaper of general circulation in the area in which the unit of local
20 government and the proposed displacement area are located. The first public notice shall
21 be given 30 days prior to the displacement issues being placed on the agenda for
22 discussion or action at an official business meeting of the governing body of the unit of
23 local government. The notice shall specify each area in which the local government
24 proposes to change the solid waste collection services that would result in the
25 displacement of a private company. In addition, the unit of local government shall send
26 written notice by certified mail, return receipt requested, to all companies that have filed
27 notice with the unit of local government clerk pursuant to the provisions of subsection
28 (g) of this section. The unit of local government shall deposit notice in the U.S. mail at
29 least 30 days prior to the displacement issues being placed on the agenda for discussion
30 or action at an official business meeting of the governing body of the unit of local
31 government.

32 (c) Following the public notice required by subsection (b) of the section, but in
33 no event later than six months after the date of the first publication of the public notice
34 pursuant to subsection (b) of this section, the unit of local government may proceed to
35 take action to displace a private company. The unit of local government or other public
36 or private entity selected by the unit of local government may not commence the actual
37 provision of these services for a period of 18 months from the date of the vote by the
38 governing body of the unit of local government awarding a contract or exclusive
39 franchise to a private firm, or approving the final plan for the unit of local government
40 to deliver solid waste collection services, unless the unit of local government provides
41 compensation to the displaced private company as follows:

42 (1) Subject to subdivision (3) of this subsection, if the private company
43 has provided collection services in the displacement area prior to
44 announcement of the displacement action, the unit of local government

1 shall provide compensation to the displaced private company in an
2 amount equal to the total gross receipts for collection services
3 provided in the displacement area for the 12 months prior to the initial
4 public notice required under subsection (b) of this section.

5 (2) Subject to subdivision (3) of this subsection, if the displaced private
6 company has provided collection services in the displacement area for
7 less than 12 months, the unit of local government shall provide
8 compensation to the displaced private company in an amount equal to
9 the total gross receipts for the period of time that the private company
10 provided such services in the displacement area.

11 (3) If the displaced private company purchased an existing operation of
12 another private company providing such services, compensation shall
13 be for 12 months based on the monthly average of the immediate
14 preceding three month's total gross revenue.

15 (d) The amount due from the unit of local government to the displaced company
16 shall be paid as follows: one-third of the economic loss to be paid within 30 days of the
17 displacement and the balance paid in five equal monthly installments during the next
18 succeeding five months.

19 (e) If the unit of local government fails to change the provision of solid waste
20 services as described in the notices required under subsection (b) of this section within
21 six months of the date of the first publication of public notice, the unit of local
22 government shall not take action to displace without complying again with the
23 provisions of subsection (b) of this section.

24 (f) As used in this section, the following terms mean:

25 (1) Displacement. – Any action by a unit of local government that
26 prohibits or has the effect of prohibiting a private company from
27 providing all or a portion of the collection services for solid waste,
28 recovered materials, or recyclables that the company is providing in
29 the affected area at least 90 days prior to the date of the first
30 publication of notice required by subsection (b) of this section.
31 Displacement also means an action by a unit of local government to
32 use an availability fee, nonoptional fee, or taxes to fund competing
33 collection services for solid waste, recovered materials, or recyclables
34 that the private company is providing at the time that the first public
35 notice required under subsection (b) of this section is given.
36 Displacement does not include any of the following actions:

37 a. Failure to renew a franchise agreement or contract with a
38 private company.

39 b. Taking action against a private company because the private
40 company's operations present an imminent and substantial
41 threat to human health and safety or are causing a substantial
42 public nuisance.

- 1 c. Taking action against a private company because the private
2 company has materially breached its franchise agreement or the
3 terms of a contract with the local government.
4 d. Terminating an existing contract or franchise in accordance
5 with the provisions of the contract or franchise agreement.
6 e. Providing temporary collection services under a declared state
7 of emergency.

8 Displacement does not include circumstances when the local
9 government contracts with the private solid waste collection company
10 to continue service for a period of two years following the action that
11 would otherwise displace the company in accordance with
12 G.S. 160A-49.3(a)(1).

- 13 (2) Unit of local government. – A county, municipality, authority, or
14 political subdivision that is authorized by law to provide for collection
15 of solid waste or recovered materials, or both.

16 (g) Notice of the provision of solid waste collection service shall be filed with the
17 unit of local government clerk of all cities located in the private company's collection
18 area or within five miles thereof.

19 (h) This section shall not apply when a private company is displaced as the result
20 of an annexation under Article 4A of Chapter 160A of the General Statutes or an
21 annexation by an act of the General Assembly. The provisions of G.S. 160A-49.3 shall
22 apply.

23 (i) If a unit of local government intends to provide compensation under
24 subsection (c) of this section to a private company that has given notice under
25 subsection (b) of this section, the private company shall make available to the unit of
26 local government not later than 30 business days following a written request of the unit
27 of local government, sent by certified mail, return receipt requested, all information in
28 its possession or control, including operational, financial, and budgetary information
29 necessary for the unit of local government to determine if the private company qualifies
30 for the benefits of this section and to determine any potential compensation. The private
31 company forfeits its rights under this section if it fails to make a good faith response
32 within 30 business days following receipt of the written request for information from
33 the unit of local government provided that the unit of local government's written request
34 so states by specific reference to this section."

35 **SECTION 4.** This act becomes effective July 1, 2006, and applies to
36 annexations initiated and all actions taken on or after that date.

VISITOR REGISTRATION SHEET

Com merce
Name of Committee

7-6-05
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

C Cover	B PMHL
[Signature]	S.A.
J.P. Cat	WASTE INDUSTRIES
[Signature]	REPUBLIC WASTE SERVICE
Don Vayha	Ademy
Pam Meyer	NC Assoc. County Commissioners
Kim Hibbard	NCLM
Andy Rommet	NCLM
Amy Pearson	Tyson Sanitation Services
Wiko Wane	SSI
Molly Diggins	Sierra club

VISITOR REGISTRATION SHEET

COMMERCE
Name of Committee

7-06-05
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Elizabeth Eiler	Sierra Club
Anita Watkins	NCLM
Jimmie Jones	NSWMA
Jim Perry	NSWMA
Thomas Winstene	NSWMA
Benjamin Mocht	NCLM
Owen Franklin	NCLM
Kate Roetzer	Sierra Club
Elizabeth Oetz	NCPIRC
Linda Culpeper	NC DENR
Mike M. Jordan	USFPA

VISITOR REGISTRATION SHEET

COMMERCE
Name of Committee

7-06-05
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Daniel M. Blum	ACLU - NC
Ted Voorhes	City of Durham
Mary Meredith	Poyner & Poyner
Remy Bunnish	Carolina Recycling Assoc.
Erin Kenney	NC Conservation Network
Alissa Dolan	NC Conservation Network
Mark Sworn	Capitol Group
Beau Mills	NC Metro Coalition
Fred Bradwell	Carolina Recycling Association
John Umstead	Gen. Assembly Intern

MINUTES

HOUSE COMMITTEE ON COMMERCE

July 13, 2005

The HOUSE COMMITTEE ON COMMERCE met on Wednesday, July 13, 2005 in Room 643 of the Legislative Office Building at 1:00 P.M. The following were present: Representative Daughtridge, presiding Chair, Representatives Goforth, LaRoque, and Rapp, Co-Chairs, Representative Rayfield, Vice-Chair, and Representatives L. Allen, Almond, Barnhardt, Bordsen, Brown, Carney, Cole, Current, Dickson, England, Faison, Gillespie, Haire, Hunter, Jeffus, McGee, McLawhorn, Pierce, Ray, Stam, Vinson, Walend, Wiley. Assisting with the meeting were Karen Cochran-Brown and Regan Walker, Staff Counsel, Dot Barber, Rachel Dupree, Ann Jordan and Lisa Kennedy, Committee Assistants. Also assisting were Brad Barefoot, Mark Cone, Linda Fuller, Frank Prevo, Dusty Rhodes and Walter Spell, Sergeants-at-Arms, and House Pages, Megan Flanagan, sponsored by Representative Alexander, Mecklenburg County, Thomas Rhodes, sponsored by Representative Daughtridge, Nash County, Kelsey Schmidt, sponsored by Representative Gulley, Mecklenburg County, and Brandon Smith, sponsored by Representative Stam, Wake County.

Representative Daughtridge called the meeting to order, and introduced the House Sergeants-at-Arms assisting with the meeting.

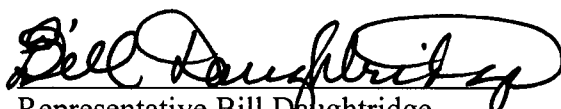
The order of business was:

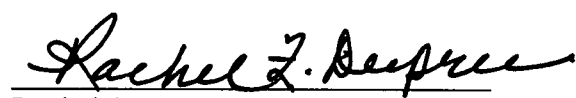
SB 247 REGULATION OF HELIPORTS – Rep. Snow explained the bill. Chip Killian and Jim Garst, representing the helicopter company spoke against the bill. Earl Davis, a resident and business owner, spoke for the bill. The meeting was adjourned before discussion and questions by all Committee Members could be recognized. Rep. Daughtridge adjourned the meeting, carrying this bill over until the next meeting.

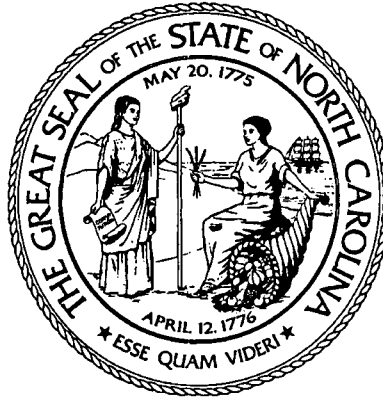
SB 757 ESC OMNIBUS ACT – Rep. Nesbitt. Time ran out before this bill could be debated and was carried over until the next meeting.

The Committee adjourned at 2:00 P.M.

Respectfully submitted,


Representative Bill Daughtridge
Presiding Chairman


Rachel Dupree
Committee Assistant



House Committee on Commerce

July 13, 2005

LOB 643

1:00 PM

Presiding Chair – Representative Bill Daughtridge

I. Call to Order

II. Program

SB 247 REGULATION OF HELIPORTS (Senator Snow)

SB 756 REVISE BUILDING COMMISSION MEMBERSHIP (Senator Nesbitt)

SB 757 ESC OMNIBUS ACT (Senator Nesbitt)

III. Adjournment

MINUTES

HOUSE COMMITTEE ON COMMERCE

July 20, 2005 – 1:00 p.m.
Room 643- LB

The HOUSE COMMITTEE ON COMMERCE met at 1:00 p.m. on Wednesday, June 1, 2005 in Room 643 of the Legislative Office Building. The following members were present: Representatives Daughtride, Goforth, LaRoque and Rapp, Chairs; and Representatives Allen, Bordsen, Brown, Carney, Cole, Coleman, Current, Dickson, Frye, Gibson, Gillespie, Haire, Jeffus, McGee, McLawhorn, Pierce, Ray, Sauls, Stam, Vinson, Walend, Wiley, and Wray. Ex-officio Representatives Cunningham, Eddins and Hackney also attended. Assisting the meeting were Karen Cochrane-Brown and Walker Regan, Staff Counsel.

Chairman Goforth called the meeting to order at 1:00. He recognized Pages and Sgt-At-Arms staff.

Rep. Goforth recognized Senator Snow to address some of the issues that were raised during the discussion of SB 247 – REGULATION OF HELIPORTS. Rep. Goforth said he wanted hold the vote by 1:30 p.m. and asked speakers to limit their comments to three minutes. Sen. Snow asked Michael Gross, with Bill Drafting, to address the question as whether this was a local bill. He concluded that it could be considered a statewide bill, but it exempts publicly operated heliports or those operated by anyone authorized to operate an air ambulance. Sen. Snow passed out Attachment # 1 which included articles and additional information on the heliport in question. In the question of taking of the property, Michael Gross said that if it considered as a non-conforming use it is not considered as a taking.

Chairman Goforth recognized Chief Michele Hicks with the Eastern Band of the Cherokee Indians for his comments. He thanked Senator Snow and Rep. Haire for their efforts on this issue. Some of the problems include interrupting church, plus many environmental pollution and health issues.

Chairman Goforth recognized Albert Crowe, Chairman of the Tribal Council, for comments. He reiterated the environmental and pollution issues as well as nuisance issues.

Chairman Goforth recognized Mr. Mike McConnell, Attorney for the Eastern Bank of the Cherokee Indians for his comments. He said the helicopter operator faced the same issues in Tennessee. The operator bought the land for \$167,000 in 1999 and offered to sell it to the tribe for \$1.5 million. If the tribe did not buy, the operator said he would not abide by any prior agreements with the tribe.

Rep. Phil Haire was recognized for comments. He said the tribal land is in Jackson, Swain and Haywood Counties. This bill under consideration was drafted from similar legislation in Tennessee. He then moved for a favorable report on the bill.

Chairman Goforth said he was going to allow committee members to continue with their discussion prior to taking a vote.

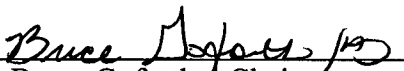
Rep. Steven LaRoque said he thought the legislation was setting a bad precedence and is not a good idea. He also asked for a recording of the ayes and no's on the vote.

Rep. Ray Rapp thought it might be appropriate to forward the bill to one of the Judiciary Committees, preferable the Judiciary III to take a look at it.

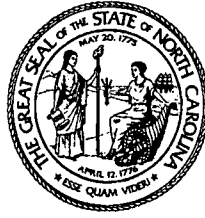
Rep. Phil Haire changed his original motion and remade it for an unfavorable report to the original bill and a favorable to the Proposed Committee Substitute and that it is re-referred to the Judiciary III committee. Motion carried.

Chairman Goforth recognized Senator Martin Nesbitt to explain SB 757 – ESC OMNIBUS ACT that would make changes to the law relating to the Employment Security laws affecting unemployment benefits. In Section 1 it would simplify the current law by providing by a person would not be disqualified for eligibility solely on the basis that he or she is in school. In Section 2 and 3 it sets out contribution rate for employers. The recommendation is for 1.95 percent of payroll to be maintained in the Unemployment Insurance Fund instead of the current flat rate of \$800,000,000. Section 4 adds a definition for willingly. Section 5 deals with the transfer of an employer's account when it is acquired by another individual and Section 6 provides for a penalty for attempting to evade or defeat a tax applying to unemployment contributions. Senator Nesbitt requested that Chairman Harry Payne or one of his representatives be recognized to address questions. Rolf Blizzard with NCCBI said they had some prior concerns with the bill but those have been addressed. Rep. Ray Rapp was recognized to explain a technical amendment and moved that it be adopted. Motion carried. Rep. Phil Haire was recognized for a motion for a favorable report as amended and unfavorable to the original and that it is re-referred to Finance. Motion carried.

Meeting adjourned at 1:55 p.m.


Rep. Bruce Goforth # Chairman


Ann Jordan – Committee Assistant



HOUSE COMMITTEE ON COMMERCE

Wednesday, July 20, 2005

LOB – Room 643

1:00 p.m.

Presiding Chair – Representative Bruce Goforth

I. Call to Order

II. Program

**SB 247 – REGULATION OF HELIPORTS – Sen. Snow
(Continuation of discussion)**

SB 757 – ESC OMNIBUS ACT – Sen. Nesbitt

III. Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S

2

SENATE BILL 247

Commerce Committee Substitute Adopted 5/31/05

Short Title: Regulation of Heliports.

(Public)

Sponsors:

Referred to:

March 1, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO RESTRICT HELIPORT LOCATIONS AND DECLARE CERTAIN
3 HELIPORTS A NUISANCE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 63-1(a) is amended by adding a new subdivision to read:

6 "(13a) 'Heliport' means any area of land or water, except a restricted landing
7 area, which is designed for the landing and takeoff of a helicopter,
8 whether or not facilities are provided for the shelter, servicing, or
9 repair of helicopters, or for receiving or discharging passengers or
10 cargo, and all appurtenant areas used or suitable for heliport buildings
11 or other airport facilities, and all appurtenant rights-of-way, whether
12 heretofore or hereafter established."

13 SECTION 2. G.S. 63-1(a) is amended by adding a new subdivision to read:

14 "(22) 'Tourist resort county' means a county having more than five percent
15 (5%) of its territory located within the boundaries of a national park
16 established pursuant to 16 U.S.C. § 403 or a county that has not less
17 than 1,000 acres of tribal land."

18 SECTION 3. G.S. 63-1(a) is amended by adding a new subdivision to read:

19 "(23) 'Tribal Land' means that portion of Indian country, as the term Indian
20 country is used in 18 U.S.C. § 1151, that is within or abutting a
21 national park established pursuant to 16 U.S.C. § 403."

22 SECTION 4. Chapter 63 of the General Statutes is amended by adding a
23 new Article to read:

24 "Article 10.

25 "Regulation of Heliports.

26 "§ 63-100. Regulation of heliports.

27 Land in a tourist resort county and within 10 miles of the boundary of either a
28 national park, established pursuant to 16 U.S.C. § 403, or Indian tribal land shall not be
29 used as a heliport.

1 **"§ 63-101. Violations – Heliports deemed a nuisance – Abatement, removal, and**
2 **conformity.**

3 Notwithstanding the provisions of Chapter 19 of the General Statutes, or any other
4 law to the contrary, a heliport operating as of July 1, 2005, which is in violation of
5 G.S. 63-100, is declared a public nuisance and shall be abated, removed, or changed to
6 conform to this Article by July 1, 2007. Such heliports may continue to operate until
7 that time provided:

8 (1) The heliport is not expanded or extended; and

9 (2) If the use of the land, or any portion thereof, as a heliport is
10 discontinued for a period of six months or changed, any future use of
11 the land is in conformity with this Article.

12 **"§ 63-102. Violations – Heliports deemed a nuisance – Private right of action.**

13 Any heliport operated in violation of this Article is deemed a public nuisance,
14 causing irreparable injury to the State, the county in which the heliport is located,
15 municipalities located in that county, and the residents of the county. In addition to any
16 other remedies or rights of action possessed by any person or governmental unit,
17 persons who reside on land subject to the prohibitions in this Chapter have a private
18 right of action against a person operating a heliport in violation of this Chapter and have
19 the right to seek injunctive relief as allowed by law to recover damages for nuisance and
20 to recover costs and attorneys' fees if the resident is the prevailing party.

21 **"§ 63-103. Exceptions.**

22 The provisions of this Article shall not apply to any heliport operated by the State of
23 North Carolina, any of its political subdivisions, any law enforcement, fire or rescue
24 agency, or a healthcare institution licensed by the State to operate an air ambulance."

25 **SECTION 5.** This act becomes effective July 1, 2005.



SENATE BILL 247: Regulation of Heliports

BILL ANALYSIS

Committee:	House Commerce	Date:	July 12, 2005
Introduced by:	Sen. Snow	Summary by:	Karen Cochrane-Brown Committee Counsel
Version:	Second Edition		

SUMMARY: *Senate Bill 247 creates a new Article in Chapter 63 entitled 'Regulation of Heliports'. The bill would prohibit the operation of heliports in a tourist resort county that is within ten miles of the Great Smoky Mountain National Park or Indian tribal land. The bill declares a heliport operating under this act on July 1, 2005, to be a public nuisance and requires that the heliport comply with the law by July 1, 2007. The bill exempts publicly operated heliports or those operated by anyone authorized to operate an air ambulance.*

BILL ANALYSIS:

Senate Bill 247 prohibits the operation of a heliport on land that is located in a tourist resort county *and* that is within ten miles of the boundary of a national park or Indian tribal land. The bill defines the term "tourist resort county" as a county having either:

- More than 5% of its territory within the Shenandoah or Great Smoky Mountain National Park; or
- At least 1000 acres of federally recognized Indian tribal land.

The operation of a heliport in violation of this provision would be considered public nuisance and would have to be abated, removed or made to conform by July 1, 2007. Until that time, heliports would be allowed to continue operating in violation of the provision, as long as the heliport does not expand or discontinue use as a heliport for six months or more.

In addition, any person who resides on land subject to the prohibition would have a right of action against the person operating the heliport and could seek injunctive relief, recover damages for nuisance, and recover costs and attorney's fees.

The prohibition would not apply to any heliport operated by the State, any political subdivision, any law enforcement, fire or rescue agency, or by a healthcare institution licensed to operate an air ambulance.

EFFECTIVE DATE: This act would become effective July 1, 2005 and applies to any heliport operating on or after that date.

Wendy Graf Ray, counsel to the Senate Commerce Committee, substantially contributed to this summary.

S0247e2-SMRO

SENATE BILL 247

Regulation of Heliports

Sen. John Snow

BY BECKY JOHNSON

STAFF WRITER

Donald Lambert was troubled by the smell of kerosene in his mother's small trailer in Cherokee one day when he made his regular visit. He got down on his knees and checked her heater and her stove but found no leaks.

Then Lambert spied the culprit: a pile of laundry on the sofa brought in from the line. The sightseeing helicopter next door had been idling all day between flights and the laundry was permeated with its exhaust fumes.

Lambert's 84-year-old mother, Nellie, had already been driven indoors by the noise and fumes generated by Cherokee Helicopters, which is popular for its inexpensive three- to five-minute flights that take off and land all day during tourist season.

"I can't go outdoors all summer. I have to keep my door shut when it starts up, and the smell still gets in the house," said 84-year-old Nellie Lambert.

The noise is just as bad. Lambert has one sofa made up like a bed to nap on during the day, but is continually interrupted by the chopper.

"That noise gets in my head," she said.

When Nellie Lambert turned 80, her family planned a big birthday cookout at her house along Soco Creek. But the helicopter had a line of customers that day and was drowning out their conversation. The family pulled the table cloth off the picnic table, put their mother in the car, abandoned the grill, bought a tub of fried chicken and moved the party to the public park along the Oconaluftee River in Cherokee.

Smoky Mountain News
March 30-April 5, 2005

John Snow (Sen. Snow)

From: Elizabeth Abbott [eabbott@ccs.bia.edu]
Sent: Tuesday, July 12, 2005 2:00 PM
To: louis.spagna1@wachovia.com
Cc: Rep. Bill Daughtridge, Jr.; StephenI; Rep. Ray Rapp; Billo; Rep. David Almond; jeffba; Rep. Becky Carney; larryb; Rep. Linda Coleman; billicu; Rep. Bob England; billf; Rep. Mitch Gillespie; phillipf; Rep. Maggie Jeffus; Earlj; Rep. Marian McLawhorn; garlandp; Rep. John I. Sauls; Pauls; Rep. Trudi Walend; lauraw; Sen. John Snow; Sen. Daniel Clodfelter
Subject: Re: Support for SB 247

This email is to ask you for your support for bill SB 247. I live approximately one half mile from the helipad, up on a hill. When the helicopter takes off, it destroys any kind of quality of life I, or my neighbors have. The Cherokee Tribe moved the helicopter from tribal lands, and the owner of the company found a small parcel of deeded land approximately one half mile from the Casino entrance. Many people live near this business, people who have lived in the area and on their property for 78 years or more. They can not afford to move, and if they did move, there is always a chance the helicopter could follow. We really need your support.

Our park lands are already in danger. This business takes the prestine look and feel that is associated with the Smokey Mtn. and the Blue Ridge Parkway and commercializes them. They fly very close to the park boundary. I was told by the manager of the helicopter business that no body can make him move. Please be sure the legal gounds in the legislature can provide relief not only to us who are affected at this moment, but to citizens in other areas as well. It seemed that one day had a happy, and peaceful place to live, and the next day it was gone in the roar and overflight of a sight seeing helicopter. Please act quickly. Please limit modifications to these bills. We need help. I am praying the Lord helps us in our efforts to reclaim some peace for our homes and our surrounding neighbors.

Thank you so much for your time and efforts. Libbi Abbott

Greetings folks,

I just wanted to share a letter I wrote to the editor of the One Feather and to remind all of us to bring ourselves and two other people to the SOS Coalition meeting next Tuesday at 7:00. Remember, it will be light later after Daylight Savings time. If you ever hope to get to work in your garden or sit on your porch and enjoy the evenings, we've got to get visitors to our area to think twice before flying the helicopter.

I'm going to start Saturday morning Qualla quality of life demonstrations on Saturday (even if it's just me ;-) so I'm hope there will be lots of us standing there together.

Dear Editor,

Over the past couple of weeks, the Save Our Skies Coalition has sprung to life as an expression of the refusal to just keep quiet while our community is steadily degraded by more and more helicopter flights, more and more noise, and less and less ability to enjoy our own homes. The people who make money by creating the noise that pollutes the very inside of our homes believe that since they are not breaking a law, that the community will just roll over and accept it. Maybe they are right. Is it really only a small number of people who are bothered by this situation? Some of you who read this newspaper are probably thinking "it doesn't bother me because helicopters don't fly over our area". When a second, third, and fourth helicopter join the ones we already have, we will be blanketed in a non-stop layer of noise above our heads. Most of us involved in this issue (one petition had almost 400 signatures from folks in the Qualla valley) would rather not have to deal with it. We'd rather just go on with our lives. This is not something that will go away by itself. If we don't act now, we are sentencing our children and grandchildren to a life of increasing noise. If we allow this, it is forever. We have another option. We can make our wishes known as a community. We can come together on Saturday mornings to celebrate the Qualla quality of life and to let the visitors to our area know that helicopter touring is an intrusive, abusive, activity that should not be enjoyed by people who respect the community they are visiting.

The Save Our Skies Coalition will be meeting this Tuesday, April 5th and every other Tuesday evening at the Qualla Community Building (right across from the recycling center, the old Qualla School) to support each other, plan ways to get our message out, and to learn from efforts in other communities. We want visitors to our area to know that we embrace tourism and we want tourism to improve our lives not degrade our lives. Join your friends and neighbors in celebrating what makes our communities great and help keep it that way. Starting April 8th, we will have Saturday morning celebrations of the Qualla quality of life. We will meet on the sidewalk across from Tunnie Katt's home on the road between the Casino Mart and the Casino. Join us or if you can't stand with us for a while, indicate your support for our collective quality of life by honking your horn as you go past. If visitors to our area as well as our elected officials think this is an issue for only a few, they will think its not important. The more of us that stand for quality of life, the more likely people will take note.

On the other hand if you think that putting stones on chimneys is a good enough reason for us to have to endure all the noise of helicopter

touring, then make that known too.

Contact us through our website www.nohelicopter.org or via email
cherokeesos@yahoo.com

Earl Davis



The Eastern Band of Cherokee Indians

The Honorable Michell Hicks, Principal Chief
The Honorable Larry Blythe, Vice-Chief

Albert Crowe
Chairman

Birdtown Township

Mike Parker
Vice-Chairman

Wolftown Township

Tribal Council Members

Mary Welch Thompson
Big Cove Township

Perry M. Shell
Big Cove Township

Jim Owle
Birdtown Township

L. Junaluska
Painttown Township

Tommye Saunooke
Painttown Township

Angie Rose Kephart
Snowbird &
Cherokee Co. Township

Abraham Wachacha
Snowbird &
Cherokee Co. Township

Dwayne Tuff Jackson
Wolfetown Township

Alan B. Ensley
Yellowhill Township

Bob Blankenship
Yellowhill Township

March 22, 2005

Representative R. Phillip Haire
419B Legislative Office Building,
Raleigh, NC 27603-5925

Senator John Snow
517 Legislative Office Building,
Raleigh, NC 27603-5925

Subject: Regulation of Commercial Helicopter Flights over
Tribal Land or Resort Areas

Dear Sirs:

The Eastern Band of Cherokee Indians is continually troubled by helicopter tour operators who fly low over the Tribe's trust lands. This practice is sometimes unsafe and certainly objectionable to our members and residents. The Tribe's ability to regulate these flights is very limited because the operator's landing and take off spot is immediately adjacent too, but off of, Tribal land. To compound the problem, the Tribe has little or no jurisdiction over its own airspace. Therefore, we request that the General Assembly entertain legislation to help us address this problem.

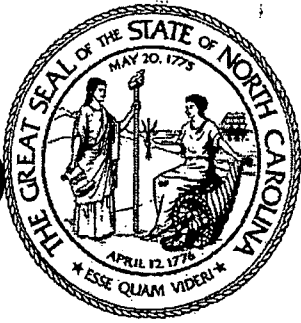
Please find attached a sample amendment to the North Carolina General Statutes that might assist the Tribe in its efforts. Also attached are copies of the laws the State of Tennessee passed to address a similar problem in the Pigeon Forge / Gatlinburg areas. We ask that you treat these attachments as catalysts for further discussion between the General Assembly and the Tribe that will produce legislation that is closely tailored to address the problem.

Thank you.

Sincerely yours,

Michell Hicks
Principal Chief

*9 pages of information
attached!*



North Carolina General Assembly
Legislative Services Office
Division of Legislative Bill Drafting

Mikael R. Gross
Legislative Counsel
Suite 401, LOB
(919) 733-6660

Senator John J. Snow, Jr.
North Carolina Senate
50th District #517
Legislative Office Building
Raleigh, NC 27603

Senator Snow:

I have received your request for legislation in the area of aviation and transportation affecting the use of helicopters in the air tour industry near the reservation and trust lands of the Eastern Band of Cherokee Indians.

I have done some research in that area, and have found that we can most likely do what Tennessee has done in the area of regulating the location of heliports. The Tennessee statute is designed particularly to prohibit air tour heliports from being established within a nine-mile distance from an established boundary of a national park, established pursuant to 16 U.S.C. §403, and located in a county where five percent of the county is also included within the boundaries of the national park. (See Attached). Their statute does not speak to the Indian lands or trust lands as designated by 18 U.S.C. §1151. (See Attached).

There are several issues we face with trying to legislate in this area:

- 1.) Does the State of North Carolina have the jurisdiction to legislate the location of the heliports and declare them a nuisance as Tennessee did?
- 2.) Does the State of North Carolina have the jurisdiction to legislate in the area of aerospace over the Indian Country as defined in 18 U.S.C. §1151 or lands designated as national parks pursuant to 16 U.S.C. §403?
- 3.) Does this interfere with the United States government's authority to regulate interstate commerce under the Commerce Clause of the United States Constitution under Article I, Section 8, Clause 3?
- 4.) What is the status of current state legislation that addresses this problem?
- 5.) What is the status of current federal legislation that addresses this problem?

Answers:

- 1.) YES
- 2.) NO
- 3.) NO
- 4.) North Carolina already addresses these issues pursuant to Chapter 63.

5.) The United States already addresses these issues pursuant to Federal Aviation Administration Rules. (See Attached).

Analysis:

1.) North Carolina can also legislate in the same way that Tennessee has to regulate the nuisance of heliports in certain areas. We would have to be very specific in our legislation to establish the boundaries of the parks or tribal lands. The boundaries should be established as of the date the law is passed and state that the acquisition of new tribal land or trust land by the state or the federal government held in trust for the Indians will not require another move by the owner of the helicopter or heliport used for air tours. This would prevent an undue burden on the operator of the air tour and avoid potential litigation that we are attempting to control interstate commerce.

2.) North Carolina has no jurisdiction to legislate in the area of aerospace over Indian Country. Indian Country as defined in 18 U.S.C. §1151 is solely the sovereign nation of the tribe to which it belongs. The Indian nation in control of that land, including the trust lands, can establish their own laws governing the use of the aerospace so long as it does not affect the sovereignty of the United States and the powers granted to it by the Constitution. In this instance, since the lands are wholly owned by either the United States and held in trust, or by the Nation, the State of North Carolina cannot legally legislate to exercise any control over that space.

3.) Legislation to designate where a heliport may be located and designating them a nuisance in certain areas is not in violation of the Commerce Clause under Art. I, Sec.8, Cls. 3, of the U.S. Constitution. However, any act that purports to do one thing, but in reality is designed to regulate commerce, such as air tour industry members, may very well be held to be un-constitutional.

4.) Under Chapter 63 of the North Carolina General Statutes, this state has already designated its sovereignty over the air space, except where the United States controls, as it does in this case. (G.S. 63-11). Ownership of the air space over land is vested in the owner of the land below the air space, subject to a right of flight. (G.S. 63-12) This right to ownership is restricted to that amount of air space one can reasonably use, and to have a claim, one must show damages. (*United States v Causby*, 328 U.S. 256 (1946)), (See Attached). And the last significant law to address lawful flight is G.S. 63-13. I have included G.S. 63-13 as an attachment so you can read the language in its intended text. You will see the statute states that flying too low, causing damage to crops, or creating an imminent threat to the safety of people and any conduct that is injurious to health and happiness is unlawful. With these statutes in place, I am certain there would be no need for further legislation to address the low flights and or any of the conduct that would be injurious to health and happiness. However, this law only applies to the aerospace that the State of North Carolina can claim sovereignty in, and Indian Country does not fall in that category.

5.) Under the federal laws, the United States Department of Transportation has already addressed the issues involved in air tours over national parks and tribal lands. The Federal Aviation Administration has issued rules that regulate all aspects of the air tour industry relating to national parks and tribal lands in Part 136 of the Federal Aviation Regulations. I have attached those rules for your edification.

Summary:

We can legislate in the area of regulating the location of heliports as Tennessee did. We will need to be very specific in our designations so the law is clear that we are not trying to regulate commerce, but a nuisance that is clearly within the general police powers of the state.

We cannot legislate in the area of air space over Indian Country. This state is most likely preempted from legislating in this area since there are already federal rules in place to govern the conduct.

I would recommend that the Eastern Band of Cherokee Indians contact Chris Cheney at the Solicitor's office in the Department of the Interior. He is the Assistant Solicitor for the Bureau of Indian Affairs. He can certainly help direct their attempts to get rules made by the FAA to prohibit flights of air tour industry members over the reservation and trust lands. His number is (202) 208-4591.

Attachments:

- N.C.G.S. 63-11
- N.C.G.S. 63-12
- N.C.G.S. 63-13
- FAR 136-1
- FAR 136-3
- FAR 136-5
- FAR 136-7
- FAR 136-9
- FAR 136-11
- 16 U.S.C. §403
- 18 U.S.C. §1151
- United States v. Causby, 328 U.S. 256 (1946)

22 pages attached showing the basis for the analysis!

CC: Representative Haire

Sen. John Snow

To... sfindlay@mail.smnet.net**Cc...****Bcc...****Subject:** FW: Cherokee Helicopter**Attachments:**

Mr. & Mrs. Findlay,

Thank you for your email. I have been working for about two months with the Eastern Band along with a group out of Jackson County called (SOS) Save our Skies, hopefully we will get the legislation finished today. This legislation is similar to Tennessee's legislation. Which will regulate the landing areas of Helicopters. Gail, I hope everything is good with the Library! Please continue to contact me with issues that are important to you.

Thank you,
John Snow

From: Shara Graham (Rep. Sauls) on behalf of Rep. John I. Sauls**Sent:** Mon 5/2/2005 12:13 PM**To:** Sen. John Snow**Subject:** FW: Cherokee Helicopter

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

From: Stephen M. Findlay [mailto:sfindlay@mail.smnet.net]**Sent:** Monday, May 02, 2005 12:10 PM**To:** Rep. Phillip Haire; Rep. John I. Sauls**Cc:** gfindlay@smnet.net**Subject:** Cherokee Helicopter

✓ The crash of the Cherokee Helicopter Saturday afternoon leaves little doubt in our minds that the state needs to regulate these flights by restricting them to taking off and landing at FAA controlled airports. This accident was particularly scary to my wife and myself, because this helicopter service flies over my house, as well many others in this area, as many as twenty times or more times a day. I am thankful that this accident didn't happen when the helicopter was totally airborne and that no one was seriously hurt.

I believe Tennessee has a law on the books regulating these flights, which has been upheld by the courts, that might be a good model for a NC statute.

Thanks for your help in this matter.

Gail and Stephen Findlay
Whittier, NC

Sen. John Snow

To... [Earl Davis](#)**Cc...****Bcc...****Subject:** RE: more reason to be concerned**Attachments:**  [heliports.doc\(44KB\)](#)

Mr. Davis,

I hope you are doing well. Attached is the copy of the legislation that will be presented to remedy the problem. We just finished this up today. So I hopeful we will get this ready to go today or tomorrow morning and it should be to committee soon. Please read over and call if you have any question or see any problems. Thank you again for bringing this problem to our attention. I will keep you posted.

Thank you,
John Snow

From: Earl Davis [mailto:earl@moonshadow.net]**Sent:** Mon 5/2/2005 4:08 PM**To:** Rep. Phillip Haire; Sen. John Snow**Subject:** more reason to be concerned

Dear Senator Snow and Representative Haire,

Although the members of Save Our Skies Coalition did not originally perceive physical safety of riders to be of great concern in our opposition to Touring Helicopters being allowed to become entrenched in Jackson County, recent events may change that.

<http://www.citizen-times.com/apps/pbcs.dll/article?AID=/20050501/NEWS01/505010326/-1/archives>

✓ This article announces the crash of the touring helicopter. We can only be glad that no one was hurt and no tourists were on board.

✓ My bigger concern since no one was hurt, is about the fuel spill that ensued. Your help in getting the 9 mile "buffer zone" for the GSMN park in our county which Tennessee residents already have can at least help ensure that future mishaps endanger fewer people.

visit our website at: www.nohelicopter.org

Earl Davis
Save Our Skies Coalition
cherokeesos@yahoo.com

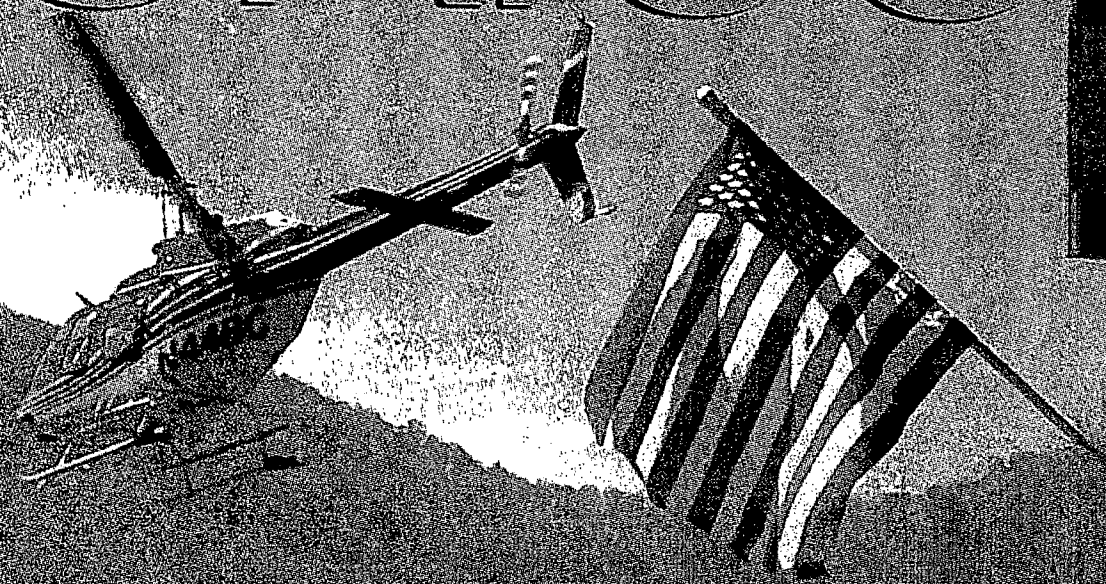
Smoky Mountain

news

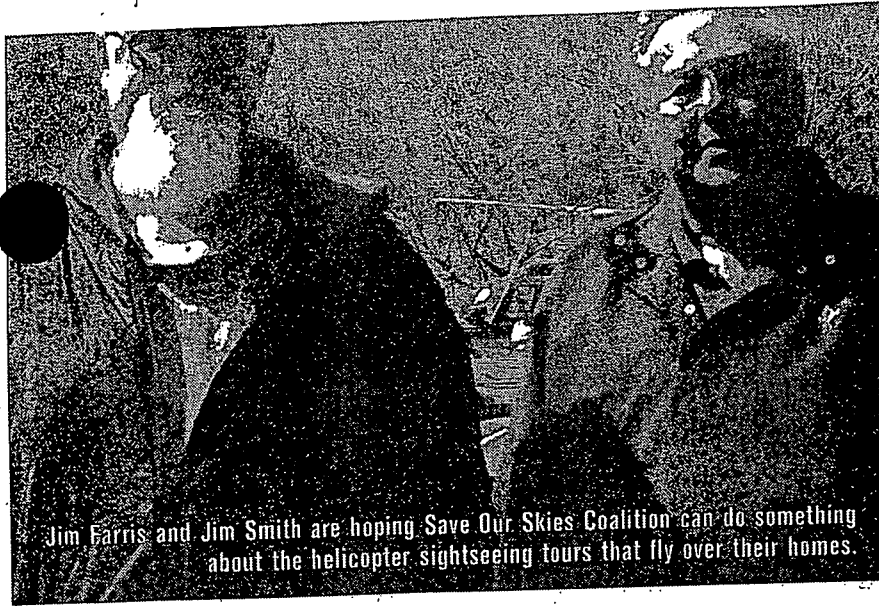
[Redacted]

our SKIES

US POSTAGE PAID
Ride
365
\$1
ANYO



...ns organize to shut down
...erokee sightseeing helicopter



Jim Farris and Jim Smith are hoping Save Our Skies Coalition can do something about the helicopter sightseeing tours that fly over their homes.

Campaign launched against sightseeing chopper

Petitions, posters and flying kites among retaliation deployed by angry residents

By BECKY JOHNSON
STAFF WRITER

Donald Lambert was troubled by the smell of kerosene in his mother's small trailer in Cherokee one day when he made his regular visit. He got down on his knees and checked her heater and her stove but found no leaks.

Then Lambert spied the culprit: a pile of laundry on the sofa brought in from the line. The sightseeing helicopter next door had been idling all day between flights and the laundry was permeated with its exhaust fumes.

Lambert's 84-year-old mother, Nellie, had already been driven indoors by the noise and fumes generated by Cherokee Helicopters, which is popular for its inexpensive three- to five-minute flights that take off and land all day during tourist season.

"I can't go outdoors all summer. I have to keep my door shut when it starts up, and the smell still gets in the house," said 84-year-old Nellie Lambert.

The noise is just as bad. Lambert has one sofa made up like a bed to nap on during the day, but is continually interrupted by the chopper.

"That noise gets in my head," she said.

When Nellie Lambert turned 80, her family planned a big birthday cookout at her house along Soco Creek. But the helicopter had a line of customers that day and was drowning out conversation. The family pulled the tablecloth off the picnic table, put their mother in the car, abandoned the grill, bought a tub of fried chicken and moved the party to the public park along the Oconaluftee River in Cherokee.

Cherokee Helicopters operated on the Cherokee Reservation for about 20 years until the late 1990s when complaints from residents and businesses spurred tribal officials to ban

the sightseeing business. So the helicopter operator moved — but not by far. They found a two-acre tract in the Whittier area of Jackson County surrounded on three sides by the Reservation and just a half-mile from the Harrah's Cherokee Casino.

The new site was right next door to Tinnie Katt's trailer, spoiling her family tradition of eating outdoors after church on Sunday.

"Sunday I like to visit with my people, my friends, my kids. We have to talk over it when it's rattling down on us," said Katt. "Sunday is supposed to be the Lord's day of rest. I don't like them running on Sunday."

The helicopter rides have grown in popularity in recent years as tourism in Cherokee has increased, largely due to advertising and promotion of Cherokee made possible by casino dollars. The helicopter offers a fun, positive experience for tourists, according to Jim Garst, manager of Cherokee Helicopters.

"You've got nothing to do on that side of the park," Garst said. "It's fun. It's such a unique thing."

And it's affordable, too, Garst said. At Niagara Falls, a five-minute helicopter ride is \$60 a person, nearly four times what Cherokee Helicopters charges.

Garst said lots of locals ride the helicopter, especially when they have family visiting from out of town.

"It is absolutely gorgeous. It is mountains as far as you can see. You do not even see flat land," Garst said.

Garst said people on the ground and in the yards often wave to the choppers, like a kid waving to a train that goes by.

"The only ones complaining are a handful," Garst said.

But according to residents, the helicopter bothers more than just a handful of immedi-

ate neighbors.

Jim Smith lives a half-mile from the helicopter but in the direct path of the short out-and-back trips.

"All these houses in here are affected," Smith said during a driving tour of several neighborhoods on the Cherokee Reservation and in Whittier that fall within the helicopter's main route.

As Smith pulled onto his own road, he waved at neighbors sitting in their yards and to each passing car. He drove up a small hill to his house, a good vantage point of the valley the helicopter frequents.

"As he comes through here, he's right at eye level," Smith said.

When the helicopter moved off the Reservation and into Jackson County's domain, residents lobbied the Jackson County commissioners to pass a helicopter ordinance. Cherokee Helicopters promptly appealed the ordinance in court and won.

"If that darn judge had come out here and sat on my porch, he'd sing a different tune," Nellie Lambert said.

Jim Smith lives a half-mile from the helicopter but in the direct path of the short out-and-back trips.

"All these houses in here are affected," Smith said during a driving tour of several neighborhoods on the Cherokee Reservation and in Whittier that fall within the helicopter's main route.

As Smith pulled onto his own road, he waved at neighbors sitting in their yards and to each passing car. He drove up a small hill to his house, a good vantage point of the valley the helicopter frequents.

"As he comes through here, he's right at eye level," Smith said.

When the helicopter moved off the Reservation and into Jackson County's domain, residents lobbied the Jackson County commissioners to pass a helicopter ordinance. Cherokee Helicopters promptly appealed the ordinance in court and won.

"If that darn judge had come out here and sat on my porch, he'd sing a different tune," Nellie Lambert said.

ECONOMICS 101

Two weeks ago, a small loose-knit group of residents opposed to the helicopter launched a new fight to rid their community of the intrusion. Under the name Save Our Skies, or SOS, residents bothered by the noise began plastering Cherokee with posters that read, "Do not ride the helicopter."

"We need to tell visitors to this area this is not just a joy ride. It is not an innocuous harmless recreation. It's got consequences," said Earl Davis, a leader of SOS and owner of Moonshadow Learning Center on the edge of Jackson County and the Reservation.

At Moonshadow, groups of at-risk youth doing ropes courses and outdoor exercises have to stop and wait for the helicopter to pass before Davis can resume his instruction. Davis counted 50 flights in one day last summer, ruining the effectiveness of his courses.

Davis asked the helicopter operator to alter the route, which the company did for awhile, but given the pilot rotation schedule he was not out from under the flight path for long.

"I realized his recipe for success is to make more and more noise, and we're in his shadow. So either he's going to be successful and our quality of life suffers, or we're going to make his business unsuccessful," Davis said.

Groups of residents in the flight path are planning to picket the sidewalk in front of the Cherokee Helicopter on Saturdays. Davis envisions a sign that reads: "If you ride in this helicopter, you may as well spit in our face," but will probably go with a more benign slogan like, "Save Our Skies" and "Don't ride the helicopter."

"If folks will join us in our expression of dismay and discontent, we can start to make some changes," Davis said.

Garst has offered the tribe a solution of his own. He offered to sell the tribe the two-acre tract for \$1.5 million.

"We understand the tribe has a concern. So if you would like to buy it, fine; if you don't want to buy it, fine," Garst said. "We have given them that opportunity."

Garst said the price tag is not unreasonable. It is prime commercial property on a four-lane road half a mile from the casino. Plus, the price tag compensates for revenue the company

would lose.

Otherwise, "we're not going away," Garst said.

A REAL FIGHTER PILOT

Cherokee Helicopters has a sister operation in Tennessee called Great Smoky Mountain Helicopters. It operated in Pigeon Forge until the mid-1990s, when the city passed an ordinance banning sightseeing helicopters. The company was given two years to move out.

When the two years were up, it refused to move and challenged the ordinance in court. The company lost at the local court level but appealed to the next level and won. The city of Pigeon Forge appealed to the Tennessee Supreme Court, which upheld the ordinance.

There is a crucial difference between the Pigeon Forge ordinance, which was ultimately upheld, and Jackson's ordinance, which was defeated. Jackson County's ordinance tried to regulate airspace, which is the domain of the federal government. Not even states, let alone

BE INVOLVED
Save Our Skies Coalition, a group opposed to helicopter sightseeing operations, will meet at the Qualla Community Center off U.S. 441 in Jackson County on Tuesday, April 5, at 7 p.m. For more information, call 828-497-9656.

counties, have jurisdiction over airspace. Pigeon Forge's ordinance took the land-use approach, however, banning sightseeing helicopter operations as it would other high-impact land uses like shooting ranges or asphalt plants.

Garst said complaints from neighbors go with the territory.

Garst compared the helicopter operation to an asphalt plant, another industry that invokes the ire of neighbors. He also equated it to go-carts, a beneficial tourism business with a noisy by-product.

Garst estimates Cherokee Helicopters brings in \$400,000 annually. That's before expenses, though, like pilot salaries and insurance, which alone costs upwards of \$500 a day. The Cherokee operation has only recently become lucrative, as tourism at the casino has increased. For years it was subsidized by the operation in Tennessee, Garst said.

A LOOMING THREAT

Smith said the plan to force the sightseeing company out of business by eroding its customer base could succeed if the hundreds of residents and businesses bothered by the chopper join forces. But it's questionable. Cherokee people are non-confrontational by nature. When they do complain, they are subtle about it.

That is probably a good description of people like Katt. She lost two sisters in recent years and had to tolerate the helicopter joy rides next to her house during her grieving period. Her comment on the intrusion was simply: "I didn't appreciate that very much."

After rallying the troops four years ago only to be defeated in court, many have lost hope that they can change anything. People have even stopped calling the helicopter company and complaining, a fact Garst is quick to point out.

"It's not real traditional for Cherokee people to speak out," said

Jim Farris, a locksmith in Cherokee who has joined SOS. "I think a lot of people have gotten discouraged, and we are going to have to reinvigorate these folks."

Armed with a stack of flyers and scotch tape, Farris made rounds to Cherokee businesses last week asking to post the notices in their windows or at their counters.

"There are mixed feelings. There are people who don't care one way or another. He's probably not flying over them half a dozen times an hour," said Farris, who lives in the flight path. "You got to stop talking, everyone's got to tolerate the noise and the distraction, and it happens all over again a few minutes later."

When Farris was hanging a flyer at the post office, he used the opportunity to engage passersby about their opinions on the chopper. One man was ambivalent. The helicopter didn't fly over his house, the man said.

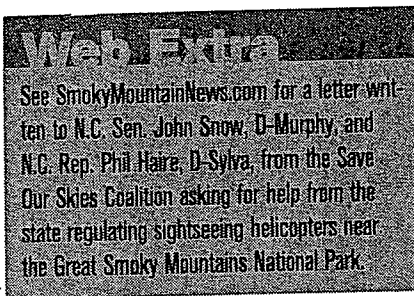
"I told him 'Yet. It doesn't fly over your house yet,'" Farris said. "It very quickly became an issue for him. As more and more people have to tolerate the distraction and noise and loss of privacy, more and more people will become concerned enough to actually do something."

TAKING CARE OF BUSINESS

Mary Hartline is one Jackson County resident who's never stopped retaliating. She got so aggravated by the helicopter flying over her hotel, the Golden Eagle, she went to the store and bought two big kites, ran them out her sunroof, and drove up and down the private road in front of her hotel, getting up enough speed to make the kites fly.

Hartline said she did it just to aggravate the pilot, even though her kite didn't fly high enough to interfere with his flight path.

Some have contemplated a campaign to paint their roofs with unflattering messages for the helicopter.



Hartline was part of the fight four years ago to get a Jackson County ordinance outlawing the helicopter. She helped collect signatures on a petition, an easy task at the Great Smoky Mountain RV Park that sprawls along Soco Creek behind the hotel. She would walk along the rows of RVs occupied by seasonal residents and have to shout over the helicopter to ask for their signature.

When Hartline's guests inquire about the helicopter, she explains the impact of the chopper on locals:

"You'd be talking and he'd go over, and they'd understand what you were talking about," Hartline said.

The helicopter is more than a tourist draw, Garst said. Garst cited a long list of contributions the company makes to the region. Its pilots can spot marijuana plots from the air and have aided in drug busts. Pilots have lowered large stones into place on chimneys of mountaintop homes unreachable by a crane.

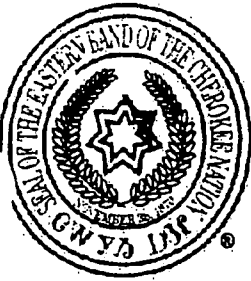
Pilots have done rescue for lost and injured hikers in the Great Smoky Mountains National Park and helped fight with forest fires. They have airlifted logs to volunteers building shelters on the Appalachian Trail.

They have shuttled around photographers doing aerial work for the tribe and conducted aerial power line patrols. They sent a chopper to scout for debris when the space shuttle Columbia exploded over Texas.

"I'm pretty positive about the good we do," said Garst.

March 30-April 5, 2005

Smoky Mountain News 14



The Eastern Band of Cherokee Indians

DW
9/27/04

The Honorable Mitchell Hicks, Principal Chief

The Honorable Larry Blythe, Vice-Chief

Office of the Attorney General Memorandum

Confidential Attorney Client Communication

To: Business Committee members
Chief Hicks, Vice Chief Blythe, Council Chair Crowe
Council Vice-Chair Parker, Superintendent White

From: Mike McConnell
Associate Counsel

Date: September 1, 2004

Subject: Helicopter proposal

At the August 24 Business Committee meeting Chief Hicks asked Cherokee Helicopter to provide a proposal to sell the land on which the operation sits. Today I received their attached proposal.

- Express terms**
- Purchase price: \$1,500,000
 - Deadline: October 29, 2004, at midnight
 - No other offers, agreements or statements apply
- I was told that**
- Counter-offers will not be accepted
 - After the deadline, the purchase price will go up \$200,000 per day
 - This is the only offer in play and all agreements regarding how Cherokee Helicopter operates will be nullified if the Tribe does not accept. That is, Cherokee Helicopter will conduct its business as it sees fit, without regard to complaints.

Albert Crowe
Chairman
Birdtown Township

Mike Parker
Vice Chairman
Wolftown Township

Tribal Council Members

Mary Welch Thompson
Big Cove Township

Perry M. Sheel
Big Cove Township

Jim Oule
Birdtown Township

Marie L. Junaluska
Lantown Township

Tommye Sawtooke
Faintown Township

Angie Rose Kephart
Snowbird &
Cherokee Co. Township

Abraham Wachacha
Snowbird &
Cherokee Co. Township

Dwayne Tuff Jackson
Wolftown Township

Alan B. Ensley
Yellowhill Township

Bob Blankenship
Yellowhill Township

SR14222
000000078716
** JACKSON COUNTY

REVAL ** C
SR 1422
THOMAS V 441 N LAND AREA
APPRAISED BY 04 ON 07/01/2003 01000

7615 04 72 3462 INT D/U SPLIT
MAP SUB BLK PAR
CARD NO. 1 OF 1
1.720AC SRC= 4INS
LAST ACTION 20030707

2003

CONSTRUCTION DETAIL
SINGLE FAMILY RESIDENTIAL

DEPRECIATION	BYB	AYB	NOBK	ECOFUN	PCT. COND	DEPR. BUILDING VALUE	MARKET
0100						7,300	
						258,000	
						265,300	

TOTAL APPRAISED VALUE - CARD 265,300
TOTAL APPRAISED VALUE - PARCEL 265,300

PRIOR PERMIT INFO
206,400
6,800
213,200

OFF. RECORD	DATE	TYPE	QTY	INDICATED
BOOK	PAIR	NO	YR	PTN.
0096205510697	WD*DIV	1	1	167,000
0055601020670	WD*KV	1	1	1927

NOTES
RT AT McDONALDS CROSS
BRIDGE 1ST ON LEFT
HELICOPTER RIDES

BUILDING DIMENSIONS 08

CODES	DESCRIPTION	LTH	WTH	UNITS	UNIT PRICE	ORIG. L. COND.	AYB	BYB	NOBK	ECOFUN	PCT. COND.	DEPR. VALUE	OB/XF DEPR.	LAND UNIT PRICE	TOTAL LAND UNITS	TOTAL ADJUSTED UNIT PRICE	LAND VALUE	LAND NOTES				
15	MD SPACR	35	12	1.00	3,000.00	100	1998	1998	00		1.00	3,000										
16	ADDITION				11.00	100	1998	1998	03		0.82	3,788										
88	DRCK	14	6		84.00	100	1998	1998	05		0.70	470										
TOTAL OB/XF VALUE													7,258									
HIGHEST AND BEST USE													COMMERCIAL	200								
TOTAL LAND DATA													1720AC	6000150,000000	258,000							

SUZANNE. TAXDEPT WED, JUL 13, 2005, 10:34 AM

292 Martin Rd.
Whittier, N.C. 28789
June 27, 2005

To Whom It May Concern:

Recently I saw a sign on a road right-of-way in Cherokee telling people not to ride the helicopter across the road. The message influenced me to go into the helicopter base to express encouragement for its operation. I was told that the North Carolina Senate has passed a bill which would prohibit a helicopter operation to be located within 10 miles of the national park. As a private citizen this appeared to me to be a classic case of business discrimination and could create an undesirable precedent.

I urge members of the state House of Representatives to kill the Senate measure.

I am not connected with the Cherokee Helicopters firm in any way and I have no desire to ride in one of its aircrafts. I can think of no better way to enjoy these beautiful mountains. When I see the copter flying over my house I often wish I had not developed a concern about height. What an attraction the mountains must offer from the air, especially for fall color.

The thousands of Harley motorcycles which roar over area highways make much more noise than the helicopter flights. My home is three block from Highway 441 and two miles from the helicopter pad. The Harley noise is far more objectionable.

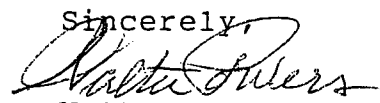
My wife, Joan, joins me in this message. Her sister, Barbara Jordan, lives about 200 feet from us and she also is very supportive of the right of the present pad location. The helicopter has a flight pattern which is over our homes. We are retired and are at home much of the time the flights occur.

Numerous times I have read newspaper stories and viewed TV accounts of the helicopter firm assisting area police agencies in emergencies. This public service is invaluable.

Those few who are objecting to the operation need to consider a more objectionable possibility. If the firm is required to move its base 10 miles away, the aircraft could bring passengers for trips over the mountain area, including the reservation. It could fly over the area at the lowest altitude allowed by the FAA. It would seem that the FAA controls air space, not the state Legislature. The present agreement not to fly over the reservation no longer would be binding.

We urge the House to reject this bad bill.

Sincerely,



Walter Powers

To Whom it may concern,

My name is Renata Maney, I'm writing this letter out of concern. I feel like it should be known that myself, husband, and 3 children live next to the helicopter business. And we do not ~~have~~ have a problem at all with them. We enjoy having them for ~~neighbors~~ neighbors. We have not had a problem with fumes or noise. My children enjoy watching the ride everyday.

The issue of this helicopter should be put to rest. And put your time and money on more important matters. For Example Drugs, Crime! To me that is what put everyone in danger. I ~~do~~ have ~~seen~~ seen what drugs does to people, not does it only kill it hurt's all the people around ~~of~~ them. So when it comes to the issue's here. I would be happier to hear that you helping us by doing more about drugs and crime. Instead of silly things like helicopter rides which here ~~are~~ where I live ~~are~~ there are alot of people I see enjoy the ride other wise ~~to~~ the gentleman would not have a business.

Thank you for your time in
hearing how I felt. ~~Love~~

Sincerely

Renata W. Maney

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Daughtridge, Goforth, LaRoque, Rapp (Chairs) for the Committee on
COMMERCE.

Committee Substitute for

SB 247 A BILL TO BE ENTITLED AN ACT TO RESTRICT HELIPORT
LOCATIONS AND DECLARE CERTAIN HELIPORTS A NUISANCE.

With a favorable report as to House committee substitute bill, which changes the title,
unfavorable as to Senate committee substitute bill and recommendation that the House committee
substitute bill be re-referred to the Committee on JUDICIARY III.

(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 757
Commerce Committee Substitute Adopted 5/31/05

Short Title: ESC Omnibus Act.

(Public)

Sponsors:

Referred to:

March 22, 2005

1 A BILL TO BE ENTITLED
2 AN ACT MAKING OMNIBUS CHANGES TO THE EMPLOYMENT SECURITY
3 LAWS OF NORTH CAROLINA.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 96-13(a) reads as rewritten:

6 "(a) An unemployed individual shall be eligible to receive benefits with respect to
7 any week only if the Commission finds that -

8 (1) The individual has registered for work at and thereafter has continued
9 to report at an employment office as directed by the Commission at
10 ~~regular intervals of not less than three weeks and not more than six~~
11 ~~weeks apart and~~ in accordance with such regulations as the
12 Commission may prescribe;

13 (2) ~~He~~ The individual has made a claim for benefits in accordance with
14 the provisions of G.S. 96-15(a);

15 (3) The individual is able to work, and is available for work: Provided
16 that, unless temporarily excused by Commission regulations, no
17 individual shall be deemed available for work unless he establishes to
18 the satisfaction of the Commission that he is actively seeking work:
19 Provided further, that an individual customarily employed in seasonal
20 employment shall, during the period of nonseasonal operations, show
21 to the satisfaction of the Commission that such individual is actively
22 seeking employment which such individual is qualified to perform by
23 past experience or training during such nonseasonal period: Provided
24 further, however, that no individual shall be considered available for
25 work for any week not to exceed two in any calendar year in which the
26 Commission finds that his unemployment is due to a vacation. In
27 administering this proviso, benefits shall be paid or denied on a
28 payroll-week basis as established by the employing unit. A week of
29 unemployment due to a vacation as provided herein means any payroll

1 week within which the equivalent of three customary full-time
2 working days consist of a vacation period. For the purpose of this
3 subdivision, any unemployment which is caused by a vacation period
4 and which occurs in the calendar year following that within which the
5 vacation period begins shall be deemed to have occurred in the
6 calendar year within which such vacation period begins. For purposes
7 of this subdivision, no individual shall be deemed available for work
8 during any week that the individual tests positive for a controlled
9 substance if (i) the test is a controlled substance examination
10 administered under Article 20 of Chapter 95 of the General Statutes,
11 (ii) the test is required as a condition of hire for a job, and (iii) the job
12 would be suitable work for the claimant. The employer shall report to
13 the Commission, in accordance with regulations adopted by the
14 Commission, each claimant that tests positive for a controlled
15 substance under this subdivision. ~~For the purposes of this subdivision,
16 no individual shall be deemed available for work during any week in
17 which he is registered at and attending an established school, or is on
18 vacation during or between successive quarters or semesters of such
19 school attendance, or on vacation between yearly terms of such school
20 attendance. Except: (i) Any person who was engaged in full-time
21 employment concurrent with his school attendance, who is otherwise
22 eligible, shall not be denied benefits because of school enrollment and
23 attendance. Except: (ii) Any otherwise qualified unemployed
24 individual who is attending a vocational school or training program
25 which has been approved by the Commission for such individual shall
26 be deemed available for work. However, any unemployment insurance
27 benefits payable with respect to any week for which a training
28 allowance is payable pursuant to the provisions of a federal or State
29 law, shall be reduced by the amount of such allowance which weekly
30 benefit amount shall be rounded to the nearest lower full dollar amount
31 (if not a full dollar amount). The Commission may approve such
32 training course for an individual only if:~~

33 a. ~~1. Reasonable employment opportunities for which the
34 individual is fitted by training and experience do not
35 exist in the locality or are severely curtailed;
36 2. The training course relates to an occupation or skill for
37 which there are expected to be reasonable opportunities
38 for employment; and
39 3. The individual, within the judgment of the Commission,
40 has the required qualifications and the aptitude to
41 complete the course successfully; or,
42 b. Such approval is required for the Commission to receive the
43 benefits of federal law.~~

1 a. An unemployed individual shall not be disqualified for
2 eligibility for unemployment compensation solely on the basis
3 that the individual is in school.

4 (4) No individual shall be deemed able to work under this subsection
5 during any week for which that person is receiving or is applying for
6 benefits under any other State or federal law based on his temporary
7 total or permanent total disability. Provided that if compensation is
8 denied to any individual for any week under the foregoing sentence
9 and such individual is later determined not to be totally disabled, such
10 individual shall be entitled to a retroactive payment of the
11 compensation for each week for which the individual filed a timely
12 claim for compensation and for which the compensation was denied
13 solely by reason of the foregoing sentence.

14 (5) The individual has participated in reemployment services, if the
15 Division referred the individual to these services after determining,
16 through use of a worker profiling system, that the individual would
17 likely exhaust regular benefits and would need reemployment services
18 to make a successful transition to new employment, unless the
19 individual establishes justifiable cause for failing to participate in the
20 services.

21 (6) An unemployed individual shall not be disqualified for eligibility for
22 unemployment compensation benefits solely on the basis that the
23 individual is only available for part-time work. If an individual
24 restricts his or her eligibility to part-time work, the individual may be
25 considered able and available to work if it is determined that all the
26 following conditions exist:

27 a. The claimant's monetary eligibility is based predominately on
28 wages from part-time work.

29 b. The claimant is actively seeking and is willing to accept work
30 under essentially the same conditions as existed while the
31 claimant's reported wages were accrued.

32 c. The claimant imposes no other restriction and is in a labor
33 market in which a reasonable demand exists for part-time
34 service.

35 This subdivision shall not be construed to amend subdivision (3) of
36 this subsection as it applies to students or G.S. 96-16 as it applies to
37 seasonal workers."

38 **SECTION 2.** G.S. 96-9(a)(3)d3. reads as rewritten:

39 "d3. The standard contribution rate set by subdivision (b)(1) of this
40 section applies to an employer unless the employer's account
41 has a credit balance. Beginning January 1, 1999, for any
42 calendar year that the training and reemployment contribution
43 in G.S. 96-6.1 does apply, not the contribution rate of an
44 employer whose account has a credit balance is determined in

1 accordance with the rate set in the following Experience Rating
 2 Formula table for the applicable rate schedule. The contribution
 3 rate of an employer whose contribution rate is determined by
 4 this Experience Rating Formula table shall be reduced by fifty
 5 percent (50%) for any year in which the balance in the
 6 Unemployment Insurance Fund on computation date equals or
 7 exceeds eight hundred million dollars (\$800,000,000) on the
 8 computation date one and ninety-five hundredths percent
 9 (1.95%) of the gross taxable wages reported to the Commission
 10 in the previous calendar year and the fund ratio determined on
 11 that date is less than five percent (5%) and shall be reduced by
 12 sixty percent (60%) for any year in which the balance in the
 13 Unemployment Insurance Fund on computation date equals or
 14 exceeds eight hundred million dollars (\$800,000,000) on the
 15 computation date, one and ninety-five hundredths percent
 16 (1.95%) of the gross taxable wages as reported to the
 17 Commission in the previous calendar year, and the fund ratio
 18 determined on that date is five percent (5%) or more.

20 EXPERIENCE RATING FORMULA

22 When The Credit Ratio Is:

24	As	But									
25	Much	Less									
26	As	Than	Rate Schedules (%)								
27			A	B	C	D	E	F	G	H	I
28	0.0%	0.2%	2.70%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%
29	0.2%	0.4%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%
30	0.4%	0.6%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%
31	0.6%	0.8%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%
32	0.8%	1.0%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%
33	1.0%	1.2%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%
34	1.2%	1.4%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%
35	1.4%	1.6%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%
36	1.6%	1.8%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%
37	1.8%	2.0%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%
38	2.0%	2.2%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%
39	2.2%	2.4%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%
40	2.4%	2.6%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%
41	2.6%	2.8%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%
42	2.8%	3.0%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%
43	3.0%	3.2%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%
44	3.2%	3.4%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%

1	3.4%	3.6%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%
2	3.6%	3.8%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%
3	3.8%	4.0%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%
4	4.0%										
5	&										
6	<u>OVER</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>

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	But	Rate Schedules (%)									
Much	Less										
As	Than	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%	

1	0.6%	0.8%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%
2	0.8%	1.0%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%
3	1.0%	1.2%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%
4	1.2%	1.4%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%
5	1.4%	1.6%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%
6	1.6%	1.8%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%
7	1.8%	2.0%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%
8	2.0%	2.2%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%
9	2.2%	2.4%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%
10	2.4%	2.6%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%
11	2.6%	2.8%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%
12	2.8%	3.0%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%
13	3.0%	3.2%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%
14	3.2%	3.4%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%
15	3.4%	3.6%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%
16	3.6%	3.8%	0.24%	0.15%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%
17	3.8%	4.0%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%	0.03%
18	4.0%	&									
19	<u>OVER</u>		<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>

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.

1 Provided, however, that the transfer of an account for the
2 purpose of computation of rates shall be deemed to have been
3 made prior to the computation date falling within the calendar
4 year within which the effective date of such transfer occurs and
5 the account shall thereafter be used in the computation of the
6 rate of the successor employer for succeeding years, subject,
7 however, to the provisions of paragraph b of this subdivision.
8 Provided there shall be no transfer of account when (i) a person
9 or entity is not an employer at the time of the acquisition and
10 (ii) the Commissioner finds that the person or entity acquired
11 the business or account solely or primarily for the purpose of
12 obtaining a reduced rate of contribution.

13 On or after August 1, 1988, whenever any individual, group
14 of individuals, or employing unit, who or which, in any manner
15 succeeds to or acquires all of the organization, trade, or
16 business of another employing unit as provided in G.S. 96-8,
17 subdivision (5), paragraph b, the account of the predecessor
18 shall be transferred as of the date of the acquisition of the
19 business to the successor employer for use in the determination
20 of his rate of contributions. Whenever any individual, group of
21 individuals, or employing unit, who or which, in any manner
22 succeeds to or acquires a distinct and severable portion of the
23 organization, trade, or business of another employing unit as
24 provided in G.S. 96-8, subdivision (5), paragraph b, that part of
25 the account of the predecessor which relates to the acquired
26 portion of the business shall, upon the mutual consent of the
27 parties concerned and approval of the Commission in
28 conformity with the regulations as prescribed therefor, be
29 transferred as of the date of acquisition of the business to the
30 successor employer for use in the determination of his rate of
31 contributions, provided application for transfer is made within
32 60 days after the Commission notifies the successor of his right
33 to request such transfer, otherwise the effective date of the
34 transfer shall be the first day of the calendar quarter in which
35 such application is filed, and that after the transfer the successor
36 employing unit continues to operate the transferred portion of
37 such organization, trade or business. On or after January 1,
38 2006, whenever part of an organization, trade, or business is
39 transferred between entities subject to substantially common
40 ownership, management, or control, the tax account shall be
41 transferred in accordance with regulations. However,
42 employing units transferring entities with any common
43 ownership, management, or control are not entitled to separate
44 and distinct employer status under this Chapter. Provided,

1 however, that the transfer of an account for the purpose of
2 computation of rates shall be deemed to have been made prior
3 to the computation date falling within the calendar year within
4 which the effective date of such transfer occurs and the account
5 shall thereafter be used in the computation of the rate of the
6 successor employer for succeeding years, subject, however, to
7 the provisions of paragraph b of this subdivision. No request for
8 a transfer of the account will be accepted and no transfer of the
9 account will be made if the request for the transfer of the
10 account is not received within two years of the date of
11 acquisition or notification by the Commission of the right to
12 request such transfer, whichever occurs later. However, in no
13 event will a request for a transfer be allowed if an account has
14 been terminated because an employer ceases to be an employer
15 pursuant to G.S. 96-9(c)(5) and G.S. 96-11(d) regardless of the
16 date of notification."

17 **SECTION 6.** G.S. 96-18(b1) reads as rewritten:

18 "(b1) Except as provided in this subsection, the penalties and other provisions in
19 subdivisions (6), (7), (9a), and (11) of G.S. 105-236 apply to unemployment insurance
20 contributions under this Chapter to the same extent that they apply to taxes as defined in
21 G.S. 105-228.90(b)(7). The Commission has the same powers under those subdivisions
22 with respect to unemployment insurance contributions as does the Secretary of Revenue
23 with respect to taxes as defined in G.S. 105-228.90(b)(7).

24 G.S. 105-236(9a) applies to a "contribution tax return preparer" to the same extent as
25 it applies to an income tax preparer. As used in this subsection, a "contribution tax
26 return preparer" is a person who prepares for compensation, or who employs one or
27 more persons to prepare for compensation, any return of tax imposed by this Chapter or
28 any claim for refund of tax imposed by this Chapter. For purposes of this definition, the
29 completion of a substantial portion of a return or claim for refund is treated as the
30 preparation of the return or claim for refund. The term does not include a person merely
31 because the person (i) furnishes typing, reproducing, or other mechanical assistance, (ii)
32 prepares a return or claim for refund of the employer, or an officer or employee of the
33 employer, by whom the person is regularly and continuously employed, (iii) prepares as
34 a fiduciary a return or claim for refund for any person, or (iv) represents a taxpayer in a
35 hearing regarding a proposed assessment.

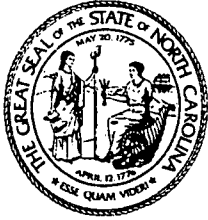
36 The penalty in G.S. 105-236(7) applies with respect to unemployment insurance
37 contributions under this Chapter only when one of the following circumstances exist in
38 connection with the violation:

- 39 (1) Any employing units employing more than 10 employees.
- 40 (2) A contribution of more than two thousand dollars (\$2,000) has not
41 been paid.
- 42 (3) An experience rating account balance is more than five thousand
43 dollars (\$5,000) overdrawn.

1 If none of the circumstances set forth in subdivision (1), (2), or (3) of this subsection
2 exist in connection with a violation of G.S. 105-236(7) applied under this Chapter, the
3 offender is guilty of a Class 1 misdemeanor and each day the violation continues
4 constitutes a separate offense.

5 If the Commission finds that any person violated G.S. 105-236(9a) and is not subject
6 to a fraud penalty, the person shall pay a civil penalty of five hundred dollars (\$500.00)
7 per violation for each day the violations continue, plus the reasonable costs of
8 investigation and enforcement."

9 **SECTION 7.** Sections 2 and 3 of this act become effective July 1, 2005.
10 Section 6 of this act becomes effective December 1, 2005. The remainder of this act is
11 effective when it becomes law.



SENATE BILL 757: ESC Omnibus Act

BILL ANALYSIS

Committee: House Commerce	Date: July 13, 2005
Introduced by: Sen. Nesbitt	Summary by: O. Walker Reagan
Version: Second Edition	Committee Co-Counsel

SUMMARY: *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

Senate Bill 757

Page 2

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.

Wendy Graf Ray, counsel to Senate Commerce Committee, substantially contributed to this summary.

S0757e2-SMRU



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 757

AMENDMENT NO. # 1
(to be filled in by
Principal Clerk)

S757-ARU-46 [v.1]

Page 1 of 1

Date 7-20, 2005

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

Representative GOFORTH RAPP

- 1 moves to amend the bill on page 3, line 38, by deleting the citation "G.S. 96-9(a)(3)d3."
- 2 and substituting the citation "G.S. 96-9(b)(3)d3."
- 3

SIGNED *James Joseph Ray Rapp*
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Daughtridge, Goforth, LaRoque, Rapp (Chairs) for the Committee on
COMMERCE.

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, which changes the title,
unfavorable as to Senate committee substitute bill and recommendation that the House committee
substitute bill be re-referred to the Committee on FINANCE.

(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 HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND BILL SPONSOR NOTICE
2005-2006 SESSION**

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

DAY & DATE: **Wednesday, July 20, 2005**

TIME: **1:00 p.m.**

LOCATION: **Room 643 - LOB**

The following bills will be considered:

SB 247 – REGULATION OF HELIPORTS (continued) - Sen. Snow

SB 757 – ESC OMNIBUS ACT – Sen. Nesbitt

Respectfully,

Representatives Daughtridge, Goforth, LaRoque
and Rapp - Chairmen

I hereby certify this notice was filed by the committee assistant at the following offices at 10:30 a.m. on July 19, 2005.

___ Principal Clerk
___ Reading Clerk - House Chamber

Ann Jordan (Committee Assistant)

VISITOR REGISTRATION SHEET

HOUSE COMMERCE COMMITTEE

JULY 20, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
CHARLES WILLIAMS	HOUSE SGT - AT - ARMS
David Fox	Alley Assoc.
R. Paul Williams	NCHBA
Lechhart Taylor	NC - ESC
David Clegg	NC - ESC
Michell Hicks	Eastern Band of the Cherokee Nation
Paxton Myers	" "
Kai - Leonard	WCSR
Sammy Smith	WCSR
Harry Payne	ESC
Bill Rowe	NC Justice ctr.

VISITOR REGISTRATION SHEET

HOUSE COMMERCE COMMITTEE

JULY 20, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

James ANDREWS	NC State AFL-CIO
Michael Houser	NEAE
Monte Egan	NMRS
Chip Killian	NMRS
James Grant	Great Smoky Mts Helicopters
Albert Crowe	Eastern Band of Cherokee Nation
Michael McConell	Eastern Band of Cherokee Nation
Alice Garland	NCDA
Meghan O'Leary	
Nicholas Moore	
Patrick Bufflin	NCGA (Rep. NYE)

VISITOR REGISTRATION SHEET

HOUSE COMMERCE COMMITTEE

JULY 20, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Don Hibbart	DOC
Andy Romanit	NCLM
John Matas	Gen Office
John Hill	Intern
Paul Buzzano	NCCM
Don Ben	
Kate Roetzer	Sierra Club
Elizabeth Self	Sierra Club
Mary Thomsen	REBIC
W. J. Brown	Capitol Hill
John Umstead	NC Gen Assembly Intern

VISITOR REGISTRATION SHEET

HOUSE COMMERCE COMMITTEE

JULY 20, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

John Snow	Staff
Zeh Diller	Alley Associates
John Bowditch	ADA
Barbara Conner	BBGR
Phyllis Ben	Boon & Assoc
Lu L. H.	KCLV
Ken McHorn	D.O.R.
Carroll	De u. of
John McHelle	MFS
Vince Androschio	Mid-STATE Ventron
Dick Carlson	atly.

House Pages

Name Of Committee: Commerce Date: 7-20-05

1-0

1. Name: Rebecca Bender

County: Jones

Sponsor: Rep. Preston

2. Name: LeeAnn Bradley

County: Harnett

Sponsor: Rep. Coates

3. Name: Carli Gibson

County: ANSON

Sponsor: Rep. Gibson

4. Name: Clayton Barnett

County: Wake

Sponsor: Rep. Sapp

5. Name: Drew Sullivan

County: Wake

Sponsor: Rep. Martin

Sgt-At-Arms

1. Name: Charles Williams

2. Name: BILL SULLIVAN

3. Name: BRAD BAREFOOT

4. Name: JAMES WORTH

5. Name: FRANK TREVO

Minutes

HOUSE COMMITTEE ON COMMERCE

July 27, 2005

The HOUSE COMMITTEE ON COMMERCE met on Wednesday, July 27, 2005, in Room 1228 LB at 1:00 p.m. The following members were present: Representatives Goforth, LaRoque, and Rapp, Chairs; Representatives Allen, Almond, Brown, Bordson, Carney, Cole, Current, Dickson, Faison, Haire, Jeffus, Jones, McGee, McLawhorn, Pierce, and Ray. Excused from the meeting were Rep. Daughtridge, Representative Rayfield, Representative Walend, and Representative Wray. Assisting the meeting were Walker Reagan, Staff Counsel; Dot Barber, Lisa Kennedy, and Ann Jordan, Committee Assistants; Charles Williams, Toussaint Avnet, Leslie Oakley, and Frank Provo, House Sgt.-at-Arms; House Pages Market Floyd of Mecklenburg County, sponsored by Representative Carney, Daryl Verves of Mecklenburg County, sponsored by Representative Cunningham, Christina Cunningham of Mecklenburg County sponsored by Representative Cunningham, and Leann Black of Mecklenburg County, sponsored by Representative Carney.

Chairman LaRoque called the meeting to order introduced the House Sergeants-at Arms, the Committee Assistants, and the House Pages assisting with the meeting.

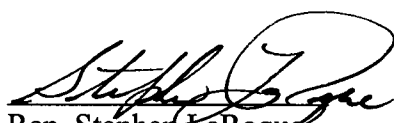
Rep. McLawhorn was recognized by the Chairman to explain the PCS for SB 606 (put the short title to the bill here). Rep. McLawhorn moved that the PCS and amendment (#1) (attached) that she presented for consideration be adopted. Motion carried. Rep. McLawhorn explained the PCS as amended to the committee. Discussion followed.

Rep. Nelson Cole asked if there would be any changes in the signs along the highways regarding this change in name of commission. After discussion, Rep. Cole offer amendment #2 (attached) and moved for it adoption. Motion carried.

Rep. Phil Haire moved that the PCS for SB 606 with amendments enrolled into the PCS be given a FAVORABLE REPORT and the original SB 606 be given an UNFAVORABLE REPORT. Motion carried.

There being no further business the meeting was adjourned.

Respectfully submitted,



Rep. Stephen LaRoque
Presiding Chairman



Lisa D. Kennedy
Committee Assistant

HOUSE COMMITTEE ON COMMERCE

Wednesday, July 27, 2005

LOB – Room 643

1:00 p.m.

Presiding Chair – Representative Stephen LaRoque

I. Call to Order

II. Program

**SB 606 – Amend Eastern Region Board- Senator
Jenkins**

III. Adjournment

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE 7-27-05

S. B. No. 606

Amendment No. ~~#1~~ 2

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE S 606-CSRV 63

Rep.)

~~HARRIS~~ COLE

Sen.)

1 moves to amend the bill on page 11, line 24

2 () WHICH CHANGES THE TITLE

3 by REWRITING THE LINE TO READ:

4 "SECTION 4. ANY COSTS ASSOCIATED WITH THE
5 CHANGE OF THE NAME OF ^{THE} GLOBAL TRANSPARK DEVELOPMENT
6 ZONE TO ^{THE} NORTH CAROLINA'S EASTERN REGION BY
7 THIS ACT SHALL BE BOURNE BY ^{THE} NORTH CAROLINA'S
8 EASTERN REGION DEVELOPMENT COMMISSION.

9 SECTION 5. THE ~~SECTION~~ ACT BECOMES EFFECTIVE
10 OCTOBER 1, 2005. "

11
12
13
14
15
16
17
18
19

SIGNED *Nelson Cole*

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

D

SENATE BILL 606*
Corrected Copy 3/17/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S606-CSRU-63 [v.3]

7/25/2005 3:45:40 PM

Short Title: Amend Eastern Region Board.

(Public)

Sponsors:

Referred to:

March 16, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE POWERS OF THE GLOBAL TRANSPARK
3 DEVELOPMENT COMMISSION AND TO CHANGE THE NAME OF THE
4 GLOBAL TRANSPARK DEVELOPMENT ZONE TO NORTH CAROLINA'S
5 EASTERN REGION.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. Article 4 of Chapter 158 of the General Statutes reads as
8 rewritten:

9 "Article 4.

10 "~~Global TransPark Development Zone~~ North Carolina's Eastern Region.

11 "§ 158-30. Title.

12 This Article shall be known as the '~~Global TransPark Development Zone~~ North
13 Carolina's Eastern Region Act'.

14 "§ 158-31. Purpose.

15 The purpose of this Article is to allow the following counties, which have the
16 potential to derive direct economic benefits from the North Carolina Global TransPark,
17 to create a special economic development district, to be known as the ~~Global TransPark~~
18 ~~Development Zone~~ North Carolina's Eastern Region: Carteret, Craven, Duplin,
19 Edgecombe, Greene, Jones, Lenoir, Nash, Onslow, Pamlico, Pitt, Wayne, and Wilson.

20 The purpose of North Carolina's Eastern Region the ~~Global TransPark Development~~
21 ~~Zone~~ is to promote the development of the North Carolina Global TransPark and to
22 promote and encourage economic development within the territorial jurisdiction of the
23 ~~Zone~~ Region by fostering or sponsoring development projects to provide land,
24 buildings, facilities, programs, information and data systems, and infrastructure
25 requirements for business and industry in the North Carolina Global TransPark outside
26 of the Global TransPark Complex, and elsewhere in the ~~Zone~~ Region.

27 "§ 158-32. Definitions.

1 The following definitions apply in this Article:

- 2 (1) Authority. – The North Carolina Air Cargo Airport Authority created
3 under Chapter 63A of the General Statutes, doing business as the
4 North Carolina Global TransPark Authority.
- 5 (2) Commission. – ~~The Global TransPark~~ North Carolina's Eastern Region
6 Development Commission, the governing body of ~~the Global~~
7 ~~TransPark Development Zone~~ North Carolina's Eastern Region.
- 8 (3) Global TransPark Complex. – The approximately four to six thousand
9 acre site designated by the Authority for a cargo airport and related
10 facilities in Lenoir County. The site will contain a modern airport large
11 enough to handle the largest aircraft and will be dedicated to the rapid
12 movement of freight and passengers by air with intermodal connecting
13 links with rail, highway, and water transportation facilities.
- 14 (4) North Carolina Global TransPark. – A large area surrounding and
15 including the Global TransPark Complex, which will contain
16 commercial and industrial sites providing attractive locations for
17 business and industry of differing sizes and varying kinds.
- 18 (4a) Region. – North Carolina's Eastern Region, an economic development
19 district created pursuant to this Article.
- 20 (5) Unit of local government. – A local subdivision or unit of government
21 or a local public corporate entity, including any type of special district
22 or public authority.
- 23 (6) ~~Zone~~. – ~~The Global TransPark Development Zone~~, an economic
24 ~~development district created pursuant to this Article~~.

25 **"§ 158-33. Creation of Global TransPark Development Zone.**

26 (a) Resolution to Create ~~Zone~~ Region. – Any three or more of the counties listed
27 in G.S. 158-31 may create ~~the Global TransPark Development Zone~~ North Carolina's
28 Eastern Region as provided in this section. In order to create the ~~Zone~~ Region the
29 governing bodies of the counties creating the ~~Zone~~ Region must first adopt, on or before
30 October 1, 1993, substantially similar resolutions stating their intent to organize the
31 ~~Zone~~ Region pursuant to this Article. Each resolution shall include articles of
32 incorporation for the ~~Zone~~ Region that shall set forth the following:

- 33 (1) The name of the ~~Zone~~ Region, which shall be the '~~Global TransPark~~
34 ~~Development Zone~~' North Carolina's Eastern Region.'
- 35 (2) A statement that the ~~Zone~~ Region is organized under this Article.
- 36 (3) The names of the organizing counties known to the county adopting
37 the resolution.

38 (b) Public Hearing. – Each resolution may be adopted only after a public hearing
39 on the question, notice of which hearing has been given by publication at least once
40 after July 25, 1993, and not less than 10 days before the date set for the hearing, in a
41 newspaper having a general circulation in the county. The notice shall contain a brief
42 statement of the substance of the proposed resolution, set forth the proposed articles of
43 incorporation of the ~~Zone~~ Region, and state the time and place of the public hearing to
44 be held on the resolution. No other publication or notice of the resolution is required.

1 (c) Incorporation of Zone-Region. – Each county that adopts a resolution as
2 provided in this section shall file a certified copy of the resolution with the Secretary of
3 State on or before October 15, 1993, together with proof of publication of notice of the
4 hearing on the resolution. Each resolution must contain the county clerk's attestation
5 that it was adopted by the board of commissioners. If the Secretary of State finds that
6 the resolutions, including the articles of incorporation, conform to the provisions of this
7 Article and that notices of the hearings were properly published, the Secretary of State
8 shall file the resolutions and proofs of publication and shall issue a certificate of
9 incorporation for the Zone-Region under the seal of the State. The Secretary of State
10 shall record the certificate of incorporation in an appropriate book of record in the
11 Secretary of State's office.

12 (d) Effect of Incorporation. – The issuance of the certificate of incorporation by
13 the Secretary of State shall constitute the ~~Global TransPark Development Zone~~North
14 Carolina's Eastern Region a public body and body politic and corporate of the State. The
15 certificate of incorporation shall be conclusive evidence that the Zone-Region has been
16 duly created and established under this Article.

17 "**§ 158-33.1. Addition of counties to Zone-Region.**

18 (a) Authority. – The Zone-Region shall allow an eligible county to participate in
19 the Zone-Region as provided in this section. A county is eligible to participate in the
20 Zone-Region under this section if G.S. 158-31 authorizes the county to create the
21 Zone-Region, but the county failed to adopt a resolution stating its intent to create the
22 Zone-Region by the October 1, 1993, deadline set in G.S. 158-33(b).

23 (b) Application. – The governing body of an eligible county may apply to
24 participate in the Zone-Region under this section by adopting a resolution to participate
25 in the Zone-Region. The resolution must comply with all the requirements of
26 G.S. 158-33(a) and (b) except that it may be adopted at any time before October 1,
27 1994. After adopting the resolution, the county shall file a certified copy of the
28 resolution with the ~~Global TransPark Development~~ Commission.

29 (c) Approval of Application. – Within one month after receipt of an application
30 to join the Zone-Region pursuant to this section, the Commission shall meet to consider
31 the application. At the meeting, the Commission shall approve the application if all of
32 the following conditions are met:

- 33 (1) The applicant is an eligible county and has adopted a resolution that
34 complies with subsection (b) of this section.
- 35 (2) The applicant agrees to pay a fee equal to the initiation fee paid by
36 each of the counties that originally created the Zone-Region.
- 37 (3) The applicant agrees to make monthly payments in lieu of taxes as
38 provided in subsection (f) of this section.

39 (d) Commission Resolution. – After the Commission votes to add a county to the
40 Zone-Region, the Commission shall adopt a resolution that states its intent to add the
41 county and includes amended articles of incorporation for the Zone-Region which set
42 forth the name of the county to be added to the Zone-Region. The Commission shall file
43 certified copies of this resolution with the Secretary of State.

1 (e) Effect of Amendment. – If the Secretary of State finds that the resolution
2 conforms to the requirements of this Article, the Secretary of State shall file the
3 resolution, issue an amended certificate of incorporation for the ~~Zone-Region~~ including
4 the additional county, and record the amended certificate of incorporation. The amended
5 certificate of incorporation for the ~~Zone-Region~~ shall become effective on the first day
6 of the second month after it is issued. Upon the effective date of the amended certificate
7 of incorporation for the ~~Zone-Region~~, the new county becomes a fully participating
8 member of the ~~Zone-Region~~. If the Commission has levied a tax in the ~~Zone-Region~~
9 pursuant to G.S. 158-42, that tax applies within the new county beginning on the date
10 the amended certificate of incorporation becomes effective.

11 (f) Payments in Lieu of Taxes. – A county that participates in the ~~Zone-Region~~
12 under this section is required to make monthly payments in lieu of taxes to the ~~Zone~~
13 ~~Region~~ after the expiration of the tax levied pursuant to G.S. 158-42. Each payment
14 shall be equal to the estimated net amount of tax that would have been collected in the
15 county under G.S. 158-42 for that month if the tax were still in effect. Each payment is
16 due within 15 days after the end of the month in which it accrues. The county is
17 required to make monthly payments for a period equal to the number of months that the
18 county was not participating in the ~~Zone-Region~~ while the tax was levied under
19 G.S. 158-42. The requirement that a county make payments in lieu of taxes expires,
20 however, on the effective date of a withdrawal from the ~~Zone-Region~~ by the county. For
21 the purposes of this Article, payments in lieu of taxes shall be considered proceeds of
22 the tax levied in G.S. 158-42 collected in the county making the payment.

23 **"§ 158-34. Territorial jurisdiction of ~~Zone-Region~~.**

24 The territorial jurisdiction of the ~~Zone-Region~~ created pursuant to this Article shall
25 be coterminous with the boundaries of the counties participating in the ~~Zone-Region~~.

26 **"§ 158-35. Commission membership, officers, compensation.**

27 (a) Commission Membership. – The governing body of the ~~Zone-Region~~ is the
28 ~~Global TransPark Development~~ Commission. The members of the Commission must be
29 residents of the ~~Zone-Region~~ and shall be appointed as follows:

- 30 (1) The board of commissioners of each county participating in the ~~Zone~~
31 ~~Region~~ shall appoint three voting members, one of whom shall be a
32 minority person as defined in G.S. 143 128.2(g)(2) and one of whom
33 may be a member of the board of commissioners.
- 34 (2) The Commission may appoint up to seven voting members. By the
35 appointment of these members, the Commission shall ensure that the
36 voting membership of the Commission includes at least seven women
37 and seven members of a racial minority described in G.S. 143
38 128.2(g)(2). The Commission shall appoint the fewest number of
39 members necessary to achieve these minimums.
- 40 (3) Four nonvoting members shall be appointed as follows:
 - 41 a. One appointed by the Chancellor of East Carolina University to
42 represent the University.

- 1 b. One appointed by a majority vote of the presidents of the
2 community colleges located in the Zone, to represent the
3 community colleges.
4 c. One appointed by the chair of the State Ports Authority, to
5 represent the sea ports of the State.
6 d. One member of the board of directors of the Global TransPark
7 Foundation, Inc., appointed by that board.

8 (b) Terms. – Members of the Commission shall serve for staggered four-year
9 terms. The members appointed by the Chancellor of East Carolina University and by the
10 chair of the State Ports Authority shall serve an initial term of two years. The members
11 appointed by the community colleges located in the Zone-Region and by the board of
12 directors of the Global TransPark Foundation, Inc., shall serve an initial term of four
13 years. Each board of commissioners shall designate one of its appointees to serve an
14 initial term of four years, one to serve an initial term of two years, and one to serve an
15 initial term to be determined at the first meeting of the Commission. One half of the
16 appointees designated to serve an undetermined initial term shall serve an initial term of
17 two years, as determined by lot at the first meeting of the Commission. The remainder
18 of the appointees designated to serve an undetermined initial term shall serve an initial
19 term of four years. Initial terms begin upon approval by the Secretary of State of the
20 articles of incorporation.

21 (c) Removal; Vacancies. – A member of the Commission may be removed with
22 or without cause by the appointing body. In addition, a majority of the Commission
23 members may, by majority vote, remove a member of the Commission if that member
24 does not attend at least three-quarters of the regularly scheduled meetings of the
25 Commission during any consecutive 12-month period of service of that member on the
26 Commission, except that absences excused by the Commission due to serious medical
27 or family circumstances shall not be considered. If the Commission votes to remove a
28 member under this subsection, the vacancy shall be filled in the same manner as the
29 original appointment. Appointments to fill vacancies shall be made for the remainder of
30 the unexpired term by the respective appointing authority. All members shall serve until
31 their successors are appointed and qualified, unless removed from office.

32 (d) Dual Office Holding. – Service on the Commission may be in addition to any
33 other office a person is entitled to hold.

34 (e) Officers. – The Commission shall annually elect from its membership a
35 chairperson and a vice-chairperson, and shall annually elect a secretary and a treasurer.
36 After the Commission has been duly organized and its officers elected as provided in
37 this section, the secretary of the Commission shall certify to the Secretary of State the
38 names and addresses of the officers as well as the address of the principal office of the
39 Commission.

40 (f) Compensation. – The members of the Commission shall receive no
41 compensation other than travel, subsistence, and reasonable per diem expenses
42 determined by the Commission for attendance at Commission meetings and other
43 official Zone-Region functions.

44 "§ 158-36. Voting.

1 A majority of the Commission members ~~shall constitute~~ constitutes a quorum for the
2 transaction of business. Each voting member of the Commission shall have one vote.
3 ~~The~~ Except as otherwise provided in this Article, the Commission may transact business
4 only by majority vote of the ~~voting~~ members present and voting.

5 **"§ 158-37. Powers of the ~~Zone~~ Region.**

6 (a) The general powers of the ~~Zone~~ Region include the following:

- 7 (1) The powers of a corporate body, including the power to sue and be
8 sued and to adopt and use a common seal.
- 9 (2) To adopt bylaws and resolutions in accordance with this Article for its
10 organization and internal ~~management~~ management, including the
11 power to create and appoint an executive and other committees and to
12 vest authority in the executive and other committees, as the
13 Commission deems advisable.
- 14 (3) To employ persons as necessary and to fix their compensation within
15 the limit of available funds.
- 16 (4) With the approval of the unit of local government's chief
17 administrative official, to use officers, employees, agents, and facilities
18 of a unit of local government for purposes and upon terms agreed upon
19 with the unit of local government.
- 20 (5) To make contracts, deeds, leases with or without option to purchase,
21 conveyances, and other instruments, including contracts with the
22 United States, the State of North Carolina, and units of local
23 government.
- 24 (6) To acquire, lease as lessee with or without option to purchase, hold,
25 own, and use any franchise or property or any interest in a franchise or
26 property, within the limit of available funds.
- 27 (7) To transfer, lease as lessor with or without option to purchase,
28 exchange, or otherwise dispose of any franchise or property or any
29 interest in a franchise or property, within the limit of available funds.
- 30 (8) To surrender to the State of North Carolina any property no longer
31 required by the ~~Zone~~ Region.

32 (b) The economic development powers of the ~~Zone~~ Region include the
33 following, to the extent appropriate to carry out its purposes as provided in this Article:

- 34 (1) To levy a temporary annual motor vehicle registration tax on vehicles
35 with a tax situs within the ~~Zone~~ Region, as provided in G.S. 158-42.
- 36 (2) To acquire, construct, improve, maintain, repair, operate, or administer
37 any component part of a public infrastructure system or facility within
38 the ~~Zone~~ Region, directly or by contract with a third party.
- 39 (3) Except as otherwise provided in this Article, to exercise the powers
40 granted to a local government for development by G.S. 158-7.1, except
41 the power to levy a property tax.
- 42 (4) To make grants and loans to support economic development projects
43 authorized by this Article within the ~~Zone~~ Region.

- 1 (5) ~~Reserved.~~ To promote travel and tourism, and natural resource-based
2 attractions, within the Region.
- 3 (6) To contract with units of local government within the ~~Zone~~ Region to
4 administer the issuance of permits and approvals required of
5 businesses.
- 6 (7) To provide employee training programs to prepare workers for
7 employment in the ~~Zone~~ Region.
- 8 (8) To gather and maintain information of an economic, a business, or a
9 commercial character that would be useful to businesses within the
10 ~~Zone~~ Region.
- 11 (9) To prepare specific site studies to assess the appropriateness of any
12 area within the ~~Zone~~ Region for use or development by a business and
13 to provide opportunities for businesses to examine sites.
- 14 (10) To exercise the powers of a regional planning commission as provided
15 in G.S. 153A-395 and the powers of a regional economic development
16 commission as provided in Article 2 of this Chapter, but the ~~Zone~~ Region
17 does not have the authority to establish land-use zoning in any
18 county.
- 19 (11) To carry out the purposes of a consolidation and governmental study
20 commission as provided in Article 20 of Chapter 153A of the General
21 Statutes.
- 22 (12) To enter in a reasonable manner land, water, or premises within the
23 ~~Zone~~ Region to make surveys, soundings, drillings, or examinations.
24 Such an entry shall not constitute trespass, but the ~~Zone~~ Region shall
25 be liable for actual damages resulting from such an entry.
- 26 (13) To monitor and encourage the use of utility corridors adjacent to
27 intrastate and interstate highways within the ~~Zone~~ Region that are
28 four-lane, divided, limited-access highways.
- 29 (14) To plan for and assist in the extension of natural gas within the
30 ~~Zone~~ Region.
- 31 (15) To assist in the placement of an information highway within the
32 ~~Zone~~ Region.
- 33 (16) To do all other things necessary or appropriate to carry out its purposes
34 as provided in this Article.

35 **"§ 158-38. Fiscal accountability.**

36 The ~~Zone~~ Region is a public authority subject to the provisions of Chapter 159 of the
37 General Statutes.

38 **"§ 158-39. Funds.**

39 The establishment and operation of the ~~Zone~~ Region are governmental functions and
40 constitute a public purpose. The State of North Carolina and any unit of local
41 government may appropriate or otherwise provide funds to support the establishment
42 and operation of the ~~Zone~~ Region. The State of North Carolina and any unit of local
43 government may also dedicate, sell, convey, donate, or lease any of their interests in
44 property to the ~~Zone~~ Region. The ~~Zone~~ Region may apply for grants from the State of

1 North Carolina, the United States, or any department, agency, or instrumentality of the
2 State or the United States. Any department of State government may allocate to the
3 Zone-Region any funds the use of which is not restricted by law.

4 **"§ 158-40. Tax exemption.**

5 Property owned by the Zone-Region is exempt from taxation. This tax exemption
6 does not apply to the lease, or other arrangement that amounts to a leasehold interest, of
7 Zone-Region property to a private party, or to the income of the lessee, unless the
8 property is leased solely for the purpose of the Zone-Region, in which case the activities
9 of the lessee are considered the activities of the Zone-Region.

10 **"§ 158-41. Withdrawal; termination.**

11 (a) Withdrawal. – A county participating in the Zone-Region may, by resolution,
12 withdraw from the Zone-Region. A resolution withdrawing from the Zone-Region may
13 not become effective before the end of the fiscal year in which it is adopted. Upon
14 adoption of a resolution withdrawing from the Zone-Region, the board of
15 commissioners of the county shall provide a copy of the resolution to the Secretary of
16 State, the Commission, the Authority, and every other county participating in the
17 Zone-Region. Withdrawal does not entitle a county to early distribution of its beneficial
18 interest in Zone-Region assets, but a county that has withdrawn retains its right to any
19 distributions that may be made to participating counties pursuant to subsection (b) of
20 this section on the same basis as if it had not withdrawn. For all other purposes, a
21 county that has withdrawn from the Zone-Region no longer participates in the
22 Zone-Region.

23 (b) Termination. – The Commission may dissolve the Zone-Region and terminate
24 its existence at any time. If the Zone-Region is dissolved and terminated or is otherwise
25 unable to expend the tax proceeds received pursuant to G.S. 158-42, the Commission
26 shall liquidate the assets of the Zone-Region to the extent possible and distribute all
27 Zone-Region assets to the counties of the Zone-Region in proportion to the amount of
28 tax collected in each county. The assets of the Zone-Region that exceed the amount of
29 tax collected by the counties and are attributable to an appropriation made to the Zone
30 Region by the General Assembly shall revert to the General Fund and may not be
31 distributed to the counties. A county may use funds distributed to it pursuant to this
32 subsection only for economic development projects and infrastructure construction
33 projects. In calculating the amount to be refunded to each county, the Zone-Region shall
34 first allocate amounts loaned and not yet repaid as follows:

35 (1) Amounts loaned for a project in a county will be allocated to that
36 county to the extent of its beneficial ownership of the principal of the
37 trust account created under G.S. 158-42 and the county will become
38 the owner of the right to repayment of the amount loaned to the extent
39 of its beneficial ownership of the principal of the trust account created
40 under G.S. 158-42.

41 (2) Amounts not allocated pursuant to subdivision (1) shall be allocated
42 among the remaining counties in proportion to the amount of tax
43 collected in each county under G.S. 158-42, and the remaining
44 counties shall become the owners of the right to repayment of the

1 amounts loaned in proportion to the amount of tax collected in each
2 county under G.S. 158-42.

3 Notes and other instruments representing the right to repayment shall, upon
4 dissolution of the ~~Zone~~Region, be held and collected by the State Treasurer, who shall
5 disburse the collections to the counties as provided in this subsection.

6 The Commission shall distribute those assets that it is unable to liquidate among the
7 ~~Zone-Region~~ counties insofar as practical on an equitable basis, as determined by the
8 Commission. Upon termination, the State of North Carolina shall succeed to any
9 remaining rights, obligations, and liabilities of the ~~Zone-Region~~ not assigned to the
10 ~~Zone-Region~~ counties.

11 **"§ 158-42. Temporary ~~Zone-Region~~ vehicle registration tax.**

12 (a) Levy. – The Commission may, by resolution, after not less than 10 days'
13 public notice and a public hearing, levy an annual registration tax of five dollars (\$5.00)
14 on motor vehicles with a tax situs within the ~~Zone-Region~~. A tax levied under this
15 section is in addition to any other motor vehicle license or registration tax.

16 The tax applies to vehicles required to pay a tax under G.S. 20-88, except trailers,
17 and G.S. 20-87(1), (2), (4), (5), (6), and (7). The tax situs of a motor vehicle for the
18 purpose of this section is its ad valorem tax situs. If the vehicle is not subject to ad
19 valorem tax, its tax situs for the purpose of this section is the ad valorem tax situs it
20 would have if it were subject to ad valorem tax.

21 (b) Effective Date; Expiration. – The effective date of a tax levied under this
22 section shall be no earlier than July 1, 1994. The effective date of a tax levied under this
23 section must be the first day of a calendar month set by the Commission in the
24 resolution levying the tax, and shall be no earlier than the first day of the third calendar
25 month after the adoption of the resolution.

26 The authority of the ~~Zone-Region~~ to levy a tax under this section expires five years
27 after the effective date of the first tax levied under this section. A tax levied under this
28 section expires when the ~~Zone's-Region's~~ authority to levy the tax expires. The
29 expiration of the tax does not affect the rights or liabilities of the ~~Zone-Region~~, a
30 taxpayer, or another person arising under this section before the expiration of the tax;
31 nor does it affect the right to any refund or credit of a tax that would otherwise have
32 been available under this section before the expiration of the tax.

33 (c) Repeal of Tax. – The Commission may, by resolution, repeal a tax levied
34 under this section. The effective date of the repeal must be the first day of a calendar
35 month set by the Commission in the resolution repealing the tax, and shall be no earlier
36 than the first day of the third calendar month after the adoption of the resolution. Repeal
37 of the tax does not affect the date the ~~Zone's-Region's~~ authority to levy the tax expires
38 under subsection (b) of this section. Repeal of the tax does not affect the rights or
39 liabilities of the ~~Zone-Region~~, a taxpayer, or another person arising under this section
40 before the effective date of the repeal; nor does it affect the right to any refund or credit
41 of a tax that would otherwise have been available under this section before the effective
42 date of the repeal.

43 (d) Administration. – The Division of Motor Vehicles of the Department of
44 Transportation shall collect and administer a tax levied under this section. Immediately

1 after adopting a resolution levying or repealing a tax under this section, the Commission
2 shall deliver a certified copy of the resolution to the Division of Motor Vehicles. If the
3 Secretary of State issues an amended certificate of incorporation adding a county to the
4 ~~Zone-Region~~ pursuant to G.S. 158-33.1, the Commission shall deliver a certified copy
5 of the amended certificate immediately to the Division of Motor Vehicles. If the
6 Commission receives a resolution from a county withdrawing from the ~~Zone-Region~~
7 pursuant to G.S. 158-41, the Commission shall deliver a certified copy of the resolution
8 immediately to the Division of Motor Vehicles.

9 A tax levied under this section is due at the same time and subject to the same
10 restrictions as the tax levied in G.S. 20-87 and G.S. 20-88. The tax shall be prorated in
11 accordance with G.S. 20-95. The Commissioner of Motor Vehicles may adopt rules
12 necessary to administer the tax.

13 (e) Distribution of Tax Proceeds. – The Commissioner of Motor Vehicles shall
14 credit the proceeds of the tax levied under this section to a special account and distribute
15 the net proceeds on a quarterly basis to the ~~Zone-Region~~. Interest on the special account
16 shall be credited quarterly to the Highway Fund to reimburse the Division of Motor
17 Vehicles for the cost of collecting and administering the tax. The Commissioner of
18 Motor Vehicles shall provide the ~~Zone-Region~~ with an accounting of the percentage of
19 proceeds collected in each county of the ~~Zone-Region~~ in each quarter.

20 (f) Use of Tax Proceeds. – The ~~Zone-Region~~ may use the proceeds of the tax
21 levied under this section only for economic development projects and infrastructure
22 construction projects that are within the territorial jurisdiction of the ~~Zone-Region~~ but
23 not within the Global TransPark Complex. The ~~Zone-Region~~ shall use the tax proceeds
24 only for public purposes authorized by this Article.

25 The ~~Zone-Region~~ shall place fifteen percent (15%) of the tax proceeds distributed to
26 it under this section in a general funds account and the remaining eighty-five percent
27 (85%) in an interest-bearing trust account. Each county shall be the beneficial owner of
28 a share of the principal of the trust account in proportion to the amount of tax proceeds
29 collected in that county.

30 The ~~Zone-Region~~ may not disburse the principal of the trust account except pursuant
31 to a contract that provides that, within a reasonable time not to exceed 20 years, the
32 ~~Zone-Region~~ will recover or be repaid the amount disbursed. The ~~Zone-Region~~ may, in
33 its discretion, set reasonable terms and conditions for the repayment of the principal
34 disbursed, including provisions for securing the debt and the payment of interest."

35 **SECTION 2.** G.S. 143B-437.21(6) reads as rewritten:

36 **"§ 143B-437.21. Definitions.**

37 The following definitions apply in this Part:

38 ...

39 (6) Regional partnership. – Any of the following:

- 40 a. The Western North Carolina Regional Economic Development
41 Commission created in G.S. 158-8.1.
42 b. The Northeastern North Carolina Regional Economic
43 Development Commission created in G.S. 158-8.2.

- 1 c. The Southeastern North Carolina Regional Economic
2 Development Commission created in G.S. 158-8.3.
3 d. The Global-TransPark-North Carolina's Eastern Region
4 Development Commission created in G.S. 158-33.
5 e. The Carolinas Partnership, Inc.
6 f. The Research Triangle Regional Partnership.
7 g. The Piedmont Triad Partnership."

8 **SECTION 3.** G.S. 158-12.1 reads as rewritten:

9 "**§ 158-12.1. Commission funds secured.**

10 The Western North Carolina Regional Economic Development Commission,
11 Research Triangle Regional Commission, Southeastern North Carolina Regional
12 Economic Development Commission, Piedmont Triad Partnership, Northeastern North
13 Carolina Regional Economic Development Commission, ~~Global-TransPark-North~~
14 Carolina's Eastern Region Development Commission, and Carolinas Partnership, Inc.,
15 may deposit money at interest in any bank, savings and loan association, or trust
16 company in this State in the form of savings accounts, certificates of deposit, or such
17 other forms of time deposits as may be approved for county governments. Investment
18 deposits and money deposited in an official depository or deposited at interest shall be
19 secured in the manner prescribed in G.S. 159-31(b). When deposits are secured in
20 accordance with this section, no public officer or employee may be held liable for any
21 losses sustained by an institution because of the default or insolvency of the depository.
22 This section applies to the regional economic development commissions listed in this
23 section only for as long as the commissions are receiving State funds."

24 **SECTION 4.** This act becomes effective October 1, 2005.



SENATE BILL 606: Amend Eastern Region Board

BILL ANALYSIS

Committee: House Commerce
Introduced by: Sen. Jenkins
Version: PCS to Second Edition
S606-CSRU-63

Date: July 25, 2005
Summary by: Walker Reagan
Committee Counsel

SUMMARY: *The Proposed House Committee Substitute for Senate Bill 606 would update the statutes to reflect the change in name of the Global TransPark Development Zone and the Global TransPark Development Commission to North Carolina's Eastern Region and North Carolina's Eastern Region Development Commission respectively, and to clarify the authority of the Commission to promote travel and tourism, and natural resource-based attractions, within the region.*

CURRENT LAW: Currently the Global TransPark Development Zone is governed by the Global TransPark Development Commission. The Zone consists of 13 counties, namely Carteret, Craven, Duplin, Edgecombe, Greene, Jones, Lenoir, Nash, Onslow, Pamlico, Pitt, Wayne, and Wilson. The Commission is made up of 3 appointees from each of the counties' county commissioners, seven members appointed by the Commission, and four non-voting representing East Carolina University, the area's community colleges, the State Ports and the Global TransPark Foundation.

BILL ANALYSIS: Senate Bill 606 changes the name of the Global TransPark Development Zone to North Carolina's Eastern Region and changes the Global TransPark Development Commission to North Carolina's Eastern Region Development Commission.

The change to G.S. 158-37(b)(5) (found on page 7, lines 1 and 2), clarifies that the Board has the authority to promote travel and tourism, and natural resource-based attractions, in the Region.

EFFECTIVE DATE: The bill becomes effective October 1, 2005.

S0606e2-SMRU-CSRU-63

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S

2

SENATE BILL 606*
Corrected Copy 3/17/05

Short Title: Amend Eastern Region Board.

(Public)

Sponsors: Senators Jenkins; Albertson, Thomas, and Swindell.

Referred to: State and Local Government.

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO RESTRUCTURE THE BOARD OF COMMISSIONERS OF THE
GLOBAL TRANSPARK DEVELOPMENT COMMISSION AND TO CHANGE
THE NAME OF THE GLOBAL TRANSPARK DEVELOPMENT ZONE TO
NORTH CAROLINA'S EASTERN REGION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 4 of Chapter 158 of the General Statutes reads as
rewritten:

"Article 4.

~~"Global TransPark Development Zone~~ North Carolina's Eastern Region.

"§ 158-30. Title.

This Article shall be known as the '~~Global TransPark Development Zone~~ North Carolina's Eastern Region Act'.

"§ 158-31. Purpose.

The purpose of this Article is to allow the following counties, which have the potential to derive direct economic benefits from the North Carolina Global TransPark, to create a special economic development district, to be known as ~~the Global TransPark Development Zone~~ North Carolina's Eastern Region: Carteret, Craven, Duplin, Edgecombe, Greene, Jones, Lenoir, Nash, Onslow, Pamlico, Pitt, Wayne, and Wilson.

The purpose of North Carolina's Eastern Region ~~the Global TransPark Development Zone~~ is to promote the development of the North Carolina Global TransPark and to promote and encourage economic development within the territorial jurisdiction of the ~~Zone~~ Region by fostering or sponsoring development projects to provide land, buildings, facilities, programs, information and data systems, and infrastructure requirements for business and industry in the North Carolina Global TransPark outside of the Global TransPark Complex, and elsewhere in the ~~Zone~~ Region.

"§ 158-32. Definitions.

The following definitions apply in this Article:

- 1 (1) Authority. – The North Carolina Air Cargo Airport Authority created
2 under Chapter 63A of the General Statutes, doing business as the
3 North Carolina Global TransPark Authority.
- 4 (2) Commission. – ~~The Global TransPark~~North Carolina's Eastern Region
5 Development Commission, the governing body of the ~~Global~~
6 ~~TransPark Development Zone~~North Carolina's Eastern Region.
- 7 (3) Global TransPark Complex. – The approximately four to six thousand
8 acre site designated by the Authority for a cargo airport and related
9 facilities in Lenoir County. The site will contain a modern airport large
10 enough to handle the largest aircraft and will be dedicated to the rapid
11 movement of freight and passengers by air with intermodal connecting
12 links with rail, highway, and water transportation facilities.
- 13 (4) North Carolina Global TransPark. – A large area surrounding and
14 including the Global TransPark Complex, which will contain
15 commercial and industrial sites providing attractive locations for
16 business and industry of differing sizes and varying kinds.
- 17 (4a) Region. – North Carolina's Eastern Region, an economic development
18 district created pursuant to this Article.
- 19 (5) Unit of local government. – A local subdivision or unit of government
20 or a local public corporate entity, including any type of special district
21 or public authority.
- 22 (6) ~~Zone. – The Global TransPark Development Zone, an economic~~
23 ~~development district created pursuant to this Article.~~

24 **"§ 158-33. Creation of Global TransPark Development Zone.**

25 (a) Resolution to Create ~~Zone~~Region. – Any three or more of the counties listed
26 in G.S. 158-31 may create the ~~Global TransPark Development Zone~~North Carolina's
27 Eastern Region as provided in this section. In order to create the ~~Zone~~Region the
28 governing bodies of the counties creating the ~~Zone~~Region must first adopt, on or before
29 October 1, 1993, substantially similar resolutions stating their intent to organize the
30 ~~Zone~~Region pursuant to this Article. Each resolution shall include articles of
31 incorporation for the ~~Zone~~Region that shall set forth the following:

- 32 (1) The name of the ~~Zone~~Region, which shall be the '~~Global TransPark~~
33 ~~Development Zone~~North Carolina's Eastern Region.'
- 34 (2) A statement that the ~~Zone~~Region is organized under this Article.
- 35 (3) The names of the organizing counties known to the county adopting
36 the resolution.

37 (b) Public Hearing. – Each resolution may be adopted only after a public hearing
38 on the question, notice of which hearing has been given by publication at least once
39 after July 25, 1993, and not less than 10 days before the date set for the hearing, in a
40 newspaper having a general circulation in the county. The notice shall contain a brief
41 statement of the substance of the proposed resolution, set forth the proposed articles of
42 incorporation of the ~~Zone~~Region, and state the time and place of the public hearing to
43 be held on the resolution. No other publication or notice of the resolution is required.

1 (c) Incorporation of Zone-Region. – Each county that adopts a resolution as
2 provided in this section shall file a certified copy of the resolution with the Secretary of
3 State on or before October 15, 1993, together with proof of publication of notice of the
4 hearing on the resolution. Each resolution must contain the county clerk's attestation
5 that it was adopted by the board of commissioners. If the Secretary of State finds that
6 the resolutions, including the articles of incorporation, conform to the provisions of this
7 Article and that notices of the hearings were properly published, the Secretary of State
8 shall file the resolutions and proofs of publication and shall issue a certificate of
9 incorporation for the Zone-Region under the seal of the State. The Secretary of State
10 shall record the certificate of incorporation in an appropriate book of record in the
11 Secretary of State's office.

12 (d) Effect of Incorporation. – The issuance of the certificate of incorporation by
13 the Secretary of State shall constitute ~~the Global TransPark Development Zone~~North
14 Carolina's Eastern Region a public body and body politic and corporate of the State. The
15 certificate of incorporation shall be conclusive evidence that the Zone-Region has been
16 duly created and established under this Article.

17 **"§ 158-33.1. Addition of counties to Zone-Region.**

18 (a) Authority. – The Zone-Region shall allow an eligible county to participate in
19 the Zone-Region as provided in this section. A county is eligible to participate in the
20 Zone-Region under this section if G.S. 158-31 authorizes the county to create the
21 Zone-Region, but the county failed to adopt a resolution stating its intent to create the
22 Zone-Region by the October 1, 1993, deadline set in G.S. 158-33(b).

23 (b) Application. – The governing body of an eligible county may apply to
24 participate in the Zone-Region under this section by adopting a resolution to participate
25 in the Zone-Region. The resolution must comply with all the requirements of
26 G.S. 158-33(a) and (b) except that it may be adopted at any time before October 1,
27 1994. After adopting the resolution, the county shall file a certified copy of the
28 resolution with the ~~Global TransPark Development~~ Commission.

29 (c) Approval of Application. – Within one month after receipt of an application
30 to join the Zone-Region pursuant to this section, the Commission shall meet to consider
31 the application. At the meeting, the Commission shall approve the application if all of
32 the following conditions are met:

- 33 (1) The applicant is an eligible county and has adopted a resolution that
34 complies with subsection (b) of this section.
- 35 (2) The applicant agrees to pay a fee equal to the initiation fee paid by
36 each of the counties that originally created the Zone-Region.
- 37 (3) The applicant agrees to make monthly payments in lieu of taxes as
38 provided in subsection (f) of this section.

39 (d) Commission Resolution. – After the Commission votes to add a county to the
40 Zone-Region, the Commission shall adopt a resolution that states its intent to add the
41 county and includes amended articles of incorporation for the Zone-Region which set
42 forth the name of the county to be added to the Zone-Region. The Commission shall file
43 certified copies of this resolution with the Secretary of State.

1 (e) Effect of Amendment. – If the Secretary of State finds that the resolution
2 conforms to the requirements of this Article, the Secretary of State shall file the
3 resolution, issue an amended certificate of incorporation for the Zone-Region including
4 the additional county, and record the amended certificate of incorporation. The amended
5 certificate of incorporation for the Zone-Region shall become effective on the first day
6 of the second month after it is issued. Upon the effective date of the amended certificate
7 of incorporation for the Zone-Region, the new county becomes a fully participating
8 member of the Zone-Region. If the Commission has levied a tax in the Zone-Region
9 pursuant to G.S. 158-42, that tax applies within the new county beginning on the date
10 the amended certificate of incorporation becomes effective.

11 (f) Payments in Lieu of Taxes. – A county that participates in the Zone-Region
12 under this section is required to make monthly payments in lieu of taxes to the Zone
13 Region after the expiration of the tax levied pursuant to G.S. 158-42. Each payment
14 shall be equal to the estimated net amount of tax that would have been collected in the
15 county under G.S. 158-42 for that month if the tax were still in effect. Each payment is
16 due within 15 days after the end of the month in which it accrues. The county is
17 required to make monthly payments for a period equal to the number of months that the
18 county was not participating in the Zone-Region while the tax was levied under
19 G.S. 158-42. The requirement that a county make payments in lieu of taxes expires,
20 however, on the effective date of a withdrawal from the Zone-Region by the county. For
21 the purposes of this Article, payments in lieu of taxes shall be considered proceeds of
22 the tax levied in G.S. 158-42 collected in the county making the payment.

23 **"§ 158-34. Territorial jurisdiction of Zone-Region.**

24 The territorial jurisdiction of the Zone-Region created pursuant to this Article shall
25 be coterminous with the boundaries of the counties participating in the Zone-Region.

26 **"§ 158-35. Commission membership, officers, compensation.**

27 (a) Commission Membership. – The governing body of the Zone-Region is the
28 ~~Global TransPark Development-Commission~~. The members of the Commission must be
29 residents of the Zone-Region and shall be appointed as follows:

30 (1) The board of commissioners of each county participating in the Zone
31 Region shall, in consultation with the county's local business
32 community, appoint ~~three voting members, one of whom shall be a~~
33 ~~minority person as defined in G.S. 143-128.2(g)(2) and one of whom~~
34 ~~may be a member of the board of commissioners. one member.~~

35 (2) ~~The Commission may appoint up to seven voting members. By the~~
36 ~~appointment of these members, the Commission shall ensure that the~~
37 ~~voting membership of the Commission includes at least seven women~~
38 ~~and seven members of a racial minority described in~~
39 ~~G.S. 143-128.2(g)(2). The Commission shall appoint the fewest~~
40 ~~number of members necessary to achieve these minimums.~~

41 (3) ~~Four nonvoting members shall be appointed as follows:~~

42 a. ~~One appointed by the Chancellor of East Carolina University to~~
43 ~~represent the University.~~

- 1 b. ~~One appointed by a majority vote of the presidents of the~~
2 ~~community colleges located in the Zone, to represent the~~
3 ~~community colleges.~~
4 e. ~~One appointed by the chair of the State Ports Authority, to~~
5 ~~represent the sea ports of the State.~~
6 d. ~~One member of the board of directors of the Global TransPark~~
7 ~~Foundation, Inc., appointed by that board.~~

8 (4) The General Assembly shall appoint two members to the Commission
9 on the recommendation of the Speaker of the House of Representatives
10 and two members on the recommendation of the President Pro
11 Tempore of the Senate in accordance with G.S. 120-121. The
12 Governor shall appoint two members to the Commission. No two
13 members appointed under this subdivision may be residents of the
14 same county.

15 (b) Terms. – Members of the Commission shall serve for staggered four-year
16 terms. ~~The members appointed by the Chancellor of East Carolina University and by the~~
17 ~~chair of the State Ports Authority shall serve an initial term of two years. The members~~
18 ~~appointed by the community colleges located in the Zone and by the board of directors~~
19 ~~of the Global TransPark Foundation, Inc., shall serve an initial term of four years. Each~~
20 ~~board of commissioners shall designate one of its appointees to serve an initial term of~~
21 ~~four years, one to serve an initial term of two years, and one to serve an initial term to~~
22 ~~be determined at the first meeting of the Commission. One half of the appointees~~
23 ~~designated to serve an undetermined initial term shall serve an initial term of two years,~~
24 ~~as determined by lot at the first meeting of the Commission. The remainder of the~~
25 ~~appointees designated to serve an undetermined initial term shall serve an initial term of~~
26 ~~four years. Initial terms begin upon approval by the Secretary of State of the articles of~~
27 ~~incorporation. Three of the members initially appointed by the boards of county~~
28 ~~commissioners pursuant to subdivision (1) of subsection (a) of this section shall serve~~
29 ~~an initial term of two years. The three members to serve initial terms of two years shall~~
30 ~~be determined by lot at the organizational meeting of the Commission. Each of the~~
31 ~~initial appointees by the General Assembly and Governor pursuant to subdivision (4) of~~
32 ~~subsection (a) of this section shall serve an initial term of two years.~~

33 (c) Removal; Vacancies. – A member of the Commission may be removed with
34 or without cause by the appointing body. In addition, a majority of the Commission
35 members may, by majority vote, remove a member of the Commission if that member
36 does not attend at least three-quarters of the regularly scheduled meetings of the
37 Commission during any consecutive 12-month period of service of that member on the
38 Commission, except that absences excused by the Commission due to serious medical
39 or family circumstances shall not be considered. If the Commission votes to remove a
40 member under this subsection, the vacancy shall be filled in the same manner as the
41 original appointment. Appointments to fill vacancies shall be made for the remainder of
42 the unexpired term by the respective appointing authority. All members shall serve until
43 their successors are appointed and qualified, unless removed from office.

1 (d) Dual Office Holding. – Service on the Commission may be in addition to any
2 other office a person is entitled to hold.

3 (e) Officers. – The Commission shall annually elect from its membership a
4 chairperson and a vice-chairperson, and shall annually elect a secretary and a treasurer.
5 After the Commission has been duly organized and its officers elected as provided in
6 this section, the secretary of the Commission shall certify to the Secretary of State the
7 names and addresses of the officers as well as the address of the principal office of the
8 Commission.

9 (f) Compensation. – The members of the Commission shall receive no
10 compensation other than travel, subsistence, and reasonable per diem expenses
11 determined by the Commission for attendance at Commission meetings and other
12 official ~~Zone-Region~~ functions.

13 **"§ 158-36. Voting.**

14 A majority of the Commission members ~~shall constitute~~ constitutes a quorum for the
15 transaction of business. Each ~~voting~~ member of the Commission shall have one vote.
16 ~~The-Except as otherwise provided in this Article, the~~ Commission may transact business
17 only by majority vote of the ~~voting~~ members present and voting.

18 **"§ 158-37. Powers of the ~~Zone-Region~~.**

19 (a) The general powers of the ~~Zone-Region~~ include the following:

- 20 (1) The powers of a corporate body, including the power to sue and be
21 sued and to adopt and use a common seal.
- 22 (2) To adopt bylaws and resolutions in accordance with this Article for its
23 organization and internal ~~management~~ management, including the
24 power to create and appoint an executive and other committees and to
25 vest authority in the executive and other committees as the
26 Commission deems advisable.
- 27 (3) To employ persons as necessary and to fix their compensation within
28 the limit of available funds.
- 29 (4) With the approval of the unit of local government's chief
30 administrative official, to use officers, employees, agents, and facilities
31 of a unit of local government for purposes and upon terms agreed upon
32 with the unit of local government.
- 33 (5) To make contracts, deeds, leases with or without option to purchase,
34 conveyances, and other instruments, including contracts with the
35 United States, the State of North Carolina, and units of local
36 government.
- 37 (6) To acquire, lease as lessee with or without option to purchase, hold,
38 own, and use any franchise or property or any interest in a franchise or
39 property, within the limit of available funds.
- 40 (7) To transfer, lease as lessor with or without option to purchase,
41 exchange, or otherwise dispose of any franchise or property or any
42 interest in a franchise or property, within the limit of available funds.
- 43 (8) To surrender to the State of North Carolina any property no longer
44 required by the ~~Zone-Region~~.

1 (b) The economic development powers of the ~~Zone~~Region include the
2 following, to the extent appropriate to carry out its purposes as provided in this Article:

- 3 (1) To levy a temporary annual motor vehicle registration tax on vehicles
4 with a tax situs within the ~~Zone~~Region, as provided in G.S. 158-42.
- 5 (2) To acquire, construct, improve, maintain, repair, operate, or administer
6 any component part of a public infrastructure system or facility within
7 the ~~Zone~~Region, directly or by contract with a third party.
- 8 (3) Except as otherwise provided in this Article, to exercise the powers
9 granted to a local government for development by G.S. 158-7.1, except
10 the power to levy a property tax.
- 11 (4) To make grants and loans to support economic development projects
12 authorized by this Article within the ~~Zone~~Region.
- 13 (5) Reserved.
- 14 (6) To contract with units of local government within the ~~Zone~~Region to
15 administer the issuance of permits and approvals required of
16 businesses.
- 17 (7) To provide employee training programs to prepare workers for
18 employment in the ~~Zone~~Region.
- 19 (8) To gather and maintain information of an economic, a business, or a
20 commercial character that would be useful to businesses within the
21 ~~Zone~~Region.
- 22 (9) To prepare specific site studies to assess the appropriateness of any
23 area within the ~~Zone~~Region for use or development by a business and
24 to provide opportunities for businesses to examine sites.
- 25 (10) To exercise the powers of a regional planning commission as provided
26 in G.S. 153A-395 and the powers of a regional economic development
27 commission as provided in Article 2 of this Chapter, but the ~~Zone~~Region
28 does not have the authority to establish land-use zoning in any
29 county.
- 30 (11) To carry out the purposes of a consolidation and governmental study
31 commission as provided in Article 20 of Chapter 153A of the General
32 Statutes.
- 33 (12) To enter in a reasonable manner land, water, or premises within the
34 ~~Zone~~Region to make surveys, soundings, drillings, or examinations.
35 Such an entry shall not constitute trespass, but the ~~Zone~~Region shall
36 be liable for actual damages resulting from such an entry.
- 37 (13) To monitor and encourage the use of utility corridors adjacent to
38 intrastate and interstate highways within the ~~Zone~~Region that are
39 four-lane, divided, limited-access highways.
- 40 (14) To plan for and assist in the extension of natural gas within the
41 ~~Zone~~Region.
- 42 (15) To assist in the placement of an information highway within the
43 ~~Zone~~Region.

1 (16) To do all other things necessary or appropriate to carry out its purposes
2 as provided in this Article.

3 **"§ 158-38. Fiscal accountability.**

4 The Zone-Region is a public authority subject to the provisions of Chapter 159 of the
5 General Statutes.

6 **"§ 158-39. Funds.**

7 The establishment and operation of the Zone-Region are governmental functions and
8 constitute a public purpose. The State of North Carolina and any unit of local
9 government may appropriate or otherwise provide funds to support the establishment
10 and operation of the Zone-Region. The State of North Carolina and any unit of local
11 government may also dedicate, sell, convey, donate, or lease any of their interests in
12 property to the Zone-Region. The Zone-Region may apply for grants from the State of
13 North Carolina, the United States, or any department, agency, or instrumentality of the
14 State or the United States. Any department of State government may allocate to the
15 Zone-Region any funds the use of which is not restricted by law.

16 **"§ 158-40. Tax exemption.**

17 Property owned by the Zone-Region is exempt from taxation. This tax exemption
18 does not apply to the lease, or other arrangement that amounts to a leasehold interest, of
19 Zone-Region property to a private party, or to the income of the lessee, unless the
20 property is leased solely for the purpose of the Zone-Region, in which case the activities
21 of the lessee are considered the activities of the Zone-Region.

22 **"§ 158-41. Withdrawal; termination.**

23 (a) Withdrawal. – A county participating in the Zone-Region may, by resolution,
24 withdraw from the Zone-Region. A resolution withdrawing from the Zone-Region may
25 not become effective before the end of the fiscal year in which it is adopted. Upon
26 adoption of a resolution withdrawing from the Zone-Region, the board of
27 commissioners of the county shall provide a copy of the resolution to the Secretary of
28 State, the Commission, the Authority, and every other county participating in the
29 Zone-Region. Withdrawal does not entitle a county to early distribution of its beneficial
30 interest in Zone-Region assets, but a county that has withdrawn retains its right to any
31 distributions that may be made to participating counties pursuant to subsection (b) of
32 this section on the same basis as if it had not withdrawn. For all other purposes, a
33 county that has withdrawn from the Zone-Region no longer participates in the
34 Zone-Region.

35 (b) Termination. – The Commission may dissolve the Zone-Region and terminate
36 its existence at any time. If the Zone-Region is dissolved and terminated or is otherwise
37 unable to expend the tax proceeds received pursuant to G.S. 158-42, the Commission
38 shall liquidate the assets of the Zone-Region to the extent possible and distribute all
39 Zone-Region assets to the counties of the Zone-Region in proportion to the amount of
40 tax collected in each county. The assets of the Zone-Region that exceed the amount of
41 tax collected by the counties and are attributable to an appropriation made to the Zone
42 Region by the General Assembly shall revert to the General Fund and may not be
43 distributed to the counties. A county may use funds distributed to it pursuant to this
44 subsection only for economic development projects and infrastructure construction

1 projects. In calculating the amount to be refunded to each county, the ~~Zone-Region~~ shall
2 first allocate amounts loaned and not yet repaid as follows:

3 (1) Amounts loaned for a project in a county will be allocated to that
4 county to the extent of its beneficial ownership of the principal of the
5 trust account created under G.S. 158-42 and the county will become
6 the owner of the right to repayment of the amount loaned to the extent
7 of its beneficial ownership of the principal of the trust account created
8 under G.S. 158-42.

9 (2) Amounts not allocated pursuant to subdivision (1) shall be allocated
10 among the remaining counties in proportion to the amount of tax
11 collected in each county under G.S. 158-42, and the remaining
12 counties shall become the owners of the right to repayment of the
13 amounts loaned in proportion to the amount of tax collected in each
14 county under G.S. 158-42.

15 Notes and other instruments representing the right to repayment shall, upon
16 dissolution of the ~~Zone-Region~~, be held and collected by the State Treasurer, who shall
17 disburse the collections to the counties as provided in this subsection.

18 The Commission shall distribute those assets that it is unable to liquidate among the
19 ~~Zone-Region~~ counties insofar as practical on an equitable basis, as determined by the
20 Commission. Upon termination, the State of North Carolina shall succeed to any
21 remaining rights, obligations, and liabilities of the ~~Zone-Region~~ not assigned to the
22 ~~Zone-Region~~ counties.

23 **"§ 158-42. Temporary ~~Zone-Region~~ vehicle registration tax.**

24 (a) Levy. – The Commission may, by resolution, after not less than 10 days'
25 public notice and a public hearing, levy an annual registration tax of five dollars (\$5.00)
26 on motor vehicles with a tax situs within the ~~Zone-Region~~. A tax levied under this
27 section is in addition to any other motor vehicle license or registration tax.

28 The tax applies to vehicles required to pay a tax under G.S. 20-88, except trailers,
29 and G.S. 20-87(1), (2), (4), (5), (6), and (7). The tax situs of a motor vehicle for the
30 purpose of this section is its ad valorem tax situs. If the vehicle is not subject to ad
31 valorem tax, its tax situs for the purpose of this section is the ad valorem tax situs it
32 would have if it were subject to ad valorem tax.

33 (b) Effective Date; Expiration. – The effective date of a tax levied under this
34 section shall be no earlier than July 1, 1994. The effective date of a tax levied under this
35 section must be the first day of a calendar month set by the Commission in the
36 resolution levying the tax, and shall be no earlier than the first day of the third calendar
37 month after the adoption of the resolution.

38 The authority of the ~~Zone-Region~~ to levy a tax under this section expires five years
39 after the effective date of the first tax levied under this section. A tax levied under this
40 section expires when the ~~Zone's-Region's~~ authority to levy the tax expires. The
41 expiration of the tax does not affect the rights or liabilities of the ~~Zone-Region~~, a
42 taxpayer, or another person arising under this section before the expiration of the tax;
43 nor does it affect the right to any refund or credit of a tax that would otherwise have
44 been available under this section before the expiration of the tax.

1 (c) Repeal of Tax. – The Commission may, by resolution, repeal a tax levied
2 under this section. The effective date of the repeal must be the first day of a calendar
3 month set by the Commission in the resolution repealing the tax, and shall be no earlier
4 than the first day of the third calendar month after the adoption of the resolution. Repeal
5 of the tax does not affect the date the Zone's-Region's authority to levy the tax expires
6 under subsection (b) of this section. Repeal of the tax does not affect the rights or
7 liabilities of the Zone,Region, a taxpayer, or another person arising under this section
8 before the effective date of the repeal; nor does it affect the right to any refund or credit
9 of a tax that would otherwise have been available under this section before the effective
10 date of the repeal.

11 (d) Administration. – The Division of Motor Vehicles of the Department of
12 Transportation shall collect and administer a tax levied under this section. Immediately
13 after adopting a resolution levying or repealing a tax under this section, the Commission
14 shall deliver a certified copy of the resolution to the Division of Motor Vehicles. If the
15 Secretary of State issues an amended certificate of incorporation adding a county to the
16 Zone-Region pursuant to G.S. 158-33.1, the Commission shall deliver a certified copy
17 of the amended certificate immediately to the Division of Motor Vehicles. If the
18 Commission receives a resolution from a county withdrawing from the Zone-Region
19 pursuant to G.S. 158-41, the Commission shall deliver a certified copy of the resolution
20 immediately to the Division of Motor Vehicles.

21 A tax levied under this section is due at the same time and subject to the same
22 restrictions as the tax levied in G.S. 20-87 and G.S. 20-88. The tax shall be prorated in
23 accordance with G.S. 20-95. The Commissioner of Motor Vehicles may adopt rules
24 necessary to administer the tax.

25 (e) Distribution of Tax Proceeds. – The Commissioner of Motor Vehicles shall
26 credit the proceeds of the tax levied under this section to a special account and distribute
27 the net proceeds on a quarterly basis to the Zone,Region. Interest on the special account
28 shall be credited quarterly to the Highway Fund to reimburse the Division of Motor
29 Vehicles for the cost of collecting and administering the tax. The Commissioner of
30 Motor Vehicles shall provide the Zone-Region with an accounting of the percentage of
31 proceeds collected in each county of the Zone-Region in each quarter.

32 (f) Use of Tax Proceeds. – The Zone-Region may use the proceeds of the tax
33 levied under this section only for economic development projects and infrastructure
34 construction projects that are within the territorial jurisdiction of the Zone-Region but
35 not within the Global TransPark Complex. The Zone-Region shall use the tax proceeds
36 only for public purposes authorized by this Article.

37 The Zone-Region shall place fifteen percent (15%) of the tax proceeds distributed to
38 it under this section in a general funds account and the remaining eighty-five percent
39 (85%) in an interest-bearing trust account. Each county shall be the beneficial owner of
40 a share of the principal of the trust account in proportion to the amount of tax proceeds
41 collected in that county.

42 The Zone-Region may not disburse the principal of the trust account except pursuant
43 to a contract that provides that, within a reasonable time not to exceed 20 years, the
44 Zone-Region will recover or be repaid the amount disbursed. The Zone-Region may, in

1 its discretion, set reasonable terms and conditions for the repayment of the principal
2 disbursed, including provisions for securing the debt and the payment of interest."

3 **SECTION 2.** G.S. 143B-437.21(6) reads as rewritten:

4 "**§ 143B-437.21. Definitions.**

5 The following definitions apply in this Part:

6 ...

7 (6) **Regional partnership.** – Any of the following:

- 8 a. The Western North Carolina Regional Economic Development
9 Commission created in G.S. 158-8.1.
10 b. The Northeastern North Carolina Regional Economic
11 Development Commission created in G.S. 158-8.2.
12 c. The Southeastern North Carolina Regional Economic
13 Development Commission created in G.S. 158-8.3.
14 d. The ~~Global TransPark~~ North Carolina's Eastern Region
15 Development Commission created in G.S. 158-33.
16 e. The Carolinas Partnership, Inc.
17 f. The Research Triangle Regional Partnership.
18 g. The Piedmont Triad Partnership."

19 **SECTION 3.** G.S. 158-12.1 reads as rewritten:

20 "**§ 158-12.1. Commission funds secured.**

21 The Western North Carolina Regional Economic Development Commission,
22 Research Triangle Regional Commission, Southeastern North Carolina Regional
23 Economic Development Commission, Piedmont Triad Partnership, Northeastern North
24 Carolina Regional Economic Development Commission, ~~Global TransPark~~ North
25 Carolina's Eastern Region Development Commission, and Carolinas Partnership, Inc.,
26 may deposit money at interest in any bank, savings and loan association, or trust
27 company in this State in the form of savings accounts, certificates of deposit, or such
28 other forms of time deposits as may be approved for county governments. Investment
29 deposits and money deposited in an official depository or deposited at interest shall be
30 secured in the manner prescribed in G.S. 159-31(b). When deposits are secured in
31 accordance with this section, no public officer or employee may be held liable for any
32 losses sustained by an institution because of the default or insolvency of the depository.
33 This section applies to the regional economic development commissions listed in this
34 section only for as long as the commissions are receiving State funds."

35 **SECTION 4.** This act is effective when it becomes law. New members of
36 North Carolina's Eastern Region Development Commission must be appointed on or
37 before July 1, 2005. Existing members of the Global TransPark Development
38 Commission shall retain office through June 30, 2005.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 606*

S606-ARU-47 [v.1]

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

Page 1 of 1

Date _____ .2005

Comm. Sub. [YES]
Amends Title [NO]
S606-CSRU-63

Representative _____

- 1 moves to amend the bill on page 2, lines 2 and 3, by rewriting the lines to read:
- 2 "(1) Authority. – The North Carolina Air-Cargo-Airport-Global TransPark
- 3 Authority created under Chapter 63A of the General Statutes, ~~doing~~
- 4 ~~business as the North Carolina Global TransPark Authority Statutes."~~
- 5

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 606*

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

S606-ARU-47 [v.1]

Page 1 of 1

Date _____, 2005

Comm. Sub. [YES]
Amends Title [NO]
S606-CSRU-63

Representative _____

- 1 moves to amend the bill on page 2, lines 2 and 3, by rewriting the lines to read:
- 2 "(1) Authority. – The North Carolina Air Cargo Airport Global TransPark
- 3 Authority created under Chapter 63A of the General Statutes, doing
- 4 business as the North Carolina Global TransPark Authority Statutes."
- 5

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



SENATE BILL 606: Amend Eastern Region Board

BILL ANALYSIS

Committee:	House Commerce	Date:	July 25, 2005
Introduced by:	Sen. Jenkins	Summary by:	Walker Reagan Committee Counsel
Version:	PCS to Second Edition S606-CSRU-63		

SUMMARY: *The Proposed House Committee Substitute for Senate Bill 606 would update the statutes to reflect the change in name of the Global TransPark Development Zone and the Global TransPark Development Commission to North Carolina's Eastern Region and North Carolina's Eastern Region Development Commission respectively, and to clarify the authority of the Commission to promote travel and tourism, and natural resource-based attractions, within the region.*

CURRENT LAW: Currently the Global TransPark Development Zone is governed by the Global TransPark Development Commission. The Zone consists of 13 counties, namely Carteret, Craven, Duplin, Edgecombe, Greene, Jones, Lenoir, Nash, Onslow, Pamlico, Pitt, Wayne, and Wilson. The Commission is made up of 3 appointees from each of the counties' county commissioners, seven members appointed by the Commission, and four non-voting representing East Carolina University, the area's community colleges, the State Ports and the Global TransPark Foundation.

BILL ANALYSIS: Senate Bill 606 changes the name of the Global TransPark Development Zone to North Carolina's Eastern Region and changes the Global TransPark Development Commission to North Carolina's Eastern Region Development Commission.

The change to G.S. 158-37(b)(5) (found on page 7, lines 1 and 2), clarifies that the Board has the authority to promote travel and tourism, and natural resource-based attractions, in the Region.

EFFECTIVE DATE: The bill becomes effective October 1, 2005.

S0606e2-SMRU-CSRU-63

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

D

SENATE BILL 606*
Corrected Copy 3/17/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S606-CSRU-63 [v.3]

7/25/2005 3:45:40 PM

Short Title: Amend Eastern Region Board.

(Public)

Sponsors:

Referred to:

March 16, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE POWERS OF THE GLOBAL TRANSPARK
3 DEVELOPMENT COMMISSION AND TO CHANGE THE NAME OF THE
4 GLOBAL TRANSPARK DEVELOPMENT ZONE TO NORTH CAROLINA'S
5 EASTERN REGION.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. Article 4 of Chapter 158 of the General Statutes reads as
8 rewritten:

9 "Article 4.

10 "~~Global TransPark Development Zone~~North Carolina's Eastern Region.

11 "§ 158-30. Title.

12 This Article shall be known as the '~~Global TransPark Development Zone~~North
13 Carolina's Eastern Region Act'.

14 "§ 158-31. Purpose.

15 The purpose of this Article is to allow the following counties, which have the
16 potential to derive direct economic benefits from the North Carolina Global TransPark,
17 to create a special economic development district, to be known as the ~~Global TransPark~~
18 ~~Development Zone~~North Carolina's Eastern Region: Carteret, Craven, Duplin,
19 Edgecombe, Greene, Jones, Lenoir, Nash, Onslow, Pamlico, Pitt, Wayne, and Wilson.

20 The purpose of North Carolina's Eastern Region ~~the Global TransPark Development~~
21 ~~Zone~~ is to promote the development of the North Carolina Global TransPark and to
22 promote and encourage economic development within the territorial jurisdiction of the
23 ~~Zone~~ Region by fostering or sponsoring development projects to provide land,
24 buildings, facilities, programs, information and data systems, and infrastructure
25 requirements for business and industry in the North Carolina Global TransPark outside
26 of the Global TransPark Complex, and elsewhere in the ~~Zone~~ Region.

27 "§ 158-32. Definitions.

1 The following definitions apply in this Article:

- 2 (1) Authority. – The North Carolina Air Cargo Airport Authority created
3 under Chapter 63A of the General Statutes, doing business as the
4 North Carolina Global TransPark Authority.
- 5 (2) Commission. – ~~The Global TransPark~~North Carolina's Eastern Region
6 Development Commission, the governing body of ~~the Global~~
7 ~~TransPark Development Zone~~North Carolina's Eastern Region.
- 8 (3) Global TransPark Complex. – The approximately four to six thousand
9 acre site designated by the Authority for a cargo airport and related
10 facilities in Lenoir County. The site will contain a modern airport large
11 enough to handle the largest aircraft and will be dedicated to the rapid
12 movement of freight and passengers by air with intermodal connecting
13 links with rail, highway, and water transportation facilities.
- 14 (4) North Carolina Global TransPark. – A large area surrounding and
15 including the Global TransPark Complex, which will contain
16 commercial and industrial sites providing attractive locations for
17 business and industry of differing sizes and varying kinds.
- 18 (4a) Region. – North Carolina's Eastern Region, an economic development
19 district created pursuant to this Article.
- 20 (5) Unit of local government. – A local subdivision or unit of government
21 or a local public corporate entity, including any type of special district
22 or public authority.
- 23 (6) ~~Zone~~. – ~~The Global TransPark Development Zone~~, an economic
24 ~~development district created pursuant to this Article~~.

25 **§ 158-33. Creation of Global TransPark Development Zone.**

26 (a) Resolution to Create ~~Zone~~Region. – Any three or more of the counties listed
27 in G.S. 158-31 may create ~~the Global TransPark Development Zone~~North Carolina's
28 Eastern Region as provided in this section. In order to create the ~~Zone~~Region the
29 governing bodies of the counties creating the ~~Zone~~Region must first adopt, on or before
30 October 1, 1993, substantially similar resolutions stating their intent to organize the
31 ~~Zone~~Region pursuant to this Article. Each resolution shall include articles of
32 incorporation for the ~~Zone~~Region that shall set forth the following:

- 33 (1) The name of the ~~Zone~~Region, which shall be ~~the 'Global TransPark~~
34 ~~Development Zone'~~'North Carolina's Eastern Region.'
- 35 (2) A statement that the ~~Zone~~Region is organized under this Article.
- 36 (3) The names of the organizing counties known to the county adopting
37 the resolution.

38 (b) Public Hearing. – Each resolution may be adopted only after a public hearing
39 on the question, notice of which hearing has been given by publication at least once
40 after July 25, 1993, and not less than 10 days before the date set for the hearing, in a
41 newspaper having a general circulation in the county. The notice shall contain a brief
42 statement of the substance of the proposed resolution, set forth the proposed articles of
43 incorporation of the ~~Zone~~Region, and state the time and place of the public hearing to
44 be held on the resolution. No other publication or notice of the resolution is required.

1 (c) Incorporation of Zone-Region. – Each county that adopts a resolution as
2 provided in this section shall file a certified copy of the resolution with the Secretary of
3 State on or before October 15, 1993, together with proof of publication of notice of the
4 hearing on the resolution. Each resolution must contain the county clerk's attestation
5 that it was adopted by the board of commissioners. If the Secretary of State finds that
6 the resolutions, including the articles of incorporation, conform to the provisions of this
7 Article and that notices of the hearings were properly published, the Secretary of State
8 shall file the resolutions and proofs of publication and shall issue a certificate of
9 incorporation for the Zone-Region under the seal of the State. The Secretary of State
10 shall record the certificate of incorporation in an appropriate book of record in the
11 Secretary of State's office.

12 (d) Effect of Incorporation. – The issuance of the certificate of incorporation by
13 the Secretary of State shall constitute ~~the Global TransPark Development Zone~~North
14 Carolina's Eastern Region a public body and body politic and corporate of the State. The
15 certificate of incorporation shall be conclusive evidence that the Zone-Region has been
16 duly created and established under this Article.

17 **"§ 158-33.1. Addition of counties to Zone-Region.**

18 (a) Authority. – The Zone-Region shall allow an eligible county to participate in
19 the Zone-Region as provided in this section. A county is eligible to participate in the
20 Zone-Region under this section if G.S. 158-31 authorizes the county to create the
21 Zone-Region, but the county failed to adopt a resolution stating its intent to create the
22 Zone-Region by the October 1, 1993, deadline set in G.S. 158-33(b).

23 (b) Application. – The governing body of an eligible county may apply to
24 participate in the Zone-Region under this section by adopting a resolution to participate
25 in the Zone-Region. The resolution must comply with all the requirements of
26 G.S. 158-33(a) and (b) except that it may be adopted at any time before October 1,
27 1994. After adopting the resolution, the county shall file a certified copy of the
28 resolution with the ~~Global TransPark Development~~ Commission.

29 (c) Approval of Application. – Within one month after receipt of an application
30 to join the Zone-Region pursuant to this section, the Commission shall meet to consider
31 the application. At the meeting, the Commission shall approve the application if all of
32 the following conditions are met:

- 33 (1) The applicant is an eligible county and has adopted a resolution that
34 complies with subsection (b) of this section.
- 35 (2) The applicant agrees to pay a fee equal to the initiation fee paid by
36 each of the counties that originally created the Zone-Region.
- 37 (3) The applicant agrees to make monthly payments in lieu of taxes as
38 provided in subsection (f) of this section.

39 (d) Commission Resolution. – After the Commission votes to add a county to the
40 Zone-Region, the Commission shall adopt a resolution that states its intent to add the
41 county and includes amended articles of incorporation for the Zone-Region which set
42 forth the name of the county to be added to the Zone-Region. The Commission shall file
43 certified copies of this resolution with the Secretary of State.

1 (e) Effect of Amendment. – If the Secretary of State finds that the resolution
2 conforms to the requirements of this Article, the Secretary of State shall file the
3 resolution, issue an amended certificate of incorporation for the ~~Zone-Region~~ including
4 the additional county, and record the amended certificate of incorporation. The amended
5 certificate of incorporation for the ~~Zone-Region~~ shall become effective on the first day
6 of the second month after it is issued. Upon the effective date of the amended certificate
7 of incorporation for the ~~Zone-Region~~, the new county becomes a fully participating
8 member of the ~~Zone-Region~~. If the Commission has levied a tax in the ~~Zone-Region~~
9 pursuant to G.S. 158-42, that tax applies within the new county beginning on the date
10 the amended certificate of incorporation becomes effective.

11 (f) Payments in Lieu of Taxes. – A county that participates in the ~~Zone-Region~~
12 under this section is required to make monthly payments in lieu of taxes to the ~~Zone~~
13 ~~Region~~ after the expiration of the tax levied pursuant to G.S. 158-42. Each payment
14 shall be equal to the estimated net amount of tax that would have been collected in the
15 county under G.S. 158-42 for that month if the tax were still in effect. Each payment is
16 due within 15 days after the end of the month in which it accrues. The county is
17 required to make monthly payments for a period equal to the number of months that the
18 county was not participating in the ~~Zone-Region~~ while the tax was levied under
19 G.S. 158-42. The requirement that a county make payments in lieu of taxes expires,
20 however, on the effective date of a withdrawal from the ~~Zone-Region~~ by the county. For
21 the purposes of this Article, payments in lieu of taxes shall be considered proceeds of
22 the tax levied in G.S. 158-42 collected in the county making the payment.

23 **"§ 158-34. Territorial jurisdiction of ~~Zone-Region~~.**

24 The territorial jurisdiction of the ~~Zone-Region~~ created pursuant to this Article shall
25 be coterminous with the boundaries of the counties participating in the ~~Zone-Region~~.

26 **"§ 158-35. Commission membership, officers, compensation.**

27 (a) Commission Membership. – The governing body of the ~~Zone-Region~~ is the
28 ~~Global TransPark Development~~ Commission. The members of the Commission must be
29 residents of the ~~Zone-Region~~ and shall be appointed as follows:

- 30 (1) The board of commissioners of each county participating in the ~~Zone~~
31 ~~Region~~ shall appoint three voting members, one of whom shall be a
32 minority person as defined in G.S. 143 128.2(g)(2) and one of whom
33 may be a member of the board of commissioners.
- 34 (2) The Commission may appoint up to seven voting members. By the
35 appointment of these members, the Commission shall ensure that the
36 voting membership of the Commission includes at least seven women
37 and seven members of a racial minority described in G.S. 143
38 128.2(g)(2). The Commission shall appoint the fewest number of
39 members necessary to achieve these minimums.
- 40 (3) Four nonvoting members shall be appointed as follows:
 - 41 a. One appointed by the Chancellor of East Carolina University to
42 represent the University.

- 1 b. One appointed by a majority vote of the presidents of the
2 community colleges located in the Zone, to represent the
3 community colleges.
4 c. One appointed by the chair of the State Ports Authority, to
5 represent the sea ports of the State.
6 d. One member of the board of directors of the Global TransPark
7 Foundation, Inc., appointed by that board.

8 (b) Terms. – Members of the Commission shall serve for staggered four-year
9 terms. The members appointed by the Chancellor of East Carolina University and by the
10 chair of the State Ports Authority shall serve an initial term of two years. The members
11 appointed by the community colleges located in the ~~Zone~~Region and by the board of
12 directors of the Global TransPark Foundation, Inc., shall serve an initial term of four
13 years. Each board of commissioners shall designate one of its appointees to serve an
14 initial term of four years, one to serve an initial term of two years, and one to serve an
15 initial term to be determined at the first meeting of the Commission. One half of the
16 appointees designated to serve an undetermined initial term shall serve an initial term of
17 two years, as determined by lot at the first meeting of the Commission. The remainder
18 of the appointees designated to serve an undetermined initial term shall serve an initial
19 term of four years. Initial terms begin upon approval by the Secretary of State of the
20 articles of incorporation.

21 (c) Removal; Vacancies. – A member of the Commission may be removed with
22 or without cause by the appointing body. In addition, a majority of the Commission
23 members may, by majority vote, remove a member of the Commission if that member
24 does not attend at least three-quarters of the regularly scheduled meetings of the
25 Commission during any consecutive 12-month period of service of that member on the
26 Commission, except that absences excused by the Commission due to serious medical
27 or family circumstances shall not be considered. If the Commission votes to remove a
28 member under this subsection, the vacancy shall be filled in the same manner as the
29 original appointment. Appointments to fill vacancies shall be made for the remainder of
30 the unexpired term by the respective appointing authority. All members shall serve until
31 their successors are appointed and qualified, unless removed from office.

32 (d) Dual Office Holding. – Service on the Commission may be in addition to any
33 other office a person is entitled to hold.

34 (e) Officers. – The Commission shall annually elect from its membership a
35 chairperson and a vice-chairperson, and shall annually elect a secretary and a treasurer.
36 After the Commission has been duly organized and its officers elected as provided in
37 this section, the secretary of the Commission shall certify to the Secretary of State the
38 names and addresses of the officers as well as the address of the principal office of the
39 Commission.

40 (f) Compensation. – The members of the Commission shall receive no
41 compensation other than travel, subsistence, and reasonable per diem expenses
42 determined by the Commission for attendance at Commission meetings and other
43 official ~~Zone~~Region functions.

44 "§ 158-36. Voting.

1 A majority of the Commission members shall ~~constitute~~constitutes a quorum for the
2 transaction of business. Each voting member of the Commission shall have one vote.
3 ~~The~~ Except as otherwise provided in this Article, the Commission may transact business
4 only by majority vote of the voting members present and voting.

5 "**§ 158-37. Powers of the ~~Zone~~Region.**

6 (a) The general powers of the ~~Zone~~Region include the following:

- 7 (1) The powers of a corporate body, including the power to sue and be
8 sued and to adopt and use a common seal.
- 9 (2) To adopt bylaws and resolutions in accordance with this Article for its
10 organization and internal ~~management~~management, including the
11 power to create and appoint an executive and other committees and to
12 vest authority in the executive and other committees, as the
13 Commission deems advisable.
- 14 (3) To employ persons as necessary and to fix their compensation within
15 the limit of available funds.
- 16 (4) With the approval of the unit of local government's chief
17 administrative official, to use officers, employees, agents, and facilities
18 of a unit of local government for purposes and upon terms agreed upon
19 with the unit of local government.
- 20 (5) To make contracts, deeds, leases with or without option to purchase,
21 conveyances, and other instruments, including contracts with the
22 United States, the State of North Carolina, and units of local
23 government.
- 24 (6) To acquire, lease as lessee with or without option to purchase, hold,
25 own, and use any franchise or property or any interest in a franchise or
26 property, within the limit of available funds.
- 27 (7) To transfer, lease as lessor with or without option to purchase,
28 exchange, or otherwise dispose of any franchise or property or any
29 interest in a franchise or property, within the limit of available funds.
- 30 (8) To surrender to the State of North Carolina any property no longer
31 required by the ~~Zone~~Region.

32 (b) The economic development powers of the ~~Zone~~Region include the
33 following, to the extent appropriate to carry out its purposes as provided in this Article:

- 34 (1) To levy a temporary annual motor vehicle registration tax on vehicles
35 with a tax situs within the ~~Zone~~Region, as provided in G.S. 158-42.
- 36 (2) To acquire, construct, improve, maintain, repair, operate, or administer
37 any component part of a public infrastructure system or facility within
38 the ~~Zone~~Region, directly or by contract with a third party.
- 39 (3) Except as otherwise provided in this Article, to exercise the powers
40 granted to a local government for development by G.S. 158-7.1, except
41 the power to levy a property tax.
- 42 (4) To make grants and loans to support economic development projects
43 authorized by this Article within the ~~Zone~~Region.

- 1 (5) ~~Reserved.~~ To promote travel and tourism, and natural resource-based
2 attractions, within the Region.
- 3 (6) To contract with units of local government within the ~~Zone~~-Region to
4 administer the issuance of permits and approvals required of
5 businesses.
- 6 (7) To provide employee training programs to prepare workers for
7 employment in the ~~Zone~~-Region.
- 8 (8) To gather and maintain information of an economic, a business, or a
9 commercial character that would be useful to businesses within the
10 ~~Zone~~-Region.
- 11 (9) To prepare specific site studies to assess the appropriateness of any
12 area within the ~~Zone~~-Region for use or development by a business and
13 to provide opportunities for businesses to examine sites.
- 14 (10) To exercise the powers of a regional planning commission as provided
15 in G.S. 153A-395 and the powers of a regional economic development
16 commission as provided in Article 2 of this Chapter, but the ~~Zone~~
17 Region does not have the authority to establish land-use zoning in any
18 county.
- 19 (11) To carry out the purposes of a consolidation and governmental study
20 commission as provided in Article 20 of Chapter 153A of the General
21 Statutes.
- 22 (12) To enter in a reasonable manner land, water, or premises within the
23 ~~Zone~~-Region to make surveys, soundings, drillings, or examinations.
24 Such an entry shall not constitute trespass, but the ~~Zone~~-Region shall
25 be liable for actual damages resulting from such an entry.
- 26 (13) To monitor and encourage the use of utility corridors adjacent to
27 intrastate and interstate highways within the ~~Zone~~-Region that are
28 four-lane, divided, limited-access highways.
- 29 (14) To plan for and assist in the extension of natural gas within the
30 ~~Zone~~-Region.
- 31 (15) To assist in the placement of an information highway within the
32 ~~Zone~~-Region.
- 33 (16) To do all other things necessary or appropriate to carry out its purposes
34 as provided in this Article.

35 **"§ 158-38. Fiscal accountability.**

36 The ~~Zone~~-Region is a public authority subject to the provisions of Chapter 159 of the
37 General Statutes.

38 **"§ 158-39. Funds.**

39 The establishment and operation of the ~~Zone~~-Region are governmental functions and
40 constitute a public purpose. The State of North Carolina and any unit of local
41 government may appropriate or otherwise provide funds to support the establishment
42 and operation of the ~~Zone~~-Region. The State of North Carolina and any unit of local
43 government may also dedicate, sell, convey, donate, or lease any of their interests in
44 property to the ~~Zone~~-Region. The ~~Zone~~-Region may apply for grants from the State of

1 North Carolina, the United States, or any department, agency, or instrumentality of the
2 State or the United States. Any department of State government may allocate to the
3 Zone-Region any funds the use of which is not restricted by law.

4 **"§ 158-40. Tax exemption.**

5 Property owned by the Zone-Region is exempt from taxation. This tax exemption
6 does not apply to the lease, or other arrangement that amounts to a leasehold interest, of
7 Zone-Region property to a private party, or to the income of the lessee, unless the
8 property is leased solely for the purpose of the Zone-Region, in which case the activities
9 of the lessee are considered the activities of the Zone-Region.

10 **"§ 158-41. Withdrawal; termination.**

11 (a) Withdrawal. – A county participating in the Zone-Region may, by resolution,
12 withdraw from the Zone-Region. A resolution withdrawing from the Zone-Region may
13 not become effective before the end of the fiscal year in which it is adopted. Upon
14 adoption of a resolution withdrawing from the Zone-Region, the board of
15 commissioners of the county shall provide a copy of the resolution to the Secretary of
16 State, the Commission, the Authority, and every other county participating in the
17 Zone-Region. Withdrawal does not entitle a county to early distribution of its beneficial
18 interest in Zone-Region assets, but a county that has withdrawn retains its right to any
19 distributions that may be made to participating counties pursuant to subsection (b) of
20 this section on the same basis as if it had not withdrawn. For all other purposes, a
21 county that has withdrawn from the Zone-Region no longer participates in the
22 Zone-Region.

23 (b) Termination. – The Commission may dissolve the Zone-Region and terminate
24 its existence at any time. If the Zone-Region is dissolved and terminated or is otherwise
25 unable to expend the tax proceeds received pursuant to G.S. 158-42, the Commission
26 shall liquidate the assets of the Zone-Region to the extent possible and distribute all
27 Zone-Region assets to the counties of the Zone-Region in proportion to the amount of
28 tax collected in each county. The assets of the Zone-Region that exceed the amount of
29 tax collected by the counties and are attributable to an appropriation made to the Zone
30 Region by the General Assembly shall revert to the General Fund and may not be
31 distributed to the counties. A county may use funds distributed to it pursuant to this
32 subsection only for economic development projects and infrastructure construction
33 projects. In calculating the amount to be refunded to each county, the Zone-Region shall
34 first allocate amounts loaned and not yet repaid as follows:

35 (1) Amounts loaned for a project in a county will be allocated to that
36 county to the extent of its beneficial ownership of the principal of the
37 trust account created under G.S. 158-42 and the county will become
38 the owner of the right to repayment of the amount loaned to the extent
39 of its beneficial ownership of the principal of the trust account created
40 under G.S. 158-42.

41 (2) Amounts not allocated pursuant to subdivision (1) shall be allocated
42 among the remaining counties in proportion to the amount of tax
43 collected in each county under G.S. 158-42, and the remaining
44 counties shall become the owners of the right to repayment of the

1 amounts loaned in proportion to the amount of tax collected in each
2 county under G.S. 158-42.

3 Notes and other instruments representing the right to repayment shall, upon
4 dissolution of the ~~Zone~~Region, be held and collected by the State Treasurer, who shall
5 disburse the collections to the counties as provided in this subsection.

6 The Commission shall distribute those assets that it is unable to liquidate among the
7 ~~Zone~~Region counties insofar as practical on an equitable basis, as determined by the
8 Commission. Upon termination, the State of North Carolina shall succeed to any
9 remaining rights, obligations, and liabilities of the ~~Zone~~Region not assigned to the
10 ~~Zone~~Region counties.

11 **"§ 158-42. Temporary ~~Zone~~Region vehicle registration tax.**

12 (a) Levy. – The Commission may, by resolution, after not less than 10 days'
13 public notice and a public hearing, levy an annual registration tax of five dollars (\$5.00)
14 on motor vehicles with a tax situs within the ~~Zone~~Region. A tax levied under this
15 section is in addition to any other motor vehicle license or registration tax.

16 The tax applies to vehicles required to pay a tax under G.S. 20-88, except trailers,
17 and G.S. 20-87(1), (2), (4), (5), (6), and (7). The tax situs of a motor vehicle for the
18 purpose of this section is its ad valorem tax situs. If the vehicle is not subject to ad
19 valorem tax, its tax situs for the purpose of this section is the ad valorem tax situs it
20 would have if it were subject to ad valorem tax.

21 (b) Effective Date; Expiration. – The effective date of a tax levied under this
22 section shall be no earlier than July 1, 1994. The effective date of a tax levied under this
23 section must be the first day of a calendar month set by the Commission in the
24 resolution levying the tax, and shall be no earlier than the first day of the third calendar
25 month after the adoption of the resolution.

26 The authority of the ~~Zone~~Region to levy a tax under this section expires five years
27 after the effective date of the first tax levied under this section. A tax levied under this
28 section expires when the ~~Zone's~~Region's authority to levy the tax expires. The
29 expiration of the tax does not affect the rights or liabilities of the ~~Zone~~Region, a
30 taxpayer, or another person arising under this section before the expiration of the tax;
31 nor does it affect the right to any refund or credit of a tax that would otherwise have
32 been available under this section before the expiration of the tax.

33 (c) Repeal of Tax. – The Commission may, by resolution, repeal a tax levied
34 under this section. The effective date of the repeal must be the first day of a calendar
35 month set by the Commission in the resolution repealing the tax, and shall be no earlier
36 than the first day of the third calendar month after the adoption of the resolution. Repeal
37 of the tax does not affect the date the ~~Zone's~~Region's authority to levy the tax expires
38 under subsection (b) of this section. Repeal of the tax does not affect the rights or
39 liabilities of the ~~Zone~~Region, a taxpayer, or another person arising under this section
40 before the effective date of the repeal; nor does it affect the right to any refund or credit
41 of a tax that would otherwise have been available under this section before the effective
42 date of the repeal.

43 (d) Administration. – The Division of Motor Vehicles of the Department of
44 Transportation shall collect and administer a tax levied under this section. Immediately

1 after adopting a resolution levying or repealing a tax under this section, the Commission
2 shall deliver a certified copy of the resolution to the Division of Motor Vehicles. If the
3 Secretary of State issues an amended certificate of incorporation adding a county to the
4 ~~Zone-Region~~ pursuant to G.S. 158-33.1, the Commission shall deliver a certified copy
5 of the amended certificate immediately to the Division of Motor Vehicles. If the
6 Commission receives a resolution from a county withdrawing from the ~~Zone-Region~~
7 pursuant to G.S. 158-41, the Commission shall deliver a certified copy of the resolution
8 immediately to the Division of Motor Vehicles.

9 A tax levied under this section is due at the same time and subject to the same
10 restrictions as the tax levied in G.S. 20-87 and G.S. 20-88. The tax shall be prorated in
11 accordance with G.S. 20-95. The Commissioner of Motor Vehicles may adopt rules
12 necessary to administer the tax.

13 (e) Distribution of Tax Proceeds. – The Commissioner of Motor Vehicles shall
14 credit the proceeds of the tax levied under this section to a special account and distribute
15 the net proceeds on a quarterly basis to the ~~Zone-Region~~. Interest on the special account
16 shall be credited quarterly to the Highway Fund to reimburse the Division of Motor
17 Vehicles for the cost of collecting and administering the tax. The Commissioner of
18 Motor Vehicles shall provide the ~~Zone-Region~~ with an accounting of the percentage of
19 proceeds collected in each county of the ~~Zone-Region~~ in each quarter.

20 (f) Use of Tax Proceeds. – The ~~Zone-Region~~ may use the proceeds of the tax
21 levied under this section only for economic development projects and infrastructure
22 construction projects that are within the territorial jurisdiction of the ~~Zone-Region~~ but
23 not within the Global TransPark Complex. The ~~Zone-Region~~ shall use the tax proceeds
24 only for public purposes authorized by this Article.

25 The ~~Zone-Region~~ shall place fifteen percent (15%) of the tax proceeds distributed to
26 it under this section in a general funds account and the remaining eighty-five percent
27 (85%) in an interest-bearing trust account. Each county shall be the beneficial owner of
28 a share of the principal of the trust account in proportion to the amount of tax proceeds
29 collected in that county.

30 The ~~Zone-Region~~ may not disburse the principal of the trust account except pursuant
31 to a contract that provides that, within a reasonable time not to exceed 20 years, the
32 ~~Zone-Region~~ will recover or be repaid the amount disbursed. The ~~Zone-Region~~ may, in
33 its discretion, set reasonable terms and conditions for the repayment of the principal
34 disbursed, including provisions for securing the debt and the payment of interest."

35 **SECTION 2.** G.S. 143B-437.21(6) reads as rewritten:

36 **"§ 143B-437.21. Definitions.**

37 The following definitions apply in this Part:

38 ...

39 (6) Regional partnership. – Any of the following:

- 40 a. The Western North Carolina Regional Economic Development
41 Commission created in G.S. 158-8.1.
42 b. The Northeastern North Carolina Regional Economic
43 Development Commission created in G.S. 158-8.2.

- 1 c. The Southeastern North Carolina Regional Economic
2 Development Commission created in G.S. 158-8.3.
3 d. ~~The Global TransPark~~ North Carolina's Eastern Region
4 Development Commission created in G.S. 158-33.
5 e. The Carolinas Partnership, Inc.
6 f. The Research Triangle Regional Partnership.
7 g. The Piedmont Triad Partnership."

8 **SECTION 3.** G.S. 158-12.1 reads as rewritten:

9 "**§ 158-12.1. Commission funds secured.**

10 The Western North Carolina Regional Economic Development Commission,
11 Research Triangle Regional Commission, Southeastern North Carolina Regional
12 Economic Development Commission, Piedmont Triad Partnership, Northeastern North
13 Carolina Regional Economic Development Commission, ~~Global TransPark~~ North
14 Carolina's Eastern Region Development Commission, and Carolinas Partnership, Inc.,
15 may deposit money at interest in any bank, savings and loan association, or trust
16 company in this State in the form of savings accounts, certificates of deposit, or such
17 other forms of time deposits as may be approved for county governments. Investment
18 deposits and money deposited in an official depository or deposited at interest shall be
19 secured in the manner prescribed in G.S. 159-31(b). When deposits are secured in
20 accordance with this section, no public officer or employee may be held liable for any
21 losses sustained by an institution because of the default or insolvency of the depository.
22 This section applies to the regional economic development commissions listed in this
23 section only for as long as the commissions are receiving State funds."

24 **SECTION 4.** This act becomes effective October 1, 2005.

House Pages

Name Of Committee: Commerce Date: 7-27-05

1. Name: MARKETA FLOYD
County: MECKLENBURG
Sponsor: REP. CARNEY
2. Name: DARYL VERVEEN
County: MECKLENBURG
Sponsor: REP. CUNNINGHAM
3. Name: KHAISTINA CUNNINGHAM
County: MECKLENBURG
Sponsor: REP. CUNNINGHAM
4. Name: LEJEANA BLACK
County: MECKLENBURG
Sponsor: REP. CARNEY
5. Name: _____
County: _____
Sponsor: _____

Sgt-At-Arms

1. Name: FRANK PUEVO
2. Name: LECILE OAKLEY
3. Name: TOUSSAINT AVENT
4. Name: CHARLES WILLIAMS
5. Name: _____

VISITOR REGISTRATION SHEET

Commerce

July 27, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Chad Hinton	Civitas Institute
Alla Rogers	Home
Billy Gullett	Home
Tom Greenwood	N.C.'s Eastern Region
Andy Romanet	WCLM
Suzanne Castleberg	GA
Peggy Myer	gn

Minutes

HOUSE COMMITTEE ON COMMERCE

August 10, 2005

The HOUSE COMMITTEE ON COMMERCE met on Wednesday, August 10, 2005, in Room 643 LOB at 1:00 p.m. The following members were present: Representatives Daughtridge, Goforth, LaRoque and Rapp, Chairs; Representatives Owens and Rayfield, Vice Chairs; Representatives Allen, Almond, Barnhart, Bordsen, Brown, Carney, Cole, Current, Dickson, England, Faison, Frye, Gibson, Haire, Jeffus, Jones, McGee, McLawhorn, Pierce, Ray, Stam, Tucker, Walend, Wiley and Wray. Assisting with the meeting in the absence of Staff Attorneys Karen Cochrane-Brown and Walker Reagan, were Mr. Canaan Huie, Ms. Wendy Graf Ray and Ms. Drewpti Chauhan, Staff Attorneys; Sgt.-at-Arms Bill Freeman, Mark Cone, Touissaint Avent, Jay Callaway, Fred Hines and Frank Prevo; Pages Amber Hayes and Lynette Spencer, both of Guilford County, sponsored by Rep. Earl Jones; Rebecca Simpson of Wake County, sponsored by Rep. Bill Daughtridge; Hope Peddle of Stokes County, sponsored by Rep. Earline Parmon; Jasmine Bullard of Robeson County, sponsored by Rep. Ron Sutton; Caroline Hazelman of Guilford County, sponsored by Rep. Maggie Jeffus and Joyce Booth of Beaufort County, sponsored by Rep. Arthur Williams.

Representative Ray Rapp called the meeting to order and welcomed all persons in attendance.


Representative Rapp recognized Rep. Bruce Goforth who moved that the House PCS for Senate Judiciary I Committee Substitute for S.B. 393 be adopted for consideration. Motion carried. Rep. Jennifer Weiss was recognized by Chairman Rapp to explain the House PCS for SB 393 (**ECONOMIC DEVELOPMENT – PUBLIC RECORDS**) to the committee for Senator David Hoyle, sponsor of the bill. Chairman Rapp recognized Mr. Mark Prak from the N. C. Press Association who spoke in support of this bill. Mr. Don Hobart with the N. C. Department of Commerce also spoke in support of the PCS. After much discussion, the first of two amendments to this PCS was offered by Rep. Bill Owens for consideration. Further discussion followed. Rep. Owens withdrew his amendment to the PCS for SB 393. Rep. Weiss asked for a member of the Commerce Committee to offer an amendment that she had prepared for consideration. Rep. Stephen LaRoque offered the Weiss amendment (#1) and moved for its adoption. Motion carried. Further discussion followed. Rep. Margaret Dickson stated that at the proper time she would like to move for a FAVORABLE REPORT for this PCS for SB 393, AS AMENDED. Mr. Andy Romanet, Jr., with the N.C. League of Municipalities, stated that this legislation satisfies all problems that the League had with this bill and he did support this bill. A vote was taken on the bill, as amended, and the motion carried unanimously. Chairman Rapp stated that this bill, as amended, would be turned into a committee substitute. **Rep. Dickson moved for a favorable report for the Proposed Committee Substitute as amended, rolled into a new House Proposed Committee Substitute for S.B. 393 with a FAVORABLE REPORT TO THE NEW COMMITTEE**

SUBSTITUTE AND AN UNFAVORABLE REPORT TO THE ORIGINAL BILL.
Motion carried.

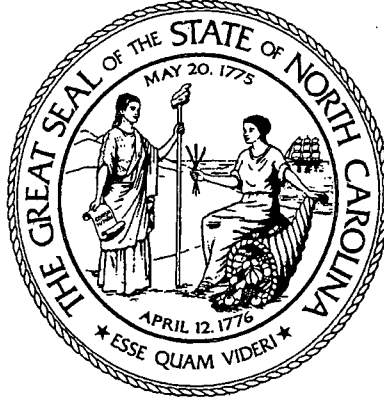
There being no further business, the meeting was adjourned at approximately 2:00 pm.

Respectfully submitted,

Representative Ray Rapp
Presiding Chairman



Dot H. Barber
Committee Assistant



HOUSE COMMITTEE ON COMMERCE

August 10, 2005

Room #643 LOB 1:00 p.m.

Presiding Chair – Representative Ray Rapp

I. Call to Order

II. Introduction of Sgt.-at-Arms and Pages

III. Program

S.B. 393 (PCS) – Economic Development – Public Records (Senator David

Hoyle and Rep. Jennifer Weiss)

IV. Adjournment

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

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

DAY & DATE: **Wednesday, August 10, 2005**

TIME: **1:00 p.m.**

LOCATION: **# 643 LOB**

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

S. B. 393 (PCS) – Economic Development – Public Records (Senator Hoyle & Rep. Weiss)

Respectfully,
Representatives Daughtridge, Goforth, LaRoque,
and Rapp, Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **9:30 am on August 10, 2005.**

 X Principal Clerk
 X Reading Clerk - House Chamber

Dot Barber (Committee Assistant)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

D

SENATE BILL 393*
Judiciary I Committee Substitute Adopted 6/1/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S393-PCS55278-LY-24

Short Title: Economic Development - Public Records.

(Public)

Sponsors:

Referred to:

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PUBLIC RECORDS LAWS WITH RESPECT TO
ECONOMIC DEVELOPMENT AND TO REQUIRE THE DEPARTMENT OF
REVENUE TO PUBLISH ANNUAL REPORTS REGARDING USE OF
ECONOMIC DEVELOPMENT TAX INCENTIVES.

The General Assembly of North Carolina enacts:

PART I. GENERAL ECONOMIC DEVELOPMENT POLICIES

SECTION 1.1. G.S. 132-6(d) reads as rewritten:

"(d) Notwithstanding the provisions of subsections (a) and (b) of this section, public records relating to the proposed expansion or location of specific business or industrial projects ~~in the State~~ may be withheld so long as their inspection, examination or copying would frustrate the purpose for which such public records were created; provided, however, that nothing herein shall be construed to permit the withholding of public records relating to general economic development policies or activities. Once the State, a local government, or the specific business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so and the business has communicated that commitment or decision to the State or local government agency involved with the project, the provisions of this subsection allowing public records to be withheld by the agency no longer apply. Once the provisions of this subsection no longer apply, the agency shall disclose as soon as practicable, and within 25 days, public records requested for the announced project that are not otherwise made confidential by law. An announcement that a business or industrial project has committed to expand or locate in the State shall not require disclosure of local government records relating to the project if the business has not selected a specific location within the State for the project. Once a specific location for the project has been

1 determined, local government records must be disclosed, upon request, in accordance
2 with the provisions of this section. For purposes of this section, "local government
3 records" include records maintained by the State that relate to a local government's
4 efforts to attract the project."

5 SECTION 1.2. Chapter 132 of the General Statutes is amended by adding a
6 new section to read:

7 "§ 132-1.8. Economic development incentives.

8 (a) Assumptions and Methodologies. – Subject to the provisions of this Chapter
9 regarding confidential information and the withholding of public records relating to the
10 proposed expansion or location of specific business or industrial projects when the
11 release of those records would frustrate the purpose for which they were created,
12 whenever a public agency or its subdivision performs a cost-benefit analysis or similar
13 assessment with respect to economic development incentives offered to a specific
14 business or industrial project, the agency or its subdivision must describe in detail the
15 assumptions and methodologies used in completing the analysis or assessment. This
16 description is a public record and is subject to all provisions of this Chapter and other
17 law regarding public records.

18 (b) Disclosure of Public Records Requirements. – Whenever an agency or its
19 subdivision first proposes, negotiates, or accepts an application for economic
20 development incentives with respect to a specific industrial or business project, the
21 agency or subdivision must disclose that any information obtained by the agency or
22 subdivision is subject to laws regarding disclosure of public records. In addition, the
23 agency or subdivision must fully and accurately describe the instances in which
24 confidential information may be withheld from disclosure, the types of information that
25 qualify as confidential information, and the methods for ensuring that confidential
26 information is not disclosed."

27 SECTION 1.3. Part 2 of Article 10 of Chapter 143B of the General Statutes
28 is amended by adding a new section to read:

29 "§ 143B-437.07. Economic development grant reporting.

30 The Department of Commerce must publish on or before March 1 of each year the
31 following information, itemized by business entity, for all grant programs administered
32 by the Department that disbursed or awarded grant monies to businesses during the
33 previous calendar year:

- 34 (1) The amount of grant monies awarded during the previous year.
- 35 (2) The amount of grant monies disbursed during the previous year.
- 36 (3) The amount of grant monies that were disbursed in earlier years to
37 business entities that received grant monies during the previous year.
- 38 (4) The amount of potential future liability under the grant program.
- 39 (5) The number, type, and wage level of jobs created or retained during
40 the previous year as a result of a grant.
- 41 (6) A description of any other financial assistance received during the
42 previous year from all economic development incentive programs
43 administered by the Department.

- 1 (7) Any amount recaptured from the business entity during the previous
2 year for failure to comply with the grant agreement or applicable law."
3

4 **PART II. SPECIFIC DISCLOSURE REQUIREMENTS**
5

6 **SECTION 2.1.** G.S. 143B-437.55(c) is amended by adding two new
7 subdivisions to read:

8 "(c) Annual Reports. – The Committee shall publish a report on the Job
9 Development Investment Grant Program on or before April 30 of each year. The report
10 shall include the following:

11 ...

- 12 (3a) A listing of the employment level for all businesses receiving a grant
13 and any changes in those levels from the level of the next preceding
14 year.

15 ...

- 16 (13) The total amount transferred to the Utility Account of the Industrial
17 Development Fund under this Part during the preceding year."

18 **SECTION 2.2.** G.S. 105-129.6 reads as rewritten:

19 "(b) Reports. – The Department of Revenue shall publish by ~~April~~ May 1 of each
20 year the following information itemized by credit and by taxpayer for the 12-month
21 period ending the preceding December 31:

- 22 (1) The number of ~~claims~~ credits taken for each credit allowed in this
23 Article.
24 (2) The number and enterprise tier area of new jobs with respect to which
25 credits were generated and to which credits were ~~claimed~~ taken.
26 (3) The cost and enterprise tier area of machinery and equipment with
27 respect to which credits were generated and to which credits were
28 ~~claimed~~ taken.
29 (4) The number of new jobs created by businesses located in development
30 zones, and the percentage of jobs at those locations that were filled by
31 residents of the zones.
32 (5) The amount and enterprise tier area of worker training expenditures
33 with respect to which credits were generated and to which credits were
34 ~~claimed~~ taken.
35 (6) The amount and enterprise tier area of new research and development
36 expenditures with respect to which credits were generated and to
37 which credits were ~~claimed~~ taken.
38 (7) The cost and enterprise tier area of real property investment with
39 respect to which credits were generated and to which credits were
40 ~~claimed~~ taken."

41 **SECTION 2.3.** G.S. 105-129.19 reads as rewritten:

42 "**§ 105-129.19. Reports.**

43 The Department of Revenue must ~~report to the Revenue Laws Study Committee and~~
44 ~~to the Fiscal Research Division of the General Assembly~~ publish by May 1 of each year

1 the following information for the 12-month period ending the preceding ~~April~~
2 ~~1~~:December 31:

- 3 (1) The number of taxpayers that ~~elaimed~~took the credits allowed in this
4 Article.
5 (2) The cost of business property and renewable energy property with
6 respect to which credits were ~~elaimed~~taken.
7 (2a) Repealed by Session Laws 2002-87, s. 6, effective August 22, 2002.
8 (3) The total cost to the General Fund of the credits ~~elaimed~~taken."

9 **SECTION 2.4.** G.S. 105-129.26(e) reads as rewritten:

10 (e) Reports. – The Department of Commerce and the Department of Revenue
11 ~~shall report to the Fiscal Research Division of the General Assembly~~jointly publish by
12 May 1 of each year the following information itemized by taxpayer for the 12-month
13 period ending the preceding ~~April 1~~:December 31:

- 14 (1) The number and location of large and major recycling facilities
15 qualified under this Article.
16 (2) The number of new jobs created by each recycling facility.
17 (3) The amount of investment in each recycling facility.
18 (4) The amount of ~~reinvestment credit refunded to each major recycling~~
19 ~~facility credits taken under G.S. 105-129.28~~this Article."

20 **SECTION 2.5.** Article 3D of Chapter 105 of the General Statutes is
21 amended by adding a new section to read:

22 "**§ 105-129.38. Reports.**

23 The Department of Revenue must publish by May 1 of each year the following
24 information for the 12-month period ending the preceding December 31:

- 25 (1) The number of taxpayers that took the credits allowed in this Article.
26 (2) The amount of rehabilitation expenses and qualified rehabilitation
27 expenditures with respect to which credits were taken.
28 (3) The total cost to the General Fund of the credits taken."

29 **SECTION 2.6.** G.S. 105-129.44 reads as rewritten:

30 "**§ 105-129.44. Report.**

31 The Department of Revenue ~~must report to the Revenue Laws Study Committee and~~
32 ~~the Fiscal Research Division of the General Assembly~~publish by May 1 of each year
33 the following information for the 12-month period ending the preceding ~~April~~
34 ~~1~~:December 31:

- 35 (1) The number of taxpayers that ~~elaimed~~took the credit allowed in this
36 Article.
37 (2) The location of each qualified North Carolina low-income building or
38 housing development for which a credit was ~~elaimed~~taken.
39 (3) The total cost to the General Fund of the credits ~~elaimed~~taken."

40 **SECTION 2.7.** G.S. 105-129.54 reads as rewritten:

41 "**§ 105-129.54. Reports.**

42 The Department of Revenue ~~must report to the Revenue Laws Study Committee and~~
43 ~~to the Fiscal Research Division of the General Assembly~~publish by May 1 of each year

1 the following information itemized by taxpayer for the 12-month period ending the
2 preceding December 31:

- 3 (1) The number of taxpayers that ~~claimed~~took a credit allowed in this
4 Article, itemized by the categories of small business, low-tier, other,
5 and university research.
- 6 (2) The amount of each credit ~~claimed~~taken in each category.
- 7 (3) The total cost to the General Fund of the credits ~~claimed~~taken."

8 **SECTION 2.8.** Article 3G of Chapter 105 of the General Statutes is
9 amended by adding a new section to read:

10 "**§ 105-129.65A. Reports.**

11 The Department of Revenue must publish by May 1 of each year the following
12 information itemized by taxpayer for the 12-month period ending the preceding
13 December 31:

- 14 (1) The number of taxpayers taking a credit allowed in this Article.
- 15 (2) The number of new jobs created with respect to which credits were
16 taken.
- 17 (3) The amount of investment in real property and machinery and
18 equipment with respect to which credits were taken.
- 19 (4) The total cost to the General Fund of the credits taken."

20 **SECTION 2.9.** G.S. 105-130.41 is amended by adding a new subsection to
21 read:

22 "(c1) Report. – The Department of Revenue must publish by May 1 of each year
23 the following information itemized by taxpayer for the 12-month period ending the
24 preceding December 31:

- 25 (1) The number of taxpayers taking a credit allowed in this section.
- 26 (2) The total amount of charges with respect to which credits were taken.
- 27 (3) The total cost to the General Fund of the credits taken."

28 **SECTION 2.10.** G.S. 105-130.45 is amended by adding a new subsection to
29 read:

30 "(f) Report. – The Department of Revenue must publish by May 1 of each year
31 the following information itemized by taxpayer for the 12-month period ending the
32 preceding December 31:

- 33 (1) The number of taxpayers taking a credit allowed in this section.
- 34 (2) The total amount of exports with respect to which credits were taken.
- 35 (3) The total cost to the General Fund of the credits taken."

36 **SECTION 2.11.** G.S. 105-151.22 is amended by adding a new subsection to
37 read:

38 "(c1) Report. – The Department of Revenue must publish by May 1 of each year
39 the following information itemized by taxpayer for the 12-month period ending the
40 preceding December 31:

- 41 (1) The number of taxpayers taking a credit allowed in this section.
- 42 (2) The total amount of charges with respect to which credits were taken.
- 43 (3) The total cost to the General Fund of the credits taken."

1 **SECTION 2.12.** G.S. 105-164.14 is amended by adding a new subsection to
2 read:

3 "**(k) Reports.** – The Department of Revenue shall publish by May 1 of each year
4 the following information itemized by taxpayer for the 12-month period ending the
5 preceding December 31:

6 (1) The number of taxpayers claiming a refund allowed in subsections (g),
7 (h), (i), and (j) of this section.

8 (2) The total amount of purchases with respect to which refunds were
9 claimed.

10 (3) The total cost to the General Fund of the refunds claimed."

11 **SECTION 2.13.** G.S. 105-259(b)(27) reads as rewritten:

12 "**(b) Disclosure Prohibited.** – An officer, an employee, or an agent of the State
13 who has access to tax information in the course of service to or employment by the State
14 may not disclose the information to any other person unless the disclosure is made for
15 one of the following purposes:

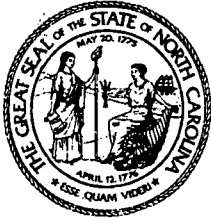
16 (27) To publish the information required under G.S. ~~105-129.6~~, 105-129.6,
17 105-129.19, 105-129.26, 105-129.38, 105-129.44, 105-129.65A,
18 105-130.41, 105-130.45, 105-151.22, and 105-164.14."

19
20 **PART III. ECONOMIC DEVELOPMENT OVERSIGHT COMMITTEE STUDY**

21 **SECTION 3.** The Economic Development Oversight Committee shall study
22 the issue of public disclosure as it relates to economic development efforts.
23 Specifically, the Committee shall study ways of providing the public information about
24 the employment levels, and any changes in employment levels, of businesses that
25 receive economic development incentives from the State or local governments. The
26 Committee may make an interim report on this study, including any recommendations
27 for legislative proposals, to the 2006 Regular Session of the 2005 General Assembly
28 and shall make a final report on this study to the 2007 General Assembly.

29
30 **PART IV. EFFECTIVE DATE**

31 **SECTION 4.** Sections 2.2 through 2.12 of this act become effective January
32 1, 2007. The remainder of this act is effective when it becomes law.



SENATE BILL 393: Economic Development - Public Records

BILL ANALYSIS

Committee: House Commerce
Introduced by: Sen. Hoyle
Version: PCS to Second Edition
S393-CSLY-24

Date: August 9, 2005
Summary by: Y. Canaan Huie
Staff Attorney

SUMMARY: This bill would require the Department of Revenue to annually publish a list, itemized by taxpayer, disclosing information about certain tax incentives. In addition, this bill would clarify that public records created with respect to a proposed location or expansion of a specific business or industrial project must be released once the project has been announced, that certain types of information are public records, and that an agency must notify applicants for and recipients of economic development incentives about public records requirements.

[As introduced, this bill was identical to H507, as introduced by Reps. Weiss, McComas, which is currently in House Commerce.]

CURRENT LAW: Generally, under current law, documents prepared or received by State agencies in the transaction of public business are public records and must be made available to the public for inspection. There are several important exceptions to the public records law that allow for withholding certain public records from disclosure. One of these exemptions is for tax information, which may be disclosed only as specifically authorized by law. Another of these exceptions relates to the location or expansion of business or industrial projects. Public records relating to the location or expansion of specific business or industrial projects may be withheld from disclosure so long as that disclosure would frustrate the purpose for which the public records were created.

BILL ANALYSIS: Section 1.1 of this bill would clarify that public records created with respect to the location or expansion of a specific business or industrial project may not be withheld once the project location or expansion has been announced. Current law specifies that these records "may be withheld so long as their inspection, examination, or copying would frustrate the purpose for which they were created..." It is arguable under current law that the release of public records related to a specific project could "frustrate the purpose for which they were created" long after the project was announced. This bill would clarify that those records may no longer be withheld once there is an announcement of the project by the State, a local government, or the specific business. The bill provides for a 15-day period for the agency to gather and review the records before making them public.

Section 1.2 specifies that when an agency is required to perform a cost-benefit analysis or similar assessment with respect to economic development incentives offered to a specific business, the assumptions and methodologies used in completing that analysis are public records and must be disclosed in the same fashion as other public records. In addition, this section requires the agency to notify the applicant or recipient of economic development incentives about the public records law requirements.

Section 1.3 creates a new reporting requirement. Under this section, the Department of Commerce must make an annual report on all grant programs administered by the Department.

Section 2.1 of the bill would require the Department of Commerce to specifically disclose the amount transferred to the Utility Account of the Industrial Development Fund under the JDIG Program each year and to report employment levels for businesses receiving grants under that Program. Sections 2.2

Senate Bill 393

Page 2

through 2.13 of the bill would require the Department of Revenue to annually publish a report on economic development tax incentives authorized by the State. Current law already requires some of these reports. For example, under G.S. 105-129.6, the Department of Revenue must publish an annual report, itemized by taxpayer, on credits claimed under the Bill Lee Act. Many other credits require that the Department make annual reports to the Revenue Laws Study Committee and/or the Fiscal Research Division. Generally, those reports are not itemized by taxpayer. This bill would amend the existing reporting requirements for the following credits to require that they be itemized by taxpayer:

- Tax incentives for recycling facilities under Article 3C of Chapter 105.
- Research and development under Article 3F of Chapter 105.

The bill would create new reporting requirements for the following tax incentives:

- Historic rehabilitation tax credits under Article 3D of Chapter 105.
- Tax incentives for major computer manufacturing facilities under Article 3G of Chapter 105.
- Credit for North Carolina State Ports Authority wharfage, handling, and throughput charges.
- Credit for manufacturing cigarettes for exportation.
- Sales tax refunds for building materials of certain industrial facilities.

The bill also makes some changes to other reporting requirements so that all reports prepared by the Department of Revenue on credits and refunds have identical reporting dates and data periods.

Part 3 of this bill assigns a study to the Economic Development Oversight Committee. The Committee shall study the issue of public disclosure as it relates to economic development efforts. Specifically, the Committee shall study ways of providing the public information about employment levels at businesses that receive economic development incentives.

EFFECTIVE DATE:

S0393e2-SMLY-CSLY-24



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 393*

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S393-ALY-53 [v.2]

Page 1 of 2

Date Aug. 10, 2005

Comm. Sub. [NO]
Amends Title [NO]
PCS to Second Edition

Representative Weiss *LaRoque*

- 1 moves to amend the bill on page 1, lines 10 through 24, by rewriting those lines to read:
- 2 "SECTION 1.1. G.S. 132-6(d) reads as rewritten:
- 3 '(d) Notwithstanding the provisions of subsections (a) and (b) of this section,
- 4 public records relating to the proposed expansion or location of specific business or
- 5 industrial projects ~~in the State~~ may be withheld so long as their inspection, examination
- 6 or copying would frustrate the purpose for which such public records were created;
- 7 provided, however, that nothing herein shall be construed to permit the withholding of
- 8 public records relating to general economic development policies or activities. Once the
- 9 State, a local government, or the specific business has announced a commitment by the
- 10 business to expand or locate a specific project in this State or a final decision not to do
- 11 so and the business has communicated that commitment or decision to the State or local
- 12 government agency involved with the project, the provisions of this subsection allowing
- 13 public records to be withheld by the agency no longer apply. Once the provisions of
- 14 this subsection no longer apply, the agency shall disclose as soon as practicable, and
- 15 within 25 days, public records requested for the announced project that are not
- 16 otherwise made confidential by law. An announcement that a business or industrial
- 17 project has committed to expand or locate in the State shall not require disclosure of
- 18 local government records relating to the project if the business has not selected a
- 19 specific location within the State for the project. Once a specific location for the project
- 20



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 393*

S393-ALY-53 [v.2]

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

Page 2 of 2

1 has been determined, local government records must be disclosed, upon request, in
2 accordance with the provisions of this section. For purposes of this section, "local
3 government records" include records maintained by the State that relate to a local
4 government's efforts to attract the project.' "

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



Note: Offered for consideration by not noted on Withdrawn

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 393*

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S393-ALY-52 [v.1]

Page 1 of 2

Date Aug. 10, 2005

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

Representative Owens

1 moves to amend the bill on page 1, lines 10 through 24, by rewriting those lines to read:
2 "SECTION 1.1. G.S. 132-6(d) reads as rewritten:
3 '(d) Notwithstanding the provisions of subsections (a) and (b) of this section,
4 public records relating to the proposed expansion or location of specific business or
5 industrial projects ~~in the State~~ may be withheld so long as their inspection, examination
6 or copying would frustrate the purpose for which such public records were created;
7 provided, however, that nothing herein shall be construed to permit the withholding of
8 public records relating to general economic development policies or activities. Once the
9 State, a local government, or the specific business has announced a commitment by the
10 business to expand or locate a specific project in this State or a final decision not to do
11 so and the business has communicated that commitment or decision to the State or local
12 government agency involved with the project, the provisions of this subsection allowing
13 public records to be withheld by the agency no longer apply. Once the provisions of
14 this subsection no longer apply, the agency shall disclose as soon as practicable, and
15 within 15 days, public records requested for the announced project that are not
16 otherwise made confidential by law. In the event the agency is unable to disclose all of
17 the requested public records within 15 business days, the agency shall notify the person
18 making the request and provide the date by which any remaining public records will be
19 disclosed. An announcement that a business or industrial project has committed to
20 expand or locate in the State shall not require disclosure of local government records
21 relating to the project if the business has not selected a specific location within the State
22



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 393*

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

S393-ALY-52 [v.1]

Page 2 of 2

1 for the project. Once a specific location for the project has been determined, local
2 government records must be disclosed, upon request, in accordance with the provisions
3 of this section. For purposes of this section, "local government records" include records
4 maintained by the State that relate to a local government's efforts to attract the project.' "

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

2

SENATE BILL 393*
Judiciary I Committee Substitute Adopted 6/1/05

Short Title: Economic Development - Public Records.

(Public)

Sponsors:

Referred to:

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PUBLIC RECORDS LAWS WITH RESPECT TO
ECONOMIC DEVELOPMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 132-6(d) reads as rewritten:

"(d) Notwithstanding the provisions of subsections (a) and (b) of this section, public records relating to the proposed expansion or location of specific business or industrial projects in the State may be withheld so long as their inspection, examination or copying would frustrate the purpose for which such public records were ~~created; provided, however, that nothing herein created.~~ Once a State or local government agency announces that a business has made a final decision to expand or locate in the State, all of that agency's public records related to that announcement not otherwise made confidential by law must be released within 15 business days of the date of the request for the public records or the date of the announcement, whichever is later. In the event an agency is unable to produce all public records requested within 15 business days, the agency shall contact the person making the request, release those public records that may properly be produced at that time, and provide a date by which the remaining public records will be released. Nothing shall be construed to permit the withholding of public records relating to general economic development policies or activities."

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 Daughtridge, Goforth, LaRoque, Rapp (Chairs) for the Committee on
COMMERCE.

Committee Substitute for

SB 393 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE PUBLIC RECORDS
LAWS WITH RESPECT TO ECONOMIC DEVELOPMENT.

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.

VISITOR REGISTRATION SHEET

COMMERCE
Name of Committee

8-10-05
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

MIKE MANN	SST
Jamie Fitzgerald	NCFPC
Richard Wagner	Carolina Journal
Mark J. Przk	BROOKS PIERCE
David Wozniak	NCRA
Charles Marshall	Brooks Pierce
Margaret Westbrook	KCLH
Eatherine Davis	Electricities
Andy Romanet	NCLM
Alie Garland	NCDAC
POPE BUSINESS	NCLM
Roz Smith	NCCOE
Matthew Early	N+D

VISITOR REGISTRATION SHEET

Commerce
Name of Committee

8-10-05
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Kathy Hawkins	Proper Energy
John Phelps	NCLM
Jan Melton	Gov Office
Al Ripley	NC Justice Ltr
Kerry Krumholz	CICA
Dick Carter	atky
Roney Lamm	Atty Group
Shirley K	CAN
Mike Nelson	Conservation Council
David Ruden	REPUBLICAN PARTY
Nicholas Ruden	
Jack Morse	
Ardis Watkins	SEANC
Suzanne Bessley	SEANC

AGENDA

**HOUSE COMMITTEE MEETING ON
COMMERCE**

June 28, 2006

1:00 P.M.

Room 643 Legislative Office Bulding

OPENING REMARKS

Representative Bill Daughtridge

INTRODUCTIONS

BILLS FOR CONSIDERATION:

**SB 729 Clarify Used MV Interest charges Under RISA
Senators Hoyle and Bingham**

**HB 2882 Gen. Contractors/Extend License Validity
Representative Goforth**

→ Roger Bone

ADJOURNMENT

1- Cole's amend.

2- Jones amend. - failed

MINUTES

HOUSE COMMITTEE ON COMMERCE

June 28, 2006

The HOUSE COMMITTEE ON COMMERCE MET Wednesday, June 28, 2006, in Room 643 of the Legislative Office Building at 1:00 P.M. The following were present: Representative Daughtridge, presiding Chair, Representative Goforth, LaRoque, and Rapp Co-Chairs, Representative Rayfield, Vice-Chair, and Representatives L. Allen, Bordsen, Carney, Cole, Coleman, Current, Dickson, Faison, Gibson, Haire, Jones, McGee, McLawhorn, Pierce, Ray, Sauls, Stam, Tucker, Vinson, Wiley and Wray. Assisting with the meeting were Karen Cochran-Brown and Regan Walker, Staff Counsels. Dot Barber, Rachel Dupree and Ann Jordan, Committee Assistants. Also assisting were Mark Cone, Will Heath, Frank Prevo, Dusty Rhodes and Charles Williams House Sergeants-at-Arms. John Burleson sponsored by Speaker Black, Wake County, Tom Peele and Joelle Humphrey sponsored by Representative Grady, Onslow County, Jade Davis and Brittany Bullman sponsored by Representative England, Rutherford County serving as House Pages.

Representative Daughtridge called the meeting to order, introduced the House Sergeants-at-Arms and the House Pages assisting with the meeting.

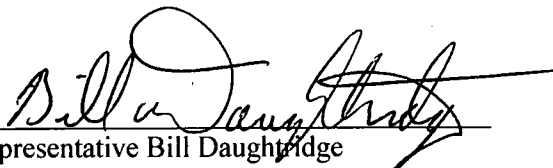
The order of business follows:

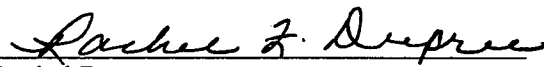
H.B. 2882 -- AN ACT ALLOWING THE STATE LICENSING BOARD OF GENERAL CONTRACTORS TO EXTEND THE PERIOD IN WHICH A LICENSE REMAINS IN EFFECT AFTER A PERSON LICENSED ON BEHALF OF A FIRM OR CORPORATION CEASES TO BE ASSOCIATED WITH THAT FIRM OR CORPORATION. – sponsored by Representative Goforth. Representative Goforth explained that this was a simple bill changing the period from 30 days to 90 days in which a license remains in effect. Representative Faison moved for a favorable report and the bill passed.

S.B. 729 -- AN ACT TO CLARIFY INCLUDABLE INTEREST CHARGES FOR USED MOTOR VEHICLES UNDER THE RETAIL INSTALLMENT SALES ACT. – sponsored by Senators Hoyle and Bingham and explained by Representative Saunders, drew three amendments. Representative Jones' amendment failed, Representative Stam's amendment failed, Representative Cole's amendment passed. After a tie vote and time running out, Chairman Daughtridge postponed the bill until another meeting.

The Committee adjourned at 1:55 P.M.

Respectfully submitted:


Representative Bill Daughtridge
Presiding Chair


Rachel Dupree
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

D

SENATE BILL 729
PROPOSED HOUSE COMMITTEE SUBSTITUTE S729-PCS75536-LB-125

Short Title: Car Sales Financing/Loan Fee.

(Public)

Sponsors:

Referred to:

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE BUSINESSES THAT FINANCE THE SALE OF MOTOR
VEHICLES UNDER THE RETAIL INSTALLMENT SALES ACT TO CHARGE
A LOAN FEE THAT IS NOT REFUNDABLE AS PART OF A REBATE ON
PREPAYMENT OF THE DEBT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 25A-32 reads as rewritten:

"§ 25A-32. **Rebates on prepayment.**

(a) Notwithstanding any provision in a consumer credit installment sale contract to the contrary, any buyer may satisfy the debt in full at any time before maturity, and in so satisfying such debt, shall receive a rebate, the amount of which shall be computed under the "rule of 78's," as follows:

"The amount of such rebate shall represent as great a proportion of the finance charge (less a prepayment charge of ten percent (10%) of the unpaid balance, not to exceed twenty-five dollars (\$25.00) and, for a consumer credit installment sale contract for a self-propelled motor vehicle, also less a loan fee not to exceed one hundred fifty dollars (\$150.00)) as the sum of the periodical time balances after the date of prepayment in full bears to the sum of all the periodical time balances under the schedule of payments in the original contract." No rebate is required if the amount thereof is less than one dollar (\$1.00).

(b) If the prepayment is made otherwise than on the due date of an installment, it shall be deemed to have been made on the installment due date nearest in time to the actual date of payment.

(c) If a seller obtains a judgment on a debt arising out of a consumer credit installment sale or the seller repossesses the collateral securing the debt, the seller shall credit the buyer with a rebate as if the payment in full had been made on the date the judgment was obtained or 15 days after the repossession occurred. If the seller obtains a judgment and repossesses the collateral, the seller shall credit the buyer with a rebate as

1 if payment in full had been made on the date of the judgment or 15 days after the
2 repossession, whichever occurs earlier."

3 **SECTION 2.** G.S. 25A-8(a) reads as rewritten:

4 "(a) "Finance charge" means the sum of all charges payable directly or indirectly
5 by the buyer and imposed by the seller as an incident to the extension of credit,
6 including any of the following types of charges ~~which are applicable;~~that apply:

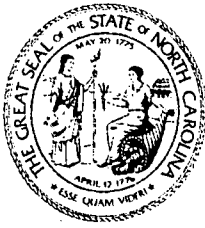
7 (1) Interest, time price differential, service, carrying or other similar
8 charge however ~~denominated;~~denominated.

9 (2) Premium or other charges for any guarantee or insurance protecting
10 the seller against the buyer's default or other credit ~~loss;~~loss.

11 (3) Loan fee, whether refundable as part of a rebate under G.S. 25A-32(a)
12 or not, finder's fee-fee, or similar ~~charge;~~and charge.

13 (4) Fee for an appraisal, investigation or credit report."

14 **SECTION 3.** This act becomes effective January 1, 2007, and applies to
15 contracts entered into on or after that date.



SENATE BILL 729: Car Sales Financing/Loan Fee

BILL ANALYSIS

Committee:	House Commerce	Date:	June 28, 2006
Introduced by:	Sen. Hoyle	Summary by:	O. Walker Reagan Committee Co-Counsel
Version:	PCS to First Edition S729-CSRU-93		

SUMMARY: *The Proposed House Committee Substitute for Senate Bill 729 amends the Retail Installment Sales Act to exempt loan fees of \$150 or less from the finance charges that would otherwise be subject to rebate upon prepayment of a motor vehicle consumer credit installment sale contract.*

CURRENT LAW: Under the Retail Installment Sales Act, a borrower has a right to prepay a loan and be rebated a portion of the finance charges on the loan, less a prepayment charge of 10% of the unpaid balance, not to exceed \$25.00.

BILL ANALYSIS: Section 1 of the bill would amend the law governing rebates of finance charges on prepayment of consumer credit installment sales contracts by excepting from the fees that are not subject to rebate a loan fee not to exceed \$150 on a loan for a self-propelled motor vehicle. Under this provision, before calculating the rebate due upon prepayment under the "rule of 78's", the lender may subtract a prepayment charge of 10% up to a maximum of \$25, and for motor vehicle loans, a loan fee of \$150.

Section 2 amends the definition of "finance charges" under the Retail Installment Sales Act to be clear that loan fees for motor vehicle loans that are not subject to rebate under Section 1 of the bill are still included in the calculations of "finance charges" for interest rate limits and APR purposes.

EFFECTIVE DATE: The bill is effective January 1, 2007, and applies to contracts entered into on or after that date.

S0729e1-SMRU-CSRU-93

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 2882

Short Title: Gen. Contractors/Extend License Validity.

(Public)

Sponsors: Representative Goforth.

Referred to: Commerce.

June 19, 2006

A BILL TO BE ENTITLED

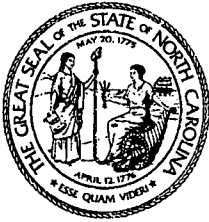
1 AN ACT ALLOWING THE STATE LICENSING BOARD OF GENERAL
2 CONTRACTORS TO EXTEND THE PERIOD IN WHICH A LICENSE
3 REMAINS IN EFFECT AFTER A PERSON LICENSED ON BEHALF OF A
4 FIRM OR CORPORATION CEASES TO BE ASSOCIATED WITH THAT FIRM
5 OR CORPORATION.
6

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 87-10(c) reads as rewritten:

9 "(c) If an applicant is an individual, examination may be taken by his personal
10 appearance for examination, or by the appearance for examination of one or more of his
11 responsible managing employees, and if a copartnership or corporation, or any other
12 combination or organization, by the examination of one or more of the responsible
13 managing officers or members of the personnel of the applicant, and if the person so
14 examined shall cease to be connected with the applicant, then in such event the license
15 shall remain in full force and effect for a period of ~~30~~90 days thereafter, and then be
16 canceled, but the applicant shall then be entitled to a reexamination, all pursuant to the
17 rules to be promulgated by the Board: Provided, that the holder of such license shall not
18 bid on or undertake any additional contracts from the time such examined employee
19 shall cease to be connected with the applicant until said applicant's license is reinstated
20 as provided in this Article."

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



HOUSE BILL 2882: Gen. Contractors/Extend License Validity

BILL ANALYSIS

Committee:	House Commerce	Date:	June 28, 2006
Introduced by:	Rep. Goforth	Summary by:	Karen Cochrane-Brown Committee Counsel
Version:	First Edition		

SUMMARY: *House Bill 2882 would amend the law governing the State Board of General Contractors to extend the period during which a license remains in effect after a person licensed on behalf of a firm or corporation ceases to be associated with that firm or corporation.*

CURRENT LAW:

Under current law, a business organization, such as a corporation or partnership, may obtain a general contractor license if one or more of the managing officers or members of the personnel of the business personally takes the examination. If that person ceases to be associated with the business, then the license will remain in effect for 30 days and then be cancelled. The business may not bid on or undertake new contracts from the time the examined person leaves the business until the license is reinstated.

BILL ANALYSIS:

This bill would extend the period during which a general contractor business license remains in effect when a person licensed on behalf of the business ceases to be associated with the business from 30 days to 90 days. This would give the business more time to have another person reexamined in order to continue the business license.

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

H2882e1-SMRO

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE 6-28-06

S. B. No. 729

Amendment No. #3

COMMITTEE SUBSTITUTE 5729-CSRU-93 [v.4]

(to be filled in by
Principal Clerk)

(Rep.) STAM
(Sen.)

1 moves to amend the bill on page 1, line 7 THROUGH PAGE 2, LINE 13

2 () WHICH CHANGES THE TITLE

3 by DELETING THE LINES, AND RENUMBERING THE REMAINING

4 SECTIONS ACCORDINGLY; AND

6 ON PAGE 1, LINES 2 THROUGH 5, BY REWRITING THE

7 LINES TO READ: "AN ACT TO EXEMPT NEW MOTOR

8 VEHICLES DEALERS FROM THE USED MOTOR VEHICLE

9 DEALERS COURSE REQUIREMENTS."

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED Stamm

ADOPTED _____ FAILED X TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 729

AMENDMENT NO. #1
(to be filled in by
Principal Clerk)

S729-ARU-75 [v.2]

Page 1 of 2

Date 6-29, 2006

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

Representative Jones

1 moves to amend the bill on page 1, line 5, by rewriting the line to read:

2 PREPAYMENT OF THE DEBT, AND TO ALLOW OTHER ADDITIONAL
3 CHARGES UNDER THE RETAIL INSTALLMENT SALES ACT.";

4
5 and on page 2, lines 13 by rewriting the line to read:

6 "(4) Fee for an appraisal, investigation or credit report.

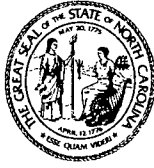
7 (b) Finance charge does not include transfer of equity fees, substitution of
8 collateral fees, default or deferment charges, the processing fee for a check on which
9 payment has been refused as permitted by G.S. 25-3-506, or additional charges for
10 insurance as permitted by ~~G.S. 25A-17~~G.S. 25A-17, or charges for insurance excluded
11 by Section 226.4(a) of Regulation Z promulgated pursuant to section 105 of the
12 Consumer Credit Protection Act.

13 (c) With respect to a transaction in which the seller acquires a security interest in
14 real property, finance charge does not include charges excluded by section 226.4(e) of
15 Regulation Z promulgated pursuant to section 105 of the Consumer Credit Protection
16 Act. "

17 SECTION 3. G.S. 25A-29 reads as rewritten:

18 "§ 25A-29. Default charges.

19 (a) If any installment is past due for 10 days or more according to the original
20 terms of the consumer credit installment sale contract, a default charge may be made in
21 an amount not to exceed five percent (5%) of the installment past due or six dollars
22 (\$6.00), whichever is ~~the lesser.~~greater. A default charge may be imposed only one time
23 for each default.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 729

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

S729-ARU-75 [v.2]

Page 2 of 2

- 1 **(b)** If a default charge is deducted from a payment made on the contract and such
- 2 deduction results in a subsequent default on a subsequent payment, no default charge
- 3 may be imposed for such default.
- 4 **(c)** If a default charge has been once imposed with respect to a particular default
- 5 in payment, no default charge shall be imposed with respect to any future payments
- 6 which would not have been in default except for the previous default.
- 7 **(d)** A default charge for any particular default shall be deemed to have been
- 8 waived by the seller unless, within 45 days following the default, (i) the charge is
- 9 collected or (ii) written notice of the charge is sent to the buyer.""; and
- 10
- 11 by renumbering the remaining bill section accordingly.
- 12

SIGNED Earl Jones
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED X TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 729

AMENDMENT NO. # 2
(to be filled in by
Principal Clerk)

S729-ARU-76 [v.1]

Page 1 of 2

Date 6 - 28, 2006

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

Representative Cole

1 moves to amend the bill on page 1, line 5, by rewriting the line to read:

2 "PREPAYMENT OF THE DEBT, AND TO EXEMPT NEW MOTOR VEHICLE
3 DEALERS FROM THE USED MOTOR VEHICLE DEALERS' COURSE
4 REQUIREMENTS..";

5
6 and on page 2, lines 14 and 15, by rewriting the lines to read:

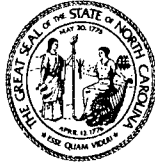
7 "SECTION 3. G.S. 20-288(a1) reads as rewritten:

8 "(a1) A used motor vehicle dealer may obtain a license by filing an application, as
9 prescribed in subsection (a) of this section, and providing the following:

10 (1) The required fee.

11 (2) Proof that the applicant, within the last 12 months, has completed a
12 12-hour licensing course approved by the Division if the applicant is
13 seeking an initial license and a six-hour course approved by the
14 Division if the applicant is seeking a renewal license. The
15 requirements of this subdivision do not apply to a used motor vehicle
16 dealer the primary business of which is the sale of salvage vehicles on
17 behalf of insurers or to a manufactured home dealer licensed under
18 G.S. 143-143.11 who complies with the continuing education
19 requirements of G.S. 143-143.11B. The requirement of this
20 subdivision does not apply to persons age 62 or older as of July 1,
21 2002, who are seeking a renewal ~~license~~ license or to a used motor
22 vehicle dealer who also holds a license as a new motor vehicle dealer.

23 (3) If the applicant is an individual, proof that the applicant is at least 18
24 years of age and proof that all salespersons employed by the dealer are
25 at least 18 years of age.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 729

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

S729-ARU-76 [v.1]

Page 2 of 2

- 1 (4) The application for a dealer license plate."
- 2 SECTION 4. This act becomes effective January 1, 2007, and applies to
- 3 contracts entered into on or after that date and applications for a used motor vehicle
- 4 dealer license filed on or after that date."

SIGNED *Melvin Cole*
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE 6-28-06

S. B. No. 729

Amendment No. #3

COMMITTEE SUBSTITUTE 5729-CSRV-93 [v. 4]

(to be filled in by
Principal Clerk)

(Rep.) STAM
Sen.)

1 moves to amend the bill on page 1, line 7 THROUGH PAGE 2, LINE 13

2 () WHICH CHANGES THE TITLE

3 by DELETING THE LINES, AND RENUMBERING THE REMAINING

4 SECTIONS ACCORDINGLY; AND

6 ON PAGE 1, LINES 2 THROUGH 5, BY REWRITING THE

7 LINES TO READ: "AN ACT TO EXEMPT NEW MOTOR

8 VEHICLES DEALERS FROM THE USED MOTOR VEHICLE

9 DEALERS COURSE REQUIREMENTS."

SIGNED Stamm

ADOPTED _____ FAILED TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 729

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

S729-ARU-76 [v.1]

Page 1 of 2

Date _____, 2006

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

Representative Cole

1 moves to amend the bill on page 1, line 5, by rewriting the line to read:

2 "PREPAYMENT OF THE DEBT, AND TO EXEMPT NEW MOTOR VEHICLE
3 DEALERS FROM THE USED MOTOR VEHICLE DEALERS' COURSE
4 REQUIREMENTS..";
5

6 and on page 2, lines 14 and 15, by rewriting the lines to read:

7 "SECTION 3. G.S. 20-288(a1) reads as rewritten:

8 "(a1) A used motor vehicle dealer may obtain a license by filing an application, as
9 prescribed in subsection (a) of this section, and providing the following:

10 (1) The required fee.

11 (2) Proof that the applicant, within the last 12 months, has completed a
12 12-hour licensing course approved by the Division if the applicant is
13 seeking an initial license and a six-hour course approved by the
14 Division if the applicant is seeking a renewal license. The
15 requirements of this subdivision do not apply to a used motor vehicle
16 dealer the primary business of which is the sale of salvage vehicles on
17 behalf of insurers or to a manufactured home dealer licensed under
18 G.S. 143-143.11 who complies with the continuing education
19 requirements of G.S. 143-143.11B. The requirement of this
20 subdivision does not apply to persons age 62 or older as of July 1,
21 2002, who are seeking a renewal ~~license~~ license or to a used motor
22 vehicle dealer who also holds a license as a new motor vehicle dealer.

23 (3) If the applicant is an individual, proof that the applicant is at least 18
24 years of age and proof that all salespersons employed by the dealer are
25 at least 18 years of age.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 729

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

S729-ARU-76 [v.1]

Page 2 of 2

- 1 (4) The application for a dealer license plate."
2 **SECTION 4.** This act becomes effective January 1, 2007, and applies to
3 contracts entered into on or after that date and applications for a used motor vehicle
4 dealer license filed on or after that date."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

Commerce

June 28, 2006

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Mark Selph	NCLBGC
Paige Hall	Gov's office
Kathleen Edwards	UNC-CH Daily Bulletin
Montezuma	NMRS
John Polanski	NCAAA
VanHeins	DM FAMILY ENTERPRENEUR
Dick Carlton	atky.
Doug Lassiter	NLSTA
W. B. Bynley	LBA
Robert Bue	Bone + Assoc
John B.	Assoc. : Assoc.

VISITOR REGISTRATION SHEET

Commerce

June 28, 2006

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
Jonas Monast	Center for Responsible Lending
Bill Dove	NC Justice Center
Chris Wilder	Ctr. for Responsible Lending
Vicky Young	DOI
CPMA	NCATC
Holly Bryner	NCATC
Rob Schobale	NCCFNP

House Pages

Name Of Committee: COMMERCE Date: 6-28-06

1. Name: John Burkson

County: Wetzel

^{Speaker}
Sponsor: Black

2. Name: Tom Peele

County: Onslow

Sponsor: Grady

3. Name: Jade Davis

County: Rutherford

Sponsor: Dr. England

4. Name: Brittany Bullman

County: Rutherford

Sponsor: Dr. Bob England

5. Name: Joelle Humphrey

County: Onslow

Sponsor: Grady

Sgt-At-Arms

1. Name: Dusty Rhodes

2. Name: MARK CONE

3. Name: Will. HEATH

4. Name: FRANK PREVO

5. Name: -CHARLES WILLIAMS

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Daughtridge, Goforth, LaRoque, Rapp (Chairs) for the Committee on
COMMERCE.

Committee Substitute for

HB 2882 A BILL TO BE ENTITLED AN ACT ALLOWING THE STATE
LICENSING BOARD OF GENERAL CONTRACTORS TO EXTEND THE PERIOD IN
WHICH A LICENSE REMAINS IN EFFECT AFTER A PERSON LICENSED ON BEHALF
OF A FIRM OR CORPORATION CEASES TO BE ASSOCIATED WITH THAT FIRM OR
CORPORATION.

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 _____.

MINUTES

HOUSE COMMITTEE ON COMMERCE

July 12, 2006 – 1:00 p.m.
Room 643- LB

The HOUSE COMMITTEE ON COMMERCE met at 1:00 p.m. on Wednesday, July 12, 2006 in Room 643 of the Legislative Office Building. The following members were present: Representatives Daughtridge, Goforth, LaRoque and Rapp, Chairs; Vice-Chairs Owens and Rayfield and Representatives Allen, Barnhart, Bordsen, Brown, Carney, Cole, Coleman, Current, Faison, Gibson, Haire, Jeffus, Jones, McGee, Pierce, Ray, Stam, Tucker, Walend, Wiley, and Wray. Assisting the meeting were Karen Cochrane-Brown and Walker Regan, Staff Counsel.

Chairman Goforth called the meeting to order at 1:00. He recognized Pages and Sgt-At-Arms staff.


Chairman Goforth recognized Representative Drew Saunders for further discussion of SB 729 – CLARIFY USED MV INTEREST CHARGES UNDER RISA. Rep. Saunders asked that Rep. Cole be recognized to explain two amendments to the bill. Both amendments passed. Rep. Cole was recognized to make a motion for a favorable report as to the House committee substitute bill, with a title change, and unfavorable as to the original bill. Motion carried.

Chairman Goforth recognized Senator David Hoyle to explain his bill – SB 951 – PUBLIC-PRIVATE SOLID WASTE COLLECTION. A motion was made for the PCS to be brought before the committee. Motion carried. Mr. Andy Romanet from the League of Municipalities was recognized for comments. Ms. Nancy Shaw and Ms. Teresa Carswell also spoke on behalf of individual contractors. Rep. Bill Faison made a motion that nothing in this section shall affect the authority of a city or county to establish recycling services where recycling service are not currently offered. Motion carried.

Rep. Ray Rapp was recognized for a technical amendment. Motion carried.

A motion was made for a favorable report as to the House committee substitute bill, unfavorable as to the Senate committee substitute. Motion carried.

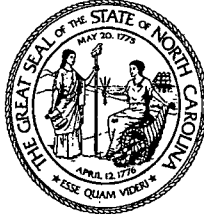
The meeting adjourned at 1:55 p.m.



Rep. Bruce Goforth – Chairman



Ann Jordan – Committee Assistant



HOUSE COMMITTEE ON COMMERCE

Wednesday, July 12, 2006

LOB – Room 643

1:00 p.m.

Presiding Chair – Representative Bruce Goforth

I. Call to Order

II. Program

**SB 729 – CLARIFY USED MV INTEREST CHARGES
UNDER RISA - Sen. Hoyle – Continued Discussion**

**SB 951 – PUBLIC-PRIVATE SOLID WASTE
COLLECTION – Sen. Hoyle**

III. Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

D

SENATE BILL 729
PROPOSED HOUSE COMMITTEE SUBSTITUTE S729-CSRO-63 [v.1]

7/11/2006 6:11:10 PM

Short Title: Car Sales Financing/Loan Fee.

(Public)

Sponsors:

Referred to:

March 22, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE BUSINESSES THAT FINANCE THE SALE OF MOTOR
3 VEHICLES UNDER THE RETAIL INSTALLMENT SALES ACT TO CHARGE
4 A LOAN FEE THAT IS NOT REFUNDABLE AS PART OF A REBATE ON
5 PREPAYMENT OF THE DEBT, AND TO EXEMPT NEW MOTOR VEHICLE
6 DEALERS FROM THE USED MOTOR VEHICLE DEALERS' COURSE
7 REQUIREMENTS.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. G.S. 25A-32 reads as rewritten:

10 "§ 25A-32. Rebates on prepayment.

11 (a) Notwithstanding any provision in a consumer credit installment sale contract
12 to the contrary, any buyer may satisfy the debt in full at any time before maturity, and in
13 so satisfying such debt, shall receive a rebate, the amount of which shall be computed
14 under the "rule of 78's," as follows:

15 "The amount of such rebate shall represent as great a proportion of the finance
16 charge (less a prepayment charge of ten percent (10%) of the unpaid balance, not to
17 exceed twenty-five dollars (\$25.00) and, for a consumer credit installment sale contract
18 for a self-propelled motor vehicle, also less a loan fee not to exceed one hundred fifty
19 dollars (\$150.00)) as the sum of the periodical time balances after the date of
20 prepayment in full bears to the sum of all the periodical time balances under the
21 schedule of payments in the original contract." No rebate is required if the amount
22 thereof is less than one dollar (\$1.00).

23 (b) If the prepayment is made otherwise than on the due date of an installment, it
24 shall be deemed to have been made on the installment due date nearest in time to the
25 actual date of payment.

26 (c) If a seller obtains a judgment on a debt arising out of a consumer credit
27 installment sale or the seller repossesses the collateral securing the debt, the seller shall
28 credit the buyer with a rebate as if the payment in full had been made on the date the

1 judgment was obtained or 15 days after the repossession occurred. If the seller obtains a
2 judgment and repossesses the collateral, the seller shall credit the buyer with a rebate as
3 if payment in full had been made on the date of the judgment or 15 days after the
4 repossession, whichever occurs earlier."

5 **SECTION 2.** G.S. 25A-8 reads as rewritten:

6 "(a) "Finance charge" means the sum of all charges payable directly or indirectly
7 by the buyer and imposed by the seller as an incident to the extension of credit,
8 including any of the following types of charges ~~which are applicable;~~ that apply:

- 9 (1) Interest, time price differential, service, carrying or other similar
10 charge ~~however denominated;~~ denominated.
- 11 (2) Premium or other charges for any guarantee or insurance protecting
12 the seller against the buyer's default or other credit ~~loss;~~ loss.
- 13 (3) Loan fee, whether refundable as part of a rebate under G.S. 25A-32(a)
14 or not, finder's fee-fee, or similar charge; ~~and charge.~~
- 15 (4) Fee for an appraisal, investigation or credit report."

16 **SECTION 3.** G.S. 20-288(a1) reads as rewritten:

17 "(a1) A used motor vehicle dealer may obtain a license by filing an application, as
18 prescribed in subsection (a) of this section, and providing the following:

- 19 (1) The required fee.
- 20 (2) Proof that the applicant, within the last 12 months, has completed a
21 12-hour licensing course approved by the Division if the applicant is
22 seeking an initial license and a six-hour course approved by the
23 Division if the applicant is seeking a renewal license. The
24 requirements of this subdivision do not apply to a used motor vehicle
25 dealer the primary business of which is the sale of salvage vehicles on
26 behalf of insurers or to a manufactured home dealer licensed under
27 G.S. 143-143.11 who complies with the continuing education
28 requirements of G.S. 143-143.11B. The requirement of this
29 subdivision does not apply to persons age 62 or older as of July 1,
30 2002, who are seeking a renewal ~~license;~~ license or to a used motor
31 vehicle dealer who also holds a license as a new motor vehicle dealer.
- 32 (3) If the applicant is an individual, proof that the applicant is at least 18
33 years of age and proof that all salespersons employed by the dealer are
34 at least 18 years of age.
- 35 (4) The application for a dealer license plate."

36 **SECTION 4.** This act becomes effective January 1, 2007, and applies to
37 contracts entered into on or after that date and applications for used motor vehicle dealer
38 license filed on or after that date.

39

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

D

SENATE BILL 951
Judiciary I Committee Substitute Adopted 5/31/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S951-CSRU-97 [v.2]

7/2/2006 7:50:26 PM

Short Title: Public-Private Solid Waste Collection.

(Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A UNIT OF LOCAL GOVERNMENT THAT DISPLACES A PRIVATE COMPANY THAT IS PROVIDING COLLECTION SERVICES FOR SOLID WASTE OR RECOVERED MATERIALS TO GIVE NOTICE OF ITS INTENT TO DO SO OR TO PROVIDE COMPENSATION TO THE DISPLACED PRIVATE COMPANY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-37.3 reads as rewritten:

"§ 160A-37.3. Contract with private solid waste collection firm(s).

(a) ~~If the area to be annexed described in a resolution of intent passed under G.S. 160A-37(a) includes an area where a private solid waste collection firm or firms:~~

(1) ~~On the ninetieth day preceding the date of adoption of the resolution of intent in accordance with G.S. 160A-37(j) or~~

(2) ~~On the ninetieth day preceding the date of adoption of the resolution of consideration in accordance with G.S. 160A-37(i) was providing solid waste collection services in the area to be annexed, and is still providing such services on the date of adoption of the resolution of intent, and:~~

(3) ~~By reason of such annexation any franchise with a county or arrangements with third parties for solid waste collection will be terminated, and~~

(4) ~~During the 90 day period preceding the date of adoption of the resolution of intent or resolution of consideration provided by subdivisions (1) or (2) of this subsection, the firm had in such area an average of 50 or more residential customers or a monthly average revenue from nonresidential customers in such area of five hundred dollars (\$500.00) or more; provided that customers shall be included in~~

1 ~~such calculation only if policies of the city will provide solid waste~~
2 ~~collection to those customers such that arrangements between the solid~~
3 ~~waste firm and the customers will be terminated, and~~

4 ~~(5) If such firm makes a written request that it wishes to contract, signed~~
5 ~~by an officer or owner of the firm, and delivered to the city clerk at~~
6 ~~least 10 days before the public hearing, unless other arrangements~~
7 ~~satisfactory to the private solid waste collection firm or firms have~~
8 ~~been made, the city shall either:~~

9 ~~(6) Contract with such solid waste collection firm(s) for a period of two~~
10 ~~years after the effective date of the annexation ordinance to allow the~~
11 ~~solid waste collection firm(s) to provide collection services to the city~~
12 ~~in the area to be annexed for sums determined under subsection (d) of~~
13 ~~this section, or~~

14 ~~(7) Pay to the solid waste collection firm(s) in lieu of a contract a sum~~
15 ~~equal to the economic loss determined under subsection (f) of this~~
16 ~~section.~~

17 (a) If the area to be annexed described in a resolution of intent passed under
18 G.S. 160A-37(a) includes an area where a firm meets the requirements of subsection
19 (a1) of this section, on the ninetieth day preceding the date of adoption of the resolution
20 of intent or resolution of consideration, was providing solid waste collection services in
21 the area to be annexed and on the date of adoption of the resolution of intent is still
22 providing such services and by reason of the annexation the firm's franchise with a
23 county or arrangements with third parties for solid waste collection will be terminated,
24 the city shall do one of the following:

25 (1) Contract with the firm for a period of two years after the effective date
26 of the annexation ordinance to allow the firm to provide collection
27 services to the city in the area to be annexed for sums determined
28 under subsection (d) of this section.

29 (2) Pay to the firm the firm's economic loss, with one-third of the
30 economic loss to be paid within 30 days of the termination and the
31 balance paid in twelve (12) equal monthly installments during the next
32 succeeding twelve (12) months. Any remaining economic loss
33 payment is forfeited if the firm terminates service to customers in the
34 annexation area prior to the effective date of the annexation.

35 (3) Make other arrangements satisfactory to the parties.

36 (a1) To qualify for the options set forth in subsection (a) of this section, a firm
37 must have done one of the following:

38 (1) Subsequent to receiving notice of the annexation in accordance with
39 subsection (b) of this section, filed with the city clerk at least 10 days
40 prior to the public hearing a written request to contract with the city to
41 provide solid waste collection services containing a certification,
42 signed by an officer or owner of the firm, that the firm serves at least
43 50 customers within the county at that time.

1 (2) Contacted the city clerk pursuant to public notice published by the
2 city, pursuant to G.S. 160A-37(b), at least 10 days before the hearing
3 and provided to the city clerk a written request to contract with the city
4 to provide solid waste collection services. The request must contain a
5 certification signed by an officer or owner of the firm that the firm
6 serves at least 50 customers within the county at that time.

7 (a2) Firms shall file notice of provision of solid waste collection service with the
8 city clerk of all cities located in the firm's collection area or within five miles thereof.

9 (b) ~~The city shall make a good faith effort to provide at least 20 days before the~~
10 ~~public hearing a copy of the resolution of intent to each private firm providing solid~~
11 ~~waste collection services in the area to be annexed. At least four weeks prior to the date~~
12 ~~of the informational meeting, the city shall provide written notice of the resolution of~~
13 ~~intent to all firms serving the area to be annexed. The notice shall be sent to all firms~~
14 ~~that filed notice in accordance with subsection (a2) of this section by certified mail,~~
15 ~~return receipt requested, to the address provided by the firm under subsection (a2) of~~
16 ~~this section.~~

17 (c) The city may require that the contract contain:

- 18 (1) A requirement that the ~~private~~ firm post a performance bond and
19 maintain public liability insurance coverage;
- 20 (2) A requirement that the ~~private~~ firm agree to service customers in the
21 annexed area that were not served by that firm on the effective date of
22 annexation;
- 23 (3) A provision that divides the annexed area into service areas if there
24 were more than one firm being contracted within the area, such that the
25 entire area is served by the ~~private~~ firms, or by the city as to customers
26 not served by the ~~private~~ firms;
- 27 (4) A provision that the city may serve customers not served by the firm
28 on the effective date of annexation;
- 29 (5) A provision that the contract can be cancelled in writing, delivered by
30 certified mail to the firm in question with 30 days to cure for
31 substantial violations of the contract, but no contract may be cancelled
32 on these grounds unless the Local Government Commission finds that
33 substantial violations have occurred, except that the city may suspend
34 the contract for up to 30 days if it finds substantial violation of health
35 laws;
- 36 (6) Performance standards, not exceeding city ~~standards,~~ standards existing
37 at the time of notice published pursuant to G.S. 160A-37(b), with
38 provision that the contract may be cancelled for substantial violations
39 of those standards, but no contract may be cancelled on those grounds
40 unless the Local Government Commission finds that substantial
41 violations have occurred;
- 42 (7) A provision for monetary damages if there are violations of the
43 contract or of performance standards.

1 (d) If the services to be provided to the city by reason of the annexation are
2 substantially the same as rendered under the franchise with the county or arrangements
3 with the parties, the amount paid by the city shall be at least ninety percent (90%) of the
4 amount paid or required under the existing franchise or arrangements. If such services
5 are required to be adjusted to conform to city standards or as a result of changes in the
6 number of customers, and as a result there are changes in disposal costs (including
7 mileage and landfill charges), requirements for storage capacity (dumpsters and/or
8 residential carts), and/or frequency of collection, the amount paid by the city for the
9 service shall be increased or decreased to reflect the value of such adjusted services as if
10 computed under the existing franchise or arrangements. In the event agreement cannot
11 be reached between the city and the private firm under this subsection, ~~such~~the matters
12 shall be determined by the Local Government Commission.

13 ~~(e) The city may, at any time after one year's operation thereunder, terminate a
14 contract made with the solid waste collection firm under subsection (a) of this section
15 upon payment to said firm of an amount equal to the economic loss determined in
16 subsection (f) of this section, but discounted by the percentage of the contract which has
17 elapsed prior to the effective date of the termination.~~

18 ~~(f) As used in this section, "economic loss" is 12 times the average monthly
19 revenue for the three months prior to the passage of the resolution of intent or resolution
20 of consideration, as applicable under subsection (a) of this section, collected or due the
21 private firm for residential, commercial, and industrial collection service in the area
22 annexed or to be annexed.~~

23 (g) The ~~private~~ firm may, if it contends that no contract has been offered, appeal
24 to the Local Government Commission within 30 days following passage of an
25 annexation ordinance. The ~~private~~ firm may appeal to the Local Government
26 Commission for an order staying the operation of the annexation ordinance pending the
27 outcome of the review. The Commission may grant or deny the stay upon such terms as
28 it deems proper. If the Local Government Commission finds that the city has not made
29 an offer which complies with this section, it shall remand the ordinance to the municipal
30 governing board for further proceedings, and the ordinance shall not become effective
31 until the Local Government Commission finds that such an offer has been made. Either
32 the ~~private~~ firm or the city may obtain judicial review in accordance with Chapter 150B
33 of the General Statutes.

34 (h) A firm which has given notice under subsection (a) of this section that it
35 desires to contract, and any firm that the city believes is eligible to give such notice,
36 shall make available to the city not later than ~~10 business~~30 days following a written
37 request of the city, sent by certified mail return receipt requested, all information in its
38 possession or control, including but not limited to operational, financial and budgetary
39 information, necessary for the city to determine if the firm qualifies for the benefits of
40 this section and to determine the nature and scope of the potential contract and/or
41 economic loss. The firm forfeits its rights under this section if it fails to make a good
42 faith response within ~~10 business~~30 days following receipt of the written request for
43 information from the city, provided that the city's written request states that statutory

1 rights will be forfeited in the absence of a timely response and includes a specific
2 reference to this section.

3 (i) As used in this section, the following terms mean:

4 (1) Economic loss. – A sum equal to 15 times the average gross monthly
5 revenue for the three months prior to the passage of the resolution of
6 intent or resolution of consideration, as applicable under subsection (a)
7 of this section, collected or due the firm for residential, commercial,
8 and industrial collection service in the area annexed or to be annexed;
9 provided that receipts shall be included in calculations under this
10 subdivision only if policies of the city will provide solid waste
11 collection to those customers such that arrangements between the firm
12 and the customers will be terminated.

13 (2) Firm. – A private solid waste collection firm."

14 **SECTION 2.** G.S. 160A-49.3 reads as rewritten:

15 "**§ 160A-49.3. Contract with private solid waste collection firm(s)-firms.**

16 (a) ~~If the area to be annexed described in a resolution of intent passed under~~
17 ~~G.S. 160A-49(a) includes an area where a private solid waste collection firm or firms:~~

18 (1) ~~On the ninetieth day preceding the date of adoption of the resolution of~~
19 ~~intent in accordance with G.S. 160A-49(j) or~~

20 (2) ~~On the ninetieth day preceding the date of adoption of the resolution of~~
21 ~~consideration in accordance with G.S. 160A-49(i)~~

22 ~~was providing solid waste collection services in the area to be annexed, and is still~~
23 ~~providing such services on the date of adoption of the resolution of intent, and:~~

24 (3) ~~By reason of such annexation any franchise with a county or~~
25 ~~arrangements with third parties for solid waste collection will be~~
26 ~~terminated, and~~

27 (4) ~~During the 90 day period preceding the date of adoption of the~~
28 ~~resolution of intent or resolution of consideration provided by~~
29 ~~subdivisions (1) or (2) of this subsection, the firm had in such area an~~
30 ~~average of 50 or more residential customers or a monthly average~~
31 ~~revenue from nonresidential customers in such area of five hundred~~
32 ~~dollars (\$500.00) or more; provided that customers shall be included in~~
33 ~~such calculation only if policies of the city will provide solid waste~~
34 ~~collection to those customers such that arrangements between the solid~~
35 ~~waste firm and the customers will be terminated, and~~

36 (5) ~~If such firm makes a written request that it wishes to contract, signed~~
37 ~~by an officer or owner of the firm, and delivered to the city clerk at~~
38 ~~least 10 days before the public hearing,~~

39 ~~unless other arrangements satisfactory to the private solid waste collection firm or firms~~
40 ~~have been made, the city shall either:~~

41 (6) ~~Contract with such solid waste collection firm(s) for a period of two~~
42 ~~years after the effective date of the annexation ordinance to allow the~~
43 ~~solid waste collection firm(s) to provide collection services to the city~~

~~in the area to be annexed for sums determined under subsection (d) of this section, or~~

~~(7) Pay to the solid waste collection firm(s) in lieu of a contract a sum equal to the economic loss determined under subsection (f) of this section.~~

(a) If the area to be annexed described in a resolution of intent passed under G.S. 160A-49(a) includes an area where a firm that meets the requirements of subsection (a1) of this section, on the ninetieth day preceding the date of adoption of the resolution of intent was providing solid waste collection services in the area to be annexed on the date of adoption of the resolution of intent or the resolution of consideration and on the date of adoption of the resolution of intent is still providing such services and by reason of the annexation the firm's franchise with a county or arrangements with third parties for solid waste collection will be terminated, the city shall do one of the following:

(1) Contract with the firm for a period of two years after the effective date of the annexation ordinance to allow the firm to provide collection services to the city in the area to be annexed for sums determined under subsection (d) of this section.

(2) Pay the firm for the firm's economic loss, with one-third of the economic loss to be paid within 30 days of the termination and the balance paid in twelve (12) equal monthly installments during the next succeeding twelve (12) months. Any remaining economic loss payment is forfeited if the firm terminates service to customers in the annexation area prior to the effective date of the annexation.

(3) Make other arrangements satisfactory to the parties.

(a1) To qualify for the options set forth in subsection (a) of this section, a firm must have done one of the following:

(1) Subsequent to receiving notice of the annexation in accordance with subsection (b) of this section, filed with the city clerk at least 10 days prior to the public hearing a written request to contract with the city to provide solid waste collection services containing a certification, signed by an officer or owner of the firm, that the firm serves at least 50 customers within the county at that time.

(2) Contacted the city clerk pursuant to public notice published by the city, pursuant to G.S. 160A-49(b), at least 10 days before the hearing and provided to the city clerk a written request to contract with the city to provide solid waste collection services. The request must contain a certification signed by an officer or owner of the firm that the firm serves at least 50 customers within the county at that time.

(a2) Firms shall file notice of provision of solid waste collection service with the city clerk of all cities located in the firm's collection area or within five miles thereof.

~~(b) The city shall make a good faith effort to provide at least 20 days before the public hearing a copy of the resolution of intent to each private firm providing solid waste collection services in the area to be annexed. At least four weeks prior to the date~~

1 of the informational meeting, the city shall provide written notice of the resolution of
2 intent to all firms serving the area to be annexed. The notice shall be sent to all firms
3 that filed notice in accordance with subsection (a2) of this section by certified mail,
4 return receipt requested, to the address provided by the firm under subsection (a2) of
5 this section.

6 (c) The city may require that the contract contain:

- 7 (1) A requirement that the ~~private~~-firm post a performance bond and
8 maintain public liability insurance coverage;
- 9 (2) A requirement that the ~~private~~-firm agree to service customers in the
10 annexed area that were not served by that firm on the effective date of
11 annexation;
- 12 (3) A provision that divides the annexed area into service areas if there
13 were more than one firm being contracted within the area, such that the
14 entire area is served by the ~~private~~-firms, or by the city as to customers
15 not served by the ~~private~~-firms;
- 16 (4) A provision that the city may serve customers not served by the firm
17 on the effective date of annexation;
- 18 (5) A provision that the contract can be cancelled in writing, delivered by
19 certified mail to the firm in question with 30 days to cure for
20 substantial violations of the contract, but no contract may be cancelled
21 on these grounds unless the Local Government Commission finds that
22 substantial violations have occurred, except that the city may suspend
23 the contract for up to 30 days if it finds substantial violation of health
24 laws;
- 25 (6) Performance standards, not exceeding city ~~standards,~~standards existing
26 at the time of notice published pursuant to G.S. 160A-49(b) with
27 provision that the contract may be cancelled for substantial violations
28 of those standards, but no contract may be cancelled on those grounds
29 unless the Local Government Commission finds that substantial
30 violations have occurred;
- 31 (7) A provision for monetary damages if there are violations of the
32 contract or of performance standards.

33 (d) If the services to be provided to the city by reason of the annexation are
34 substantially the same as rendered under the franchise with the county or arrangements
35 with the parties, the amount paid by the city shall be at least ninety percent (90%) of the
36 amount paid or required under the existing franchise or arrangements. If such services
37 are required to be adjusted to conform to city standards or as a result of changes in the
38 number of customers and as a result there are changes in disposal costs (including
39 mileage and landfill charges), requirements for storage capacity (dumpsters and/or
40 residential carts), and/or frequency of collection, the amount paid by the city for the
41 service shall be increased or decreased to reflect the value of such adjusted services as if
42 computed under the existing franchise or arrangements. In the event agreement cannot
43 be reached between the city and the ~~private~~-firm under this subsection, ~~such~~ the matters
44 shall be determined by the Local Government Commission.

1 ~~(e) The city may, at any time after one year's operation thereunder, terminate a~~
2 ~~contract made with the solid waste collection firm under subsection (a) of this section~~
3 ~~upon payment to said firm of an amount equal to the economic loss determined in~~
4 ~~subsection (f) of this section, but discounted by the percentage of the contract which has~~
5 ~~elapsed prior to the effective date of the termination.~~

6 ~~(f) As used in this section, "economic loss" is 12 times the average monthly~~
7 ~~revenue for the three months prior to the passage of the resolution of intent or resolution~~
8 ~~of consideration, as applicable under subsection (a) of this section, collected or due the~~
9 ~~private firm for residential, commercial, and industrial collection service in the area~~
10 ~~annexed or to be annexed.~~

11 (g) ~~The private firm may, if it contends that no contract has been offered, appeal~~
12 ~~to the Local Government Commission within 30 days following passage of an~~
13 ~~annexation ordinance. The private firm may appeal to the Local Government~~
14 ~~Commission for an order staying the operation of the annexation ordinance pending the~~
15 ~~outcome of the review. The Commission may grant or deny the stay upon such terms as~~
16 ~~it deems proper. If the Local Government Commission finds that the city has not made~~
17 ~~an offer which complies with this section, it shall remand the ordinance to the municipal~~
18 ~~governing board for further proceedings, and the ordinance shall not become effective~~
19 ~~until the Local Government Commission finds that such an offer has been made. Either~~
20 ~~the private firm or the city may obtain judicial review in accordance with Chapter 150B~~
21 ~~of the General Statutes.~~

22 (h) A firm which has given notice under subsection (a) of this section that it
23 desires to contract, and any firm that the city believes is eligible to give such notice,
24 shall make available to the city not later than ~~10 business 30~~ days following a written
25 request of the city, sent by certified mail return receipt requested, all information in its
26 possession or control, including but not limited to operational, financial and budgetary
27 information, necessary for the city to determine if the firm qualifies for the benefits of
28 this section and to determine the nature and scope of the potential contract and/or
29 economic loss. The firm forfeits its rights under this section if it fails to make a good
30 faith response within ~~10 business 30~~ days following receipt of the written request for
31 information from the city, provided that the city's written request so states by specific
32 reference to this section.

33 (i) As used in this section, the following terms mean:

34 (1) Economic loss. – A sum equal to 15 times the average gross monthly
35 revenue for the three months prior to the passage of the resolution of
36 intent or resolution of consideration, as applicable under subsection (a)
37 of this section, collected or due the firm for residential, commercial,
38 and industrial collection service in the area annexed or to be annexed;
39 provided that receipts shall be included in calculations under this
40 subdivision only if policies of the city will provide solid waste
41 collection to those customers such that arrangements between the firm
42 and the customers will be terminated.

43 (2) Firm. – A private solid waste collection firm."

44 **SECTION 3.** G.S. 160A-324 reads as rewritten:

1 **"§ 160A-324. Contract with private solid waste collection firm(s).**

2 ~~(a) This section applies to any area to be annexed by an act of the General~~
3 ~~Assembly which includes an area where a private solid waste collection firm or firms on~~
4 ~~the 90th day preceding the date of introduction in the House of Representatives or the~~
5 ~~Senate of the bill which became the act making the annexation was:~~

- 6 ~~(1) Providing solid waste collection services in the area to be annexed;~~
7 ~~(2) Is still providing such services on the date of enactment of the act;~~
8 ~~(3) By reason of such annexation any franchise with a county or~~
9 ~~arrangements with third parties for solid waste collection will be~~
10 ~~terminated; and~~
11 ~~(4) During the 90 day period preceding the date of introduction, the firm~~
12 ~~had in such area an average of 50 or more residential customers or a~~
13 ~~monthly average revenue from nonresidential customers in such area~~
14 ~~of five hundred dollars (\$500.00) or more; provided that customers~~
15 ~~shall be included in such calculation only if policies of the city will~~
16 ~~provide solid waste collection to those customers such that~~
17 ~~arrangements between the solid waste firm and the customers will be~~
18 ~~terminated,~~

19 ~~and if such firm makes a written request that it wishes to contract, signed by an officer~~
20 ~~or owner of the firm, and delivered to the city clerk at least 20 days before the effective~~
21 ~~date of the annexation provided in the act, unless other arrangements satisfactory to the~~
22 ~~private solid waste collection firm or firms have been made, the city shall either:~~

- 23 ~~(1) Contract with such solid waste collection firm(s) for a period of two~~
24 ~~years after the effective date of the annexation act to allow the solid~~
25 ~~waste collection firm(s) to provide collection services to the city in the~~
26 ~~area to be annexed for sums determined under subsection (d) of this~~
27 ~~section, or~~
28 ~~(2) Pay to the solid waste collection firm(s) in lieu of a contract a sum~~
29 ~~equal to the economic loss determined under subsection (f) of this~~
30 ~~section.~~

31 (a) If the area to be annexed described in an act of the General Assembly
32 includes an area where a firm that meets the requirements of subsection (a1) of this
33 section, on the ninetieth day preceding the date of introduction in the House of
34 Representatives or the Senate of the bill which became the act making the annexation,
35 was providing solid waste collection services in the area to be annexed and is still
36 providing such services on the date the act becomes law, and by reason of the
37 annexation the firm's franchise with a county or arrangements with third parties for solid
38 waste collection will be terminated, the city shall do one of the following:

- 39 (1) Contract with the firm for a period of two years after the effective date
40 of the annexation ordinance to allow the firm to provide collection
41 services to the city in the area to be annexed for sums determined
42 under subsection (d) of this section.
43 (2) Pay the firm for the firm's economic loss, with one-third of the
44 economic loss to be paid within 30 days of the termination and the

1 balance paid in twelve (12) equal monthly installments during the next
2 succeeding twelve (12) months. Any remaining economic loss
3 payment is forfeited if the firm terminates service to customers in the
4 annexation area prior to the effective date of the annexation.

5 (3) Make other arrangements satisfactory to the parties.

6 (a1) To qualify for the options set forth in subsection (a) of this section, a firm
7 must have, subsequent to receiving notice of the annexation in accordance with
8 subsection (b) of this section, filed with the city clerk at least 10 days prior to the
9 effective date of the annexation a written request to contract with the city to provide
10 solid waste collection services containing a certification, signed by an officer or owner
11 of the firm, that the firm serves at least 50 customers within the county at that time.

12 (a2) Firms shall file notice of provision of solid waste collection service with the
13 city clerk of all cities located in the firm's collection area or within five miles thereof.

14 (b) The city shall make a good faith effort to provide at least 30 days before the
15 effective date of the annexation a copy of the act to each private firm providing solid
16 waste collection services in the area to be annexed. The notice shall be sent to all firms
17 that filed notice in accordance with subsection (a2) of this section by certified mail,
18 return receipt requested, to the address provided by the firm under subsection (a2) of
19 this section.

20 (c) The city may require that the contract contain:

- 21 (1) A requirement that the ~~private~~-firm post a performance bond and
22 maintain public liability insurance coverage;
23 (2) A requirement that the ~~private~~-firm agree to service customers in the
24 annexed area that were not served by that firm on the effective date of
25 annexation;
26 (3) A provision that divides the annexed area into service areas if there
27 were more than one firm being contracted within the area, such that the
28 entire area is served by the ~~private~~-firms, or by the city as to customers
29 not served by the ~~private~~-firms;
30 (4) A provision that the city may serve customers not served by the firm
31 on the effective date of annexation;
32 (5) A provision that the contract can be cancelled in writing, delivered by
33 certified mail to the firm in question with 30 days to cure, for
34 substantial violations of the contract, but no contract may be cancelled
35 on these grounds unless the Local Government Commission finds that
36 substantial violations have occurred, except that the city may suspend
37 the contract for up to 30 days if it finds substantial violation of health
38 laws;
39 (6) Performance standards, not exceeding city ~~standards,~~standards existing
40 at the time of notice provided pursuant to subsection (b) of this section,
41 with provision that the contract may be cancelled for substantial
42 violations of those standards, but no contract may be cancelled on
43 those grounds unless the Local Government Commission finds that
44 substantial violations have occurred;

1 (7) A provision for monetary damages if there are violations of the
2 contract or of performance standards.

3 (d) If the services to be provided to the city by reason of the annexation are
4 substantially the same as rendered under the franchise with the county or arrangements
5 with the parties, the amount paid by the city shall be at least ninety percent (90%) of the
6 amount paid or required under the existing franchise or arrangements. If such services
7 are required to be adjusted to conform to city standards or as a result of changes in the
8 number of customers and as a result there are changes in disposal costs (including
9 mileage and landfill charges), requirements for storage capacity (dumpsters and/or
10 residential carts), and/or frequency of collection, the amount paid by the city for the
11 service shall be increased or decreased to reflect the value of such adjusted services as if
12 computed under the existing franchise or arrangements. In the event agreement cannot
13 be reached between the city and the ~~private~~-firm under this subsection, ~~such~~the matters
14 shall be determined by the Local Government Commission.

15 ~~(e) The city may, at any time after one year's operation thereunder, terminate a~~
16 ~~contract made with the solid waste collection firm under subsection (a) of this section~~
17 ~~upon payment to said firm of an amount equal to the economic loss determined in~~
18 ~~subsection (f) of this section, but discounted by the percentage of the contract which has~~
19 ~~elapsed prior to the effective date of the termination.~~

20 ~~(f) As used in this section, "economic loss" is 12 times the average monthly~~
21 ~~revenue for the three months prior to the introduction of the bill, collected or due the~~
22 ~~private firm for residential, commercial, and industrial collection service in the area~~
23 ~~annexed or to be annexed.~~

24 (g) If the city fails to offer a contract to the ~~private~~-firm within 30 days following
25 the effective date of the annexation act, the ~~private~~-firm may appeal within 60 days
26 following the effective date of the annexation act to the Local Government Commission
27 for an order directing the city to offer a contract. If the Local Government Commission
28 finds that the city has not made an offer which complies with this section, it shall order
29 the city to pay to the ~~private~~-firm a civil penalty of the amount of payments it finds that
30 the city would have had to make under the contract, during the noncompliance period
31 until the contract offer is made. Either the ~~private~~-firm or the city may obtain judicial
32 review in accordance with Chapter 150B of the General Statutes.

33 (h) A firm which has given notice under subsection (a) of this section that it
34 desires to contract, and any firm that the city believes is eligible to give such notice,
35 shall make available to the city not later than ~~five~~30 days following a written request of
36 the city all information in its possession or control, including but not limited to
37 operational, financial and budgetary information, necessary for the city to determine if
38 the firm qualifies for the benefits of this section and to determine the nature and scope
39 of the potential contract and/or economic loss. The firm forfeits its rights under this
40 section if it fails to make a good faith response within 30 days following receipt of the
41 written request for information from the city, provided that the city's written request so
42 states by specific reference to this section.

43 (i) As used in this section, the following terms mean:

1 (1) Economic loss. – A sum equal to 15 times the average gross monthly
2 revenue for the three months prior to the introduction of the bill under
3 subsection (a) of this section, collected or due the firm for residential,
4 commercial, and industrial collection service in the area annexed or to
5 be annexed; provided that receipts shall be included in calculations
6 under this subdivision only if policies of the city will provide solid
7 waste collection to those customers such that arrangements between
8 the firm and the customers will be terminated.

9 (2) Firm. – A private solid waste collection firm."

10 SECTION 4. Part 1 of Article 16 of Chapter 160A of the General Statutes is
11 amended by adding a new section to read:

12 **"§ 160A-327. Displacement of private solid waste collection services.**

13 (a) A unit of local government shall not displace a private company that is
14 providing collection services for municipal solid waste or recovered materials, or both,
15 except as provided for in this section.

16 (b) Before a local government may displace a private company that is providing
17 collection services for municipal solid waste or recovered materials, or both, the unit of
18 local government shall publish notice of the first meeting where the proposed change in
19 solid waste collection service will be discussed. Notice shall be published once a week
20 for at least four consecutive weeks in at least one newspaper of general circulation in
21 the area in which the unit of local government and the proposed displacement area are
22 located. The first public notice shall be given no less than 30 days but no more than 60
23 days prior to the displacement issue being placed on the agenda for discussion or action
24 at an official meeting of the governing body of the unit of local government. The notice
25 shall specify the date and place of the meeting, the geographic location in which solid
26 waste collection services are proposed to be changed, and the types of solid waste
27 collection services that may be affected. In addition, the unit of local government shall
28 send written notice by certified mail, return receipt requested, to all companies that have
29 filed notice with the unit of local government clerk pursuant to the provisions of
30 subsection (f) of this section. The unit of local government shall deposit notice in the
31 U.S. mail at least 30 days prior to the displacement issues being placed on the agenda
32 for discussion or action at an official meeting of the governing body of the unit of local
33 government.

34 (c) Following the public notice required by subsection (b) of the section, but in
35 no event later than six months after the date of the first meeting pursuant to subsection
36 (b) of this section, the unit of local government may proceed to take formal action to
37 displace a private company. The unit of local government or other public or private
38 entity selected by the unit of local government may not commence the actual provision
39 of these services for a period of 15 months from the date of the first publication of
40 notice, unless the unit of local government provides compensation to the displaced
41 private company as follows:

42 (1) Subject to subdivision (3) of this subsection, if the private company
43 has provided collection services in the displacement area prior to
44 announcement of the displacement action, the unit of local government

1 shall provide compensation to the displaced private company in an
2 amount equal to the total gross receipts for collection services
3 provided in the displacement area for the 6 months prior to the first
4 publication of notice required under subsection (b) of this section.

5 (2) Subject to subdivision (3) of this subsection, if the displaced private
6 company has provided collection services in the displacement area for
7 less than 6 months prior to the first publication of notice required
8 under subsection (b) of this section, the unit of local government shall
9 provide compensation to the displaced private company in an amount
10 equal to the total gross receipts for the period of time that the private
11 company provided such services in the displacement area.

12 (3) If the displaced private company purchased an existing operation of
13 another private company providing such services, compensation shall
14 be for 6 months based on the monthly average total gross receipts for
15 three months the immediate preceding the first publication of notice
16 required under subsection (b) of this section.

17 (d) If the local government elects to provide compensation pursuant to subsection
18 (c) of this section, the amount due from the unit of local government to the displaced
19 company shall be paid as follows: one-third of the compensation to be paid within 30
20 days of the displacement and the balance paid in six (6) equal monthly installments
21 during the next succeeding six (6) months.

22 (e) If the unit of local government fails to change the provision of solid waste
23 services as described in the notices required under subsection (b) of this section within
24 six months of the date of the first meeting pursuant to subsection (b) of this section, the
25 unit of local government shall not take action to displace without complying again with
26 the provisions of subsection (b) of this section.

27 (f) Notice of the provision of solid waste collection service shall be filed with the
28 unit of local government clerk of all cities and counties located in the private company's
29 collection area or within five miles thereof.

30 (g) This section shall not apply when a private company is displaced as the result
31 of an annexation under Article 4A of Chapter 160A of the General Statutes or an
32 annexation by an act of the General Assembly. The provisions of G.S. 160A-37.3, G.S.
33 160-49.3, or G.S. 160A-324 shall apply.

34 (h) If a unit of local government intends to provide compensation under
35 subsection (c) of this section to a private company that has given notice under
36 subsection (f) of this section, the private company shall make available to the unit of
37 local government not later than 30 days following a written request of the unit of local
38 government, sent by certified mail, return receipt requested, all information in its
39 possession or control, including operational, financial, and budgetary information
40 necessary for the unit of local government to determine if the private company qualifies
41 for compensation. The private company forfeits its rights under this section if it fails to
42 make a good faith response within 30 days following receipt of the written request for
43 information from the unit of local government provided that the unit of local
44 government's written request so states by specific reference to this section.

1 (i) As used in this section, the following terms mean:

2 (1) Collection. –The gathering of municipal solid waste, recovered
3 materials or recyclables from residential, commercial, industrial,
4 governmental or institutional customers and transporting it to a
5 sanitary landfill or other disposal facility. Collection does not include
6 transport from a transfer station or processing point to a disposal
7 facility.

8 (2) Displacement. – Any formal action by a unit of local government that
9 prohibits a private company from providing all or a portion of the
10 collection services for municipal solid waste, recovered materials, or
11 recyclables that the company is providing in the affected area at least
12 90 days prior to the date of the first publication of notice required by
13 subsection (b) of this section. Displacement also means an action by a
14 unit of local government to use an availability fee, nonoptional fee, or
15 taxes to fund competing collection services for municipal solid waste,
16 recovered materials, or recyclables that the private company is
17 providing in the affected areas at least 90 days prior to the date of the
18 first publication of notice required under subsection (b) of this section
19 is given. Displacement does not include any of the following actions:

20 a. Failure to renew a franchise agreement or contract with a
21 private company.

22 b. Taking action that results in a change in solid waste collection
23 services because the private company's operations present an
24 imminent and substantial threat to human health or safety or are
25 causing a substantial public nuisance.

26 c. Taking action that results in a change in solid waste collection
27 services because the private company has materially breached
28 its franchise agreement or the terms of a contract with the local
29 government, or the company has notified the local government
30 that it no longer intends to honor the terms of the franchise
31 agreement or contract. Notice of breach must be delivered in
32 writing, delivered by certified mail to the firm in question with
33 30 days to cure the violation of the contract.

34 d. Terminating an existing contract or franchise in accordance
35 with the provisions of the contract or franchise agreement.

36 e. Providing temporary collection services under a declared state
37 of emergency.

38 f. Taking action that results in a change in solid waste collection
39 services due to the existing providers' felony conviction of a
40 violation in the State of federal or state law governing the solid
41 waste collection or disposal.

42 g. Contracting with a private company to continue its existing
43 services or provide a different level of service at a negotiated
44 price on terms agreeable to the parties.

1
2
3
4
5
6
7

(3) Municipal solid waste. – As defined in G.S. 130A-290(18a).

(4) Unit of local government. – A county, municipality, authority, or political subdivision that is authorized by law to provide for collection of solid waste or recovered materials, or both."

SECTION 5. This act becomes effective January 1, 2007. Sections 1 through 3 of this act apply to annexations for which a resolution of intent is adopted on or after that date. Section 4 of this act applies to actions taken on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE 7-12-06

S. B. No. 951

Amendment No. #1

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE S951-CSR-97

Rep.) FAISON
Sen.) _____

1 moves to amend the bill on page 14, line 1

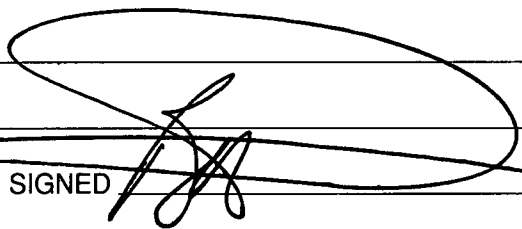
2 () WHICH CHANGES THE TITLE

3 by REWRITING THE LINE TO READ:

4 " (i) NOTHING IN THIS SECTION SHALL AFFECT THE
5 AUTHORITY OF A CITY OR COUNTY TO ESTABLISH
6 RECYCLING SERVICES WHERE RECYCLING SERVICES ARE
7 NOT CURRENTLY BEING OFFERED.

8 (j) AS USED IN THIS SECTION, THE FOLLOWING TERMS
9 MEAN: "

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

SIGNED 

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE 7-12-06

S. B. No. 951

Amendment No. # 2

COMMITTEE SUBSTITUTE SSS1-CSRV-97

(to be filled in by
Principal Clerk)

(Rep.) RAPP
Sen.)

1 moves to amend the bill on page 13, line 5 2, 10 + 14

2 () WHICH CHANGES THE TITLE

3 by DELETING THE WORD "RECEIPTS" AND SUBSTITUTING

4 THE WORD "REVENUE"

5 _____

6 _____

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED [Signature]

ADOPTED X FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 729

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

S729-ARO-59 [v.1]

Page 1 of 1

Date _____, 2006

Comm. Sub. [YES]
Amends Title [NO]
S729-CSRO-63[v.1]

Representative COLE

1
2
3
4
5
6
7
8
9
10
11

moves to amend the bill on page 2, lines 30-31, by rewriting the lines to read:

"2002, who are seeking a renewal license. This subdivision also does not apply to an applicant who holds a license as a new motor vehicle dealer as defined in G.S. 20-286(13) and operates from an established showroom one mile or less from the established showroom for which he seeks a used motor vehicle dealer license. An applicant who also holds a license as a new motor vehicle dealer may designate a representative to complete the licensing course required by this subdivision."

SIGNED [Signature]
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 729

S729-ARO-60 [v.1]

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

Page 1 of 1

Date _____, 2006

Comm. Sub. [YES]
Amends Title [NO]
S729-CSRO-63[v.1]

Representative Stam

- 1 moves to amend the bill on page 1, lines 2-5, by rewriting the lines to read:
- 2
- 3 "AN ACT TO EXEMPT NEW MOTOR VEHICLE";
- 4
- 5 and on page 1, line 9 through page 2, line 15, by deleting the lines and renumbering the
- 6 sections accordingly;
- 7
- 8 and on page 2, lines 36-38, by rewriting the lines to read:
- 9 "SECTION 2. This act becomes effective January 1, 2007, and applies to
- 10 applications for used motor vehicle dealer licenses filed on or after that date."
- 11

SIGNED Stam
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

House Pages

COMMERCE

Name Of Committee: _____

Date: 12 JULY 2006

1. Name: Scott Possie!

County: Wake

Sponsor: Yongue

2. Name: Lynn Riddle

County: Lincoln

Sponsor: Karen Ray

3. Name: George Davies

County: Charlotte

Sponsor: Speaker Black

4. Name: Win Jayner

County: Hertford

Sponsor: Bill Owens

5. Name: _____

County: _____

Sponsor: _____

Sgt-At-Arms

1. Name: CHARLES WILLIAMS

2. Name: FRANK BREVO

3. Name: NEIL CASPER

4. Name: JERARD PERRY

5. Name: MARTHA GADISON Jackson

JAMES WORTH

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

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

DAY & DATE: **Wednesday, July 12, 2006**

TIME: **1:00 p.m.**

LOCATION: **Room 643 - LOB**

The following bills will be considered:

SB 729 – CLARIFY USED MV INTEREST CHARGES UNDER RISA - Sen. Hoyle

SB 951 – PUBLIC-PRIVATE SOLID WASTE COLLECTION – Sen. Hoyle

Respectfully,

Representatives Daughtridge, Goforth, LaRoque
and Rapp - Chairmen

I hereby certify this notice was filed by the committee assistant at the following offices at 1:30 p.m. on July 6, 2006.

___ Principal Clerk
___ Reading Clerk - House Chamber

Ann Jordan (Committee Assistant)

VISITOR REGISTRATION SHEET

Commerce Committee
Name of Committee

July 12, 2006
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
<i>Fay Bone</i>	<i>Bone & Assoc.</i>
<i>Roger Bone</i>	<i>'1</i>
<i>Verny/Gunnish</i>	<i>Carolina Recycling Assoc.</i>
<i>Christina Stachi</i>	<i>Rep. Starn</i>
<i>ANTHONY ALLEN</i>	<i>NCAR</i>
<i>JIM BRADSHAW</i>	<i>NCAR</i>
<i>Drill Colton</i>	<i>etc.</i>
<i>J Bewley</i>	<i>LOA</i>
<i>Stephanie Linn</i>	<i>NCAR</i>
<i>Gracie J</i>	<i>AMICS</i>
<i>Henry Jones</i>	<i>Attorney Raleigh</i>

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Daughtridge, Goforth, LaRoque, Rapp (Chairs) for the Committee on
COMMERCE.

Committee Substitute for

SB 951 A BILL TO BE ENTITLED AN ACT TO REQUIRE A UNIT OF LOCAL GOVERNMENT THAT DISPLACES A PRIVATE COMPANY THAT IS PROVIDING COLLECTION SERVICES FOR SOLID WASTE OR RECOVERED MATERIALS TO GIVE NOTICE OF ITS INTENT TO DO SO AND TO PROVIDE COMPENSATION TO THE DISPLACED PRIVATE COMPANY.

With a favorable report as to the House committee substitute bill, unfavorable as to the ~~original bill.~~ *Sen. Comm. Sub.*

(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.

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Daughtridge, Goforth, LaRoque, Rapp (Chairs) for the Committee on
COMMERCE.

Committee Substitute for

SB 729 A BILL TO BE ENTITLED AN ACT TO CLARIFY INCLUDABLE
INTEREST CHARGES FOR USED MOTOR VEHICLES UNDER THE RETAIL
INSTALLMENT SALES ACT.

With a favorable report as to the House committee substitute bill, *with the amendments* 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.

_____ 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.

VISITOR REGISTRATION SHEET

Commerce Committee
Name of Committee

July 12, 2006
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rich Webb	NCGA Intern
Chris Kolka	Ctr. for Responsible Lending
Rob Schofield	NC CNP
Nancy Shaw	Shaw Sanitation Service
Jana Caswell	Reliable Sanitation: Recycling Service
O.L. Yates	
Mike Mann	NSWMA
Phil Carter	NSWMA - WASTE INDUSTRIES
Don Dyer	NSWMA
JoBert Auld	First Tee Transport
Erin Kinney	NC Conservation Network

VISITOR REGISTRATION SHEET

Commerce Committee
Name of Committee

July 12, 2006
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jami Fitzgerald	NCFC
Lauren Rogers	NCFC
Cameron Cortizano	Daily Bulletin
Bill Schrum	Republic Services
Jim Blackburn	NC Association of County Commissioners
Haley Nix	NCICL
Karen Lee	NCICL
Will Cross	NCICL
Rachel Grubbs	NCICL
David Co	CRV
James Moore	CRV

